

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-30
DECEMBER 15, 2006

RE: May former employee immediately represent clients before the Department of Revenue?

DECISION: Yes, as long such representation does not involve matters in which he was directly involved the last 36 months of his tenure.

This opinion is issued in response to your November 22 and November 27, 2006 requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 2006 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You currently are employed by the Kentucky Department of Revenue (the Department") as a protest resolution officer in the Division of Protest Resolution managing sales and use tax protest cases. Previously, you also worked for the Department from January 2000 until September 2002 as a revenue field auditor. You left state employment until September 2004 when you returned to the Department as an auditor in the Corporation Income Tax section. In April of 2005 you moved to your current position.

You have accepted employment to work for a state and local tax consulting firm beginning December 1, 2006, serving client need in the sales and use tax area. You understand that you will not be permitted to represent clients on tax issues in which you previously had direct involvement. However, you request clarification and guidance on the following situations:

- 1) Company ABC has two ongoing sales tax audits, one for 1998-2002 and the other for 2003-06. You personally worked on the 1998-2002 audit, but not on the 2003-06. You ask if you may represent a client on the 2003-06 audit if you had no direct involvement with that audit. Also, what if you had involvement with similar issues during a protest? What if the protests are being handled simultaneously but the later one by a different protest officer?
- 2) You worked Company ABC sales tax protest; may you represent Company ABC on refund request issues? What if the protest is still outstanding? What if the refund request is for the same period as the ongoing protest? What if the protested case is closed or resolved?

- 3) How much does “internal department knowledge” of a case and its issues impact your representation of a company if you never actually worked on the company’s case?

Please find enclosed the brochure entitled, *Leaving State Government?*, which will provide you with guidance regarding your representation of clients in your new position. As provided in KRS 11A.040(9) stated below, for one year following your resignation of employment you are prohibited from representation a person of business before the state in matters in which you had direct involvement the last 36 months of you state tenure. “Matters” is narrowly interpreted as specific cases, audits, projects, issues, etc.

KRS 11A.040(9):

A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

Thus, for one year you are prohibited from representing clients before the Department regarding specific cases or audits if you had direct involvement with those cases or matters during the last 36 months, even if you had a break in service during those 36 months. For one year you should refrain from representing clients in matters of any audits or cases on which you worked from December 1, 2003 through November 30, 2006, during your state government tenure

Given that you worked on the 1998-2002 sales tax audit during the last 36 months, for one year you should not represent a client regarding that audit. However, you are not prohibited from immediately representing the same client on the 2003-06 audit, with which you had no direct involvement, as long as you are not representing the client regarding the same issues on which you worked during the previous audit. Further, if you had involvement with certain issues during your work as a protest officer, you should refrain for one year from representing a client regarding those issues. You may represent the same client on new issues or matters that were not before you during a protest, or on which you didn’t work as an auditor, even if the issues were handled by a co-worker.

You are not prohibited from representing a company on a refund request issue provided that refund was not the result, or part, of the sales tax protest on which you worked. If the refund request is for the same period as the ongoing protest on which you worked, you would be prohibited for one year from representing the client on the refund request issue, even if the protest is closed or resolved.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-30
December 15, 2006
Page Three

As provided in Advisory Opinion 03-12 (a copy of which is enclosed), you are not prohibited from using any general knowledge gained from your state employment, but should not use any specific knowledge gained that is not readily available to the general public.

Sincerely,
EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosures: *Leaving State Government?*
Advisory Opinion 03-12