

July 30, 1976

Mr. Frank A. Kirk, Director
Department of Local
Government Affairs
State of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

Re: Public Hearings on Proposed Rules and Procedures
Governing the Illinois Capital Stock Tax

Dear Mr. Kirk:

This is to notify you that the undersigned intends to testify concerning the above-captioned rules and procedures during the public hearings held by your Department on same on August 2, 3 and 4, 1976, in Room 3, 55 East Jackson Street, Chicago, Illinois.

Please notify the undersigned promptly of the precise time of the hearing of the undersigned's testimony.

Very truly yours,

William J. Bowe

WJB/sl

bcc: Mr. Ed Levin

August 4, 1976

Mr. Ed Levin, Assistant Director
Dept. of Local Government Affairs
180 North LaSalle Street
Chicago, Illinois 60601

Re: Capital Stock Tax Assessment Procedures

Dear Ed:

I thought you might be interested in the enclosed statement which was delivered to the representatives of the Department during their public hearings on the new policies with respect to the assessment of capital stock.

I appreciate very much your guidance in this matter. With best regards, I remain,

Very truly yours,

William J. ³Bowe

WJB/sl

Enc.

bcc: Francis A. Beninati, Esq.

July 30, 1976

Mrs. William J. Bowe
1120 North Lake Shore Drive
Chicago, Illinois 60611

Re: A Son's Remembrance to the Dearest,
Sweetest Mother He Ever Had

Dear Mom:

Enclosed for your perusal and guffaws is evidence that all of your work may have been for naught--you may have raised (God forbid) some kind of a tax layer.

Love,

STATEMENT OF WILLIAM J. BOWE, ESQ.
CONCERNING PROPOSED POLICY OF THE ILLINOIS
DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS
REGARDING THE ASSESSMENT OF CAPITAL STOCK
AUGUST 3, 1976

My name is William Bowe and I am a partner in the Chicago law firm of Roan & Grossman. I appreciate the opportunity to make a statement concerning the proposed policy for the assessment of capital stock recently issued by the Department of Local Government Affairs of the State of Illinois. I would like to commend the Department for scheduling public hearings concerning this important matter because the surest way for a well-intentioned policy to miss the mark is to develop that policy in a vacuum. I am sure the Department will give careful consideration to the many technical comments it receives concerning the new capital stock assessment policies. I am confident that the Department has an open mind with respect to making revisions in the proposed policies which will lead to fair and equitable treatment for all taxpayers.

The proposed rules of the Department of Local Government Affairs, in part, appear designed to tighten up and formalize the system by which the information for capital stock tax assessments is gathered and the system by which those assessments may be

protested. It also seems clear that one of the primary objectives of the new policy is to minimize possible variations in discretionary settlements. As a taxpayer and attorney, I fully support the Department's goal of further standardizing assessment and protest procedures. However, the proposed regulations as presently drafted do a disservice to taxpayers by not providing enough time in which to prepare the tax return. Further, the proposed policy gives insufficient time to protest an assessment believed to be excessive. Finally, the application of penalties is not clear under the new rules.

1. The Period for Preparing and Filing Capital Stock Tax Schedules Should Be Increased from 30 to 60 Days

Subparagraph C(1) of Section I, dealing with Taxpayer Completion and Filing of Returns, provides that capital stock tax schedules are to be completed and returned to the Department of Local Government Affairs within 30 days of their mailing by the Department. This rule further provides that if a schedule is filed subsequent to this 30-day period, it shall be considered a late filing and will only be utilized if an assessment has not already been made upon the particular corporation involved.

The preparation of a capital stock tax return is frequently a relatively difficult and time-consuming matter,

requiring in many instances the assistance of an accountant or an attorney. The Department's proposed 30-day period does not take into account the mail delays between the Department and the taxpayer, and the taxpayer and his attorney and accountant. Not only must the schedule itself be circulated to all parties involved in the preparation process, but supporting material and revisions similarly must be circulated by mail. Further, the same attorneys and accountants are often called upon to assist many taxpayers in preparing their returns at the same time. A 60-day return period will assist in giving adequate time to prepare schedules and will also help professionals manage their workload. A 30-day return requirement is too short a period to insure preparation of accurate and thorough schedules.

I recommend, therefore, that the first sentence of paragraph C(1) of Section I, relating to Taxpayer Completion and Filing of Returns, be amended to read as follows: "Capital stock tax schedules shall be returned to this office completed within 60 days of mailing."

2. The Period To File a Protest to an Assessment Should Be Increased from 10 to 30 Days

Paragraph A of Section IV, dealing with Objections and Review, provides that a taxpayer may file a written objection to

an assessment only within 10 days of the publication or mailing of assessment notices. Under subparagraph A(2), the assessment supervisor is given discretion under this rule to extend the 10-day period, but only in accordance with the internal workload of the section. This means that a taxpayer has no guaranty of a review of his objection to an assessment unless he prepares his objections, mails them and they are received within 10 days of the mailing by the Department of the assessment notices. Assuming that 3 days of mail time must be taken into account before the taxpayer receives his notice, and that 3 additional days must be taken into account for the objection to arrive at the Department's offices, the taxpayer is actually given 4 days within which to review the assessment and prepare his written objection. Inasmuch as taxpayers usually consult with their attorneys and accountants prior to the preparation and filing of any objection to an assessment, and since they may have to file additional documentation to support their objections, the 4-day period actually given to prepare their objections will, for all practical purposes, prevent taxpayers from exercising their right to object.

Accordingly, it is recommended that the time within which the taxpayer may file objections to a capital stock tax assessment be increased from 10 days to 30 days, and that

paragraph A of Section IV of the proposed policy be amended to read: "Within 30 days of the publication or mailing of assessment notices, a taxpayer may file a written objection to the assessment."

3. Clarify Application of Penalty Where the Assessment Schedule is Filed during the Protest Period

Paragraph C of Section I, dealing with Taxpayer Completion and Filing of Returns, states that if a corporation fails to file a capital stock tax return, an assessment will be based upon the best and most available information pertaining to corporations similar to the corporation in question, and that, in addition thereto, a penalty in the amount of half of the assessment thus determined will be placed against said corporation. Paragraph D of Section IV, dealing with Objections and Review, provides that if a capital stock tax schedule has not been previously submitted for the year in question and if an objection to that assessment is made, the schedule must be presented and filed prior to review of the assessment. There is no clarification as to whether the presentation of a capital stock tax schedule at the objection stage will eliminate the 50% penalty levied for failure to file the return in the first instance. The rules should be clarified to indicate whether, in fact, the penalty will be waived upon filing

of the schedule during the protest period. The decision of a taxpayer to protest an assessment may well be determined by the answer to this question.

Conclusion

The proposed policies regarding the assessment of capital stock are a major improvement towards formalizing and standardizing assessment procedures. By amending the rules and policies to provide adequate time for preparation of the assessment schedules and protests of assessments, and by clarifying application of penalties, the Department will improve its objective of establishing fair and equitable treatment for all taxpayers.