

M e m o r a n d u m

170.0007.003

To : Mr. Vic Anderson
Supervisor, Petitions Section

Date: August 28, 1996

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
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Subject: P--- L--- Co. Inc.
Account No. SR BH XX-XXXXXX-010

Gary Jugum has requested that I respond to your memorandum to him dated August 20, 1996 concerning the above taxpayer.

In your memorandum, you state that a Jeopardy Notice of Determination was issued to the taxpayer for the period 07-01-90 to 09-30-93 on December 7, 1993. Shortly thereafter, the taxpayer filed a timely petition for redetermination and posted security equal to the determined liability. A protective claim for refund was later filed by the taxpayer's representative in the amount of the security posted.

On January 10, 1994, the taxpayer filed Chapter 11 bankruptcy. The taxpayer's Plan of Reorganization was confirmed by order of the bankruptcy court on December 28, 1995. You ask that the Legal Section provide guidance on the action to be taken on the taxpayer's petition and protective claim for refund.

11 U.S.C. section 362(c) provides that a bankruptcy "stay" continues until property of the bankruptcy estate is no longer property of the estate or until a bankruptcy discharge is granted or denied.

11 U.S.C. section 1141(b) provides that except as otherwise provided in the plan or the order confirming the plan, the confirmation of a Chapter 11 plan vests all of the property of the estate in the debtor.

11 U.S.C. section 1141(d)(1) provides that except as otherwise provided in the subsection, in the plan, or in the order confirming the plan, the confirmation of a plan discharges the debtor from any debt that arose before the date of such confirmation.

We have not discovered any provision in the taxpayer's plan or in the order confirming the plan which modifies the date that the "automatic stay" is lifted by statute. It is our opinion that the taxpayer's "automatic stay" was lifted when the order confirming the taxpayer's plan was entered and that the Board may now resolve the taxpayer's determined liability and claim for refund. The taxpayer's determined liability has not become "due and payable" or "final" under California law and therefore has not been discharged in the taxpayer's bankruptcy action.

TJC/cmm

cc: Audit Program Manager (MIC:49)
Robert Buntjer, Refunds and Allocation Section (MIC:39)
San Francisco District Administrator (BH)