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DEPARTMENT OF JUSTICE
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January 14, 1997

Laurel Ann Curtis
1239 SE 50th Ave.
Portland, OR 97215-2607

Re: *Petition for Public Records Disclosure Order: Oregon Department of Revenue Records*

Dear Ms. Curtis:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on January 9, 1997, asks the Attorney General to direct the Oregon Department of Revenue (department) to make available "all income tax records for the years 1981 through and including 1986 pertaining to [you]." Included with your petition was a copy of your original request to the department in which you requested

> a copy of any and ALL income tax records pertaining to [Laurel Ann Curtis] and with respect to the years 1981 through and including 1986. [You] particularly want, but not limited to, All records pertaining to income tax assessments, payments and dates. Also, any and ALL records pertaining to any Appeals and/or Hearings, Case Numbers (if any and Dates of such Appeals and/or Hearings.

You also stated in your petition that the department provided several documents to you. The department also informed you that it had no income tax records related to you for the tax years 1981 and 1982. In your petition, you assert that there should be records for these years because you have lived in Oregon since 1968 and paid income taxes until approximately 1986. For the reasons that follow, we respectfully deny your petition.

For purposes of the Public Records Law, a public record includes information maintained on paper or in electronic or microfiche form. ORS 192.410. Pursuant to ORS 192.430, the custodian of a public record that is maintained in machine readable or electronic form, must "furnish proper and reasonable opportunity [for inspection] to assure access to

the record." ORS 192.430. The custodian must also provide copies of such machine readable or electronic records in the form requested, if available. ORS 192.440(2).

Bruce Hale, an auditor in the department's Audit Division, has informed us that he will send copies of all return, assessment, payment, appeal and other information that the department has for the years you requested that are maintained on paper, microfiche, computer file or otherwise.

Specifically, Mr. Hale has informed us that the department will send you the following records:

| | |
|---|---|
| 1982 - | an opinion and order issued by the department |
| 1983 - | an opinion and order issued by the department, an accounting/payment record, audit reports, notices of assessment |
| 1984 - | an accounting/payment record, audit reports, notices of assessment, record of collection activity |
| 1985 - | an accounting/payment record, audit reports, notices of assessment, record of collection activity |
| 1986 - | an accounting/payment record, audit reports, notices of assessment, record of collection activity |

If the department has no return, payment or other information, whether on paper or in electronic, microfiche or other form, the department has no obligation to, and cannot, make such information available because it does not exist as a public record. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 5 (1995) ("Public Records Law does not impose on public bodies the duty to *create* public records."). We have confirmed with Mr. Hale that some of the records that you requested do not exist with the department. For instance, there are no records related to a tax return, assessment or payment for the tax year 1981. The Attorney General has no authority to order the department to produce records that do not exist. *See* ORS 192.450. The department is required to maintain its income tax records for only four years pursuant to a document retention schedule approved by the Secretary of State. ORS 192.105. After that time period has expired, the records are destroyed. In your case, because there was some collection and hearing activity with respect to certain tax years, some of the records that would have otherwise been destroyed have been maintained.

Because the department has agreed to provide copies of the requested records that exist upon your payment of the appropriate fees for its photocopying costs,[1/] we deny your petition as moot. You may contact Bruce Hale at 503-945-8470 to make arrangements to obtain the requested records.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:CCB:AV:jpl:JAA021FAc

c: Bruce Hale, Auditor, Audit Division, Dept. of Revenue

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[1/] The department may charge a fee reasonably calculated to cover its costs in making copies of the records available to you. ORS 192.440(3); OAR 150-192.440.