

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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**NASHVILLE, TENNESSEE 37202**

December 20, 2005

Opinion No. 05-181

Governmental Entity's Authority to Contract with Private Firm to Audit, Assess, or Collect Taxes

**QUESTION**

May a city, county, or state agency engage a private firm to serve as an agent of that governmental entity for the purpose of auditing, assessing, or collecting taxes?

**OPINION**

Counties and cities have been given limited authority to contract with private firms for the assessment and collection of local taxes. They may hire firms to review property tax rolls, inspect taxable property, and render assessment advice to the local tax assessor and board of equalization. They also may hire attorneys or agents to collect delinquent personal and real property taxes, as well as business taxes.

With regard to state-assessed taxes, the Commissioner of Revenue has been given limited authority to contract with a debt collection agency or attorney to collect unpaid taxes, licenses, fees, interest, and penalty.

**ANALYSIS**

By statute, counties and cities have been given limited authority to enter into contracts with private firms to assist with the auditing, assessment, and collection of taxes. With regard to property taxes, Tenn. Code Ann. § 67-5-507 authorizes and empowers the governing body of any county, town, or city to enter into contracts with individuals, firms, or corporations to assist the local tax assessor in the assessment of taxes. *See* Tenn. Code Ann. § 67-5-507(a)(1) (2003). Such contracts may require the private firm to review the county or city tax rolls, to examine all taxable property in the county or city, and to make assessment recommendations to the tax assessor and local board of equalization. *See* Tenn. Code Ann. § 67-5-507(a)(2) (2003). Under the statute, however, the private firm's function is "advisory only." *Id.* The tax assessor and board of equalization must make all final decisions as to the amounts to be assessed. *See id.* Moreover, the statute prohibits the firm's compensation from being based upon the amounts assessed. *See* Tenn. Code Ann. § 67-5-507(c) (2003).

In cases where real property taxes are delinquent, the county trustee is authorized to hire an attorney, with the approval of the county mayor, “to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes.” Tenn. Code Ann. § 67-5-2404(a) (2003 & Supp. 2005). The county legislative body must approve the delinquent tax attorney’s rate of compensation, “but in no event shall such compensation exceed ten percent (10%) of all delinquent land taxes collected.” *See* Tenn. Code Ann. § 67-5-2404(a)(2)(A) (2003 & Supp. 2005). Thus, unlike contracts with private firms that provide assessment advice, contracts between the trustee and the delinquent tax attorney may base the attorney’s compensation upon the amounts collected. Additionally, the county trustee may request the delinquent tax attorney’s assistance in collecting delinquent personal property taxes pursuant to the authority set forth in Tenn. Code Ann. § 67-5-2003(a) (2003).

Counties and cities have been given similar authorization in the area of business taxes. As your request points out, Tenn. Code Ann. § 67-4-719 authorizes the county clerk or city tax collector, in jurisdictions where the governing body has adopted these statutory provisions, to “retain, by written contract, an attorney or agent to collect or to institute proceedings to collect delinquent business taxes, interest and penalties, upon such terms as the county clerk or city tax collector deems appropriate.” Tenn. Code Ann. § 67-4-719(b)(1) (2003). In that event, “the attorney or agent is deemed to be a tax collector for the purpose of having access to all statements, reports or returns of a taxpayer.” Tenn. Code Ann. § 67-4-719(b)(3) (2003).

In the context of state-assessed taxes, this Office is not aware of any statutes that would authorize the Commissioner of Revenue to contract with a private firm to provide tax audit or assessment services. To the contrary, the statutes governing the Department of Revenue place these duties squarely on the Department itself. *See, e.g.*, Tenn. Code Ann. § 67-1-102 (2003). Moreover, a statute purporting to authorize the Department to contract with a private firm to provide these services would run afoul of the Taxpayer Confidentiality Act set forth in Tenn. Code Ann. §§ 67-1-1701, *et seq.* The Taxpayer Confidentiality Act prohibits any officer or employee of the Department of Revenue or the State of Tennessee with access to tax returns, tax information, or tax administration information from disclosing this information unless such disclosure is authorized by the Act. *See* Tenn. Code Ann. § 67-1-1702 (2003). Such prohibition applies “[n]otwithstanding any provision of law to the contrary,” *i.e.*, notwithstanding any provision of law that would appear to authorize such disclosure. *Id.*

Nevertheless, the Department of Revenue has been given limited authority to engage private firms to assist it in its collection efforts. In cases where the Department has “completed all administrative notices and actions” under the Tax Enforcement Procedures Act, the Commissioner of Revenue “may contract with any debt collection agency or attorney to collect unpaid taxes, licenses, fees and/or interest and penalty.” Tenn. Code Ann. § 67-1-1445(a) (2003). The Taxpayer Confidentiality Act contains a specific provision permitting the Commissioner to furnish information to a debt collection agency “only to the extent necessary for the collection of unpaid taxes.” Tenn. Code Ann. § 67-1-1704(f) (2003). This exception applies only to debt collection services. It would not extend to audit or assessment matters.

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