


STATE BOARD OF EQUALIZATION

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March 5, 1996

E. L. Sorensen, Jr.
 Executive Director

W--- C. L---
 Attorney at Law
 XXX --- Street
 --- ---, California XXXXX

Re: P--- S--- Corporation
 Account No. SR -- XX-XXXXXX

Dear Mr. L---:

Ronald Dick has requested that I respond to your letter to him dated February 8, 1996 concerning P--- S--- Corporation.

In your letter, you state that the Board has requested an audit of the above taxpayer's tax liability for the period of April 1, 1992 to December 31, 1995. P--- S--- Corporation filed Chapter 11 bankruptcy on November XX, 199X. You state that your "position regarding post-petition taxes is that the SBOE failed to file an administrative claim during the prescribed time for sales and/or use taxes due post-petition and any such claim is now barred. Therefore, you are precluded from audit of sales and/or use tax for the following reason:

"Paragraph XV, B., at page 21 of the Debtor's First Amended Plan of Reorganization, creates a bar date of 45 days after the Effective Date for the time to file administrative claims. The Order Confirming First Amended Plan of Reorganization, creates a bar date of 45 days after the Effective Date for the time to file administrative claims. The Order Confirming Plan was signed and entered on March 23, 1995, which makes the Effective Date April 8, 1995 (11 days after entry of the Order). Therefore, May 23, 1995 was the bar date for filing administrative claims. SBOE failed to file an administrative claim during that time period and is thus precluded from now auditing Debtor's records which may lead to a claim for unpaid administrative sales and/or use taxes."

Paragraph XV, B of the Debtor's First Amended Plan of Reorganization provides:

"Administrative Claims: Any creditor who has a claim for administrative expenses shall file a claim with the Court for such administrative expenses on or before 45 days after the Effective Date and serve a copy of the claim on Debtor. Claims for administrative expenses filed after the deadline set forth herein shall

be barred and Debtor has no obligation to pay such late filed claims. This provision specifically excludes administrative claims of professionals employed in this Bankruptcy Case.”

The Debtor’s Plan of Reorganization defines “Administrative Claim Expense” as “any cost or expense of administration of the Chapter 11 case allowed under section 503(b) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses to the extent allowed by the Bankruptcy Court under section 330 of the Bankruptcy Code.” (See paragraph I(A)(1.) of the Plan of Reorganization.) Bankruptcy Code section 330 is inapplicable to tax liabilities.

Bankruptcy Code section 503(b) provides:

“After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including --

“(1)

“(B) Any tax --

“(i) incurred by the estate, except a tax of a kind specified in section 507(a)(8) of this title”

California sales and use taxes are taxes specified in 11 U.S.C. section 507(a)(8).

P--- S--- Corporation’s confirmed plan of reorganization excludes California sales and use taxes as “administrative expense claims.” Therefore, the Board had no obligation to file a claim for post-petition taxes incurred by P--- S--- Corporation in the taxpayer’s bankruptcy action.

Very truly yours,

Thomas J. Cooke
Staff Counsel

TJC/cmm

cc: --- --- District Administrator (---)