

Memorandum

170.0001.150

To : Mr. Vic Anderson
Supervisor, Petitions Section

Date: August 1, 1996

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
CalNet 485-6496

Subject: A--- S--- and M--- Company, Inc.
Account No. SZ --- XX-XXXXXXX-010/020

T--- A--- S--- and M--- Company
Account No. SN -- XX-XXXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated July 29, 1996 concerning the above taxpayer. You ask that the Legal Section provide guidance on action to be taken on the taxpayer's petitions.

In your memorandum, you state that Notices of Determination for the periods October 1, 1986 to March 31, 1987 and April 1, 1987 to December 31, 1989 were issued to A--- S--- and M--- Company on February 14, 1991, with timely petitions for redeterminations filed by this taxpayer for those periods. On December 28, 1994, the taxpayer filed Chapter 11 bankruptcy. This taxpayer's Third Amended Plan of Liquidation was ordered confirmed by the bankruptcy court on February 16, 1996, with the order entered on February 20, 1996 (see attached). Paragraph VI(a) of the Third Amended Plan of Liquidation provides, in part:

"Upon confirmation of the Plan the automatic stay is lifted as to property of the estate. However, the stay continues to prohibit collection or enforcement of pre-petition claims against the debtor or the debtor's property until the date the debtor receives a discharge, if any. Here, because the debtor is a corporation it does not seek and is not entitled to receive a discharge pursuant to Section 1141(d). Therefore, a discharge of the Debtor will be deemed denied, and the stay as to the Debtor and the Debtor's property will terminate upon entry of the order confirming the Plan."

11 U.S.C. section 1141(d)(3) provides, in part:

“The confirmation of a plan does not discharge a debtor if-

“(A) the plan provides for the liquidation of all or substantially all of the property of the estate”

It is our opinion that the bankruptcy automatic stay was lifted as to A--- S--- and M--- Company on February 20, 1996, the date that the order confirming the Third Amended Plan of Liquidation was entered.

It is our recommendation that a hearing before the Board be scheduled in both the A--- S--- and M--- Company and the T--- A--- S--- and M--- cases for the same Board session as these cases involve application of the tax to a transaction which is the subject of a contract between these parties.

TJC/cmm
Attachment

cc: Mr. Rick A. Slater - w/attachment (MIC:55)
Rancho Mirage District Administrator (EHC)
Out-of-State District Administrator (OH)