

170.0030

Memorandum

To: Mr. Jack E. Warner
Out of State District Principal
Auditor - OH

Date: July 21, 1993

From: Thomas Cooke
Tax Counsel

Subject: 1. A--- Sign Corporation
Account No. SN --- XX-XXXXXXX
2. A--- II of F---, Inc.
Account No. SN -- XX-XXXXXXX

This office has received your memorandum dated July 6, 1993 concerning the above taxpayers.

In your memorandum, you state that the Board's --- --- office performed an audit on A--- Sign Corporation. The audit resulted in a liability for a period from January 1, 1980 to December 31, 1987.

After the appeals process, it was determined that the entity's name was, in fact, A--- II of F--- Inc. The taxpayer noted this discrepancy during the appeals conference.

You state that the compliance staff has declined to start collection activities since they believe that the wrong entity was determined. You further state that a Field Billing Order has been issued against A--- II of F---, Inc., for the period April 1, 1985 to December 31, 1987 to further protect the state's interest.

The compliance staff's belief that the wrong entity was determined is incorrect. The determination was issued for a business. That business contested the liability. The

determination against that business became "final". We believe that the determination was issued incorrectly naming the entity and not issued against the wrong entity.

During the appeals process, if it is discovered that an entity has been incorrectly named, the hearing officer can substitute the correct entity name for the incorrect designation. Under the authority of Russ v. Smith (1968) 264 Cal.App.2d 385, a hearing officer of a state administrative agency has the power to correct a clerical error in his/her decision in failing to properly designate the responsible entity.

It is our recommendation that the action be forwarded to the hearing officer so that the clerical error can be corrected. However, the correct name of the entity should be verified with the --- --- Secretary of State before the action is forwarded.

TJC:ph