

170.0011**Memorandum****To:** Mr. Rick A. Slater
Supervisor of Collections (MIC:55)**Date:** July 18, 1995**From:** Thomas J. Cooke
Staff Counsel**Telephone:** (916) 445-6496
CalNet 485-6496**Subject:** REDACTED TEXT
Account No. REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum dated July 10, 1995, concerning your request that a nominee lien be issued in the name of REDACTED TEXT, aka REDACTED TEXT.

A nominee lien is an instrument that is recorded against certain property to allege that the property is being held by another, the "nominee," for the benefit and usage of the debtor taxpayer. The filing of the nominee lien is proper where title is held by a nominee third party as a result of a fraudulent conveyance by a delinquent tax debtor. Whether a conveyance is fraudulent involves a review of the following elements and factors: (1) the intent of the parties; (2) the financial conditions of the transfer; (3) the consideration or lack of considerations for transfer; and (4) the relationship of the parties. (Operations Memo No. 878, revised June 22, 1987.)

Operations Memo No. 878 cited former Civil Code Sections 3439.04 and 3439.07 of the Uniform Fraudulent Conveyance Act as to what circumstances to look for in determining whether a fraudulent conveyance has been made. These code sections were subsequently amended by the revamped Uniform Fraudulent Transfer Act, and consolidated into Civil Code Section 3439.04. (Stats. 1986, Ch. 383 §2.) Civil Code Section 3439.04, as amended, provides that:

A transfer made or obligation incurred by the debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

- (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.
- (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, the debtor:
 - (1) Was engaged or was about to engage in business or a transaction for which the remaining assets of the debtor were unreasonably

small in relation to the business or transaction; or

- (2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

A review of the file in this case indicates that REDACTED TEXT was issued a seller's permit in 1987 to operate a service station. In December of 1992, the Board issued a Notice of Determination to this taxpayer in the total sum of REDACTED TEXT. The taxpayer currently owes over \$100,000.00 to the Board.

In 1987, the taxpayer and his wife, REDACTED TEXT, were deeded property as joint tenants. At the time of this transfer, \$260.70 documentary transfer tax was paid when the deed was recorded.

On June 29, 1994, this property was deeded by "REDACTED TEXT and REDACTED TEXT, husband and wife as joint tenants" to "REDACTED TEXT, a married woman as her sole and separate property." The deed transferring this property shows that no documentary tax was paid.

It is our opinion that the transfer to REDACTED TEXT as her separate property was fraudulent as to the State Board of Equalization within the meaning of Civil Code Section 3439.04 as the transfer was made with actual intent to hinder, delay or defraud the Board. It is our opinion that a nominee lien should be recorded.

TJC/cmm

cc: Norwalk District Administrator