

[Application/return for property tax exemption
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Number: AGO 95-07

Date: July 31, 1995

Subject:

Application/return for property tax exemption

The Honorable Oliver Lowe
Charlotte County Property Appraiser
18500 Murdock Circle
Port Charlotte, Florida 33948-1076

RE: TAX COLLECTORS--TAXATION--PUBLIC RECORDS--application and return for property tax exemption treated as a return by the Department of Revenue is confidential pursuant to section 193.074, Florida Statutes.

Dear Mr. Lowe:

You ask substantially the following question:

Is the Florida Department of Revenue Form 504, "Ad Valorem Tax Exemption Application and Return," when filed by the taxpayer, subject to disclosure pursuant to Florida's Public Record Law?

In sum:

In light of the position taken by the Department of Revenue that Form 504, "Ad Valorem Tax Exemption Application and Return," is treated as a return, when such form is executed and filed by the taxpayer it is confidential pursuant to section 193.074, Florida Statutes.

Section 193.074, Florida Statutes, provides:

"All returns of property and returns required by s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, and the Auditor General, their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1). . . ." (e.s.)

While there is no statutory definition of what constitutes a "return," the Florida Department of Revenue (department) has promulgated a rule that defines "return" as:

"those documents, declarations, reports, schedules, amendments, or other written statements filed with the Department by a taxpayer under a revenue law of this state or rules of the Department. This term includes any copy of a federal income tax return or other attachments

which are designed to be supplemental to, or become a part of, a return. However, the annual report required of taxpayers who claim the enterprise zone jobs credit under ss. 220.181(3) and 212.096(4), F.S., is not included in the definition of return."[1] (e.s.)

Thus, pursuant to the definition promulgated by the department, declarations or written statements filed with the department pursuant to a revenue law of this state would be a "return," and therefore would in the instance where such declarations or statements relate to property subject to taxation, be confidential pursuant to section 193.074, Florida Statutes. You state that the department has provided Form DR-504 to the property appraisers so that taxpayers may claim an exemption from property taxation. This office has been informed by the department that Form DR-504 filed by a taxpayer is treated as a "return" for purposes of handling by the department.

It is well settled that the construction of a statute by the agency charged with its administration is entitled to great weight and will not be overturned unless it is clearly erroneous.[2] Thus, the interpretation by the Department of Revenue that Form DR-504 is a "return" that is confidential pursuant to section 193.074, Florida Statutes, should be followed, absent a showing that such a determination is not supported by the facts.

You indicate that Form DR-504 is entitled "Ad Valorem Tax Exemption Application and Return." Information elicited on the form includes the legal description of the organization's property, a list of owners and the owners' statements of value of real property improvements, real property land and tangible personal property. The taxpayer must state the use of the property and whether it is used for any non-exempt purposes. An applicant also must provide information regarding the structure of the organization, including a copy of the articles of incorporation and a statement indicating salaries, fees, loans, commissions and other compensation of the organization's officers, directors, trustees, members or stockholders. Moreover, the applicant must provide statements of the salaries for the operation, services rendered, supplies and materials used by the applicant, reserves for service or repair or replacement and depreciation of property, mortgage lien and encumbrances payments for the property, as well as a statement indicating the extent to which the proceeds of the sale, lease, or other disposition of the applicant's property will benefit the members, directors and officers of the applicant. This information clearly would appear to be written declarations by an applicant on the form that the department has provided for an applicant to obtain an exemption from property taxation pursuant to state law.

In light of the department's interpretation of what constitutes a "return" for purposes of the taxation statutes and its determination that Form DR-504 is a "return," it is my opinion that Form DR-504 when executed and filed by a taxpayer is a "return" that would be confidential pursuant to section 193.074, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Rule 12-22.002(5), F.A.C.

[2] See *Department of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815 (Fla. 1983), and *State ex rel. Biscayne Kennel Club v. Board of Business Regulation of Department of Business Regulation of State*, 276 So. 2d 823 (Fla. 1973).