TAXATION:
FRANCHISE TAX REPORTS:
SECRECY OF TAX RETURNS:
STATE TAX COMMISSION:
INSPECTION OF TAX RETURNS:

Section 147.110, paragraph 3, RSMo 1959, which prohibits the state tax commission, its officers and employees and all other officers and employees of the state from divulging or making known the information contained in a franchise tax report does not prohibit the commission from permitting the taxpayer, acting through a duly authorized officer or agent from inspecting or obtaining a copy of its own report theretofore filed.

September 9, 1963

Opinion No. 321
(Nessenfeld)

State Tax Commission
Jefferson Building
Jefferson City, Missouri

FILED
321

Gentlemen:

You have requested our opinion as follows:

> "This commission requests an official opinion from your department respecting the provisions of Section 147.110 (3), RSMo., 1959, specifically advising to whom, if anyone, the commissioners or any officer or employee of the commission may divulge or make known the information, or any part thereof, contained in the corporation franchise tax report to this commission under Section 147.020, RSMo., 1959."

To the extent relevant to your request, Section 147.110, paragraph 3, RSMo 1959, provides:

> "It shall be unlawful for any member of the state tax commission or for any officer or employee of such commission, or for any other officer or employee of the state * * * to divulge or make known in any manner not provided by law any * * * report made under this chapter."

Section 147.020, RSMo 1959, provides for a report from every corporation liable to the franchise tax. This section requires that such report shall contain certain specified information relating to the corporation and its business, including the market value of its property and assets, the amount of

its liabilities and its balance sheet. Much of this information which is required to be reported is of a nature which many corporations would deem confidential and not to be disclosed publicly.

The prohibitory provisions of Section 147.110, paragraph 3, evidence and declare a public policy to make the information contained in franchise tax returns confidential and privileged. The policy therein declared is to encourage the full, frank and truthful disclosure of information to the commission by insuring to the reporting corporations that the information furnished will be held in confidence. In clear and unambiguous language, this section prohibits the commission and the public officers and employees therein set forth from disclosing the contents of a franchise tax report or any part thereof in any manner not provided by law.

It is our opinion, however, that the prohibition against such disclosure is not intended to and does not bar the commission or its officers or agents from permitting an authorized officer or agent of the taxpayer itself acting on behalf of the taxpayer to inspect a franchise tax report which was filed by said taxpayer or to obtain a copy thereof. The language used in the statute simply makes it unlawful "to divulge or make known" the report. We do not believe it can reasonably be said that by permitting the taxpayer to see or obtain a copy of its own report, the commission is thereby "divulging" information.

In Webster's New International Dictionary, Second Edition, the word "divulge" is defined as follows:

> "To make public; to reveal or communicate to the public; to tell (a secret) so that it may become generally known; to disclose; --said of that which had been confided as a secret, or had been before unknown."

Every statute must be construed to accord with the obvious legislative intent and to effectuate the manifest legislative policy. We can discern no purpose or policy in the statute to require the commission to withhold from the corporation which filed the return and which not only knew but was the very source of the information, the right to see and examine its own report. Nothing is thereby "divulged" or "made known" in the obvious sense in which those words are used in the statute. Nothing

is made public. No confidence is violated. No secret is revealed. Certainly the corporation itself cannot be harmed by being permitted to see and examine its own report.

The commission must, of course, take care that the information is given only to the taxpayer itself. To this end, it is our opinion that the request for such information must be made in the name and on behalf of the reporting corporation by some officer or agent duly authorized to act on its behalf at the time the commission is requested to make the disclosure. The mere fact that a particular individual may have signed the return at the time it was filed would not necessarily be sufficient to authorize him to see the report or obtain a copy thereof. This is true because the information is not furnished to such person but to the corporation itself, and such person may no longer be an agent of or authorized to act on behalf of the corporation.

CONCLUSION

It is the opinion of this office that Section 147.110, paragraph 3, RSMo 1959, which prohibits the state tax commission, its officers and employees and all other officers and employees of the state from divulging or making known the information contained in a franchise tax report, does not prohibit the commission from permitting the taxpayer, acting through a duly authorized officer or agent, from inspecting or obtaining a copy of its own report theretofore filed.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JN:sr