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Rev. Rul. 83-86

ISSUE

Whether the district director may relieve a corporation, which has ceased business operations, is in bankruptcy, and has neither income nor assets, from filing a corporation income tax return.

LAW AND ANALYSIS

Section 6012(a)(2) of the Internal Revenue Code provides that every corporation subject to income tax must file an income tax return.

Under section 1.6012-2(a)(2) of the Income Tax Regulations, a corporation is required to make a return if it is in existence during any part of a taxable year. A corporation is not in existence after it ceases business and dissolves, retaining no assets, regardless of whether state law continues a corporation for certain limited purposes connected with winding up its affairs. A corporation does not go out of existence if it is turned over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization, has transacted no business, and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of the facts to the district director, a corporation will be required to make a return.

Section 1.6012-3(b)(4) of the regulations states that a receiver, trustee in dissolution, trustee in bankruptcy, or assignee must make a return of income for the corporation in the same manner and form as corporations are required to make returns, if, by order of a court of competent jurisdiction, by operation of law or otherwise, it has possession of or holds title to all, or substantially all, the property or business of the corporation.

Although a receiver or trustee is generally required to make an income tax return for a corporation it has in its possession, a corporation that is in fact, if not formally, dissolved (that is, it has ceased business operations and has neither assets nor income) and for which a discharge has not yet been granted by the Bankruptcy Court, stands in a position similar to a corporation that has received a charter, but has never perfected its organization, has transacted no business and has no income from any source. Therefore, relief from the necessity of filing an income tax return for the period after dissolution has occurred in fact, even though not formally, may be regarded as subject to administrative control similar to that which is applied under section 1.6012-2(a)(2) of the regulations to a corporation that has never perfected its organization.

HOLDING

Upon presentation of the facts to the district director, a corporation that is in bankruptcy may be relieved from filing federal income tax returns for the period after dissolution has occurred in fact; - that is, it has ceased business operations and has neither assets nor income, even though a discharge has not yet been granted by the Bankruptcy Court. However, the period for which a

return is not filed will still constitute a taxable year for purposes of any net operating loss carryover that survives the bankruptcy.

For guidance on how to apply to the district director for relief from the filing requirements, see Rev. Proc. 83-44, page 779, this Bulletin.