

M e m o r a n d u m**170.0033**

To : Mr. Robert O. Colivas
Sacramento District Compliance

Date: January 15, 1993

From : Thomas Cooke
Tax Counsel

Subject: A--- M. R--- aka A--- M--- and J--- M---
S- -- XX0XXXXXXX; S- -- XX-XXXXXX

Gordon Adelman has requested that I respond to your memorandum to him dated November 23, 1992, concerning the above taxpayers.

In your memorandum, you state that a Notice of Levy was served on New York Life Insurance Company to obtain interest income payable on a life insurance policy held by the taxpayers. The insurance company responded that the proceeds levied upon are exempt under Nevada Statute 687B.260. You state that the taxpayers are no longer living in Nevada. They have moved to New York.

You ask if the fact that New York Life is licensed to issue policies in California, and that the policy levied upon may have been written in California, constitute a "nexus" that would give the Board the authority and jurisdiction to levy in another state?

A check of the local telephone directory verifies that New York Life Insurance has agents in California "doing business" in this state. Every foreign corporation must obtain a certificate of qualification from the California Secretary of State before it can transact intrastate business in this state (Corp. Code § 2105). The foreign corporation must designate an agent within this state upon whom process for the corporation may be served. The corporation must give its irrevocable consent to service directed to it upon the agent designated and upon the Secretary of State (Corp. Code § 2105). It is recommended that any future Notice of Levy be served on the agent within this state designated by a foreign corporation (whose name can be obtained from the Secretary of State).

Under California law, unmaturing life insurance policies, but not the loan values of such policies, are exempt from execution without making a claim (Cal. Code Civ. Proc. § 704.100(a)). The aggregate loan value of unmaturing life insurance policies is exempt in the amount of \$4,000.00 (Cal. Code Civ. Proc. § 704.100(b)). There is no restriction on the garnishment of dividends or interest payable to the insured on life insurance policies.

In *Equico Lessors, Inc. v. Metropolitan Life Ins. Co.* (1978) 88 Cal.App.3d Supp. 6, 151 Cal.Rptr. 618, the court adopted the reasoning of *Isaac Van Dyke Co. v. Moll* (1928) 241 Mich. 255 and *Farmers & Merchants Bank v. National Life Ins. Co.* (1926) 161 Ga. 793, for the rule that when money is absolutely payable without condition, the debt may be garnished. A dividend issued on a life insurance policy to which the insured has an absolute right without any action on his part is subject to garnishment.

In *Brainard v. Rogers* (1925) 74 Cal.App. 247, 239 P. 1095, the court held that the proceeds of an insurance policy presently payable to an insured because of a loss may be garnished by the insured's creditor.

It is the opinion of the Legal Division that there is no California statutory prohibition on the garnishment of life insurance policy dividends to which the policyholder becomes entitled and New York Life Insurance Company must comply with the levy. New York Life Insurance Company, in any event, cannot claim an exemption on behalf of the taxpayer.

TC:wk