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Robert E. Corbin

January 6, 1981

INTERAGENCY
Mr. J. Elliott Hibbs, Director
Arizona Department of Revenue
State Capitol
1700 West Washington
Phoenix, AZ 85007

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ARIZONA ATTORNEY GENERAL

Re: I81- 018 (R80-234)

Dear Mr. Hibbs:

You have asked whether the Department of Revenue ("DOR") and the Department of Economic Security ("DES") can exchange confidential information acquired in the administration of their respective tax programs and whether the two agencies can contract with each other so that one agency assumes the performance of certain tax administration functions of the other agency, such as auditing, collecting and licensing. We conclude that the exchange of information is permissible and that the ability to contract is dependent upon each agency's authority to perform the activity sought to be performed by contract.

With respect to your first question, specific statutes authorize each of the agencies to make confidential tax information available to other state agencies in the performance of their duties. A.R.S. § 23-722, dealing with DES, provides in pertinent part:

A. The department, the appeals board or an appeal tribunal may require from an employing unit sworn or unsworn reports with respect to persons employed by it which it deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or open to public inspection, other than to public employees in the performance of their duties or to an agent of the department designated as such in writing for the purpose of accomplishing certain of the department's functions, in any manner revealing the employing unit's identity, but a claimant at a hearing before an appeal tribunal, the appeals board or the department shall be supplied with the information from the records to the extent necessary for the proper presentation of his claim.

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The subsection relates exclusively to the contributions section of the unemployment insurance program, which is the only tax assessing division within DES. It precludes DES from releasing information obtained through its taxing function except "to public employees in the performance of their duties." It thus would permit DES to release confidential tax information to DOR in the performance of DOR's authorized duties.

Authority for the DOR to exchange confidential tax information with DES is provided in A.R.S. § 43-364 as follows:

The department may permit the commissioner of internal revenue of the United States, other tax officials of this state, or the proper officer of any state imposing an income tax or a tax measured by income or the authorized representative of any such officer to inspect the income tax returns of any individual, estate, trust or partnership or may furnish to the officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer. Permission shall be granted or information furnished to the officer or his representative only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the department.

DES officials who administer the unemployment insurance program qualify as "other tax officials of this state" under this statute. Although sums collected from employers to pay unemployment benefits are referred to in the Arizona Employment Security Act as "contributions", that term is synonymous with "taxes". The United States Supreme Court in Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1936), held that the fact that a state unemployment insurance statute refers to payments imposed under the Act as "contributions" is immaterial; they are taxes.

Thus, both DOR and DES have specific statutory authority to exchange confidential tax information obtained in the course of their respective operations for the purpose of assisting other state agencies in the performance of their duties.

With respect to the second question, both DES and DOR have specific statutory authority to contract with another state agency. Each agency is authorized to "[c]ontract with or assist other departments, agencies and institutions of the state . . . in the furtherance of its purposes, objectives and

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programs." (Emphasis added.) A.R.S. §§ 41-195 A.7 (DES),
42-104.4 (DOR). The use of the word "its" limits each agency
to contracting only in order to further its own "purposes,
objectives, and programs."

These provisions do not grant authority to DES to perform
statutory duties of DOR, nor do they allow DOR to perform the
duties of DES. Each agency has a specific legislative grant of
power and can do only what the Legislature authorizes it to do.
If you think that certain taxing functions could be better and
more economically accomplished by one agency, your appropriate
remedy is legislative relief.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:JTT:lfc