

1976 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4320, 1976 WL 22939

Office of the Attorney General

State of South Carolina

Opinion No. 4320

April 7, 1976

Both the State and Federal estate tax returns filed with the Tax Commission are public records within the meaning of the South Carolina Freedom of Information Act, and therefore must be made available to the public for examination and inspection.

*1 Director

Estate and Gift Tax Division

South Carolina Tax Commission

You have presented the following 2 questions:

(1) Is an estate tax return filed with the Tax Commission protected from public disclosure?

(2) Are Federal returns and other information included within the records of the Tax Commission protected from public disclosure?

The Freedom of Information Act provides that all public records shall be open for public examination and inspection. (Section 1–20.2) Public records are defined to include all records required by law to be kept or maintained by any public agency. Excluded from the Act are records protected from disclosure by public law, for example, income tax returns, sales and use tax returns and all information related thereto. (Section 1–20.1, Section 65–307 and Section 65–1477) There are no specific exclusions in the Freedom of Information Act for estate tax returns, therefore, in our opinion the same must be made available for public examination and inspection.

Section 65–493 of the Code, in addition to Section 65–492 which requires a South Carolina estate tax return, requires the filing of a duplicate Federal estate tax return. The Federal return, under the authority of [26 U.S.C. 6103](#), is not absolutely protected from public disclosure but can be made available for public inspection under regulation of the President. Upon the filing of this return with the State, however, it becomes subject to the disclosure rules of the State.

It is our further opinion that the Freedom of Information Act's definition of the term 'public records' includes all documents which are prepared or used by a public agency with the exception of the information furnished by the Internal Revenue Service to the Commission which is excluded from the Federal Freedom of Information Act ([5 U.S.C., Section 552](#)) and protected thereby from disclosure. [Subsection \(b\) of Section 552](#) protects certain information which in our opinion includes Federal audit reports and related working papers. This information cannot be disclosed.

This office has stated that a liberal interpretation must be given to acts requiring public disclosure of information. [Laman v. McCord](#), 432 S. W. 2d 753 (1968 Arkansas). The rule, we understand, has been favored in the interpretation of the Freedom of Information Act since the issuance of an opinion of this office to the Tax Commission dated September 7, 1973.

In conclusion, both the State and Federal estate tax returns filed with the Tax Commission are public records within the meaning of the South Carolina Freedom of Information Act and therefore must be made available to the public for examination and inspection. Further, any information contained in the State's file must be made available except such

information which is protected from disclosure by the Federal Freedom of Information Act, i.e., Federal audit reports and related working papers.

*2 G. Lewis Argoe, Jr.
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4320, 1976 WL 22939

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.