

170.0007.100

Memorandum

To: R. A. Slater
Supervisor of Collections (MIC:55)

Date: August 31, 1995

From: Anthony I. Picciano
Staff Counsel

Subject: REDACTED TEXT

This is in response to your memoranda dated July 25, 1995. You asked for a referral of this matter to the Attorney General's office in order to obtain an Earnings Withholding Order on wages of the taxpayer's spouse, REDACTED TEXT.

The taxpayer, REDACTED TEXT, is indebted to the Board on account number REDACTED TEXT in the sum of \$151,257.11 and on account number REDACTED TEXT the sum of \$59,680.30 as of July 13, 1995. The taxpayer is married to REDACTED TEXT who is a REDACTED TEXT personality. Ms. REDACTED TEXT has substantial earnings as well as property.

The taxpayer and Ms. REDACTED TEXT entered into a prenuptial agreement on December 31, 1990. That agreement was acknowledged and incorporated into a marital agreement which they entered into on November 30, 1992. The agreements provide that neither spouse had or would obtain any interest in the other's property and that all property acquired by either spouse during the course of the marriage would be that spouse's separate property.

The outstanding tax obligations owed by the taxpayer were determined by audits conducted on December 14, 1992 in the case of account number REDACTED TEXT and September 17, 1993 on account number REDACTED TEXT. Up until that time the taxpayer had been submitting his sales and use tax returns in a relatively timely fashion included within which were the payments that he perceived were due.

The Universal Prenuptial Agreement Act, Family Code section 16000 et seq., allows individuals who are entering, or intend to enter into marriage, make a determination of the status of their property before during and after the course of a marriage. The agreements entered into by the taxpayer and Ms. REDACTED TEXT satisfies the requirements of that act.

Civil Code section 3439.05 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose **before** transfer was made or the obligation was incurred. The tax obligation was incurred by the taxpayer subsequent to the execution of the

premarital and marital agreement. Hence, even assuming there was a transfer involved, said transfer could not be fraudulent as to the Board as a creditor of the taxpayer.

Further, there was no transfer of property at the time the taxpayer and Ms. REDACTED TEXT entered into the premarital agreement since there was no community property interest until after the marriage. There can be no fraudulent transfer of noncommunity property by a husband when said property is the sole and separate property of the wife. Howland Building Co. v. Reynolds (1942) 49 Cal.App.2nd 176. Howland is cited in Wilkerson v. Wilkerson (1975) 51 Cal.App.3d 382, 389. Wilkerson stands for the proposition that an individual must own property before any lien may be attached. This case is analogous to our situation since there was no ownership in any of REDACTED TEXT's property by the taxpayer at the time they entered into the premarital agreement.

We cannot seek to reach the earnings of Ms. REDACTED TEXT because there was no transfer of property at the time the parties entered into the premarital agreement and because the debt to the Board arose after the agreement was executed.

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