

STATE AUDITOR:

Sales tax returns filed with the State Auditor are privileged communications.

November 21, 1938

11-23



Honorable B. Hugh Smith
City Attorney
Cape Girardeau, Missouri

Dear Sir:

We have received your letter of November 5th, a part of which reads as follows:

"Therefore, I write to ask your interpretation of Section 34 on page 566 of the 1937 Sales Tax Law, and to ask if in your opinion we can require the State Auditor to produce in our Court the sales tax records of this Defendant in order that I may be able to produce the same at Court and prove the total gross receipts of this Defendant from his business for the preceding year.

"In other words will this provision for the Sales Tax Act relative to the records in the State Auditor's office override and render ineffectual Sections 1657 and 1660 of the 1929 revised statutes of Missouri."

Section 34 of the Laws of Missouri, 1937, page 566, reads as follows:

"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 return filed under this Act, or to permit any other person or persons not connected with his office to see, inspect or

examine the same; and it shall be unlawful for any person or officer to use any return filed under this Act in any manner whatever in connection with or for the purpose of assessing property tax or determining the amount of property assessment of any person or corporation, or to use the same in any way in making up any property assessment roll. It shall be unlawful for the Auditor, or his deputy, agent or clerk to in any way permit the inspection of any such return or to use the same in any way in making assessments other than the assessment of the tax provided for in this Act, and any person violating the provisions of this Section shall be deemed guilty of a misdemeanor; Provided, however, that this Section shall not prohibit the Auditor nor any agent, clerk or inspector from giving evidence in Court in any proceeding brought to collect any tax due hereunder, or to punish any person for the making of false or fraudulent returns."

Neither the above statute nor any similar one has ever been passed upon or construed by any appellate court in the State of Missouri in connection with the question you present, as far as we have been able to determine. However, in the case of *In re Valecia Condensed Milk Co.*, 240 Fed. 310, a quite similar Wisconsin statute was involved. In the bankruptcy proceedings of the Valecia Condensed Milk Company the Secretary of the Wisconsin Tax Commission was served with a subpoena to appear before the Referee to testify, and there to produce all reports, correspondence, certificates and documents in possession of the Commission relating to the bankrupt. He appeared and testified that the only papers of the kind mentioned in the subpoena in the possession of the Commission were the income tax returns of the bankrupt which were made and returned to the State Tax Commission in pursuance of the statute of the state, and that the statute prohibited him from permitting such income tax returns to be examined by any person, and he refused to produce them. The Wisconsin statute in this connection read as follows:

"1. No commissioner, assessor of incomes, deputy, member of a county board of review, or any other officer, agent, clerk or employe shall divulge or make known to any person in any manner except as provided by law any information whatsoever obtained directly or indirectly by him in the discharge of his duties or permit any income return or copy thereof or any paper or book so obtained to be seen or examined by any person except as provided by law.

"2. Any officer, agent, clerk or employe violating any of the provisions of this section shall upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the state prison for not more than two years, at the discretion of the court.

"3. Such officer, agent, clerk or employe upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of three years thereafter."

In holding that the income tax returns were privileged communications and that the Secretary of the Wisconsin Tax Commission could not be forced to reveal their contents because of the statute, the court said:

Without in any degree trenching upon the essential and full power of courts to compel the production of papers, we must recognize also the generally declared public policy against revealing such returns--made, as they are, under compulsion of law, for the particular purpose of taxation; a public policy repeatedly recognized by the courts. With

an enactment such as the one in question, directed against the production of these returns, it is not lightly to be presumed that the public policy manifested by such statute was intended to be practically neutralized by the excepting words."

Also in the case of *In re Reid*, 155 Fed. 933, it appeared that the president of the board of assessors of the City of Detroit was called as a witness and was asked to produce a certain tax statement filed by the bankrupt. He refused on the ground that the statutes of Michigan provided that no such statement shall be used for any other purpose, except the making of the assessment for taxes. The bankrupt gave his consent to the production. The question of the right to compel the production was certified to the District Court, which, deciding against the right to compel the production, said:

"The purpose of the provisions of section 3846 is plainly to promote the collection from each taxpayer of his just share of state, county, and municipal taxes, and to that end to require from each property owner the full disclosure of all his taxable property under the state's pledge that the statement shall be kept inviolate, save to the officials for whose information and guidance it was made. To permit that information to become public would defeat the plain purpose of the statute by deterring the taxpayer from revealing what frequently could not be learned from any other source. * * * To sanction the violation of that pledge by denying the taxpayer the protection of the statute would invite refusals to obey the law, evasions, and perjury, often injuriously affect the interests of the taxpayer, would obstruct the collection of taxes, and diminish the revenues of the state. The power of the Legislature to prevent these consequences is unquestionable. The wisdom and policy of the act must be con-

clusively assumed. Its meaning is unequivocal, and needs no construction."

Section 34, supra, appears to be as broad in its application as were the statutes in the above two cited cases. It makes it unlawful for any person, persons or officers to give out any information or to permit anyone not connected with the Auditor's office to inspect or examine any return filed by anyone under the terms of the Sales Tax Act. The Auditor and his employees are prohibited from using such returns for any purpose other than "the assessment of the tax provided for in this Act," which is the State Sales Tax Act. Further, anyone violating such provisions shall be deemed guilty of a misdemeanor. The legislative purpose undoubtedly was that no one connected with the Auditor's office should ever divulge any of the contents of the Sales tax returns to anyone for any purpose other than in the enforcement of the sales tax laws; that except for the one purpose the returns are privileged. The proviso recites that the section should not prohibit the Auditor or his employees from giving evidence in any court in any proceeding brought to collect the state sales tax. By specifically exempting court proceedings for the collection of the sales tax from the effect of the section, it is evident that the Legislature did not intend that such returns should ever be used in any other type of court action.

You mention Sections 1657 and 1660, R. S. No. 1929, as possibly having a bearing on the question. Section 1657 provides that copies of all papers on file in the office of the State Auditor or of any matter recorded therein shall be evidence in all courts of this state when the same are certified under the seal of the State Auditor. Section 1660 is a similar enactment and provides that copies of all papers and documents lawfully deposited in the office of the State Auditor shall be received in evidence in the same manner and with like effect as the original when the same are certified by the Auditor and authenticated by the seal of his office. These two statutes, of course, can refer only to such documents as are public records and which the Legislature has not designated as privileged communications. These two sections mean that if the sales tax returns

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were not privileged, then copies thereof properly certified and authenticated would be evidence in the courts of this state. If the State Auditor or his employees can not testify in the courts of this state as to the contents of sales tax returns, the Auditor can not, through the use of certified and authenticated copies of such records, thereby produce or divulge the same information. We can only conclude that Sections 1657 and 1660 refer to documents on file in the Auditor's office which are not privileged.

CONCLUSION

Sales tax returns filed with the State Auditor pursuant to the terms of the Sales Tax Act are made privileged communications by Section 34, Laws of Missouri, 1937, page 566. Consequently, the State Auditor can not voluntarily give in any form, nor can he be forced by subpoena duces tecum or otherwise to divulge the contents of such returns in any court proceeding other than in an action brought to collect a tax due under the terms of the State Sales Tax Law.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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