

M e m o r a n d u m**170.0007.175**

To: District Principal Compliance Supervisors

Date: May 13, 1988

From: R. A. Slater

Subject: Notice of Levy

Attached is a favorable decision from the United States Bankruptcy Court, Eastern District, Sacramento.

In summary, the Board levied upon the taxpayer's bank account. Two days later, the taxpayer filed for protection under Chapter 13 of the Bankruptcy Code. The taxpayer objected, contending that the levied funds were property of the estate as they had not yet been remitted to the Board. The Attorney General prevailed.

It is interesting to note that Judge Dahl relies on In re Farmers Market. Judge Dahl issued the original opinion in Farmers Market which was adverse to the Board and now cites the language in our successful appeal to support our position in this case. Districts should be alert to this change, noting that it probably is not relevant to Chapter 11 cases. If you should encounter a case similar to the attached, refer the debtor to Judge Dahl's opinion. If you are unsuccessful and the amount warrants Attorney General involvement, forward your request for referral.

If you have any questions, give me a call.

R A Slater

RAS:tw

cc: Ms. Judy A. Agan
Mr. R. Nunes
Mr. P. M. Fiorino
Mr. G. A. Bystrom
Mr. E. V. Anderson
Mr. C. Cordell
Mr. A. L. Cade
Mr. O. A. McCarty
Mr. R. O. Padilla

Memorandum

170.0007.175

To: Mr. Glenn Bystrom

Date: May 20, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed R. A. Slater's memorandum of May 13, 1988 to District Principal Compliance Supervisors.

We are in agreement with his conclusion, as follows:

Filing of Bankruptcy After Service Levy. The Board levied upon the taxpayer's bank account. Two days later, the taxpayer filed for protection under Chapter 13 of the Bankruptcy Code. The taxpayer objected, contending that the levied funds were property of the estate as they had not yet been remitted to the Board. In a notice of levy, title passes to the creditor upon levy. Accordingly, the money is not part of the estate of the bankrupt. 5/13/88.

Gary Jugum