

**M e m o r a n d u m****320.0055**

To: Mr. Rick Slater  
Supervisor, Collections Unit

Date: October 3, 1990

From: Gordon P. Adelman  
Tax Counsel

Subject: Effective Date of Payment

In your memorandum dated September 11, 1990 you inquired as to the effect of two recent bankruptcy cases on Section 11002, Government Code: regarding the effective date of payment of funds to the Board. The two cases are In re Paul v. State Board of Equalization, decided May 12, 1988 in the USBC, Eastern District of California, and In re Caldwell (Sanwa Bank California) v. State Board of Equalization, decided February 16, 1990 in the USBC, Central District of California.

Government Code Section 11002 provides in part that funds are "deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance..." The two cases hold that service of a Notice or Levy by the Board transfers ownership in the funds levied upon to the Board as of the date of service. You see an apparent conflict between the statute and the cases.

I do not see a conflict, The Paul and Caldwell cases involve (1) a question of whether funds levied upon by the Board before a petition in bankruptcy is filed become part of the estate and (2) whether the automatic stay provided by 11 U.S.C. § 362 conceals and applies to the service of the Notice of Levy.

The Paul case held that the funds levied upon by the Board two days before the bankruptcy petition was filed never became part of the bankruptcy estate because ownership was transferred to the Board at the time the levy was served. The decision distinguishes Sections 6757(a) and 6703, Revenue and Taxation Code, from Sections 6796 et seq., where seizure and sale occur but the taxpayer retains an interest in the property until title passes.

The Caldwell case reached the same conclusion and denied application of the automatic stay since the stay can only apply to debtors and property of the bankruptcy estate. Since ownership transferred to the Board upon service of the levy, the funds were never part of the estate and the automatic stay cannot apply to those funds.

Section 11002, Government Code, is not concerned with whether or not funds levied upon are part of a bankruptcy estate. The statute provides that receipt of funds required by law to be made to the Board on or before a specified date sent through the U. S. Mail is deemed received by the Board on the date postmarked. The taxpayer has relinquished control of the funds when the funds are posted in the mail.

I understand that the situation that brought this issue to light involved a levy served on the bank. Before the bank transferred the funds to the Board, the taxpayer filed a petition in bankruptcy. The bank did not release the funds to the Board until the Court ruled the funds were ours. The Court relied on the Paul and Caldwell cases. Meanwhile, the ten-day period for payment after levy had long elapsed and the question arose as to whether a late payment penalty should apply.

Since the Board had ownership as of the date of service, a late penalty cannot apply.

If you have additional questions, please let me know.

GPA: sr

cc: Ms. Vi Sawyer  
General Services Division

# Memorandum

320.0055

To: Legal - John Abbott

Date: September 11, 1990

From: P. A. Slater

Subject: Effective Date of Payment

Historically, the Board has used the postmark as effective date of payment of remittances as defined in Government Code Section 11002 (attached).

Two recent bankruptcy cases, In Re Paul and In Re Caldwell found that service of a Notice of Levy transferred ownership in the funds levied upon to the Board as of the date of service rather than upon receipt of funds by the Board.

It would appear that, in the case of remittances received via levy the effective date of payment should be the date of service. This Approach, however, appears to conflict with Section 11002.

My choice is date of service. What is yours?

PAS:sas

Attachment

cc: San Jose - Bill Ryle  
Gary Evans