

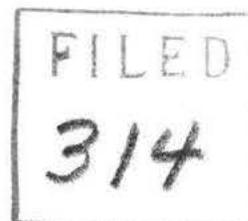
INCOME TAX:
INCOME TAX RETURNS:
CONFIDENTIAL INFORMATION:

No person other than a grand jury, prosecutor or Attorney General may obtain information from the Director of Revenue concerning income tax returns, including disclosure of whether or not a return has been filed.

Opinion No. 314

October 5, 1964

Honorable M. E. Morris
Director, Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. Morris:

This opinion is in response to your request for an official opinion of this office inquiring "if it is legal and proper for our Income Tax Division to answer inquiries as to whether an individual citizen of Missouri has or has not filed an income tax return?"

We enclose herewith a copy of the opinion of this office addressed to Forrest Smith dated July 20, 1939, holding that state income tax returns must be produced under a subpoena duces tecum to a grand jury.

Under the reasoning of that opinion, to which we adhere, a prosecuting attorney and the Attorney General may obtain information relative to state income tax returns from the Department of Revenue and may also obtain from the Department information as to whether or not a given individual or corporation has filed a return. This stems from the legislative purpose of enforcing the income tax laws, both criminal and civil. The enclosed opinion presents a full exposition of this purpose and leads directly to the result that information regarding income tax returns and the returns themselves are available to prosecutors and the Attorney General.

Note the proviso in Section 143.270 RSMo, Subsection 2:

"* * * provided, however, that this section shall not prohibit the director of revenue nor any agent, clerk or inspector from proceeding in the discharge of their official duties in the administration of the income tax laws, nor from giving evidence in any court, or before

(Repealed)

the state tax commission, in any proceeding brought to collect any tax due hereunder or to question or determine the validity or correctness of any assessment by the director of revenue under the terms of this chapter, or to punish any person for making false or fraudulent returns; * * *."

We think that the prosecution of those who make false and fraudulent tax returns comes within the term "administration of the income tax laws" as used in the above proviso and tax officials are permitted to divulge such information to the legally constituted law enforcing agencies of the state when an individual's return is under investigation. If these returns are withheld from a grand jury or other agencies of the state in the enforcement of the criminal or civil tax laws, we are at a loss to see how anyone could be successfully prosecuted for rendering a false, fraudulent, or insufficient return unless the law enforcing officers are permitted to examine the return of the individual.

However, we hold that no persons or officers may divulge any information relative to the contents of any state income tax return or information as to whether or not a return has been filed to any person or persons other than to a grand jury, a prosecuting attorney, and the Attorney General.

Section 143.270, RSMo, Subsection 1, provides:

"1. It shall be unlawful for any person, persons or officers to divulge, give out or impart to any other person, or persons, any information relative to, or the contents of any income tax return filed under this chapter, * * *." (Emphasis supplied)

The prohibition in the statute is not confined to information about the contents of any income tax return, but includes "any information relative to" an income tax return filed in Missouri. The use of this phrase separated from the reference to disclosure of contents of returns must mean something other than disclosure of contents of returns. The reasonable meaning, therefore, of the phrase "any information relative to" is that the fact of filing or not is "relative" to a return and, hence, the statute means that the fact of filing or not filing must not be disclosed except to authorized officials.

To inform an inquirer that a return has been filed would be giving information relative to that return. In order to conform to the statute and decline to advise anyone that a given return has been filed, it is also necessary to withhold information that a return was not filed for a certain year by a named person.

If the Department were at liberty to divulge that a person had not filed a return for a certain year, an inquirer would be able to ascertain that another certain return had been filed. Consider the operation of such a system. If a certain return had not been filed, the Department would answer that it had not. If a return had been filed, the Department would refuse to give that information. Thus, if an inquiry elicited from the Department a refusal to answer, then the inquirer would know that the return had been filed, and this would be a violation of the statute.

The public policy of Missouri in this regard is to be contrasted with that of the federal government. 26 U.S.C.A. 6103 provides that income tax returns are public records that shall be open to inspection upon the order of the President or under regulations approved by the President, and that lists of taxpayers are to be made available to the public. Missouri has no comparable statute.

The policy expressed in the Missouri statute (Section 143.270) is directly to the contrary and provides for secrecy, only allowing disclosure to investigating and prosecuting agents of the state.

CONCLUSION

It is the opinion of this office that:

- (1) State income tax returns must be produced under a subpoena duces tecum to a grand jury;
- (2) A prosecuting attorney or the Attorney General can require the Department of Revenue to furnish to such prosecutor or Attorney General the contents of any income tax return and information as to whether or not an income tax return has been filed;
- (3) No person or persons other than a grand jury, a prosecutor, or the Attorney General can receive from any person or officers any information relative to any income tax return, including whether or not a return has been filed.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Donald L. Randolph.

Yours very truly,

Thomas F. Eagleton
THOMAS F. EAGLETON
Attorney General