

## **Opinion No. 65-30**

February 18, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Jerry Wertheim, Assistant Attorney General

**TO:** Max M. Gonzales, Commissioner of Revenue, Bureau of Revenue, State of New Mexico, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

May the authorized agent or auditor of the Bureau of Revenue examine books and records of a taxpayer beyond three years from the date of the examination if such books and records have been voluntarily maintained beyond that period?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*55} ANALYSIS

Sections 72-16-34 and 72-17-21, N.M.S.A., 1953 Compilation authorize the Bureau of Revenue or its agents or auditors to examine the business records of a taxpayer for purposes of establishing tax liability or determining the correctness of a return. This authority is unlimited in Sections 72-16-34 and 72-17-21 except that the Bureau of Revenue may not audit the same period eighteen months after an audit approval has issued without notifying the taxpayer of an extension of time within that eighteen month period. The Bureau of Revenue can examine the business records of a taxpayer as far back in time as it is authorized to establish liability. In practical effect the Bureau of Revenue is implicitly limited in examining the business records of a taxpayer only by the statutes of limitations applicable to the School Tax and Compensating Tax Acts. Sections 72-7-35 and 72-21-25, N.M.S.A., 1953 Compilation. The statutes of limitations for both the School Tax and Compensating Tax Acts are both longer than three years.

Sections 72-16-33 and 72-17-20, N.M.S.A., 1953 Compilation do not limit the right of the Bureau of Revenue to examine the business records of a taxpayer. These sections provide an affirmative duty on the taxpayers to maintain his business records for three years. The correlative of this duty is the right of the state to prosecute the taxpayer under 72-16-40, N.M.S.A., 1953 Compilation, for breach of the duty. The taxpayer's duty to maintain records for three years does not directly or indirectly affect the right of the Bureau of Revenue to examine available business records of the taxpayer. To the

extent that this opinion differs with Attorney General's Opinion No. 57-114 dated May 28, 1957, the latter is overruled.