

Memorandum

170.1250

To : Mr. R. A. Slater
Supervisor of Collections

Date: October 2, 1995

From : Thomas J. Cooke
Staff Counsel

Subject: S.T.O.T.D., Inc.
Account No. SR -- XX-XXXXXX
F--- B---
Account No. SN -- XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated August 16, 1995, concerning the above taxpayers.

In your memorandum, you state that the --- --- District Office is requesting a legal opinion on the dischargeability of taxes owed by Frank B---. Mr. B--- filed personal bankruptcy on August 7, 1989. His discharge was granted on December 2, 1989.

Our review of Mr. B---'s file indicates that the Board issued two determinations against Mr. B---: The first determination was issued on October 19, 1990, for the tax period of July 1, 1982 to January 26, 1984, for the total sum of \$38,879.02, the second determination was issued on October 26, 1990, for the tax period of September 1, 1989 to June 30, 1990, for the total sum of \$12,900.87. This second determination states:

“You are liable as an officer of S.T.O.T.D., Inc. for the period of suspension by Franchise Tax Board.”

No returns were filed by the corporation or by Mr. B--- for any audit period.

In the Report of Field Audit dated August 1, 1990, it is stated:

“Taxpayer filed bankruptcy 8-27-89.”

In a letter form the Board dated October 19, 1990, it is stated:

“A second billing will be submitted under this account number to the bankruptcy court for the period 9-1-89 to 6-30-90.”

11 U.S.C. §523 states:

“(a) A [bankruptcy] discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(1) for a tax or a custom duty -

. . . (B) with respect to which a return, if required -

(i) was not filed; . . .

. . .

(3) neither listed nor scheduled under section 521(l) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owned, in time to permit -

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;”

Since no tax returns were filed by S.T.O.T.D., Inc. or by Mr. B--- for the audit period, the liability for the audit period is non-dischargeable in Mr. B---’s personal bankruptcy action. Even if tax returns were filed, Mr. B---’s personal bankruptcy will not discharge his personal liability unless he listed or scheduled the Board as a creditor in his bankruptcy petition or unless the Board had actual knowledge of his bankruptcy proceeding in time to file a claim in that action.

Mr. B---’s file indicates that the Board had actual knowledge of his bankruptcy action in 1990. There is no indication in the file that the Board had actual knowledge of the action in time to file a claim in the bankruptcy proceeding.

It is our opinion that no portion of the liability was dischargeable in Mr. B---’s bankruptcy.

TJC/cmm