



COMMONWEALTH of VIRGINIA

Department of Taxation  
Richmond, Virginia 23282

MEMORANDUM

TO: Garland F. Wilmoth, Director  
Processing Services Division

DATE: May 14, 1986

SUBJECT: Keeper of the records

In December you requested Tax Policy Division to advise you of any statutory requirements that require your division to be the keeper of the records for purposes of Subpoena Duces Tecum served on the department.

Under the rules of evidence, business records can be introduced as evidence in court if the keeper of the records testifies.

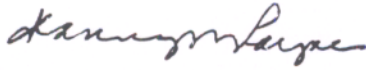
Section 58.1-110 provides that the court may accept, as prima facie evidence as to whether or not a tax return has been filed or tax paid, a duly executed affidavit by the Tax Commissioner. This provision permits the affidavit to be accepted as evidence.

In the case of a subpoena of a return, Section 58.1-109 sets forth the requirements for the production of confidential returns. Such returns can be furnished in an envelope. There is nothing in the statutes which require the keeper of the records to furnish such evidence. However, if such records are introduced as evidence, someone may be required to testify that such records have been personally found, examined, are complete and unaltered. The person testifying to these matters may be required to be the keeper of the records.

If it becomes an issue in the court action, the person testifying must do the actual research and assure copies are correct or the person testifying may even have to produce new copies and testify to such copies. For example, if the disputed issue in a case is whether a return was timely filed, the filing date may be the disputed issue. If so, testimony in court would be required as to processing, saving postmarked envelopes, etc. The person testifying should be familiar with these procedures whether or not such person is a "keeper of the records."

In summary, there is nothing in Section 58.1-109 to require the keeper of the records to produce the records unless the court or attorneys make an issue of the matter and subpoena the keeper of the records to testify. At that time the keeper of the records will be required to research and reproduce the records.

I trust this information will be beneficial to you, if you need any further review please let me know.



Danny M. Payne  
Director  
Tax Policy Division