

**OPINION NO. 92-004**

**Syllabus:**

R.C. 718.07 permits the disclosure of municipal income tax information to the Auditor of State, by those officers or employees of the municipal corporation responsible for administering the levy and

collection of the municipal income tax, for purposes of facilitating an audit undertaken pursuant to R.C. 117.11.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Lee Fisher, Attorney General, March 18, 1992**

You have requested an opinion addressing the issue of whether R.C. 718.07 precludes the Auditor of State from examining municipal income tax returns and records for purposes of an audit.

**The Statutory Scheme Governing Disclosure Of Municipal Income Tax Information**

R.C. 718.07 reads as follows:

Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter or by a charter or ordinance of a municipal corporation levying an income tax pursuant to this chapter is confidential, and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this chapter or the charter or ordinance authorizing the levy. The tax administrator of the municipal corporation may furnish copies of returns filed under this chapter to the internal revenue service and to the tax commissioner.

R.C. 718.07 provides confidentiality for, *inter alia*, information gained as a result of returns that are required or authorized to be filed by R.C. Chapter 718 (municipal income taxes), and returns required or authorized to be filed by a charter or ordinance of a municipal corporation levying an income tax pursuant to that chapter. However, disclosure of this information may be made: (1) in accordance with a judicial order; (2) in connection with the official duties of the person making the disclosure; or (3) in connection with the official business of the municipal corporation as authorized by R.C. Chapter 718 or the charter or ordinance authorizing the levy. R.C. 718.07. There is no specific exception authorizing the disclosure of municipal tax information to the Auditor of State.<sup>1</sup> Therefore, whether municipal income tax returns and records may be disclosed to the Auditor of State depends upon whether one of the three exceptions set forth in R.C. 718.07 otherwise permits that disclosure.

**Disclosure To The Auditor Of State**

A review of the three exceptions in R.C. 718.07 indicates that the disclosure of municipal tax information to the Auditor of State is permissible. You did not mention a judicial order in your request letter. I assume, therefore, that your question concerns circumstances in which no judicial order exists and that the exception stated in R.C. 718.07 for a judicial order does not apply.

The exception for business of the municipal corporation also appears inapplicable. That exception is limited by its own terms to official business authorized by R.C. Chapter 718, or by the charter or ordinance authorizing the levy. R.C. Chapter 718 sets forth various limitations and restrictions with respect to the levying of a municipal income tax, see R.C. 718.01; R.C. 718.02; R.C. 718.04, as well as specific time limitations for bringing either civil actions to recover the tax and penalties, or criminal prosecutions for offenses made punishable under a municipal ordinance imposing an income tax, R.C. 718.06. R.C. Chapter 718 does not, however, address audits of the municipal corporation conducted by the Auditor of State; accordingly, disclosure of municipal income tax information for purposes of

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<sup>1</sup> Compare R.C. 5703.21(B)(1), which expressly permits the Auditor of State, for the purpose of certain types of audits, access to and the right to examine state tax returns and state tax return information in the possession of the Department of Taxation.

such an audit does not appear to qualify as "official business" within the meaning of R.C. Chapter 718.<sup>2</sup>

The exception in R.C. 718.07 that authorizes the disclosure of municipal income tax information "in connection with the performance of the *official duties*" of the person making the disclosure does permit disclosure of this information to the Auditor of State for purposes of an audit conducted pursuant to R.C. 117.11. The Auditor of State is the chief inspector and supervisor of public offices. R.C. 117.09. In this capacity, it is the duty of the Auditor of State to conduct an audit of each public office. R.C. 117.11. A municipal corporation is a "public office" for purposes of R.C. Chapter 117, R.C. 117.01(D), and thus subject to audit by the Auditor of State. The scope of the audit is broad. The Auditor must inquire "into the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of the office, whether the laws, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the auditor of state have been complied with." R.C. 117.11(A). In your request letter you state that, in order to complete the audit of a municipal corporation, your office must review municipal tax returns and records. The reason for this is evident in light of the mandate that the Auditor of State inquire into the accuracy of the accounts, financial reports, and records of the municipal corporation. Municipal income tax returns form the basis for the income tax records and accounts maintained by the municipal corporation. The income tax return is the instrument by which the municipal corporation calculates the amount of income tax that is due and owing. In order to verify the accuracy of municipal tax records and accounts containing proceeds of the municipal income tax, the Auditor of State must be permitted to examine municipal income tax returns.

The statutory duty of the Auditor of State to audit a municipal corporation pursuant to R.C. 117.11 necessarily implies a corresponding duty on the part of the municipal corporation to cooperate with the Auditor of State and enable the audit to be completed. If the Auditor of State must review municipal income tax returns and records in order to complete an audit pursuant to R.C. 117.11, the municipal corporation has a duty to provide the Auditor access to that information.<sup>3</sup> It reasonably follows, therefore, that the responsibility to provide the Auditor of State with that information is among the official duties of one or more officers or employees of the municipal corporation responsible for administering the levy and

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<sup>2</sup> Because your request letter includes no information concerning specific charter provisions or ordinances, I shall assume that none of the charters or ordinances that authorize income tax levies for the municipal corporations in question authorize official business that includes disclosure of tax returns or records to the Auditor of State and that the exception in R.C. 718.07 that permits disclosure of confidential tax information in connection with the official business of the municipal corporation as authorized by R.C. Chapter 718, or by the charter or ordinance authorizing the levy, also does not apply.

<sup>3</sup> *Collins v. Ferguson*, 48 Ohio App. 2d 255, 357 N.E.2d 51 (Franklin County 1976), decided prior to the enactment of R.C. 5703.21(B)(1), *see* note one, *supra*, and mentioned in your letter, determined that the authority of the Auditor of State to examine the accounts of the Tax Commissioner was limited by the confidentiality accorded income tax data by R.C. 5747.18. Specifically, the court stated that the power of the Auditor of State to examine the accounts of public offices, and to supervise the methods of accounting and verify the procedures of the Tax Commissioner's office, "is subject to the exclusion of the confidentiality of income tax data which is, by its very nature, personal." 48 Ohio App. 2d at 262-63, 357 N.E.2d at 56. This case can be distinguished from the situation posed by your question, however, since the court in *Collins* determined that the Auditor of State was able to fulfill the statutory duty then at issue without examining state income tax returns. You have explained, in contrast, that an examination of municipal income tax returns and records is necessary for the complete audit of a municipal corporation.

collection of the municipal income tax.<sup>4</sup> Accordingly, those officers or employees are permitted by R.C. 718.07 to disclose municipal income tax returns and records to the Auditor of State for the purpose of facilitating an audit conducted pursuant to R.C. 117.11.

#### Conclusion

On the basis of the above analysis, it is my opinion, and you are hereby advised that R.C. 718.07 permits the disclosure of municipal income tax information to the Auditor of State, by those officers or employees of the municipal corporation responsible for administering the levy and collection of the municipal income tax, for purposes of facilitating an audit undertaken pursuant to R.C. 117.11.

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<sup>4</sup> Presumably, the specific officer or employee whose official duties include the responsibility to make municipal income tax information available to the Auditor of State will be the person who maintains that information. For example, in a municipal corporation that has not adopted a charter pursuant to Ohio Const. art. XVIII, §7 that specifies otherwise, that person will likely be the officer provided for in R.C. 733.85(B) to administer the municipal income tax, or an employee serving under that officer's direction.