

[9] State and Territory revenue audits — Access to Tax File Numbers

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The Victorian State Revenue Office ("SRO") has asserted a right of access in revenue audits to tax file number information. This assertion of a right of access requires qualification in two respects so that taxpayers are aware of their rights and do not breach the law.

In Ruling GEN.04 "Rights of Access of Records Prepared for ATO Purposes" the SRO says in part:

"Accordingly, authorised officers of the SRO can require production of information pertaining to records or documents prepared for the Australian Taxation Office, including documents with tax file numbers, from taxpayers and/or their representatives for the purposes of determining their liability. This right of access does not adversely affect the confidentiality of tax file numbers or other personal information. The privacy and misuse of such information is protected by State and Federal legislation".

It is of course for the SRO itself to reconcile its position with the Privacy Act and with the offences created by Subdiv BA of Div 2 of Pt III of the Taxation Administration Act 1953 (Cth). For example, an investigating officer might wish to consider whether the officer can retain a photocopy of a document containing a person's tax file number.

The more important aspects for taxpayers and their advisers are these:

1. That a taxpayer may remove the tax file number information on records or documents produced to a State or Territory revenue authority.
2. That a taxpayer is positively obliged to remove such tax file number information where the tax file number belongs to another person. Exceptions are limited — for example, a disclosure might be made where the person who has received the request for the record or document is acting in the conduct of the affairs of the third person.

From the point of view of the investigator, section 8WA(2) of the Taxation Administration Act is some comfort. It limits the offence of requesting or requiring an unauthorised quote of a tax file number. The offence is not committed where the person making the request simply requests the production of a document and does not prevent the removal of the tax file number from the document.

This is consistent with clause 7.1(a) of the Tax File Number Guidelines. That permits a person to remove a tax file number from a document even where the person is required by law to provide information (which contains a tax file number) for purposes not connected with the administration of certain Commonwealth laws.

Therefore, to the extent that Ruling GEN.04 might be read as requiring production of documents containing tax file number information to the SRO, the ruling should be read down as permitting a person to remove that person's tax file number information from the document.

The position is even more acute for financial institutions, companies and other bodies permitted to request a quote of tax file numbers from persons dealing with them. Section 8WB of the Taxation Administration Act prohibits such a person divulging or communicating another person's tax file number to a third person. There are some exceptions, but those exceptions would not apply to a State or Territory revenue audit unless the financial institution or body could be said to be acting on behalf of the person whose tax file number is disclosed in the conduct of that person's affairs.

Likewise, clause 2.4 of the Tax File Number Guidelines prohibits disclosure of a tax file number except for the purpose of carrying out responsibilities under certain Commonwealth laws.

To the extent that Ruling GEN.04 tends to contradict that, it should be read down.

In summary:

1. Taxpayers are permitted to delete their tax file number from documents requested by State and Territory revenue authorities. Taxpayers' advisers ought to be alive to this.
2. Persons who are the subject of an investi-

gation are positively obliged to remove tax file number information of third parties from documents requested by State and Territory revenue authorities. The exceptions are very limited — for example, where the disclosure is made when acting on behalf of the third party in the conduct of their affairs.

