

Memorandum

170.0008.925

To : Mr. Bill Ragle
Special Procedures Section

Date: May 12, 1997

From : Thomas J. Cooke
Tax Counsel

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Subject: [J]
Permit No. S- -- XX-XXXXXX

In your memorandum dated May 6, 1997, you requested that the Legal Section provide thoughts and opinions on a letter from [D] concerning his request that the Board release the lien filed with the U.S. Coast Guard against the vessel owned by the above taxpayer.

In his letter, Mr. [D] states that the Board's lien is improper since tax liens are non-maritime liens and Federal Maritime Law (which pre-empts state lien laws as to vessels) is intended to provide a mechanism only for recording maritime liens. In the case of *In re Alberto* (1987) 823 F.2d 712, the court stated:

“The SMA [the Ship Mortgage Act of 1920] envisions a two-step process for a ship mortgagee to perfect its security interest in a federally documented vessel. First, recordation of a ship mortgage is required for the mortgage to be valid against persons other than the mortgagor, his heirs or devisees, and persons with action notice of the mortgage. See 46 U.S.C. §§ 921, 1012. Prospective non-maritime creditors are put on notice of the mortgage by its recordation with the Coast Guard at the vessel's home port. Upon recordation, the ship mortgage is valid and has priority over all subsequent non-maritime liens. See *Morse Drydock & Repair Co. v. S.S. Northern Star*, 271 U.S. 552, 554, 46 S. Ct. 589, 859-90, 70 L.Ed. 1082 (1926); *Jackson v. Inland Oil & Transport Co.*, 318 F.2d 802, 810 (5th Cir. 1963).”

Since recording of liens with the Coast Guard is the exclusive method of imposing a lien on a documented vessel, the Board's “subsequent non-maritime lien” must be recorded with the Coast Guard.

Mr. [D] also states in his letter that the SBE does not have authority to file any lien notice with the United States Coast Guard. Since a vessel is personal property, a lien against a vessel would normally be filed in the California Secretary of State's office or as a lien attaching to a title certificate issued by a state agency. However, the Federal Government has pre-empted any state law providing for the registration of title to, or liens against, documented vessels. Federal law directs California to record any liens against a documented vessel with the U.S. Coast Guard rather than the procedure provided in the California Government Code.

Mr. [D] also states that the vessel was not located in California when the Board filed its notice of claim. The Board's claim against the vessel arose from the non-payment of tax due on the sale of the vessel. Under state law, the tax due became a lien on all property belonging to the taxpayer and located "in this state" (Govt. Code § 7170). Under the federal registration system for documented vessels, the recording of a Notice of Claim with the U.S. Coast Guard is the sole method of providing record notice to potential purchasers of the Board's claim against the vessel. Any purchaser of the vessel is deemed to have notice of the Board's lien by the recordation of the Notice of Claim with the U.S. Coast Guard. There is no requirement under California law that any personal property must be physically located in California at the time that a lien against that property is filed or recorded. If the vessel is returned to California and federal law permits, the vessel will be subject to the Board's collection procedures.

TJC/cmm
Attachment