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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

June 12, 1974

Opinion No. 74- 186

Mr. James T. McDonald  
Secretary of Revenue  
State Office Building  
Topeka, Kansas 66612

RE: K.S.A. 79-3234 and K.S.A. 79-4301 [ARTICLE VIII, (6)].

Dear Mr. McDonald:

You have requested an opinion from this office relative to the application of K.S.A. 79-3234 and K.S.A. 79-4301 [ARTICLE VIII, (6)] to the answering of certain interrogatories propounded by plaintiff in the case of United States Steel Corporation vs. Multistate Tax Commission (U.S. District Court, Southern District of New York; 72 CIV. 3438 CHT). Specifically you ask whether the Secretary of Revenue runs the risk of violating Kansas law if in answering said interrogatories he divulges amounts of income or any particulars set forth or disclosed in reports or returns submitted to him as required under the Kansas Income Tax Act where he is ordered to do so by the United States District Court.

Secrecy requirements for reports and returns submitted to the Secretary of Revenue under the Income Tax Act as set out in K.S.A. 79-3234 provide in part:

"(b) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the director, any deputy, agent, clerk or other officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report or return required under this act; . . .

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"(d) Any violation of subsection (b) of this section shall be punished by a fine not exceeding one thousand dollars; and if the offender be an officer or employee of the state, he shall be dismissed from office."  
[Emphasis added]


Further, note should be taken (for the purposes in the above identified case) of K.S.A. 79-4301 [ARTICLE VIII, (6)] which also provides in pertinent part:

"(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law."

These statutory provisions clearly allow for an exception to the prohibition of divulging certain information submitted to the Secretary of Revenue: that being when ordered to do so by a proper judicial order. Accordingly, it is the opinion of this office that the Secretary of Revenue may under order of the United States District Court answer the interrogatories propounded by plaintiff without violating the laws of this state.

Should you have any further questions regarding this please feel at liberty to contact us.

Very truly yours,

  
VERN MILLER  
Attorney General

VM:JPS:bw