

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

PUBLIC NOTICE

PROPOSED

301 Publication of Tax Information

SUBJECT: "PUBLICATION OF TAX INFORMATION"
30 Del.C. §359(b). A NEW ENACTMENT OF THE 143RD GENERAL ASSEMBLY

DATED: October 5, 2006

AUTHORITY:

This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the **Delaware Code** as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) or whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

REGULATION:

The Department interprets the word "taxpayer" appearing in sections (b)(2) and (4) to include within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons. Therefore, before one of their names can be published the liability against the individual owner, beneficial owner or responsible officer must be reduced to judgment.

DISCUSSION:

The specific requirement of subsection (b)(4) given the plain meaning of the words that appear therein is that a taxpayer's liability must be reduced to judgment before that taxpayer's name can be published. The Secretary of Finance understands the provisions of subsection (b)(4) to be a precautionary measure intended to insure that the taxpayer is aware of the taxpayer's personal responsibility for a tax liability that has become fixed, liquidated and final by being reduced to judgment. To that extent, any judgment against the taxpayer must be final, that is, not subject to appeal or further appeal. Because subsection (b)(4) requires that notice of the judgment be given to the same persons who are described in subsection (b)(2), that is, taxpayers, taxpayer's owners, beneficial owners or officers, it is concluded that the limitations imposed by subsection (b)(4), that is, that the liability be reduced to judgment and that sixty day advance notice be given, apply to the persons described in subsection (b)(2), namely, 25% owners, beneficial owners or officers as well as to taxpayers themselves.

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at c.yegla@state.de.us or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.