



STATE OF INDIANA

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April 13, 2009

Robin Alberson
Jay County Treasurer
Via electronic mail to ralberson@co.jay.in.us

Re: Informal inquiry 09-INF-13 regarding innkeeper's tax records

Dear Ms. Alberson:

This advisory opinion is in response to your informal inquiry dated March 11, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write to inquire about records maintained by your office related to collection of innkeeper's taxes. You explain that after receiving a request for a breakdown of which hotels pay what amount in innkeeper's tax, you indicated to the requestor that you could provide the total amount collected for the year but could not provide information for individual hotels. You based your answer on an opinion by former Public Access Counselor Anne O'Connor, as provided in *The County Bulletin and Uniform Compliance Guidelines Issued by the State Board of Accounts*, January 2000. You write to inquire whether the opinion remains the same concerning the innkeeper's tax. I do not find in my office a written opinion on the matter, but I have reviewed the January 2000 *County Bulletin*, and I agree with the recommendation.

The public policy of the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Treasurer's Office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Treasurer during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA provides that certain records may not be disclosed upon request except as required by state or federal law or order of a court under the rules of discovery. I.C. § 5-14-3-4(a). Among those are any records declared confidential by state statute. I.C. § 5-14-3-4(a)(1).

State statute specifically makes confidential records related to tax payments:

(a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States; when it is agreed that the information is to be confidential and to be used solely for official purposes.

I.C. § 6-8.1-7-1.

"Listed taxes" or "taxes" includes only . . . the various innkeeper's taxes (IC 6-9); . . .

I.C. § 6-8.1-1-1.

"Person" includes an individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, national bank, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, limited liability company, Indiana political subdivision engaged in private or proprietary activities, estate, trust, or any group or combination acting as a unit.

I.C. § 6-8.1-1-3.

"Taxpayer" means a person liable for the payment of taxes.

I.C. § 6-8.1-1-3.

Based on the foregoing definitions, the corporation (or other entity owning or operating a hotel) which is liable for the payment of taxes is a taxpayer. And a state statute declares confidential the amount of tax paid by any taxpayer, indicating no person may disclose the information. *See* I.C. § 6-8.1-7-1. As such, it is my opinion you may not disclose the amount of tax paid by an individual taxpayer (i.e. a specific hotel). I do not find a prohibition on disclosing the total amount collected by the county. As

indicated in the January 2000 *County Bulletin*, though, a county which has collections for only one entity would be unable to disclose the amount because the county would in effect be disclosing the tax amount paid by a taxpayer.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor

Cc: Indiana State Board of Accounts