

M e m o r a n d u m**170.0007.050**

To : Mr. Vic Anderson
Supervisor, Petitions Section

Date: January 9, 1996

From : Thomas J. Cooke
Tax Counsel

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Subject: S---, Inc. fka N---, Inc.
Permit No. SC OH XX-XXXXXX-010

Gary Jugum has requested that I respond to the memorandum of the Audit Program Manager to him dated December 27, 1996 concerning the above taxpayer.

In that memorandum, it states that a Notice of Determination was issued to the taxpayer for the period 10-01-86 to 12-31-89 on April 24, 1991. A timely petition for redetermination was filed shortly thereafter. On August 27, 1993, the taxpayer filed Chapter 11 bankruptcy. The matter was referred to the Attorney General's office when the taxpayer objected to the claim that the Board filed in the bankruptcy action. A plan of reorganization was confirmed by the bankruptcy court on April 5, 1994. The Legal Section is asked for guidance on action to be taken on the taxpayer's petition for redetermination and the impact the amended plan of reorganization has on the liability.

Our review of the files indicates that the Board filed proofs of claim in the taxpayer's bankruptcy action for audit liabilities for the period 10-01-86 to 12-31-89 and for 1-01-90 to 9-30-92. The taxpayer objected to these claims on the grounds that certain portions of the claim were barred by the statute of limitations and that a substantial portion of the claim did not constitute a priority claim under bankruptcy law. An agreement was reached between the Board and the taxpayer in which 50 percent of the taxes due for the period 10-01-86 to 12-31-89 were to be considered a priority claim in the bankruptcy action (along with 50 percent of the interest due to the petition date, August 27, 1993), plus 100 percent of the taxes due for the period 1-01-90 to 9-30-92 (plus interest on those taxes through the petition date). All other amounts, including post-petition interest through May 31, 1995, were allowed as a general (non-priority) unsecured claim. The amount of the pre-petition priority claim allowed was \$239,157.16, and the amount of the general (non-priority) claim was \$140,165.11. The Board was paid the full amount of the allowed priority claim plus interest in the bankruptcy distribution.

In the Order Confirming Amended Plan of Reorganization entered on August 8, 1994, it states:

“7. The entry of this Order shall constitute a finding that the Debtor is entitled to a discharge under Section 1141 of the Bankruptcy Code and further, that no debts which exist are excepted from discharge.”

It is our opinion that the petitioned liability has been discharged in the taxpayer's bankruptcy and it is our recommendation that the Board take no further action on the taxpayer's petition for redetermination.

TJC/cmm

cc: Mr. Bruce Henline
Out-of-State District Administrator (OH)