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SPRINGFIELD

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REVENUE:

Application of Statute Restricting
Access to Tax Returns

Mr. Daniel L. Lenckos
Acting Director
Department of Revenue
1500 South 9th Street
Springfield, Illinois 62708

Dear Mr. Lenckos:

In two different letters, your predecessor asked my interpretation of Illinois statutes requiring tax returns sent to the Department of Revenue to be kept confidential. These statutes make certain exceptions to the prohibition against disclosure. The first letter asks whether these exceptions allow release of information, without a subpoena, to other agencies of this State, of other States, or of the Federal government for the purpose of aiding those agencies in their

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investigations.

The statutes involved are in the Illinois Income Tax Act and the Retailers' Occupation Tax Act. The first, section 917 of the Illinois Income Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 9-917) provides in part:

"(a) Confidentiality. Except as provided in this Section, all information received by the Department from returns filed under this Act, or from any investigation conducted under the provisions of this Act, shall be confidential, except for official purposes within the Department or pursuant to official procedures for collection of any State tax or enforcement of any civil or criminal penalty or sanction imposed by this Act or by another statute imposing a State tax, and any person who divulges any such information in any manner, except for such purposes and pursuant to order of the Director or in accordance with a proper judicial order, shall be guilty of a Class A misdemeanor. (Emphasis added.)

* * *

(c) Governmental agencies. The Director may make available to the Secretary of the Treasury of the United States or his delegate, or the proper officer or his delegate of any other state imposing a tax upon or measured by income, for exclusively official purposes, information received by the Department in the administration of this Act, but such permission shall be granted only if the United States or such other state, as the case may be, grants the Department substantially similar privileges."

A somewhat different confidentiality provision, for Retailers' Occupation Tax returns, is found in section 11 of the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 450):

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"All information received by the Department from returns filed under this Act, or from any investigation conducted under this Act, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class B misdemeanor. (Emphasis added.)

* * *

Nothing in this Act prevents the Director of Revenue from divulging to the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this Act, provided that such other governmental agency agrees to divulge requested tax information to the Department.

* * *

This section is also made expressly applicable, by the statutes levying several other occupation or use taxes, to returns filed under those statutes.

The crucial term in these sections is "official purposes." Those words are not defined in these Acts, and no precise judicial definition of them exists. However, some conclusions may be stated regarding their meaning. They certainly exclude personal or private purposes. In general, the term should be considered to refer to those purposes encompassed by the official duties of the persons handling the information.

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The United States Court of Appeals for the District of Columbia discussed the related concept of acts done under official authority, in a passage in Cooper v. O'Connor (D.C. Cir. 1938), 99 F. 2d 135, 139 that has been widely quoted by other courts:

" * * *

It is not necessary — in order that acts may be done within the scope of official authority — that they should be prescribed by statute [citation]; or even that they should be specifically directed or requested by a superior officer. [Citation.] It is sufficient if they are done by an officer 'in relation to matters committed by law to his control or supervision.' [citation]; or that they have 'more or less connection with the general matters committed by law to his control or supervision.' [citations]; or that they are governed by a lawful requirement of the department under whose authority the officer is acting. (Emphasis added by D.C. Circuit Court.)

" * * *

Concerning disclosure to the Federal or other State governments, the quoted provision of the Illinois Income Tax Act allows disclosure to officers involved with income taxation in such governments, "for exclusively official purposes," if the Illinois Department of Revenue is allowed reciprocal privileges. I interpret this to allow disclosure of Illinois income tax information to other governments only for purposes of enforcing their income tax laws. The Retailers' Occupation Tax Act provision,

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on the other hand, states that it does not prohibit disclosure to "the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes," (emphasis added) again provided reciprocal privileges are given to Illinois. I interpret this to allow more broadly for disclosure to such officers for any official purposes of their governments.

Addressing the parts of the questions relating to disclosure to Illinois agencies, the Illinois Income Tax Act seems fairly clear on this point. The phrase "except for official purposes within the Department or pursuant to official procedures for collecting any State tax or enforcement of any civil or criminal penalty or sanction" is broad enough to allow disclosure to various State agencies, including the Attorney General's office, provided the purpose of the disclosure is to collect any State tax or enforce penalties related to a State tax. It does not allow disclosure for other purposes.

Application of the Retailers' Occupation Tax Act section to Illinois State agencies is somewhat different. That section provides that the information:

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" * * * shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class B misdemeanor.

* * *

This allows disclosure in only two situations: when there is a "proper judicial order" and "as otherwise provided by law" and then only for official purposes. The last three paragraphs in that section describe three situations in which information may be disclosed: to a surety on a taxpayer's bond, to the Illinois Liquor Control Commission, and to the Auditor General. Without other legal authority allowing disclosure — and I am aware of none — it is my opinion that this provision allows disclosure only pursuant to a proper judicial order or in the three situations listed.

However, because of the duty of the Attorney General and State's Attorneys under sections 4 and 5 of "AN ACT in regard to Attorneys General and State's Attorneys" (Ill. Rev. Stat. 1977, ch. 14, pars. 4, 5) to represent the people and prosecute tax actions, and the well-established privilege of attorney-client communications from disclosure, it is my opinion that the tax statutes should not be construed to prohibit the Department from disclosing to authorized employees of the

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Attorney General and State's Attorneys such information from returns as is necessary to carry out this representation.

The second letter asks whether the statutes allow sending the physical tax returns or other documents to testing laboratories such as the one maintained by the F.B.I. for handwriting analysis or other tests to determine their source or authenticity. The letter states that such analysis is sometimes necessary to enforce the tax laws. The quoted provision from the Income Tax Act exempts disclosure "pursuant to official procedures for collection of any State tax" if ordered by the Director. The Retailers' Occupation Tax Act provision allows the Director to disclose tax information "to the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes," if there is a reciprocal arrangement. In my opinion, both these provisions are broad enough to allow disclosure of returns to the F.B.I. or other governmental agencies for the purpose of technical analysis.

This opinion construes only Illinois law and does not address the possible effect of Federal laws on your department.

Very truly yours,

A T T O R N E Y G E N E R A L