

Disclosure of Nebraska Department of Revenue Responses to Taxpayers

ISSUE: This Revenue Ruling describes the circumstances and procedures the Nebraska Department of Revenue (Department) will consider and use to publish responses to taxpayer inquiries about the application of tax law (Nebraska statutes or regulations, the Internal Revenue Code, or federal regulations) to specific transactions or situations.

CONCLUSION: While the statutes covering confidentiality of taxpayer information usually prohibit disclosure of Department responses to taxpayer inquiries, there are instances where all taxpayers could benefit from the publication of the Department's position and analysis of the tax consequences of specific transactions or situations. In these instances, the Department's response will be published on its website to serve as a reference and guide for other taxpayers. However, confidentiality statutes require the Department to avoid, redact, or eliminate any taxpayer-specific identifications, numbers, or other information that may allow the public to identify a particular taxpayer, its business affairs, or its operations.

DEFINITIONS:

Confidential Taxpayer Information. Confidential taxpayer information is any information regarding sales, income, operating practices or processes, or any details obtained from any report, application, or return that comes into the possession of the Department or its employees. Confidential taxpayer information includes, but is not limited to:¹

1. A taxpayer's ID number;
2. The nature, source, or amount of a taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, income tax withheld, deficiencies, assessments, or tax payments;
3. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;
4. Financial records of state and local subdivisions, persons, and corporations subject to the tax laws of this state that are obtained in an audit or examination;
5. Any other information received by, recorded by, prepared by, furnished to, or collected by the Department with respect to a return;
6. The determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense;
7. Any part of any written determination or any background file document relating to a written determination (for example, the records from an audit);
8. Any information that identifies a specific taxpayer; or
9. Any information received from a public service company or railroad that is not available from any other public source.

¹ Neb. Rev. Stat. §§ 77-376, 77-603, 77-801, 77-2711, and 77-27,119

Correspondence. Correspondence is any written communication with a taxpayer or a taxpayer's representative, whether by letter, fax, email or other electronic means, which: answers one or more questions posed by the taxpayer; describes the forms that must be completed or the steps that must be taken to comply with Nebraska law regarding taxation; or communicates the position of the Department on a particular issue. Correspondence often contains confidential taxpayer information and will remain unpublished and confidential.

Declaratory Order. A declaratory order is the outcome of a proceeding initiated by a petitioner seeking a binding order by the Department as to the applicability of the law to specific circumstances or actions. Declaratory order proceedings are contested cases that involve oral arguments made to the Tax Commissioner or a hearing officer. They are authorized by Neb. Rev. Stat. § 84-912.01 and governed by Reg-34-001 through Reg-34-007. The petition, evidence, argument, and order remain confidential taxpayer information and will not be published by the Department.

Department. Department means the Nebraska Department of Revenue.

General Information Letter (GIL). A GIL is a written and published general response directed to one or more taxpayers that describes a procedure to follow, a form to be used, or cites interested parties to applicable statutes, regulations, or rulings. GILs may be issued in response to an inquiry from a particular taxpayer, but the GIL itself is prepared so that it does not contain any confidential taxpayer information.

Published. Published means posted on the website of the Department and available for the public to read and apply to particular situations.

Redacted. Redacted means that any confidential taxpayer information is removed, blacked out, or replaced by general or nondescriptive terms. Responses are redacted so that no confidential taxpayer information is contained in the publication.

Revenue Ruling. A Revenue Ruling is a written and published statement initiated by the Department that interprets and applies tax law in general or to a specific set of facts.

Taxpayer Ruling. A Taxpayer ruling is a written and published statement of the Department that interprets and applies tax law to a specific set of facts relating to a specific taxpayer. Taxpayer rulings are initiated by the taxpayer or the taxpayer's representative. Taxpayer rulings are produced in two versions, a private and a public version. The private version is provided only to the taxpayer and may contain confidential taxpayer information regarding that taxpayer. The public version contains the analysis and conclusions of the Department, but any confidential taxpayer information is redacted before it is published.

ANALYSIS:

The Department realizes that published information about the application of tax law to specific factual situations may be extremely helpful to taxpayers and tax practitioners. Publishing responses to taxpayers may also help with tax compliance by avoiding audits and protests.

Approximately 35 states currently publish private letter rulings, usually on the website of their respective revenue departments.² The statutes of Nebraska provide that all interested persons have a right to examine public records (see Neb. Rev. Stat. § 84-712) and the Legislature has expressed a strong public policy in favor of disclosure.³ At least one state has faced litigation seeking disclosure of taxpayer responses under its Freedom of Information Act.⁴

At the same time, the Department is prohibited from disclosing confidential taxpayer information. It is a Class I misdemeanor for the Department or any of its employees to make known anything about the business affairs, operations, or any information obtained from taxpayers on returns, or from investigations or audits with regard to sales tax (Neb. Rev. Stat. § 77-2711.) It is a felony for the Department or any of its employees to make known the income or particulars disclosed in any report or return with regard to income tax (Neb. Rev. Stat. § 77-27,119.)

Addressing this issue involves balancing these two conflicting public policies.

The Department has determined that there are circumstances where the public may benefit from disclosing the Department's interpretation of the tax law in a particular situation, or reciting the law that applies in a particular situation. In these instances, the response should be published. These circumstances will be rare and most communications to taxpayer inquiries will be issued only as correspondence. Correspondence, as defined in this revenue ruling, will remain confidential and will not be published, disclosed, or otherwise made available to the public by the Department.

When the Department receives an inquiry where there may be a benefit to publishing the applicable law or the Department's interpretation of the law as applied to the circumstances, the Department must decide if the response should be published before deciding how to respond. The Department's initial decision on publication will depend upon the public benefit derived from publication as compared to the ability to draft a response that does not disclose confidential taxpayer information. If, in the Department's opinion, this balancing favors publishing the response, the Department will publish the response as long as the response contains no confidential taxpayer information.

Confidential taxpayer information may be protected by issuing one of three types of responses.

1. **Issuing a GIL.** The Department may issue a GIL when the specific taxpayer is unknown, or when the response that is required is general and provides either a procedure to follow or merely cites the applicable statutes, regulations, or rulings. This may be in response to a single inquiry, or a number of similar inquiries. GILs are relatively informal, and may answer a particular taxability question, list the forms or procedures required to comply

² Griffeth, Cara, Amy Hamilton, and Jennifer Carr, *Transparency in State Taxation, Part 2: Legislative Process and Letter Rulings*, State Tax Notes, April 30, 2012.

³ *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009)

⁴ Maria Koklanaris, *Tax Analysts Joins Kentucky Suit Seeking Release of DOR Rulings*, State Tax Notes, August 1, 2013; Carr, Jennifer, *Kentucky Judge Expresses Skepticism Over DOR's Refusal to Release Letter Rulings*, State Tax Notes, Dec. 18, 2013.

with Nebraska tax law, or cite the law that applies to a set of facts. Every GIL will state that the GIL is the Department's current policy and taxpayers may rely on the Department to follow the principles or procedures described in a GIL until it is rescinded, superseded, or made invalid by changes to the statutes or by court decisions. GILs do not contain confidential taxpayer information, and will not name or refer to the identity of the taxpayers who made the original inquiry.

2. **Issuing a revenue ruling.** The Department may respond to an issue or a taxpayer inquiry with correspondence and then initiate and prepare a revenue ruling that will be published and applicable to all taxpayers. Revenue rulings interpret and apply the law to certain situations, industries, or issues. Revenue rulings may address general or multiple situations or issues and often give general guidance to taxpayers regarding new legislation, federal changes, or frequently asked questions. They are more formal than GILs and are signed by the Tax Commissioner. The difference between a GIL and a revenue ruling is that GILs only recite current law while revenue rulings interpret the law and often deal with new situations.

Revenue rulings are statements of the Department's interpretation of the law and taxpayers may rely on the Department to follow a revenue ruling until it is rescinded, superseded, or reversed by statutory changes or court decisions. Like GILs, revenue rulings do not contain confidential taxpayer information. Only the Department may initiate a revenue ruling.

Revenue Ruling 33-76-2, which deals with requesting and issuing Revenue Rulings, is hereby rescinded and superseded.

3. **Issuing a taxpayer ruling.** A taxpayer or the taxpayer's representative may request a taxpayer ruling. Taxpayer rulings are issued by the Department in response to specific taxpayer inquiries concerning the application or interpretation of a tax statute or regulation to a particular fact situation. Taxpayer rulings are formal, signed by the Tax Commissioner, and may take some time to issue. Taxpayer rulings are different from, and should not be confused with, Declaratory Orders, which will not be published.

To request a taxpayer ruling, the taxpayer (or representative) must provide:

- a. The name and address of the requester, including e-mail;
- b. The name and address, or email of the taxpayer, if different from the requester;
- c. The tax programs involved (for example, sales and use tax, income tax, etc.);
- d. A complete statement of the pertinent facts;
- e. The issue or issues the requester is seeking to be resolved;
- f. A suggested answer and argument (if any); and
- g. An indication of when the requester would like the taxpayer ruling to be issued. The normal time for issuing a taxpayer ruling is four months. If the requester needs a faster response, the Department usually will not issue a taxpayer ruling.

Taxpayer rulings will generally be published within 60 days after they are issued to the requester. Confidential taxpayer information must be redacted from the response. A proposed, redacted

version will be prepared by the Department and sent to the requesting taxpayer or representative for comments.

Proposals will be exchanged until all confidential taxpayer information is removed or redacted in the published version.

Taxpayer rulings, like GILs and revenue rulings, are statements of the Department's interpretation of the law and all taxpayers may rely on the Department to follow a taxpayer ruling until it is rescinded, superseded, or reversed by statutory changes or court decisions. In addition to this general applicability, a taxpayer ruling is binding on the Department with regard to the taxpayer who requested the ruling to the extent the facts recited in the taxpayer ruling are correct and complete, and the applicable law remains the same. If the answer provided in a taxpayer ruling later proves to be contrary to law, the Department will waive any penalty and interest associated with the taxpayer's reliance on the taxpayer ruling.

The Department will not issue a taxpayer ruling:

1. If the inquiry deals with unnamed taxpayers or hypothetical situations; or
2. If confidential taxpayer information cannot be adequately redacted from the response.

When these situations occur, the Department may issue either a revenue ruling or a GIL.

Revenue Ruling 99-81-1, which deals with form letters and letter rulings, is hereby rescinded and superseded.