

SALES TAX: A record of all sales tax returns made to the de-
RECORDS: partment of revenue must be kept; no authority ex-
ists for destroying these records at any time. Such
records may be preserved by microfilming or photo-
graphing, and when such records are reproduced in
this manner the original record may be destroyed.



February 27, 1957

Mr. L. M. Chiswell, Supervisor
Sales Tax Division, Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads
as follows:

"It is respectfully requested that
this department be provided with
an official opinion from your of-
fice with relation to the follow-
ing questions:

"First. For what period is the Sales
Tax Division of the Department of
Revenue required by Statute to pre-
serve and keep on file the sales tax
returns submitted to the department
by taxpayers.

"Second. Is the department authorized
by Statute to microfilm the sales tax
returns and subsequently destroy the
originals prior to the close of the
period during which the department is
required to preserve and keep such
returns.

"It has been the policy of the depart-
ment in the past to retain in our files
all returns submitted for the past four
previous years, plus returns submitted
for the current year, making five years
in all."

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Chapter 144, RSMo 1949, is the law of Missouri relating to sales tax. Section 144.310 of that chapter reads:

"The director of revenue shall keep a record of every tax, interest and penalty imposed or paid under this chapter. (11434 A.L. 1941, p. 698, A.L. 1943 p.1012, A.L. 1945 p.1865)."

We are unable to find anywhere in the sales tax law any authorization for the destruction, at any time, of sales tax returns. The above is a particular statute relating to a specific phase of state government activity and would take precedence over any general law relating to public records. We do believe that such sales tax returns may be preserved in the manner set forth in Section 109.120, RSMo 1949, which reads:

"The head of any business, industry, profession, occupation or calling, or the head of any state, county or municipal department, commission, bureau or board may cause any or all records kept by such official, department, commission, bureau, board or business to be photographed, microphotographed, photostated or reproduced on film. Such film or reproducing material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details. (L.1945 p.1427, §§ 1,3, A.1949 H.B. 2048)."

Also, Section 109.130, RSMo 1949, reads:

"Such photostatic copy, photograph, microphotograph and photographic film of the original records shall be deemed to be an original record

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for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof, shall, for all purposes recited in section 109.120 to 109.140, be deemed to be a transcript, exemplification or certified copy of the original. (L.1945 p.1427 § 2)."

Also, Section 109.140, RSMo 1949, reads:

"Whenever such photostatic copies, photographs, microphotographs or reproductions on film shall be placed in conveniently accessible files and provisions made for preserving, examining and using same, the said head of a state department, commission, bureau or board, county office or department, city office or department may certify those facts to the governor, or to the county court or to the mayor of a municipality, respectively, according to their status as subdivisions of government, who shall have the power to authorize the disposal, archival storage or destruction of the records or papers from which such photographic copies were made. (L.1945 p.1427 § 4, A. 1949 H.B. 2048)."

On May 25, 1956, this department rendered an opinion to James L. Paul, Prosecuting Attorney of McDonald County, a copy of which opinion is enclosed. We send you this opinion because it states the general rule regarding the destruction of public records.

CONCLUSION

It is the opinion of this department that a record

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must be kept of all sales tax returns made to the department of revenue of the State of Missouri, and that no authority exists for destroying these records at any time. It is the further opinion of this department that such records may be preserved by microfilming or photographing, and that when such records are reproduced in this manner that the original record may be destroyed.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc

1 enclosure