

# Memorandum

**170.0000.400**

To : Mr. Steve Adams  
Supervising Tax Auditor, Petitions Section

Date: April 7, 1997

From : Thomas J. Cooke  
Tax Counsel

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Subject : N--- H--- dba A--- M--- P---  
Permit No. SN -- XX-XXXXXX-010

Your memorandum dated March 26, 1997 and addressed to Gary Jugum has been forwarded to me for response.

In your memorandum, you state that a Notice of Determination was issued to the taxpayer for the period 10-01-86 to 12-31-86, with a timely petition for redetermination filed shortly thereafter. On December 16, 1994, the taxpayer filed Chapter 7 bankruptcy. The Fresno District Office has informed us that the no asset case was discharged on March 24, 1995 and is now closed. You request an opinion on whether or not the liability is subject to discharge.

The taxpayer's liability has not become "due and payable" within the meaning of Revenue and Taxation Code section 6564 and 6757(b)(4) because the taxpayer filed a timely petition for redetermination and then filed bankruptcy while the petition for redetermination was pending.

Taxes measured by income or gross receipts that are "assessed" with 240 days of the filing of a bankruptcy petition are non-dischargeable in bankruptcy. 11 U.S.C. sections 507(a)(7)(ii), 523(a)(1)(A). In California, for purposes of section 507(a)(7)(A)(ii), a tax is "assessed" when the tax becomes "final." (See *In re King*, 961 F.2d 1423 (9th Cir. 1992).)

It is our opinion that the taxpayer's determined liability was not discharged in the Chapter 7 bankruptcy action.

TJC/cmm

cc: San Jose District Administrator (GH)