



THE ATTORNEY GENERAL

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October 10, 1973

Mr. Henry Heinmuller, Jr.
Retail Sales Tax Division
301 W. Preston Street
Baltimore, Maryland 21201

Dear Mr. Heinmuller:

Your letter of September 13, 1973, requests our advice as to the authority of the Comptroller under Article 81, Section 365(f) of the Annotated Code of Maryland (1969 Replacement Volume) to release information relating to taxpayers to the Treasury Department of the United States. We understand your question to be directed to sales tax reports and their contents within the purview of Article 81, Section 366, which provides in relevant part:

"Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Comptroller or any deputy, agent, auditor or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any other particulars set forth or disclosed in any of the terms required by this sub-title...."

We also will assume for purposes of your inquiry that the information in question would fall within the terms of the Public Information Act, Article 76A of the Annotated Code of Maryland, Section 3(c) which provides, inter alia, that:

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

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Mr. Henry Heinmuller, Jr. -2- October 10, 1973

"(v)...confidential...financial...
data furnished by or obtained from any
person."

As you have pointed out, Section 365 of Article 81 provides the following specific delegation of authority to the Comptroller:

"In addition to the powers granted to the Comptroller in this sub-title, he is hereby authorized and empowered:

"....(f) to request information from the State Tax Commission of Maryland or the Treasury Department of the United States relative to any person; and to afford information to the State Tax Commission of Maryland or the Treasury Department of the United States relative to any person."

It is our opinion that this provision is clear and specific and falls within the terminology contained in Section 366 of Article 81, "except... as otherwise provided by law" and of Section 3 of Article 76A, "unless otherwise provided by law", and would therefore constitute an exception to the prohibitions of both of these Sections. Accordingly, it is our opinion that the Comptroller is fully authorized to enter into the type of reciprocal agreement for the exchange of information with the Treasury Department of the United States as you have described in your letter.

We further believe that there is no requirement that such information be released to the Treasury Department only upon receipt of a subpoena or other judicial order. To impose such a qualification upon the authority granted in Section 365(f) of Article 81 would exceed the requirements of the statute and distort its mandate. That the Comptroller of the Treasury or any other state official must comply with a subpoena or other judicial order of a United States Court (or a properly authorized administrative subpoena of a federal agency) is required by the Constitution of the United States (see our recent opinion to James B. Coulter, Secretary of the Department of Natural Resources, dated March 29, 1973, a copy of which is attached hereto.) However, we think that the language "to afford information to... the Treasury Department of the United States relative to any person" does not limit the means of providing information to compliance with judicial orders since in the following section, Section 366, the Legislature authorized tax infor-

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Mr. Henry Heilmuller, Jr.

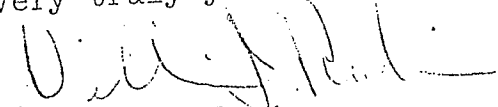
-3-

October 10, 1973

mation to be divulged "in accordance with proper judicial order or as otherwise provided by law." (Emphasis supplied). Accordingly, it is our opinion that since Section 365(f) of Article 81 authorizes the Comptroller to provide tax information to the Treasury Department of the United States without inhibiting the manner in which such information may be transmitted. Upon receipt of a bona fide request in such form as the Comptroller may deem appropriate tax information may be released to any accredited agent of the Treasury Department who is authorized to receive such information on behalf of the Department.

We trust that this fully answers your inquiry.

Very truly yours,



William J. Rubin
Assistant Attorney General

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