

OPINION NO. 75-012

Syllabus:

A request for information "needed in performing the duties of this office" does not come within the scope of "official purposes" as that term is used in R.C. 5747.18.

To: Gerald S. Collins, Tax Commissioner, Dept. of Taxation, Columbus, Ohio
By: William J. Brown, Attorney General, February 25, 1975

Your request for my opinion reads in part as follows:

"This office has received the following request by letter from the Auditor of State;

"I hereby make a request for all original documentation supporting Income Tax data in Recap No. 51789 dated June 14, 1974, Recap No. 51797 dated July 29, 1974, and Recap No. 51800, dated August 13, 1974.

"This request is made pursuant to Section 5703.41 of the Revised Code and this information is needed in performing the duties of this office.'

"Such original documentation would include the individual income tax returns, and applications for refund.

"In order to establish the extent to which the Department of Taxation and its employees can fulfill a request such as related above, please advise if requests such as quoted above come within the scope of 'official purposes' as used in Section 5747.18, R.C., and if so, the manner in which such requests, should be handled in light of the applicable statutory provisions."

R.C. 5747.18 provides for the confidentiality of income tax records:

"The tax commissioner shall enforce and administer this chapter. In addition to any other powers conferred upon him by law, the commissioner may:

"(A) Prescribe all forms required to be filed pursuant to this chapter;

"(B) Promulgate such rules and regulations as he finds necessary to carry out this chapter;

"(C) Appoint and employ such personnel as are necessary to carry out the duties imposed upon him by this chapter.

"Any information gained as the result of returns, investigations, hearings, or verifications required or authorized by Chapter 5747. of the Revised Code is confidential and no person shall disclose such information, except for official purposes or except in accordance with proper judicial order. The tax commissioner may furnish the bureau of internal revenue, treasury department of the United States, with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to individual taxpayers." (Emphasis added.)

This statute operates as an exception to the general rule in R.C. 149.43 requiring that public records be open at all reasonable times for inspection. However, by its own lang-

usage the requirements of confidentiality of tax records does not extend to the disclosure of such information for "official purposes" or pursuant to a proper judicial order. This is consistent with the general requirement in R.C. 5703.41, which directs the Department of Taxation to make information available upon request to officers, boards, and commissions of the state and its political subdivisions. That Section reads:

"At the request of any officer, board, or commission of the state or any political division thereof, the department of taxation shall furnish any information to such officer, board, or commission and shall assist such officer, board, or commission in performing the duties of its office. All state, county, and local officers shall make and forward to the department, upon the department's written order, such transcripts of records, or parts thereof, and other information in their possession as are deemed necessary by the department to properly carry into operation the laws which it is required to administer."
(Emphasis added.)

It is necessary then to determine what constitutes an "official purpose" for which the tax commissioner may authorize the disclosure of information pursuant to R.C. 5747.18. R.C. 5747.01, which defines terms used in R.C. Chapter 5747 with respect to the state income tax, does not define "official purposes", although that Section does provide that "any term used in Chapter 5747 of the Revised Code has the same meaning as when used in a comparable context in the Internal Revenue Code * * *." We must, therefore, consider the provisions relating to the confidentiality of federal tax returns.

Section 7213(a)(2), Internal Revenue Code, states that:

"(2) State employees. - Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103(b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103(b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103(b), to be seen or examined by any person, except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution."

Section 6103(b)(2) reads:

"(2) State bodies or commissions. - All income returns filed with respect to the taxes im-

posed by chapters 1,2,3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission or any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws." (Emphasis added.)

Although those Sections do not use the specific term "official purposes", it does set out guidelines for determining the purposes for which such information may be used.

In addition it should be noted that much of the information used by the Department of Taxation in performing its duties under R.C. Chapter 5747 originates in the preparation of federal income tax returns. R.C. 5747.01, R.C. 5747.10, R.C. 5747.17. To the extent that the tax commissioner or any of his agents have, in the course of enforcing these Sections, obtained information pursuant to Section 6103.(b) the restrictions therein concerning disclosure would apply to any request by an official, body, or commission of the state or its political subdivisions.

It appears then that the General Assembly in providing in R.C. 5747.18 for the confidentiality of income tax records intended to allow access to such information for the same official purposes for which inspection of federal income tax records is authorized. As such this provision must be distinguished from other statutes designed to protect the confidentiality of property tax returns. My predecessor's apparent conclusion in Opinion No. 4791, Opinions of the Attorney General for 1932, p. 1342, that such returns were available without restriction for inspection by governmental agencies was based on the language of G.C. 5372-2 which merely stated that the returns shall not be open to "public" inspection. This language was not used in R.C. 5747.18. The General Assembly instead adopted the term "official purposes" and directed that doubts as to the meaning of terms be resolved by reference to the Internal Revenue Code.

I must, therefore, conclude that the tax commissioner in performing his duty under R.C. 5747.18 to protect the confidentiality of income tax information may not provide such information to any official except for the purposes outlined in Section 6103(b), Internal Revenue Code, which are the administration of any state or local tax law.

With respect to requests by the Auditor of State it may be noted that he performs a statutory function directly related to the administration of the state income tax. See R.C. 5747.11, et seq. and R.C. 5747.50, et seq. In addition as Auditor he may inquire into the legality of claims and vouchers submitted to him, and must refuse to issue a warrant on the Treasurer of State for such a claim unless he finds it legal. R.C. 115.35. This would necessarily include claims for income tax refunds certified to the Auditor pursuant to R.C. 5747.11.

Furthermore, he is charged with investigating, through the Bureau of Inspection and Supervision of Public Offices, the accounts of the various state departments and institutions. R.C. 117.01. Where the Department of Taxation is the object of the investigation, the Bureau's function is related to the administration of the state tax law and it may request and receive information relevant to that inquiry.

It is clear then that there are "official purposes" for which the Auditor of State may pursuant to R.C. 5747.18 request and receive information gained by the tax commissioner or his agents. However, this right to access is balanced by the tax commissioner's duty under R.C. 5747.18 to insure the confidentiality of income tax records and to protect against the abuse of such information. Therefore, the Auditor in requesting income tax records must state a purpose, such as an investigation pursuant to R.C. 115.35 of claims for tax refunds, which on its face is related to the administration of state or local taxes. However, the request for information which you have received from the Auditor of State does not state a purpose which on its face is related to the administration of state or local tax laws.

Therefore, in specific answer to your question it is my opinion and you are so advised that a request for information "needed in performing the duties of this office" does not come within the scope of "official purposes" as that term is used in R.C. 5747.18.