

495.0737**M e m o r a n d u m**

To : Mr. Bill Ragle
Collections Section - MIC:55

Date: March 29, 1995

From : Thomas Cooke
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Subject: **P--- H---**
W--- & L--- K---
Account No. SR --- 23-XXXXXX

L--- K---
Account No. SR --- 99-XXXXXX

F--- M. R---, Receiver
Account No. SR -- 23-XXXXXX

On February 7, 1991, W--- and L--- K--- applied for a permit to operate a restaurant known as S--- Meat, Fish & Liquor Co. at XX-XXX Hwy XXX in [California 1]. The account number was SR --- 23-XXXXXX. The Board issued two determinations on this account in 1992 for the periods of October 1, 1991 to March 31, 1992 and April 1, 1992 to June 17, 1992. The taxpayers' mail on this account was sent to XX-XXX Hwy XXX, [California 2]. On September 18, 1992, L--- K--- filed Chapter 11 bankruptcy. The Board filed a Proof of Claim in the bankruptcy on the above account for \$91,066.33 for the period of October 1, 1991 to June 17, 1992. L--- K--- objected to the Board's claim stating that she separated from her husband on July 26, 1991 and was divorced in August of 1992. She stated that W--- K--- was given sole ownership of S--- Meat, Fish & Liquor Co. and another restaurant known as the P--- H--- in [California 2] in the marital settlement agreement. Because of a breach of the marital settlement agreement, Mrs. K--- had a receiver appointed to operate the [California 2] restaurant. Mrs. K--- rejected any liability for taxes due on the [California] account. On January 19, 1994, the bankruptcy court disallowed the Board's claim against L--- K--- finding "that the debt to the Board of Equalization was not incurred by debtor herein." On April 25, 1994, the Board withdrew its amended claim for the [California] liability from the bankruptcy action.

F--- R--- was appointed to operate the [California 2] restaurant known as the P--- H--- on June 18, 1992. Mr. R--- applied for a permit on June 26, 1992. The permit was issued under Account No. SR --- 23-XXXXXX. For some reason, the permit was issued to P--- H---, Estate of W--- and L--- K---. A determination was issued under this name on March 12, 1993. On March 18, 1994, the determination was reissued to F--- M. R---, Receiver in the amount of

\$48,441.41 for the period of June 1, 1992 to September 26, 1992. On September 26, 1992, the Board closed out Mr. R---'s permit based on the bankruptcy filing by L--- K--- as a debtor-in-possession. On November 21, 1994, Mr. R---'s liability was redetermined to \$14,938.32.

On August 2, 1993, Mr. R--- filed Chapter 7 bankruptcy listing the Board as a creditor. Apparently, this is a "no-assets" case.

On September 29, 1992, L--- K--- applied for a seller's permit for P--- H--- of [California 2]. The permit number is SR --- 99-XXXXXX. The address for this business is XX-XXX Hwy XXX, [California 2]. The reason that Mrs. K--- applied for this permit is that in August of 1992, the superior court awarded this business to her as her separate property.

On April 1, 1994, the bankruptcy court entered its order confirming Mrs. K---'s plan of reorganization.

We believe a referral to the Attorney General's office is warranted only to satisfy Mr. R---'s liability from the amount of the receiver's bond that was required to be posted. The bankruptcy court has held that Mrs. K--- has no liability in bankruptcy court for the taxes due under Account No. SR --- 23-XXXXXX. She also has no liability for the period that Mr. R--- was operating the [California 2] restaurant under his own permit. Mrs. K---'s liability under Account No. SR --- 99-XXXXXX is presently approximately \$25,000.00. It is our recommendation that collection efforts be employed at the district level to collect this liability.

We believe that a motion made in Mrs. K---'s bankruptcy proceeding to seek payment of Mr. R---'s sales tax liability will not succeed. It may be true that there was a turnover of all receivership estate's assets to the K--- bankruptcy estate. When Mr. R--- was appointed receiver of the [California 2] business, all of the assets belonging to that business and owned by the K---'s were transferred to the receiver to enable the receiver to operate the business.

Mrs. K---'s bankruptcy estate is not enriched when it obtains the same assets that it would have received directly from the debtor had there been no receiver. If there is information that the receiver turned over to the bankruptcy estate assets greater in value than he received from the K---s, please advise this office.

TJC:plh