



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 9, 1999

Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-013

ADMINISTRATIVE LAW:
Power of the Department of
Revenue to Disclose Lists of
Delinquent Taxpayers Periodically

Mr. Glen L. Bower
Director
Illinois Department of Revenue
101 West Jefferson Street
Springfield, Illinois 62702

Dear Director Bower:

I have your letter wherein you inquire whether, pursuant to section 39b54 of the Civil Administrative Code of Illinois (added by Public Act 90-753, effective January 1, 1999, to be codified at 20 ILCS 2505/39b54), the Director of the Department of Revenue may elect to disclose segments of its list of delinquent taxpayers on a periodic basis, rather than through a single disclosure. For the reasons hereinafter stated, it is my opinion that the Department has the authority to promulgate rules providing for either a single disclosure or the periodic disclosure of

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the names of taxpayers who are significantly delinquent in the payment of State taxes, as is deemed most appropriate.

Section 39b54 of the Civil Administrative Code of Illinois provides:

"Sec. 39b54. Public list of delinquent State taxes.

(a) The Director may annually disclose a list of all taxpayers, including but not limited to individuals, trusts, partnerships, corporations, and other taxable entities, that are delinquent in the payment of tax liabilities collected by the Department. The list shall include only those taxpayers with total final liabilities for all taxes collected by the Department (including penalties and interest) in an amount greater than \$10,000 (or such greater amount as established by the Department by rule) for a period of 6 months (or such longer period as established by the Department by rule) from the time that the taxes were assessed or became final, as provided in the statute imposing the tax. The list shall contain the name, address, types of taxes, month and year in which each tax liability was assessed or became final, the amount of each tax outstanding of each delinquent taxpayer, and, in the case of a corporate taxpayer, the name of the current president of record of the corporation.

(b) At least 90 days before the disclosure of the name of any delinquent taxpayer prescribed in subsection (a), the Director shall mail a written notice to each delinquent taxpayer by certified mail addressed to the delinquent taxpayer at his or her last or usual place of business or abode detailing the amount and nature of the delinquency and the intended disclosure of the delinquency.

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If the delinquent tax has not been paid 60 days after the notice was delivered or the Department has been notified that delivery was refused or unclaimed, and the taxpayer has not, since the mailing of the notice, either entered into a written agreement with the Department for payment of the delinquency or corrected a default in an existing agreement to the satisfaction of the Director, the Director may disclose the tax in the list of delinquent taxpayers.

(c) Unpaid taxes shall not be deemed to be delinquent and subject to disclosure if (i) a written agreement for payment exists without default between the taxpayer and the Department or (ii) the tax liability is the subject of an administrative hearing, administrative review, or judicial review.

(d) The list shall be available for public inspection at the Department or by other means of publication, including the Internet.

(e) The Department shall prescribe reasonable rules for the administration and implementation of this Section.

(f) Any disclosure made by the Director in a good faith effort to comply with this Section shall not be considered a violation of any statute prohibiting disclosure of taxpayer information."

You have advised in your letter that the Department intends to implement section 39b54 by publishing the list of delinquent taxpayers on the Internet, by press releases and possibly by other means. The Department has adopted emergency rules implementing section 39b54. (23 Ill. Reg. 3521 (1999).)

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The emergency rules define "annual list" as the "list of delinquent taxpayers as disclosed by the Department in a single calendar year". (23 Ill. Reg. 3521, 3524 (1999).) The emergency rules additionally provide that no disclosure of a taxpayer's disclosable information will be made in the same calendar year as a prior disclosure. (23 Ill. Reg. 3521, 3525 (1999).) The emergency rules do not address, however, whether the Department will disclose the entire annual list once a year or disclose portions of the annual list periodically throughout the year.

It is well established that administrative agencies possess only those powers that are expressly granted to them by statute, together with those powers that may be necessarily implied therefrom to effectuate the powers that have been granted. (Lake County Board of Review v. Property Tax Appeal Board (1988), 119 Ill. 2d 419, 427; R.L. Polk & Co. v. Ryan (1998), 296 Ill. App. 3d 132, 141.) Thus, it is necessary to review section 39b54 in order to determine the extent of the Department's power to disclose lists of delinquent taxpayers.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Martinez (1998), 184 Ill. 2d 547, 550.) Legislative intent is best evidenced by the language used in the statute. (Burrell v. Southern Truss (1997), 176 Ill. 2d 171, 174.) Where

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statutory language is clear and unambiguous, it must be given effect as written. People v. Martinez (1998), 184 Ill. 2d at 550.

Subsection 39b54(a) of the Code expressly provides that the Department may "annually disclose a list of all taxpayers * * * that are delinquent in the payment of tax liabilities collected by the Department". Subsection 39b54(e) of the Code requires the Department to "prescribe reasonable rules for the administration and implementation of this Section". Section 39b54 does not set any specific date or dates upon which the list of delinquent taxpayers must be disclosed. Furthermore, section 39b54 does not expressly limit the Department to a single disclosure of the list. Thus, whether the Department may periodically release lists of the names of delinquent taxpayers will necessarily depend upon the meaning given to the term "annually".

The term "annually" is not defined in section 39b54 or in the emergency rules promulgated to implement section 39b54. It is well established, however, that undefined terms in a statute must be given their ordinary and popularly understood meaning. (Gem Electronics of Monmouth, Inc. v. Department of Revenue (1998), 183 Ill. 2d 470, 477-78.) The term "annual" is defined by Webster's as "* * * of or measured by a year[,] * * * that comes or happens once a year, yearly[,] * * * for a year's

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time * * *". (Webster's New World Dictionary 56 (2nd College ed. 1982).) The term is also defined as "* * * [r]ecurring, done, or performed every year[,] * * * determined by a year's time * * *". (American Heritage Dictionary 112 (2nd College ed. 1991).)

Black's Law Dictionary further defines "annual" to include "* * * continuing for a period of a year; accruing within the space of a year * * *". (Black's Law Dictionary 89 (6th ed. 1990).)

"Annually" is defined as "[i]n annual order or succession; yearly, every year, year by year * * *". (Black's Law Dictionary 89 (6th ed. 1990).)

Based upon the several meanings attributed to the terms "annual" and "annually", the phrase "annually disclose a list of all taxpayers delinquent in the payment of tax liabilities collected by the Department" could be construed as authority for the Department to disclose the list only once a year. Because "annually" can also mean "measured by a year" or "accruing within the space of a year", however, the term could also be construed to allow the periodic disclosure of such lists or portions thereof over the course of a year. A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses, thus warranting the consideration of other sources than legislative language to

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ascertain the legislative intent. Advincula v. United Blood Services (1996), 176 Ill. 2d at 18.

In interpreting an ambiguous statute, consideration may be given to the provision's legislative history and debates, and the purposes and underlying policies of the legislation.

(Advincula v. United Blood Services (1996), 176 Ill. 2d at 19.)

Section 39b54 was added to the Civil Administrative Code of Illinois by Public Act 90-753, effective January 1, 1999. During the legislative debates concerning House Bill 2671, which was enacted as Public Act 90-753, the sponsor of the legislation stated "House Bill 2671 grants discretion to the Department of Revenue to publish, at least once each year, the name and address of any taxpayer whose debt to the State is more than \$10 thousand, it has been unpaid for more than six months after the date of assessment". (Emphasis added.) (Remarks of Rep. Krause, March 24, 1998, House Debate on House Bill No. 2671, at 157.) The House sponsor's statement, therefore, strongly suggests that the General Assembly did not intend to limit the Department's disclosure of its list of delinquent taxpayers to a single occurrence per year.

Moreover, it is noteworthy that individuals and businesses become eligible to be listed as delinquent taxpayers throughout the year. Thus, the list at the end of one year may

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contain numerous delinquent taxpayers who were not so situated at the beginning of the year. Periodic releases of segments of the list would allow the Department to incorporate and disclose the names of taxpayers who become reportable, for purposes of the statute, during the year.

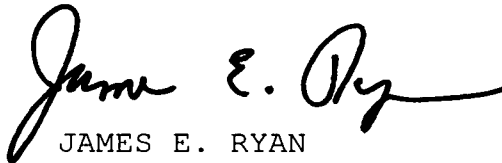
Section 39b54 specifically requires the Department to prescribe rules to administer and implement its provisions. An agency charged with enforcing a statute is given wide latitude in adopting rules or policies to carry out its statutory duties.

(Lake County Board of Review v. Property Tax Appeal Board (1988), 119 Ill. 2d at 428; Water Pipe Extension, Bureau of Engineering, Laborers Local 1092 v. Illinois Local Labor Relations Board (1993), 252 Ill. App. 3d 932, 936.) The interpretation of section 39b54 of the Civil Administrative Code proposed by the Department is a permissible one, based upon the language and expressed intent of the provision. Therefore, it is my opinion that the Department of Revenue may, through its rulemaking powers, provide for the periodic disclosure of lists of taxpayers

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delinquent in the payment of State taxes rather than a single,
annual disclosure.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL