

January 23, 2008

Examination and Retention of Taxpayer Records

Issue:

Whether the Department of Revenue can examine, inspect, make and retain copies of taxpayer records relevant to an audit or review of the taxpayer's compliance with Nebraska's tax laws.

Analysis:

Chapter 77, article 3, of the Nebraska Revised Statutes addresses the authority of the Tax Commissioner in relation to the administration and enforcement of the State's tax laws. Specifically:

Neb. Rev. Stat. §77-375 provides the general authority to require the production of records deemed necessary by the Tax Commissioner;

Neb. Rev. Stat. §77-366 provides that personnel of the Tax Commissioner may serve a subpoena to carry out his or her enforcement of the tax laws of this state;

Neb. Rev. Stat. §77-376 permits the Tax Commissioner to examine and "make memoranda from" any of the financial records of persons and corporations subject to the tax laws of this state; and

Neb. Rev. Stat. §77-369 further empowers the Tax Commissioner to "make, adopt, and publish such rules and regulations as he or she may deem necessary and desirable to carry out the powers and duties imposed upon him or her and the Department of Revenue."

Conclusion:

Based upon the statutory authority cited above, the Tax Commissioner has determined that these powers include the right to copy and retain copies of taxpayer records so produced. The Tax Commissioner may exercise his or her powers through duly appointed agents.

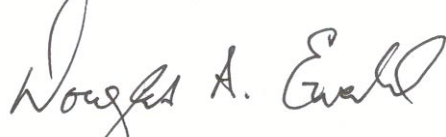
The Tax Commissioner may require taxpayers undergoing an audit or other review to provide records deemed necessary to make a proper determination of the taxpayer's compliance with, and liability under, Nebraska's tax laws. Department auditors and agents may examine and inspect, and may make and retain copies of, requested documents for such purposes.

Persons subject to production of records or testimony while under audit or other review typically comply with informal written or verbal requests for books and records and other documents requested by auditors, who are the authorized agents of the Tax Commissioner. Auditors and agents are encouraged to cooperate with a taxpayer who asserts that a request for production is too burdensome, and to investigate mutually agreeable alternatives that may fulfill the audit purpose at less expense or inconvenience. However, when an informal, but otherwise reasonable and proper request is refused, including a request to supply or permit the making of copies of records, then the demand may be embodied in a more formal written document, known as an administrative subpoena. The administrative subpoena is issued under the authority of the Tax Commissioner. The subpoena will clearly outline the scope of the demand for production of records and any other

requirements, indicating when, where, and how to comply with the demand. It will state that non-compliance may result in a penalty under law. The subpoena may be civilly enforced in an action filed in the District Court of Lancaster County by the Attorney General on behalf of the Tax Commissioner.

For purposes of this ruling, “copy” is a term that is not restricted to a particular technology, media, or format. It may include hand-entered notes and extracts made by auditors or agents from original documents, paper or film photocopies of such documents, electronically scanned and stored image files, electronic spreadsheet or data or text files, printouts of such files, and any other established method or form of record-keeping and output. The form or method by which books, records, and documents are kept by the taxpayer will be considered in any determination of the form or method in which particular records, documents, or other storage of data or information must be supplied to, or may be copied by, a requesting auditor.

APPROVED:

A handwritten signature in cursive script that reads "Douglas A. Ewald". The signature is written in black ink and is positioned above the printed name of the signatory.

Douglas A. Ewald
Tax Commissioner

January 16, 2008