

M e m o r a n d u m

535.0043

To: Mr. P. K. Taylor

Date: October 23, 1979

From: Margaret H. Howard

Subject: Does Section 6814 Prohibit Jeopardy Determinations in Successor Liability Cases?

The subject question was asked by your office today. Section 6814 was signed on July 16, 1979 and became effective on July 17, 1979 (SB 287, Chapter 260). It provides as follows:

“The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be service in the manner prescribed for service of a notice of deficiency determination. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 6561) of Chapter 5 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.”

This new section was enacted at the request of the Board. The stated purpose of the section was to provide a statutory remedy to business successors under Article 7 (commencing with Section 6811) Chapter 6 of the Sales and Use Tax Law, to petition for reconsideration of the amount of sales and use tax due. The correspondence in the Board’s legislation file indicates that the remedy intended to be provided was “equivalent to petitioning for redetermination against an ordinary determination.”

An early legal office draft of the section contained the phrase “the notice shall become final in the same manner as a deficiency determination or jeopardy determination, as the case may be,” with a penalty of 10 percent added if not paid when final. Apparently this phraseology was dropped at the time the staff determined that the 10 percent penalty was not appropriate, and was never contained in a draft of the bill submitted to the Legislature.

This section as adopted does not expressly prohibit the jeopardy collection method, nor does it state that the method specified is exclusive. We find nothing in the background material or in Section 6814 itself which indicates that the Board intended (a) to impose restrictions upon itself in its collection methods, or (b) to relieve a successor from the effect of Section 6526, et seq., if applicable.

Section 6814 permits the successor to petition for reconsideration “in the same manner” as under Section 6561. Since a person under Section 6561 is subject to the jeopardy provisions, we conclude that a successor under 6814 would be equally subject to the same jeopardy provisions. To hold otherwise would be to give to the successor a superior rather than an “equivalent” remedy as was intended.

It is our opinion that when the Board believes that collection of any tax will be jeopardized by delay, the provisions of Section 6536 et seq. may be employed. We therefore answer the subject question in the negative.