

MASSACHUSETTS DEPARTMENT OF REVENUE CORPORATE EXCISE

TRUSTEE IN BANKRUPTCY; DEBTOR IN POSSESSION; REORGANIZATION; CORPORATE FILING REQUIREMENTS



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FACTS: Lossco, a Massachusetts corporation, is in financial difficulty. On March 1, 1988, Lossco filed a bankruptcy petition under chapter 11 of the United States Bankruptcy Code seeking protection from creditors and time to reorganize the business.

ISSUE: What Massachusetts tax forms must be filed on behalf of Lossco after Lossco files under c. 11?

DISCUSSION: The tax consequences of Lossco's filing under c. 11 are dictated by the interrelationship of the Bankruptcy Code (federal law) and applicable provisions of Massachusetts law. Under the Bankruptcy Code, when a corporation files a reorganization petition under c. 11, the corporation does not become a separate entity for tax purposes. Tax filing and payment requirements of the corporation after the filing of the petition remain precisely as they were before it. 11 U.S.C. § 346(c). This is true for all taxes, including the corporate excise and any transactional taxes, e.g., withholding, room occupancy, sales and use. 11 U.S.C. § 346(c), (f).

Responsibility for collecting and paying over any amounts required to be withheld or collected under Massachusetts or local law rests with the trustee in bankruptcy, if any, or with the debtor in possession. In paying transactional taxes, the trustee or other person responsible should continue to use the vendor number issued the business before the filing of the case.

NOTE: If post-petition state taxes due in the normal course of business are not paid on time, interest and penalties may accrue on these taxes and must be paid as well. 11 U.S.C. § 507(a)(1), 11 U.S.C. § 503(b); *In re Gould & Eberhardt Gear Machinery Corp.*, 80 Bankr. 614 (D. Mass. 1987).

REFERENCE: 11 U.S.C. § 346(c), (f); 11 U.S.C. § 503(b); 11 U.S.C. § 507(a)(1); *In re Gould & Eberhardt Gear Machinery Corp.*, 80 Bankr. 614 (D. Mass. 1987).

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DOCUMENTS
COLLECTION

Stephen W. Kidder
Commissioner of Revenue

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.