

OFFICIAL OPINION NO. 90-1

Pennsylvania Department of Revenue—The Fiscal Code—The Tax Reform Code—Confidentiality of Tax Records—Official Purposes—Contractor Responsibility.

1. The Department of Revenue, pursuant to the “official purposes” exception to the confidentiality requirements of the Fiscal Code and the Tax Reform Code, is authorized to release information regarding delinquent tax accounts to a centralized information system accessible by authorized agency officials in the context of a contractor responsibility program.
2. The “official purposes” exception to the confidentiality requirements of the Fiscal Code and the Tax Reform Code means official tax administration or tax collection purposes.
3. The use of tax information to collect delinquent tax payments from prospective state contractors is an “official purpose” within the meaning of the Fiscal Code and the Tax Reform Code.

May 9, 1990

Honorable David L. Donahoe
Secretary
Department of Revenue
11th Floor, Strawberry Square
Harrisburg, PA 17120

Dear Mr. Donahoe:

You have requested my opinion on whether the Department of Revenue, consistent with the Fiscal Code and the Tax Reform Code of 1971, may provide information indicating that a taxpayer is delinquent to a centralized information system accessible by authorized agency officials in the context of a contractor responsibility program. It is my opinion and you are so advised that the Department may provide such information without violating the Fiscal Code or the Tax Reform Code.

In your opinion request, you describe the outlines of a contractor responsibility program, one feature of which is the identification of contractors who are seeking to do business with the Commonwealth and who are delinquent in their payment of state taxes. This feature of the program serves the dual interests of assuring that the Commonwealth does business only with financially responsible contractors and aiding the ongoing process of tax collection.

As you know, this Office already operates a contract match program. The Commonwealth Attorneys Act requires us to review for form and legality all proposed state contracts. The Act also requires us to collect, by suit or otherwise, all debts, taxes and accounts due the Commonwealth. Since we maintain computerized dockets for both purposes, we are able to and do electronically match those dockets to identify prospective contractors who owe the Commonwealth money.

In the course of establishing our contract match program, we examined internally essentially the same question on which you have requested my opinion. The Fiscal Code and the Tax Reform Code each require that tax information be kept confidential, except for official purposes. Specifically, the Fiscal Code provides that:

Any information gained by any administrative department, board, or commission, as a result of any returns, investigations, hearings or verifications required or authorized under the statutes of the Commonwealth imposing taxes or bonus for State purposes, or providing for the collection of the same, shall be confidential except for official purposes. . . .

72 P.S. § 731. Similarly, the Tax Reform Code includes the following provisions relating respectively to sales and use, personal income and corporation taxes:

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this article, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law. . . .

72 P.S. § 7274.

It shall be unlawful for any officer, agent or employee of the Commonwealth to divulge or to make known in any manner whatever, not provided by law, except for official purposes, to any person, the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law and it shall be unlawful for any person to print or publish in any manner whatsoever not provided by law, any return or any part thereof or source of income, profits, losses or expenditures appearing in any return. . . .

72 P.S. § 7353(f).

The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and settle the tax imposed by this article. . . . Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this article, shall be confidential, except for official purposes. . . .

72 P.S. § 7408(b). Each of these provisions is enforceable by criminal penalties.

Obviously, my response to your request for advice requires us to determine what is meant by the term “official purposes.” In prior informal opinions rendered by this Office to state agencies, we have consistently interpreted “official purposes” to mean official tax administration or tax collection purposes. Our reasoning has been that if “official purposes” is interpreted to have a broader meaning—if, for example, it is interpreted to mean any purpose within the statutory powers of any state agency—then the requirement of confidentiality would have very little meaning. Tax records would become openly accessible, without judicial review or other protection, for a wide variety of regulatory and investigatory purposes. We are firmly of the view that the General Assembly intended no such result. In our opinion, tax records may be released for a purpose other than tax administration or collection only with the consent of the taxpayer or pursuant to a court order.

Clearly, both your Department and this Office can access tax records for tax collection purposes. But can either or both of our agencies share with other state agencies tax information indicating specifically that a particular taxpayer is delinquent in tax payments? Resolution of that question turns on the purpose for which we are providing the information; and we have no difficulty concluding, both in the context of your contractor responsibility program and our contract match program, that the purpose is predominantly tax collection and exclusively related to the financial responsibility of the prospective contractor.

When we match a prospective contractor with a delinquent tax account, we take several steps aimed at verifying the match and collecting the tax. Among those steps, assuming verification of the match, is to return the contract to the contracting agency without approval, reciting as the reason therefore the prospective contractor’s liability to the Commonwealth. Also

among those steps is to contact the debtor with a view toward obtaining either immediate satisfaction of the debt or agreement to a plan of repayment. Although it may happen that the contracting agency will decline to do business with the contractor or that this Office will decline approval of the contract, such outcomes are not the purpose of our contract match program, which, consistent with our duties under the Commonwealth Attorneys Act, is to collect the debt.

The contractor responsibility program that you describe in your letter obviously has other, albeit related and also important, purposes in addition to the collection of taxes.¹ Our inquiry, however, must focus on that aspect of the program pursuant to which your agency would identify delinquent tax accounts to a centralized information system accessible by authorized officials involved in the contractor responsibility program in other state agencies. The purpose of that aspect of the program, while perhaps not exclusively tax collection, seems clearly to us to be predominantly tax collection. We base that conclusion on your representation that prospective contractors identified as delinquent in their taxes will be afforded an opportunity to satisfy or arrange to satisfy their obligations before they are denied contracts for failure to satisfy such obligations. You further represent that officials allowed access to information on delinquent tax accounts will be instructed that such information may be used only for collection purposes.

We should note that, to the extent that liens are filed of record because of unpaid taxes, information regarding such unpaid taxes is available to the public and, therefore, is not confidential under the Fiscal Code or the Tax Reform Code.

In summary, it is my opinion and you are hereby advised that the disclosure of tax information by the Department of Revenue to a centralized information system for the purposes and in the manner described in your request for legal advice falls within the "official purposes" exception to the confidentiality requirements of the Fiscal Code and the Tax Reform Code. You are further advised that in accordance with Section 204(a)(1) of the Common-

1. The Pennsylvania Supreme Court has consistently held that public officials must exercise sound discretion in selecting a contractor. *McIntosh Road Materials Co. v. Woolworth*, 365 Pa. 190, 208, 74 A.2d 384, 392 (1950). Officials should investigate financial standing, reputation, resources and judgment and should investigate financial standing, reputation, resources and judgment and should "call to their assistance the means of information at hand to form an intelligent judgment." *Hibbs v. Arensberg*, 276 Pa. 24, 29, 119 A. 727, 729 (1923).

wealth Attorneys Act, 71 P.S. § 732-204(a)(1), you are required to follow the advice set forth in this opinion and shall not in any way be liable for doing so.

Very truly yours,

Ernest D. Preate, Jr.
Attorney General

OFFICIAL OPINION NO. 90-2

Pennsylvania Fish Commission—Game Commission—Compliance with Management Directives—Powers of Governor over Expenditures for Automated Technology.

1. The Commissions are not required to observe the Governor's Management Directives on Automated Technology.
2. The Governor has authority to disapprove specific expenditures of the Commissions for both program-specific and general fiscal reasons.

November 7, 1990

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Edward R. Miller
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Dear Mr. Duncan and Mr. Miller:

You have requested my opinion whether the Fish and Game Commissions