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Memorandum

To : Mr. Robert O. Colivas
Tax Compliance Supervisor
Sacramento District Office (KH)

Date: April 10, 1995

From : Thomas Cooke
Staff Counsel

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Subject: Section 6829 Determinations
R--- C--- B---, Inc.
Account No. SY -- XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated March 28, 1995 concerning the issuance of Section 6829 dual determinations against the officers of the above corporate taxpayer.

In your memorandum, you state that R--- C--- B---, Inc. filed a Chapter 11 bankruptcy petition on February 24, 19XX. The bankruptcy action was converted to Chapter 7 on December 9, 19XX. Taxes are due from this corporation for the periods April 1, 1992 through July 31, 1993.

The Board is attempting to dual the corporate liability to two corporate officers for the period April 1, 1993 through June 30, 1993. The bankruptcy action is still open but the Board expects only a small dividend to be paid from the bankruptcy action.

The bankruptcy "automatic stay" only restricts the issuance of determinations to individuals or entities that have filed bankruptcy. If a corporation has filed bankruptcy, the "automatic stay" does not prevent the Board from issuing determinations to, or collecting liabilities from, other parties who have not filed bankruptcy and who are jointly liable with the bankruptcy debtor for the taxes due. The Board may issue a dual determination to a corporate officer pursuant to Section 6829 after the corporation has filed bankruptcy unless the corporate officer has also filed bankruptcy in his or her personal capacity.

We cannot recommend any remedy other than Section 6829 when a person responsible for the payment of taxes wilfully fails to pay those taxes. Section 6829 was specifically enacted to create a dual liability in these circumstances and it is our recommendation that a determination

be issued to a corporate officer under this section if the Board's requirements for the issuance of such a determination are met.

In your memorandum, you ask if a bankruptcy filing by a corporate officer (or other person responsible for the payment of taxes by an entity) can be interpreted as an attempt to pay the liability so as to preclude a dual determination pursuant to Section 6829? We believe that a bankruptcy filing cannot be interpreted as an attempt to pay a tax liability. The "automatic stay" imposed as a result of the bankruptcy filing prevents the Board from continuing its collection efforts against the bankrupt and the bankruptcy action often results in little or no recovery of the taxes owed by the taxpayer.

TJC:plh