

sonal property to be used on contracts with exempt credit unions.

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¹ Under Article 81, Section 372 (d) and (i) (2), the application of the Maryland Use Tax would be substantially identical.

² Accordingly the only exemption now provided for contractors with exempt persons by the Comptroller's Rules and Regulations is in Rule 70A, as follows:

"SALES TO CONTRACTORS PERFORMING JOBS FOR CERTAIN EXEMPT PERSONS

Contractors and subcontractors performing construction contracts for non-profit religious, charitable or educational institutions or organizations for use in carrying on the work of the non-profit institution or organization may purchase tax free the materials which will actually be incorporated into and remain a part of the finished job. Nothing in this Rule 70A shall apply to contracts with Federal, State or Local Governments or Agencies. . . ."

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TAXATION—PUBLIC INFORMATION—STATE DEPARTMENT OF ASSESSMENTS AND TAXATION NOT REQUIRED ON REQUEST TO FURNISH PUBLIC INFORMATION UNDER ARTICLE 76A IN FORM OF DUPLICATE DATA PROCESSING TAPE BUT MAY FURNISH REQUESTED PUBLIC INFORMATION IN FORM OF A PRINTOUT.

December 22, 1971.

Mr. Albert W. Ward.

You have asked whether the State Department of Assessments and Taxation has the right under applicable statutes to refuse to grant a request to supply, upon payment of the cost thereof, a "mother copy" (duplicate tape) of the Department's data processing tape containing the names and addresses of all active corporations in Maryland. The person making the request which prompted your inquiry wishes to furnish a blank tape on which the Department's records would be transcribed.

You have informed us that the Department is willing to furnish a printout of the names and addresses of active corporations. A printout would be in hard copy form, and it would be relatively impractical to make copies from it. On the other hand, you have informed us that the Department's tape contains more information than merely the names and addresses of active corporations, and the Department plans to add additional information to it from time to time, some of which may be confidential. Furthermore, if a mother copy of the tape were supplied, the person obtaining it could run off as many copies as he wishes with relative ease.

Article 76A, Section 4(a) of the Annotated Code of Maryland (Supplement 1971) provides, in part:

"(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian."

Section 4(b) of Article 76A provides that if the custodian does not have the facilities for making "... copies, printouts or photographs..." of such records, an applicant shall be given access to the records for the purpose of making such "... copies, printouts or photographs". Public records are defined to include:

"... any paper correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made... by any agencies of the State... or received by them in connection with the transaction of public business, *except those privileged or confidential by law.*" Article 76A, Section 1(a). (Emphasis supplied.)

The right to inspect public records, subject to certain prescribed limitations, is set forth in Article 76A, Section 3, which provides in part:

"(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (d) of this section:

"(i) Such inspection would be contrary to any State statute;

* * *

"(c) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

* * *

"(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;..."

Despite the breadth of the definition of public document, we find nothing in Article 76A which requires the Department in any case to provide upon request a mother copy of the

Department's data processing tape. We believe the statutory requirements to be satisfied where the Department is able and willing to supply a printout of the information requested, in this instance the names and addresses of all corporations active in Maryland. Article 76A gives any person the right to inspect public records (Section 3) and to obtain copies, printouts or photographs thereof (Section 4), but nothing in Article 76A gives any person the right to dictate that an agency provide the information requested in the form of a mother copy of a data processing tape containing more information than was requested. The statute guarantees any person the right to public information and to obtain authentic copies thereof, but it does not guarantee the right to have the information provided in any specific form.

Therefore, it is our opinion that the Department would be justified under the circumstances you have described in refusing to supply a mother copy of the Department's data processing tape and in providing only a printout of the information requested. The printout is an authentic copy of information on the tape and is recognized as such by the language of Section 4(a) which gives any person the right to request "copies, printouts or photographs" of public records, whichever is appropriate.

If the Department "... denies access to any public record ... to any person, he is entitled to a statement of the grounds for the denial and may appeal the denial to the District Court. Article 76A, Subsections 3(d) and 3(e). However, the Department is not denying "access" to information by refusing to provide a data processing tape where it is willing to provide a printout of the requested information. If, on the other hand, the Department believes the disclosure of any public record otherwise available "... would do substantial injury to the public interest", it may apply to the District Court for an order restricting such disclosure. Article 76A, Section 3(f).

We further advise you, however, that certain records of the Department are confidential under Article 81, Section 45 of the Annotated Code of Maryland, and thus are not subject to inspection by anyone other than the taxpayer who is the subject thereof. Article 81, Subsections 45(b) and (d) provide:

"(b) Record of assessments of personal property.—The record of assessments of personal property, by whatever nature, shall be arranged in alphabetical order according to owner by county, or election district, or taxing district, and the nature of the property shall be briefly stated, and the taxable value shall be shown. *However, the details thereof shall not be open to inspection except by the taxpayer or by officers of the State, and/or city or county affected thereby.*

* * *

"(d) Data which shall not be open to public inspection.—*Assessment work sheets or cards, or correspondence containing private appraisal information, building costs, rental data or business volume, which may have been assembled for consideration by assessors in estimating property values, shall not be open to public inspection, except by the taxpayer concerned, or officers of the State and/or city or county affected thereby.*" (Emphasis supplied.)

Disclosure of records described in these subsections would be "... contrary to [a] State statute" and be of "... confidential commercial [or] financial ... data furnished by or obtained from any person;" and therefore their disclosure is neither required nor permitted by Article 76A, Article 76A, Subsections 3(a)(i), 3(c)(v), *supra*. They would also be "... confidential by law" and this excluded from the definition of public records. Article 76A, Section 1(a). Consequently, we advise you that the Department may refuse to supply so-called mother tapes in any case and if the data processing tapes of the Department contain any classified or confidential information, the Department must by law refuse to supply mother copies of such tapes and must provide, upon request, the information which is public in some other appropriately edited form.

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TAXATION—TAX CREDIT—ASSESSMENTS—TAX CREDIT FOR HOMEOWNERS BY REASON OF AGE AND INCOME (ARTICLE 81, SECTION 12F) MUST BE APPLIED FOR EACH YEAR BY SEPTEMBER 1, EVEN IF TAX BILL IS NOT TIMELY MAILED (ARTICLE 81, SECTION 49C).

December 27, 1971.

Honorable Carter M. Hickman.

You have asked for our opinion whether Article 81, Section 49C(a) of the Annotated Code of Maryland (1969 Replacement Volume) requires a taxpayer, who is eligible for the tax credit provided for in Article 81, Section 12F (age and income), to apply for the tax credit each year by September 1 in order to receive it for that year, or whether it is only necessary for an eligible taxpayer to apply once for the first year after he reaches age sixty-five. Article 81, Section 49C(a) provides in pertinent part:

"... The taxpayer shall be given a notice of the possible credit provided by Section 12F at the time his tax bill is sent to him. He shall not be required to submit the application in person. He may apply for the tax credit at any time up to September 1, of the taxable year, but if he has not made application on or before that date, the credit shall not be allowed." (emphasis supplied)

In our opinion the reference to "the taxable year" in Section 49C(a) requires the taxpayer to make application for the Section 12F tax credit by September 1 of each tax year for which he seeks the credit, and for any tax year in which he does not apply by September 1, "the credit shall not be allowed." There are sound reasons for requiring the taxpayer to reapply each year. Circumstances may change over the course of a year, and a taxpayer who is eligible for the credit in one year may not be entitled to it for the next.

Section 12F(c) allows a tax credit on a dwelling to a homeowner who is 65 years of age provided his gross income, or combined gross income as the case may be, does not exceed