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September 17, 1993

Neil H. Robblee
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Lou Ellen Pearson
Department of Revenue
353 Revenue Building
Salem, OR 97310

Re: Petition for Public Records Disclosure Order:
Department of Revenue Records
DOJ File No. 150-800-1TXGA02-93

Dear Mr. Robblee and Ms. Pearson:

This letter is the Attorney General's order on Mr. Robblee's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on September 10, 1993, asks the Attorney General to direct the Department of Revenue to make available the following:

1. Records concerning any computer program, the purpose of which is to generate a notice of liability, referred to in ORS 316.207(3)(a).

2. Records concerning whether or when the Department of Revenue ever issued any "Notices of Liability" to any persons.

3. Records showing whether the Department of Revenue issued any "Notices of Liability" to potentially responsible corporate officers on or before October, 1991.

4. All records contained in Department of Revenue Appeal Section File No. 92-5693.

For the reasons that follow, we respectfully deny requests Nos. 1, 2 and 3. We grant request No. 4.

I. NOTICE OF LIABILITY

ORS 316.207(3) provides that when an employer's withholding tax liability has been self-assessed, the Department of Revenue "may issue a notice of liability" to a responsible officer or employee:

> (3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265(12) and 314.407(1), the department may issue a notice of liability to any officer, employee or member described in ORS 316.162(3)(b) of such employer within three years from the time of assessment * * *.

The Department of Revenue does not, and, to our knowledge, has not issued a document entitled "Notice of Liability." The practice of the department is to issue a "Notice of Deficiency" or a "Notice of Determination and Assessment." These may be in the form of a computer printout or a pattern letter, examples of which are attached. Both types give the officer or employee notice of liability and rights of appeal.

II. DISCLOSURE OF APPEAL FILES

ORS 314.835 generally prohibits the Department of Revenue from disclosing the contents of an income tax appeal file to anyone except the petitioner and the petitioner's representative. However, the file in this case contains no information of that nature. The issue in this appeal is officer liability for withholding taxes; and, where more than one officer or employee may be held liable for withheld taxes, ORS 316.207(5) provides for a joint determination of liability notwithstanding ORS 314.835, 314.840 or 314.991.

We understand you are scheduled to appear before the department for a joint determination. Since the contents of the appeal file will be available to the

participants at the time of the joint hearing, we see no reason why that information should not be provided the participants before the hearing.

Therefore, we grant your request No. 4 and order the Department of Revenue to disclose the requested records. The department has seven days from the date of this order in which to comply. ORS 192.450(2).

The agency may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. See ORS 192.440(3).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

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