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From: [REDACTED]

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To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: FW: Question

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I apologize--I have been sitting on this question for a while now and was finally able to turn to it this week.

It looks to me as though Virginia law addresses the personal liability of a business owner that continues to operate as a de facto sole proprietorship during the 5-year period between termination and reinstatement. Specifically, Va. Code Ann. 13.1-91 and -92 provide for personal liability of such owner if he continues to operate the business following termination beyond just ordinary winding-up activities. The statute expressly provides that the personal liability survives even if the corporation is subsequently (and retroactively) reinstated. The liability from the date of the date of reinstatement going forward would, of course, be corporate liability. See these cases: Flip, 841 F.2d 531; Moore, 591 F.2d 991. See also Hudgins, 967 F.2d 973. There is also a law review article cited in footnote 3 of the Flip case that may be worth reading.

Have a look at these cases/statutes and see if that helps you respond to the question from the RO. As you know, state law provides the basis for collection under a section 6901/transferee/successor liability scenario. I am not as familiar with the Virginia law as you are, but it looks to me as though it addresses your question.

You may also want to consider adding something on this issue to your local law guide.

Let me know if you have further questions.