Ordinance

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

ORDINANCE NO. 222

AN ORDINANCE OF THE CITY OF SAN LUIS, ARIZONA RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "APPENDIX IV- MODIFICATIONS TO THE MODEL CITY TAX CODE FOR CITIES AND TOWNS IN STATE COLLECTION SYSTEM PERFORMING SUPPLEMENTARY LOCAL AUDITS" TO THE TAX CODE OF THE CITY OF SAN LUIS; REPEALING ANY CONFLICITING PROVISIONS; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Mayor and Council of the City of San Luis, Arizona as follows:

Section 1: That certain document entitled "Appendix IV - Modifications to the Model City Tax Code For Cities and Towns in State Collection System Performing Supplementary Local Audits", three copies of which are on file in the office of the City Clerk of the City of San Luis, Arizona, which document was made a public record by a resolution of the City of San Luis, Arizona is referred to, adopted, and made a part hereof as though fully set out in this ordinance.

Section 2: In the event of a conflict between the provisions of this Ordinance and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are hereby repealed, superseded, and replaced, and the provisions of this ordinance shall govern.

Section 3: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4: Whereas, it is necessary for the preservation of the peace, health, safety and welfare of the City of San Luis, Arizona, and for further reason that pending purchases, financial considerations, and the best interest of the City require the amendments to go into immediate effect, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 9th day of February, 2005.

Guillermina Fuentes, Mayor

ATTEST:

Rosalicia Cordova, City Clerk

APPROVED AS TO FORM:

Glenn J. Gimbut
City Attorney

Appendix IV - Modifications to the Model City Tax Code
For Cities and Towns in State Collection System
Performing Supplementary Local Audits

((These modifications are in addition to those listed in Appendix I. Where a section or regulation in the tax code is amended in both Appendix I and this Appendix, the section or regulation as presented in this appendix shall apply.)

Insert the following after the title of Article V:

(NOTICE: Both the Department of Revenue and the (city/town) may perform audits of local taxpayers. Although many of the administrative procedures are the same, regardless of which entity is performing the audit, some differences will apply. To identify those differences, the words "State Administration and Audits" or "Local Audits" appear following the title of the Section. If the Section applies to audits performed by both the State and the (city/town), no notation appears.)

Replace Sec. -500(d) with:

Sec. __ -500. Administration of this Chapter; rule making. (State Administration and Audits)

(d) Taxpayers shall be subject to the State taxpayer bill of rights (A.R.S. § 42-2051 et. seq.).

Sec. __ -500. Administration of this Chapter; rule making. (Local Audits)

(d) (Reserved)

Replace Sec. -515 with:

Sec. __ -515. (Reserved) (State Administration and Audits)

Sec. __ -515. Duties of the Taxpayer Problem Resolution Officer. (Local Audits)

For text of section, see pages 42 and 43 of this model code.

Replace Sec. -516 with:

Sec. __ -516. (Reserved) (State Administration and Audits)

Sec. __ -516. Taxpayer Assistance Orders. (Local Audits)

For text of section, see page 43 of this model code.

Replace Sec. -517 with:

Sec. __ -517. (Reserved) (State Administration and Audits)

Sec. __ -517. Basis for evaluating employee performance. (Local Audits)

For text of section, see page 43 of this model code.

Replace Sec. -541 with:

Sec. __ -541. (Reserved) (State Administration and Audits)

Sec. __ -541. Erroneous advice or misleading statements by the Tax Collector; abatement of penalties and interest; definition. (Local Audits)

For text of section, see page 48 of this model code.

Replace Sec. -546 with:

Sec. __ -546. (Reserved) (State Administration and Audits)

Sec. __ -546. Closing agreements in cases of extensive taxpayer misunderstanding or misapplication; approval; rules. (Local Audits)

For text of section, see pages 49 and 50 of this model code.

Replace Sec. -553 with:

Sec.___-553. (Reserved) (State Administration and Audits)

Sec.___-553. Examination of taxpayer records; joint audits. (Local Audits)

For text of section, see page 51 of this model code.

Replace Sec. -556 with:

Sec. __ -556. (Reserved) (State Administration and Audits)

Sec. __ -556. No additional audits or proposed assessments; exceptions. (Local Audits)

For text of section, see page 52 of this model code.

Replace Sec. -570 with:

Sec. __ -570. Administrative review; petition for hearing or for redetermination; finality of order. (State Administration and Audits)

For the purposes of this section, "Municipal Tax Hearing Office" means the administrative offices of the Minicipal Tax Hearing Officer.

(a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-1113.

(b) Administrative review.

(1) Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-1251, as modified by Section ___-571.

(2) (Reserved)

(3) (Reserved)

(4) (Reserved)

(5) Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-1251. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-1253.

(6) (Reserved)

(7) (Reserved)

(8) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) Taxpayers shall be subject to the state taxpayer bill of rights (A.R.S. § 42-2051 et. seq.).

Sec. ___-570. Administrative review; petition for hearing or for redetermination; finality of order. (Local Audits)

(a) Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

(b) Administrative Review.

(1) Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

(A) within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied; or

(B) by voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

(C) by petition accompanying a timely filed return contesting an amount reported but not paid; or

(D) by petition requesting review of denial of waiver of penalty as provided in subsection ___-540(g).

(2) Extension to file a petition. In all cases, the taxpayer may request only one (1) extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay and time of delay requested, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow such extension to file a petition, when such written request has been properly and timely made by the taxpayer, but such extension shall not exceed forty-five (45) days beyond the time provided for originally filing a petition.

(3) Requirements for petition.

(A) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

(B) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

(C) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under the Section.

(4) Transmittal to Hearing Officer. The city/town shall designate a Hearing Officer, who may be other than an employee of the (city/town). The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Officer within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition.

(5) Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

(6) Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

(7) Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.

(8) Notice of Refund or Adjusted Assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.

(c) Stipulations that future tax is also protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.

(d) When an assessment is final.

(1) If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection (b) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty determined to be due shall be final as provided in subsections ___-545(a) and ___-555(f).

(2) The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection (b)(8) above, unless the taxpayer appeals the order or decision in the manner provided in Section ___-575.

(e) The provisions of the state taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.) shall not apply.

Replace Sec. -571 with:

Sec. ___-571. Jeopardy assessments. (State Administration and Audits)

(a) If the Tax Collector believes that collection of any amounts imposed by this Chapter will be jeopardized by delay, he shall issue notice to the taxpayer in accordance with the provisions of A.R.S. Section 42-1111.

(b) In cases where such jeopardy notice has been issued, the taxpayer must meet the provisions of A.R.S. Section 42-1111, concerning appeals of jeopardy assessments, before any request for administrative review shall be honored. Any bond or collateral that may be required shall meet the provisions of A.R.S. Section 42-1102.

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

Sec. ___-571. Jeopardy assessments. (Local Audits)

(a) If the Tax Collector believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax or deficiency declared to be in jeopardy, including interest, penalties, and additions.

(b) Jeopardy assessments are immediately due and payable, and the Tax Collector may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Tax Collector may allow, by bond or collateral in favor of the (city/town) in the amount Tax Collector declared to be in jeopardy in his notice.

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SAN LUIS, AZ 85349
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(c) "Bond or Collateral", as required by this Section,

(1) shall mean either:

(A) a bond issued in favor of the (city/town) by a surety company authorized to transact business in this State and approved by the Director of Insurance as to solvency and responsibility, or

(B) collateral composed of securities or cash which are deposited with, and kept in the custody of, the Tax Collector.

(2) shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Tax Collector must be of a nature that they may be sold at public or private sale without notice to the taxpayer.

(d) If bond or collateral is not filed within the period prescribed by subsection (b) above, the tax collector may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Sections ___-570 and ___-575. The filing of a petition by the taxpayer under Section ___-570, however, shall not stay the tax collector's rights to pursue any collection proceedings.

(e) If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section ___-570, including requests for additional time to file a petition.

Replace Sec. -572 with:

Sec. ___-572. (Reserved) (State Administration and Audits)

Sec. ___-572. Expedited review of jeopardy assessments. (Local Audits)

For text of section, see page 57 of this model code.

Replace Sec. -575 with:

Sec. __ -575. Judicial review. (State Administration and Audits)

(a) Appeal of a State Board of Tax Appeals decision to the courts is valid only if all the provisions of A.R.S. Section 42-1254 are met.

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:

(1) the taxpayer asserts a reasonable dispute regarding the issue.

(2) the taxpayer has fully cooperated with the tax collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the tax collector.

(3) the taxpayer has kept and maintained records as required by the City.

(f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the (city/town) or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the (city/town) to recover any amounts claimed to be due to it by virtue of the original assessment.

(g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

Sec. __ -575. Judicial review. (Local Audits)

(a) A taxpayer may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action against the (city/town) in the appropriate Court of this County. A taxpayer is not required to pay any tax, penalty, or interest upheld by the Hearing Officer before seeking such judicial review.

(b) The Tax Collector may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action in the appropriate Court of this County.

(c) An action for judicial review can not be commenced by either the taxpayer or the Tax Collector more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Hearing Officer's decision, unless the time to commence such an action is extended in writing signed by both the taxpayer and the Tax Collector. Failure to bring the action within thirty (30) days or such other time as is agreed upon in writing shall constitute a waiver of any right to judicial review, except as provided in subsection (f) below.

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ATTN: CITY CLERK

(d) The court shall hear and determine the appeal as a trial de novo; however, the Tax Collector cannot raise in the court any grounds or basis for the assessment not asserted before the Hearing Officer. Nothing in this subsection, however, shall preclude the Tax Collector from responding to any arguments which are raised by the taxpayer in the appeal.

(e) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:

(1) the taxpayer asserts a reasonable dispute regarding the issue.

(2) the taxpayer has fully cooperated with the tax collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the tax collector.

(3) the taxpayer has kept and maintained records as required by the City.

(f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the (city/town) or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the (city/town) to recover any amounts claimed to be due to it by virtue of the original assessment.

(g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

Replace Sec. -578 with:

Sec. ___-578. (Reserved) (State Administration and Audits)

Sec. ___-578. Reimbursement of fees and other costs; definitions. (Local Audits)

For text of section, see pages 58 and 59 of this model code.

Replace Sec. -590 with:

Sec. __ -590. Civil actions. (State Administration and Audits)

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(a) Liens.

(1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the (city/town) perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the county recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the (City/Town) Council and further, stating that the (city/town) claims a lien therefor.

(2) The notice of claim of lien shall be signed by the tax collector under his official seal or the official seal of the (city/town), and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.

(3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the (city/town), but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.

(4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the county recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the (city/town).

(b) Actions to recover tax. The Arizona Department of Revenue, or any agent or representative authorized by that Department, may bring action, in the name of the (city/town), to recover taxes as provided in A.R.S. Section 42-1114.

Sec. __ -590. Civil actions. (Local Audits)

(a) Liens.

(1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the (city/town) perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty, and

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interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the county recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the (City/Town) Council and further, stating that the (city/town) claims a lien therefor.

(2) The notice of claim of lien shall be signed by the (City/Town) Manager under his official seal or the official seal of the (city/town), and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.

(3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the (city/town), but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.

(4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the county recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the (city/town).

(b) Actions to recover tax. An action may be brought by the (City/Town) Attorney or other legal advisor to the (city/town) designated by the (City/Town) Council, at the request of the Tax Collector, in the name of the (city/town), to recover the amount of any taxes, penalties, interest, recording costs, lien processing fees and lien release fees due under this Chapter; provided that:

(1) no action or proceeding may be taken or commenced to collect any taxes levied by this Chapter until the amount thereof has been established by assessment, correction, or reassessment; and

(2) such collection effort is made or the proceedings begun:

(A) within six (6) years after the assessment of the tax; or

(B) prior to the expiration of any period of collection agreed upon in writing by the Tax Collector and the taxpayer before the expiration of such six (6) year period, or any extensions thereof; or

(C) at any time for the collection of tax arising by reason of a tax lien perfected, recorded, or possessed by the (city/town) under this Section.

Replace Sec. -596 with:

Sec. ____-596. (Reserved) (State Administration and Audits)

Sec. ____-596. Agreement for installment payments of tax. (Local Audits)

For text of section, see page 62 of this model code.

Replace Sec. -597 with:

Sec. ____-597. (Reserved) (State Administration and Audits)

Sec. ____-597. Private taxpayer rulings; request; revocation or modification; definition. (Local Audits)

For text of section, see page 63 of this model code.

Replace entire Reg. -555.1 with:

Reg. __ -555.1. (Reserved) (State Administration and Audits)

Reg. __ -555.1. Administrative Request for the attendance of witnesses or the production of documents; service thereof; remedies and penalties for failure to respond. (Local Audits)

(a) If a taxpayer refuses or fails to comply in whole or in part with a request to provide records authorized by Section __ -555, the Tax Collector may issue his written Administrative Request which shall:

(1) designate the individual to provide information.

(2) describe specifically or generally the information to be provided, and any documents sought to be examined.

(3) state the date, time, and place in which the individual shall appear before the Tax Collector to provide the information and to produce the documents sought.

(4) be directed to:

(A) any director, officer, employee, agent, or representative of the person sought to be examined; or

(B) any independent accountant, accounting firm, bookkeeping or financial service retained or employed by such person for any purpose connected with business activity subject to taxation; or

(C) any other person who, in the opinion of the Tax Collector, has knowledge of facts bearing upon any tax liability of the person or taxpayer from whom information is sought.

(b) The failure of a taxpayer to comply with reasonable requests for records without good reason or cause may, in the exercise of judicial discretion by a court, be held to constitute a failure to exhaust administrative remedies.

Rev. Date: 1-12-2005