



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-7

Tax Return Preparation by Department of
Revenue Services Personnel

The Ethics Commission has been asked whether employees of the Department of Revenue Services may, without violating the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes), prepare federal tax returns for clients on their own time.

The principal purposes of the Department are to ascertain the correctness of State taxes paid and to ensure compliance with the State's tax laws and regulations. Department personnel (less the Division of Special Revenue and the Gaming Policy Board) collect and deposit tax revenues, conduct desk and field audits to determine the accuracy of tax reporting, enforce compliance with the tax laws when they are not obeyed voluntarily, or support those who are administering the tax laws.

More than thirty tax laws are administered by the Department. Of these, three -- the corporation business tax, the estate tax, and the dividends, interest income, and capital gains tax -- are based on federal tax returns. Chapters 208, 217, and 224, General Statutes, respectively.

Department employees should not prepare federal tax returns which will be used as the basis for preparing State tax returns. The Code of Ethics of the Department's Audit Division currently prohibits this, as does the State Code of Ethics. There is a direct mathematical relationship between the figures in the federal tax returns and the amount of tax which will be paid Connecticut. Some judgment can be exercised in preparing the federal tax return. Once it is completed, the Connecticut return has been determined.

The purpose of a tax preparer is to compute the minimum amount of tax due under the tax laws. If he does not strive to achieve this, he will not remain long in business. The goal of Revenue Services employees is to collect the maximum amount of tax due under the tax laws. As court cases testify, there can be legitimate differences of opinion as to how a tax law is to be interpreted. A Department of Revenue Services employee

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should interpret laws and regulations in favor of the State. A tax preparer should interpret them in favor of his client. A Revenue Services employee with a private business preparing federal tax returns which will determine the amount of tax to be paid to Connecticut has a clear conflict of interests.

Additionally, the employee will have accepted employment which impairs his independence of judgment, in violation of subsection 1-84(b), General Statutes. He could not, for example, take Departmental action on the return of his client if, although he had not prepared the Connecticut return, he had prepared the federal tax return on which the State return was based. However, assigning the return to another employee for action would not cure the problem if, as is understood, a number of employees are in the business of preparing tax returns. One employee could not be strict in reviewing the return of another's client, knowing that the other might review the returns of the first employee's clients. The temptation to exchange favors to prevent problems with one's private business would be compelling.

Further, employees would be in a position to use their State authority, and confidential information gained in it, for their financial gain and that of their business, in violation of subsection 1-84(c), General Statutes. They could use their official association with tax returns to prospect for clients, a violation of the State Code of Ethics, and the Department's Code of Ethics as well. The employee would also be in a position to take improper official action, the nature of it depending upon his Departmental position, favoring his client and thus his business.

The Code of Ethics prevents a Department employee from preparing Connecticut tax returns indirectly by preparing the federal return upon which it is based. It is even more clear under the Code of Ethics that a Department employee may not, without violating the Code of Ethics, prepare Connecticut tax returns for another. The Department's Code of Ethics also forbids this.

The Department is expected to collect some \$4 billion in taxes in fiscal year 1987-88, which will pay most of the cost of State government. The public could have little confidence in the integrity of the administration of the tax laws if those charged with ensuring that returns conform to the law were the ones who prepared the returns.

The amount of tax owed by a taxpayer is significantly or completely determined from, and validated by, the books and records of the taxpayer. For the same reasons that a Revenue

Services employee should not prepare federal tax returns upon which Connecticut taxes are based, one should not maintain books and records upon which Connecticut tax returns will be based directly, or indirectly via a federal tax return.

In many tax laws there is a threshold which must be exceeded before any tax is due. For example, a taxpayer whose adjusted gross income, for federal income tax purposes, is less than \$54,000 need not pay Connecticut dividend and interest income tax, and may not have to pay Connecticut capital gains tax. Section 12-506, General Statutes. Whether a person is subject to Connecticut tax will depend to some extent on judgment calls made by the one who keeps the person's books and records and, sometimes, the one who prepares the person's federal tax return. A Revenue Services employee should not keep the books and records, or prepare federal tax returns upon which Connecticut taxes are based, for persons or organizations which are on the borderline of having to pay Connecticut taxes. There would again be a conflict of minimizing taxes for the client at the cost of denying Connecticut tax receipts.

It is understood that only 10% of the individuals who file federal tax returns also file Connecticut tax returns. Even if those who are on the borderline of having to pay Connecticut taxes are also excluded as clients, Department employees who wish to prepare federal income tax returns on their own time should be able to find eligible clients. The books and federal tax returns of small businesses which are not required to pay Connecticut taxes also could be maintained by Department employees.

The Department employees whom the Code of Ethics restricts with respect to their private bookkeeping and tax preparations business are those involved in the administration of the State's tax laws and regulations, and those -- mail room, payroll, clerical, etc. personnel -- who support them. Although administratively part of the Department of Revenue Services, the Gaming Policy Board and the Division of Special Revenue appear to take no part in the administration of the State tax laws and regulations. The Code of Ethics does not limit the outside employment, as bookkeepers and tax preparers, of them or other State employees unless their duties are somehow related to State taxes.

The excellent code of ethics in effect in the Department of Revenue Services either states directly, or can be construed as imposing, the same limitations on tax preparation and bookkeeping as does the State Code of Ethics, as interpreted in this Opinion. The Commissioner might wish to consider making

more specific in his Departmental code of ethics the instructions concerning outside employment which bears a relation to the official duties of employees of the Department.

By order of the Commission,



William A. Elrick
Vice-Chairman

Dated 6/1/87