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SALEM, OREGON

January 9, 1998

David Warren Pinski
Faye Irene Pinski
9205 SE Clackamas Road #24
Clackamas, OR 97015

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

Dear Mr. and Mrs. Pinski:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, 192.410 to 192.505. Your petition, which we received on January 5, 1998, asks the Attorney General to direct the Oregon Department of Revenue to produce various records related to the determination of income tax liability. For the reasons stated below, we respectfully deny your petition.

The request for disclosure that you sent the Department of Revenue was received by the department on December 15, 1997. The request states in part:

> We understand that this request will be answered within 10 days. We will not voluntarily extend this time should you seek additional time, we will immediately appeal to the Attorney General.

Although your petition states that the Director of the Department of Revenue denied your request, Gary Humphrey, Department of Revenue Conference Coordinator, informs us that the department has not denied your request. You apparently base your claim that the department denied your request on the fact that the department did not respond to your request within the 10-day deadline that you attempted to impose.

The Public Records Law requires that a custodian of public records "shall furnish proper and ***reasonable*** opportunities for inspection and examination" of the records in its custody. ORS 192.430 (emphasis added). The Public Records Law imposes no specific

deadline for release of requested records; the public body must release nonexempt records within a "reasonable" time. The reasonableness of the time may vary with, for instance, the extensiveness of the request and the complexity of the legal and factual issues that arise in determining whether the request encompasses documents that are exempt from disclosure. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 6 (1995). When a public body has a question about its legal duty to disclose requested records, it is reasonable for that public body to consult its legal counsel. When a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with a deadline that a requestor seeks to impose. *See id.* at 15.

In response to your request, the Department of Revenue has gathered and reviewed the requested documents to determine whether they are exempt from disclosure. Until that review is completed, and unless the department denies all or part of your request, it is premature for you to file a petition with the Attorney General.[1/] *See* ORS 192.450(1) (Attorney General may consider petition only when person has been denied right to inspect or receive copy of public record); *see also Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990). Accordingly, we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA028EA/DS/jh
c: Elizabeth Harchenko; Director
Oregon Department of Revenue

[1/] We understand that the department expects to respond to your request by January 13.