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January 16, 2018

Ms. Janell E. Tuttle, Executive Secretary  
Records Committee  
346 South Rio Grande Street  
Salt Lake City, Utah 84101-1106

Dear Ms. Tuttle:

On behalf of Tax Analysts, I write to appeal the attached letter dated December 19, 2017, from Barry Conover, executive director of the Utah State Tax Commission. In that letter, Mr. Conover denied Tax Analysts' request for access to audit training manuals and field audit manuals. Ms. Furniss's letter states that these records are "protected" from disclosure under Utah Code § 63G-2-305(15). We respectfully ask you to reverse this decision.

Tax Analysts is a leading nonprofit publisher of a number of periodicals dealing with taxation issues. Founded in 1970, Tax Analysts' weekly print publications include *Tax Notes* (dealing with federal taxation issues) and *State Tax Notes* (dealing with state tax issues). In addition, Tax Analysts publishes online editions of *Tax Notes Today* and *State Tax Today*. Our readers are for the most part attorneys, accountants and other tax professionals. Our state tax publications regularly report on developments in Utah, and we have a number of subscribers and readers in your state.

Our request in this case seeks access to the State Tax Commission's "field audit manuals," which provide useful information for tax practitioners about the proper interpretation of Utah tax laws. Access to such guidance is particularly important in the area of taxation, given the complexity of tax laws and the questions that inevitably arise about the proper application of broadly written tax laws to individual taxpayers or corporations.

Consistent with that goal, Tax Analysts has used state "open records" or "freedom of information" laws to make requests for field audit manuals and similar training materials from as many states as possible. To date we have received copies of field audit manuals and training materials from revenue departments in 19 states. Indeed, some state departments of revenue post their audit manuals online, including a 13-chapter, 1059-page audit manual prepared by the California Board of Equalization, <https://boe.ca.gov/sutax/manuals/fam-01.pdf><sup>1</sup> and Massachusetts' 373-page audit manual, [www.mass.gov/dor/docs/dor/audit/field-audit-procedures-manual.pdf](http://www.mass.gov/dor/docs/dor/audit/field-audit-procedures-manual.pdf).

We respectfully request reversal of the decision in Mr. Conover's letter for several reasons.

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<sup>1</sup> The URL shown in the text is for the first chapter of the manual. Chapters 2 through 13 may be accessed by substituting the appropriate two-digit chapter number for "01" shown in the URL.

First, in order for records to be withheld under Utah code § 63G-2-305, the records must be “properly classified.” There is no indication that any such “proper classification” took place.

Second, if a determination was made that the requested records were “properly classified,” we asked Mr. Conover to provide a copy of the decision document and the date it was reported to the state archives under Utah Code § 63G-2-307(1)(c). Mr. Conover made no mention of this request in his denial letter. One cannot conclude that records were “properly classified” unless there is a document showing when and how such classification occurred.

Third, subsection (15) of Utah Code § 63G-2-305, upon which the Commission relies does allow – but does not require – the Commission to withhold “records and audit workpapers that identify audit, collection and operational practices, and methods used by the State Tax Commission, if disclosure would interfere with audits or collections.”

The latter phrase that we just quoted is key, because it requires a determination that disclosure “would” actually “interfere” with audits or collections: not “may” interfere or “might” interfere, or even “could reasonably be expected to” interfere. The statute requires that any concern about “interference” must be real and not theoretical or conjectural. Mr. Conover’s letter does not demonstrate that any such showing has been made as to the documents we request.

Alternatively, if the requested records have been properly classified, we would ask you to order disclosure of the requested documents under the authority provided in Utah Code § 63G-2-201(5)(b), since there is no public interest in restricting access to the record, or the interests favoring access exceed the interest in favoring restricting access.

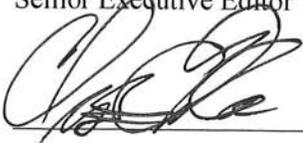
Finally, because we recognize that a “public records” request may be an inefficient way to have a dialogue with the Commission, we asked Mr. Conover for an opportunity to speak with him or someone at the Commission on specific concerns the Commission may have. His letter makes no mention of that request. Many courts and agencies these days find it useful for parties to a case or controversy to meet and discuss their concerns, thus attempting to see if it is possible for them to reach a negotiated settlement short of full-blown litigation of an issue. We respectfully suggest that the Records Committee may wish to require such a mediation or dialogue here.

Thank you for your consideration of these points. We look forward to hearing from you.

Sincerely,

Chuck O'Toole

Senior Executive Editor



Cc: Mr. Barry C. Conover (by courier)

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