



County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda January 15, 2002

To: Board of Supervisors

Re: Claim of Dale Lloyd, Ellis, No. 102-058

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

1. Reject the claim of _____ and refer to County Counsel.
2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
- X 5. Reject the claim of Dale Lloyd, Ellis, No. 102-058 as insufficiently filed and refer to County Counsel.

cc: Richard Bedal,
County Clerk-Recorder/
Treasurer/Tax Collector

RISK MANAGEMENT

By Janet McKinley
Janet McKinley, Risk Manager

DANA McRAE, COUNTY COUNSEL

By Kim Elizabeth Baskett
Kim Elizabeth Baskett, Assistant County Counsel

102-058

ELLIS

0010

Respond to:

Dale Lloyd, Ellis - ~~ALL~~ rights reserved

Address used "without prejudice to rights" 2001 NOV 26 PM 3:41

In Care Of - 5551 Freedom Blvd.

Aptos, Non-Domestic is in real California

No Zip Code Used

Date: 23 November 2001

To:

Santa Cruz County

Richard Bedal - County Recorder

701 Ocean street, Room 230

Santa Cruz, California [PZ 950601]

Cert. # 70011140 0001 9435 2079

Department of the Treasury

Internal Revenue Service of Puerto Rico

55 South Market street

San Jose, California

Re: Constitution for the united States of America - Article IV, sec. 1 "Full faith and credit..."
and California Code of Civil Procedure sections 2106 & 2107.

Subject: California Code of Civil Procedure sec. 2102 - "Certification of notice of liens, ..".

Dear Sir(s):

NOTICE

Please be informed that as of this date the Internal Revenue Service of Puerto has failed and/or refused to sign, in certification thereof - "under the penalty of perjury", **any** of their alleged documents that they have allegedly sent me. This would include all alleged "Notice(s) of Federal Tax Lien(s)" and have further failed and/or refused to provide proof, evidence, of their alleged claim of jurisdiction over and/or relative to me.

Respective of the concerns of this Notice; I call to your attention section 2100 of the Code of **Civil** Procedure, hereafter CCP, and its related Internal Revenue Code, hereafter IRC, section 6323(f)(4)(B). Section 2100 explicitly states that "this title applies **only** to federal tax liens" "**under** any act of Congress or any regulation adopted pursuant thereto" and that these "Federal tax liens" "**are required or permitted to be filed in the same manner** as notices of federal tax liens." Therefore, it is explicitly stated that the "federal tax liens" **and** the "notices of federal tax liens" are not one and the same but "are required or permitted to be filed in the same manner". Now the related IRC section, sec. 6323(f)(4)(B), **is** noted by the words "under any act of Congress" respective of the words 'kequired or permitted to be filed'.

Section 6323(f)(4)(B) of the IRC states "there is maintained (at the applicable Office under paragraph (1)) an adequate system for the public indexing of **federal tax liens**, then the **notice of lien** referred to in subsection (a) **shall not be treated as meeting the filing requirements under paragraph (1)** unless the fact of **filing** is entered and recorded in the index

referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien." Relative to the foregoing is section 2101 of the CCP that states that "notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this title". In so much as all "notices of liens" "affecting federal tax liens" "must be filed in accordance with this title". I made a "reasonable inspection of the index" in your office and I failed to find a copy of the "Federal tax lien" that was "required or permitted to be filed" "in the same manner as notices of federal tax liens".

Note: The Federal Tax Lien Act of 1966 (P. L. 89-719), wherein the Senate Report No. 1708 states; "Since the adoption of the Federal income tax in 1913, the nature of commercial financial transaction has changed appreciably... This **Bill** is in part an attempt to conform the lien provisions of the internal revenue Laws to the concepts developed in the Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to collection of taxes of delinquent persons..." and CCP sec. 2107.

Sometime time ago, the Internal Revenue Service, hereafter IRS, of Puerto Rico issued "notices of federal tax liens" against my rights to property title and apparently requested that your office file the notices, which constitutes a partial seizure of my property rights. Whereas my inspection of **your** index failed to reveal the existence of the federal tax lien, **I** realized that laws were violated in the filing of such "notices of federal tax liens".

It has come to my attention that an individual in Michigan hired an attorney to file a civil case against his local county recorder for fraudulently filing "notices of federal tax liens". This case was fled over two years ago and the Michigan Court of Appeals has finally issued its ruling.

The case was put before the Michigan Court of Appeals about December of 1999 and the ruling was issued on October 16, 2001. The case was titled CHARLES F. CONCES vs. **ANNE B. NORLANDER**, case number 224157. The ruling in the third paragraph states, "As an initial matter, we recognize that the tax lien instrument as filed did not comply with the statutory requirement of MCL 211.664 (requiring certification of the lien). ...". The Appeals Court went on to say that the individual defendants have **immunity** under state law because of technical considerations, but that is a separate issue from the ruling that the law was violated by not having a certification on the "notice of federal tax lien". The court did not, however, **claim** that the local county had **immunity**.

Relative to the foregoing ruling, I call to your attention Article IV, section 1 of the Constitution for the United States of America that the "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state" and sec. 2106 of the CCP. This ruling is applicable to CCP section 2102 in so much as said section concerns the certification of notices of liens "affecting federal liens by the Secretary of the Treasury of the United States or **his** or her delegate". See: Section 2107 of the CCP.

While government agents have **immunity** if they are acting in good faith and if they meet several requirements of state law, the courts have stated emphatically that counties and municipalities do not have any **immunity from** tort claims. "The **rule** of government **immunity** as

to all political subdivisions of government is hereby abrogated as it has heretofore been abrogated as to municipal corporations, i.e. cities. No longer is the defense of governmental **immunity** for tort liability available, irrespective of whether the involved political subdivisions is functioning 'governmentally' or 'proprietary'." **MYERS vs. GENESSEE COUNTY, 375 Mich 1, 1965.**

This, therefore, is my official notice to you and your agency that all prior "Notice(s) of Federal **Tax Lien(s)**" Med on my rights to property title **must** be brought into compliance with the law. This can only be accomplished by sending **all** prior notices back to the IRS and having each document certified.

In order to ensure that the **lawful** and correct certification take place by an authorized agent of the IRS. I am enclosing an "Affidavit of Authority" for the agent to complete, sign, and have witnessed and returned to your office before the notices are filed again. **This will** ensure that the County **will** not be put in a position of legal jeopardy and prevent a lawsuit against you personally because of having acted in good faith.

If you do not notify me of a good faith attempt **to** bring the notices into compliance within **10** days, I **will** be required to take **further** steps., With the sending of this letter to you, my administrative remedies will have been exhausted and I will only be left with judicial remedies.

I call to your attention my letter, copy mailed to your office, concerning the issue of Federal Rules and the Rule of Acquiescence by default.

Respectfully presented.

Dale Lloyd, Ellis / Secured Party Creditor
Dale Lloyd, Ellis / Private Citizen / Non-Fiduciary

cc:

See: Mailing ~~list~~ attached hereto and made a part hereof.

Affidavit of Authority
(2 pages)

I am an agent of the Internal Revenue Service and have the lawful authority to issue this "Notice of Federal Tax Lien" on the property title belonging to Dale Lloyd, Ellis, a Citizen of California and the united, Union, of States of America. I understand that the property owner is not employed by the federal government or the State of California nor has he entered into any agreement with the federal government to voluntarily subject himself to the income tax laws. My lawful authority for requesting you to file said "Notice of Federal Tax Lien" on the property title of this Citizen is the Internal Revenue Code; section 6331, and regulation number _____ paragraph(s) _____ of Title 26 of the Code of Federal Regulations. I certify that my Delegation of Authority Order number _____ from the Secretary of the Treasury, grants me the authority to act under Internal Revenue Code section 6331 on behalf of the Secretary of the Treasury. I certify that my official title, _____ (title), is listed in Internal Revenue Code section 7608 or section _____, and that said Code section grants to me the statutory authority to act under subtitle "A" and "C" of the Internal Revenue Code. The Internal Revenue Service agrees to hold you and your governmental agency harmless in any legal action initiated by the owner of the property for the filing of the "Notice Federal Tax Lien" on said owner's property title. I further certify that the Internal Revenue Service is acting under all lawful and correct collection procedures and that you and your governmental agency would not be putting itself into legal jeopardy by complying with our filing request.

I declare under the penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. If I cannot swear to every provision, herein stated, I delete such items by drawing a line through them and initialing them in the margin.

Signed: _____ Date: _____

Printed Name of Agent: _____

Agent's Title & Employee Number: _____

Agent's IRS Division Name: _____

Witness Signature and Printed Name: _____

NOTICE

Notice is hereby given that if the Internal Revenue Service will not provide the information requested above, failure to do so shall be construed as constructive silence and concealment of evidence and shall create the legal presumption or conclusion that such authority does not exist.

The supreme court of the United States has placed the burden of checking the government agent's authority on the individual, "Whatever the form in which the government functions, anyone entering into an arrangement with the government, takes a risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority." Federal Crop Insurance vs. Merrill, 332 US 380. See also Utah Power and Light Co. vs. United States, 243 US 389 and United States vs. Stewart, 311 US 60.

The supreme court has also ruled that, "Silence can be equated with fraud where there is a legal moral duty to speak, or where an inquiry left unanswered would be intentionally misleading."

US vs. Tweel, 550 F.2d 297, 299. See also US vs. Prudden, 242 F.2d 1021, 1032 and Carmine vs. Bowen, 64 A. 932.

Department of the Treasury
Internal Revenue Service of Puerto Rico
Director, Fresno Service Center
5045 East Butler Ave.
fresno, California [PZ 93888]

District Attorney
P.O. Box 1159
Santa Cruz, California.
[PZ 95060]

Department of the Treasury
Internal Revenue Service of Puerto Rico
Director, Ogden Service Center
1150 West 1200 South street
Ogden, Utah. [PZ844011]

Risk Management
Attn. Janet McKinley
Room 310
701 Ocean Street
Santa Cruz, California.
[PZ 95060]

Mr. Gerald Goldberg
FIB, Ex Officer
c/c P.O. Box 942840
Sacramento, California
[PZ 942401]

Ms. Kathleen Connell, Controller
Chairperson, FIB
300 Capital Mall, Suite 1850
Sacramento, California
[PZ 95814]

State of California
Office of the Attorney General
Dept. of Justice
P.O. Box 944255
Sacramento, California (PZ 94244)

Mak Tracy
Sheriff of Santa Cruz County
701 ocean Street
Santa Cruz, California. [PZ95060]

Pacific Gas and Electric Co.
Attention: Mar Alberto
Payroll Department.
Mail Code B6B
P.O. Box 770000
San Francisco, Ca. 94177

Pacific Gas and Electric Co.
Attention: Gail Steinman
Payroll Department
Mail Code B6B
P.O. Box 770000
San Francisco, Ca. 94177

Pacific Gas and Electric Company
Attn. Law Department
77 Beale Street B11a
San Francisco, California
[PZ94106]

2100. This title applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

2101. (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this title.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed for record in the office of the recorder of the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the Secretary of State.

(2) If the person against whose interest the lien applies is a trust that is not covered by paragraph (1), in the office of the Secretary of State.

(3) If the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State.

(4) In all other cases, in the office of the recorder of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

2102. Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his or her delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

2103. (a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subdivision (b) is presented to a filing officer who is:

(1) The Secretary of State, he or she shall cause the notice to be marked, held, and indexed in accordance with the provisions of subdivision (4) of Section 9403 of the Commercial Code as if the notice were a financing statement within the meaning of that code; or

(2) A county recorder, he or she shall accept for filing, file for record in the manner set forth in Section 27320 of the Government Code, and index the document by the name of the person against whose interest the lien applies in the general index.

(b) If a certificate of release, nonattachment, discharge, or

subordination of any lien is presented to the Secretary of State for filing he or she shall:

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(1) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Commercial Code.

(c) If a refiled notice of federal lien referred to in subdivision (a) or any of the certificates or notices referred to in subdivision (b) is presented for filing to a county recorder, he or she shall accept for filing, file for record in the manner set forth in Section 27320 of the Government Code, and index the document by the name of the person against whose interest the lien applies in the general index.

(d) Upon request of any person, the filing officer shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed after January 1, 1968, under this title or former Chapter 14 (commencing with Section 72001 of Division 7 of Title 1 of the Government Code, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien. If the filing officer is a county recorder, the fee for a certificate for each name searched shall be set by the filing officer in an amount that covers actual costs, but that, in no event, exceeds fifteen dollars (\$15), and the fee for copies shall be in accordance with Section 27366 of the Government Code. If the filing officer is the Secretary of State, the certificate shall be issued as part of a combined certificate pursuant to Section 9409 of the Commercial Code, and the fee for the certificate and copies shall be in accordance with that section.

2104. The fee charged for recording 2nd indexing each notice of lien or certificate or notice affecting the lien filed with the County recorder shall be the same as those established by Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code for the recording and indexing of documents.

The fee for filing and indexing each notice of lien or certificate or notice affecting the lien with the office of the Secretary of State is twenty dollars (\$20).

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents recorded or filed by the county recorder or the Secretary of State.

This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

2104. The fee charged for recording and indexing each notice of lien or certificate or notice affecting the lien filed with the county recorder shall be the same as those established by Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code for the recording and indexing of documents.

The fee for filing and indexing each notice of lien or certificate or notice affecting the lien with the office of the Secretary of State is five dollars (\$5).

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The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents recorded or filed by the county recorder or the Secretary of State.

This section shall become operative on January 1, 2000.

2105. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before January 1, 1968, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to January 2, 1968" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before January 1, 1968, any certificate or notice affecting the lien shall be filed in the same office.

2106. This title shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

2107. This title may be cited as the Uniform Federal Lien Registration Act.