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REVENUE:  
Access of Outside Consultants  
to Income Tax Case Files

Robert M. Whitler  
Director  
Department of Revenue  
State of Illinois  
1500 South Ninth Street  
Springfield, Illinois 62708

Dear Director Whitler:

I have your letter wherein you propose to utilize the expertise of an outside consulting firm to prepare a management plan to help alleviate the case backlog in the Conference and Hearings Division of the Department of Revenue. As you state, the question is whether the Department may permit these outside consultants, who are independent contractors, to have access to Illinois income tax case files, solely for the purpose of analyzing the operational problems

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in detail, without violating the confidentiality provision of section 917 of the Illinois Income Tax Act. (Ill. Rev. Stat. 1975, ch. 120, par. 9-917.) Section 917 provides in paragraph (a):

"(a) Confidentiality. Except as provided in this Section, all information received by the Department from returns filed under this Act, or from any investigation conducted under the provisions of this Act, shall be confidential, except for official purposes within the Department or pursuant to official procedures for collection of any State tax or enforcement of any civil or criminal penalty or sanction imposed by this Act or by another statute imposing a State tax, and any person who divulges any such information in any manner, except for such purposes and pursuant to order of the Director or in accordance with a proper judicial order, shall be guilty of a Class A misdemeanor."

It is my opinion that the employment of outside consultants to prepare a plan that would improve the operations of the Conference and Hearings Division is an "official purpose within the Department" so that the consultants' access to income tax case files would not be a breach of the confidentiality provision of the Illinois Income Tax Act.

The exception to confidentiality "for official purposes within the Department" is rather broad. There is little authority construing the phrase and a search of Illinois statutes containing similar language has uncovered no further

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elaboration or judicial interpretation of the terminology. A reasonable interpretation is that the tax returns shall at all times be kept within the Department and examined only by those officially authorized to examine them, and then only for purposes of carrying on the business and functions of the Department, but only so far as necessary to carry on those functions.

What is to be regarded within the exception is primarily determined by the Director of the Department. The statute states that the information shall be confidential except for certain purposes and pursuant to order of the Director. If the Director issues an order authorizing the use of the information and stating that the use permitted is for official purposes, the exception would become operative. In this particular case it would be reasonable for the Director to make a determination that the employment of a professional firm to devise a plan to improve the functions of the Department so that it can efficiently perform the duties it was designed to carry out constitutes an "official purpose within the Department".

In order to guard against any breach of confiden-

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tiality, the contract entered into between the Department of Revenue and the management consulting firm should contain provisions incorporating section 917, stating that the returns and the information in them are confidential and may be examined only for official purposes related to the management problem; stating that the employees and agents of the consulting firm may not divulge any information from any return to any person other than an employee of the Department or to another employee or agent of the consulting firm and then only for purposes of the management survey; and providing for practical procedures that the Director deems necessary to insure confidentiality. Such procedures could include naming the management firm people who could examine the returns and limiting their number, directing supervision and control of returns to be handled by certain department employees, providing for safekeeping, and requiring careful adherence by everyone to the requirements for keeping the information in the returns confidential. In short, the Department should retain a greater supervisory role over the operations of the consultants than is usually the case with an independent contractor.

Very truly yours,

A T T O R N E Y   G E N E R A L