

M e m o r a n d u m

170.0007.185

To : Mr. Steve Adams
Supervising Tax Auditor
Petitions Section

Date: August 4, 1997

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
CalNet 485-6496

Subject: J--- Industries Ltd.
Permit No. SS --- XX-XXXXXX-010

Gary Jugum has requested that I respond to your memorandum to him dated July 23, 1997 concerning the above taxpayer.

In your memorandum, you state that a Notice of Determination was issued to the taxpayer on October 9, 1991. A timely petition for redetermination was filed on October 28, 1991. While the taxpayer's petition was pending, the taxpayer filed Chapter 7 bankruptcy on March 17, 1992. The no asset case was closed on June 4, 1992. You ask if the liability was subject to discharge.

Liabilities which do not become "due and payable" prior to a taxpayer's Chapter 7 bankruptcy filing because the taxpayer avails itself of its statutory right to an administrative review of the liability will not be subject to discharge. The bankruptcy code permits a tax agency a designated period of time to collect a tax liability before the tax liability will be subject to discharge in a taxpayer's Chapter 7 bankruptcy action (see 11 U.S.C. § 507(a)(8)(A); 11 U.S.C. § 523(a) (1)(A) and *In re King* 961 F.2d 1423 (9th Cir. 1992)).

Since the tax liability did not become "final" (and therefore collectable by the Board) prior to the taxpayer's bankruptcy filing, the liability was not discharged in the taxpayer's bankruptcy action.

TJC/cmm
Attachment

cc: Out-of-State District Administrator (OH)