

M e m o r a n d u m

170.0007.035

To : Mr. Rod Kelleher
Special Procedures

Date April 18, 1996

From : Thomas J. Cooke
Staff Counsel

Subject: F--- R---, Inc.
Dualees: B--- T. and S--- M. G---
Account No. SR --- XX-XXXXXX (-1 and -2)

Ronald Dick has requested that I respond to your memorandum to him dated April 17, 1996 concerning the above taxpayers.

In your memorandum, you state that the San Francisco District Office has asked if the liability of the above dualees has been discharged by their bankruptcy action filed in 1990.

F--- R---, Inc. filed Chapter 11 bankruptcy on November 14, 1989 and the case was converted to Chapter 7 on February 21, 1991. The business was sold and a \$74,396 dividend was paid on the Board's claim. The remaining liability is for penalties and accrued interest.

Dual determinations were billed on December 26, 1995 for the period January 1, 1989 to November 13, 1989 based on corporate suspension.

On May 15, 1990, B--- and S--- G--- filed a joint personal Chapter 7 bankruptcy action. Court notices were mailed to the San Mateo branch office but the debtors could not be identified as corporate officers of F--- R---, Inc.

The no-asset case was closed and debtors were discharged on December 14, 1990. The final decree was issued on May 8, 1991.

We hesitate to render an opinion when we have not been presented with documents indicating the nature of the "court notices" sent to the San Mateo branch office and have not seen the bankruptcy petition filed by the G---s. We note that the liability accrued in 1989, that the

corporation filed bankruptcy six months prior to the bankruptcy filing by the dualees and that the Board received a distribution in the corporate bankruptcy action.

11 U.S.C. section 523(a) states:

“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;”

It is our opinion that if the Board had filed a claim in the G---s' bankruptcy action, the claim would have been entitled to priority status pursuant to 11 U.S.C. section 507(a)(8). Since 11 U.S.C. section 523(a) denies discharge to tax claims entitled to priority status whether or not a claim was filed, we conclude that the discharge entered in the G---s' bankruptcy did not discharge the Board's claim for taxes owed by them.

TJC/cmm

cc: San Mateo District Administrator (BHA)