

General Information Letter Transferees of a dissolved corporation are potentially liable for unpaid Illinois income tax obligations of the corporation.

October 18, 2012

Dear:

This is in response to your letter dated September 14, 2012. The nature of your letter requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

I am responding on behalf of the above mentioned taxpayer regarding the enclosed notice dated July 2, 2012. I have attached a copy of the IL-2848 to this letter for your convenience. The notice of deficiency indicates that COMPANY has a total deficiency of \$XX. The amount of the deficiency is representative of the total income tax due for the period ended December 31, 20XX.

As of December 31, 20XX, COMPANY has ceased doing business in the state of Illinois. As of the above mentioned date, the corporation has liquidated all assets; therefore the corporation does not have any assets left to pay the back income taxes. It is my understanding, according to federal tax law, that once a corporation has dissolved and no longer has any assets, back income taxes are uncollectible, with the exception of trust fund liabilities.

I am requesting an interpretation of the Illinois Tax Law that pertains to the above mentioned understanding of the ability to collect back income taxes from a corporation that is no longer in business and has disposed of all of its' assets. I have searched the Illinois Department of Revenue and I have spoken to several agents without any clear understanding. I need the interpretation of the law in order to properly file the Form EAR-14, Format for Filing a Protest for Income Tax.

Additionally, I have tried contacting the individual and department listed on the attached notice for over three weeks without any response. I have left several voicemails to get in touch with a representative to address this matter to no avail. I was informed yesterday by an Illinois representative over the phone that the number listed on the attached notice is not active, the department does not answer phone calls, and the department does not return voicemails. The fact that the notice indicates if you have questions please contact us and representatives do not answer at the listed number has caused the time to respond on this notice to expire. I am asking for relief on the expiration of time, as I have made a good faith effort to contact Brian Hamer at the Business Processing Division on several occasions over the past couple weeks.

RULING

The dissolution of a corporation under state law does not render uncollectible the corporation's previously assessed income tax liabilities. In addition to other law that may allow for recovery of claims against a dissolved corporation (see, e.g., Blankenship v. Demmler Mfg. Co., 89 Ill. App. 3d (Ill. App. Ct. 1980); Mid-American Elevator Co. v. Norcon, Inc., 287 Ill. App. 3d 582 (Ill. App. 3d 1997); IBM v. Martin Prop. & Cas. Insur. Agency, 281 Ill. App. 3d 854 (Ill. App. Ct. 1996); See also, In re

Segno Communications Inc., 246 B.R. 501 (Bankr. N.D. Ill. 2001) (“When read together the foregoing Illinois statutes continue the existence of a dissolved corporation for a period of five years after it is dissolved, so that the corporation can wind-up its affairs.”)), Section 1405 of the Illinois Income Tax Act (35 ILCS 5/1405) extends transferee liability upon shareholders of a dissolved corporation. The section states:

The liability of a transferee of property of a taxpayer for any tax, penalty or interest due the Department under this Act, shall be assessed, paid and collected in the same manner and subject to the same provisions as in the case of the tax to which the liability relates, except that the period of limitations for the issuance of a notice of deficiency with respect to such liability shall be as provided in Section 905(m). The term “transferee” includes donee, heir, legatee, and distributee and bulk purchasers under Section 902(d).

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)