

Memorandum

170.0007.030

To : Mr. Steve Adams
Supervising Tax Auditor, Petitions

Date: June 24, 1997

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
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Subject: L--- E--- E---
Permit No. SS -- XX-XXXXXX-010

Gary Jugum has requested that I respond to your memorandum to him dated June 20, 1997 concerning the above taxpayer.

In your memorandum, you state that a Notice of Determination was issued to the taxpayer on June 20, 1995 for the period January 1, 1984 to June 30, 1991. A timely petition for redetermination was filed by the taxpayer on July 6, 1995. On September 6, 1996 the taxpayer filed Chapter 7 bankruptcy. The San Jose District advises that the no asset bankruptcy case was closed on November 27, 1996. You ask whether the liability is subject to discharge.

11 U.S.C. section 727 grants a discharge, under Chapter 7, "unless . . . the debtor is not an individual . . ." If the above taxpayer is considered a corporation, it could not have received a discharge in a Chapter 7 bankruptcy.

Assuming the taxpayer is not considered a corporation, 11 U.S.C. section 523(a) provides, in part:

"A discharge under section 727, . . . of this title does not discharge an individual debtor from any debt -

"(1) for a tax or a custom duty -

"(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed . . ."

11 U.S.C. 507(a)(8)(A) specifies:

“a tax on or measured by income or gross receipts -

“ . . .

“(ii) assessed within 240 days, . . . before the date of the filing of the petition”

In *King v. Franchise Tax Board*, 961 F.2d 1423 (9th Cir. 1992), the court stated that taxes measured by income or gross receipts that are assessed within 240 days of the filing of a bankruptcy petition are non-dischargeable in bankruptcy. The court held that, under California law, a tax is “assessed” for bankruptcy purposes when the assessment becomes “final.”

Since L--- E--- E--- filed a timely petition for redetermination and no decision on the petition has been issued, the liability is not “final” under California law (see Rev. & Tax. Code §§ 6561, 6564, and 6565). The tax had not been “assessed” at the time that the taxpayer filed its bankruptcy petition and the liability is not dischargeable.

It is our opinion that whether or not the taxpayer is considered a corporation, the liability was not subject to discharge in the bankruptcy action.

TJC/cmm
Attachments

cc: Mr. J. W. Cornelius, (MIC:49)
Mr. Philip W. Spielman (MIC:38)
Ms. Janeth Z. Brower (MIC:39)
Mr. Stanley J. Rose (GH)
San Jose District Administrator (GH)