SHERRARD
GERMAN & KELLY, P.C.
ATTORNEYS AT LAW

28th Floor, Two PNC Plaza, Pittsburgh, PA 15222
Phone: 412-355-0200 • Fax: 412-261-6221 • www.sgkpc.com

# REPORT FROM COUNSEL

***FALL 2002 ISSUE***

## *TO KEEP OR NOT TO KEEP? THAT IS THE QUESTION.*

*By Robert J. Courie, Esquire*

If you are like most people, your home is probably littered with countless pieces of paper, which represent the myriad of transactions that take place in your life. Also, if you are like most people, you have no idea which of these records to keep and which not to keep, and, if so, for how long? This article will shed some light on what types of records should be kept by an individual and how long such records should generally be retained. Record retention guidelines for businesses, while similar in many respects, are not specifically covered.

Personal records can generally be classified under two main categories: (1) Personal, Family and Household Records and (2) Tax Records.

### *Personal, Family and Household Records*

The following charts categorize certain records of a personal, family or household nature under three broad categories: (1) general records, (2) property records and (3) financial records. Certain of these records may be difficult to replace if the original records are lost or the official records are destroyed. Therefore, they should be kept in a safe deposit box, accessible by more than one person, or a home fireproof safe. Other records can be kept in a home filing cabinet or storage.

*General Records*

| Type of Record | Retention Period |
|---|---|
| Birth, marriage and death certificates | Forever |
| Wills | As long as in effect |
| Living Will<br>Advanced Healthcare Directive<br>Durable Power of Attorney | As long as in effect; update as needed |
| Social security card | Forever |
| Diplomas, transcripts | Forever |
| Passports | Until replaced |
| Adoption and custody documentation | Forever |
| Citizenship documentation | Forever |
| Divorce and separation agreements | Forever |
| Settlement agreements | Forever |
| Military documentation | Forever |
| Medical history | Forever |
| Employment records | Forever |
| Inventory of valuable papers and list of advisors | Forever; update annually |

*Property Records*

The following property records may also have tax considerations that require longer retention periods (see tax charts below):

| Type of Record | Retention Period |
|---|---|
| Real property deeds, title documents, title abstracts, title insurance policies, mortgages, and other lien documents (including rental property) | Duration of ownership (or longer if needed for tax purposes) |
| Home maintenance (e.g., routine plumbing) warranties, receipts and cancelled checks | Duration of warranty |
| Home improvement (capital improvements) warranties, receipts and cancelled checks | Duration of warranty (cancelled checks/receipts until property is sold or longer if needed for tax purposes) |
| Burial lot deed | Duration of ownership |
| Property appraisals by outside appraisers | Duration of ownership (or longer if needed for tax purposes) |
| Tax assessment notices, purchase contracts, records of capital improvements (including rental property) | Duration of ownership (or longer if needed for tax purposes) |
| Motor vehicle titles, purchase receipts and licenses | Duration of ownership |
| Records of auto service/repair | Duration of ownership |
| Appraisals of jewelry and other valuable items | Duration of ownership |

| Type of Record | Retention Period |
|---|---|
| Inventory of household goods and appraisals (including rental property) | Forever; update annually |
| Auto insurance card and registration | Current only |

*Financial Records*

The following financial records may also have tax considerations that require longer retention periods (see tax charts below):

| Type of Record | Retention Period |
|---|---|
| Stock certificates, bonds and other securities | Duration of ownership (or longer if needed for tax purposes) |
| Bank account agreements and account statements | Three years (or longer if needed for tax purposes) |
| Cancelled checks | One year (or longer if needed for tax purposes to support deductions, support increase in cost basis or as proof of purchase date for warranties) |
| Savings certificates | Duration of ownership (or longer if needed for tax purposes) |
| Loan/Mortgage documents | Until loan/mortgage is satisfied (or longer if needed for tax purposes or as support for possible litigation) |
| Retirement, IRA, social security and pension records | Forever |
| List of credit, ATM and debit cards, credit contracts, agreements, records of credit payments and account statements | Duration of account or obligation (or longer if needed for tax purposes) |
| Insurance policies and records of claims made and paid under insurance policies | Duration of policy; forever, if occurrence policy; update as needed (consult with insurance provider or agent) |

## *Tax Records*

*General Tax Guidelines*

The primary reason that individuals must retain certain types of records is for tax purposes. An individual must keep records for as long as they may be needed for the administration of any provision of the Internal Revenue Code (IRC). Generally, this means that such records must be kept as support until the period of limitations for the applicable tax return expires.

The period of limitations is the period of time in which a taxpayer can amend a tax return to claim a credit or refund or the Internal Revenue Service (IRS) can assess additional tax. The period starts from the later of the tax return due date or actual filing date. The following table contains the periods of limitations that apply to tax returns.

Generally, it is advisable to retain uncomplicated complete tax returns for three years and complicated tax returns for at least six years. Information related to a tax audit or appeal should be kept permanently.

| If a taxpayer … | Then the period is |
|---|---|
| Owes additional tax and (2), (3), and (4) do not apply | 3 years |
| Does not report income that should be reported and such income is more than 25% of the gross income shown on the applicable tax return | 6 years |
| Files a fraudulent return | No limit |
| Does not file a tax return | No limit |
| Files a claim for credit or refund after a tax return is filed | Later of 3 years or 2 years after tax was paid |
| Files a claim for a loss from worthless securities | 7 years |

*Income and Deductions*

A taxpayer's records should include information that prove reported income and non-reported tax-exempt income (e.g., tax-exempt interest from municipal bonds). Income may include wages, dividends, interest, and partnership or S-corporation distributions. Such information may include Form(s) W-2, Form(s) 1099 or Form(s) K-1.

A taxpayer's records should include information that supports a claimed deduction (or credit) on a tax return. Such deductions may include alimony, charitable contributions, mortgage interest, childcare expenses and real estate taxes. Generally, proof of payment is demonstrated with a cancelled check or cash receipt. In addition, proof of payment may be proved with an account statement (for electronic funds transfer, credit card or check payment) if the amount paid, check number (if applicable), the payee and the transaction date are reflected.

Assuming that there is no question of underreporting of gross income by more than 25%, tax fraud or failure to file a tax return, the following minimum guidelines should apply for tax records supporting income and deductions:

| Type of Record | Retention Period |
|---|---|
| Proof of income (e.g., Forms W-2, 1099, K-1 and alimony statements) | Three years |
| Bank statements (supporting tax deductions) | Three years |
| Cancelled checks (supporting tax deductions) | Three years |
| Credit card statements (supporting tax deductions) | Three years |

| Type of Record | Retention Period |
|---|---|
| Mortgage statements (supporting mortgage interest deductions) | Three years |
| Purchase receipts (if payment is in cash and supporting tax deductions) | Three years |
| Charitable contribution documentation (supporting tax deductions) | Three years |
| Other information supporting income and/or tax deductions | Three years |
| Diaries, logs and other supporting records pertaining to tax returns | Three years |

*Property and Investments*

An individual should maintain records relating to property (real property and investments) until the period of limitations expires for the year in which the property is disposed of in a taxable disposition. All information that is needed to support the cost basis and sale proceeds of property in the computation of gain or loss on disposition of the property should be retained. If property was received in a nontaxable exchange (e.g., received as a gift, like-kind exchange), all cost basis information related to the old property and new property must be retained until the period of limitations expires for the year in which the new property is disposed of in a taxable disposition.

For a taxpayer's residence or other real property, the records should reflect the purchase price, settlement or closing costs and the cost of any improvements. The records should also support any casualty losses deducted, insurance reimbursements for casualty losses, and postponed gain from the sale of a previously owned home.

For investments, the records should reflect the purchase price, sale price and commissions. The records should also reflect any reinvested dividends, stock splits and dividends, load charges and original issue discounts (OID).

| Type of Record | Retention Period * |
|---|---|
| Investment purchase and sales confirmations or account statements reflecting the same information | Duration of ownership + three years |
| Dividend reinvestment records | Duration of ownership + three years |
| Year-end brokerage statements (interim statements should be retained until replaced) | Three years |
| Year-end mutual fund statements (interim statements should be retained until replaced) | Three years |
| Other investment property purchase or sale documents impacting cost basis or sale proceeds | Duration of ownership + three years |
| Real property purchase documents; settlement sheets (to determine cost basis) | Duration of ownership + three |

| Type of Record | Retention Period * |
|---|---|
| | years |
| Real property improvement receipts and cancelled checks (to determine adjusted basis) | Duration of ownership + three years |
| Real property sale documents; settlement sheets (to determine sale proceeds) | Three years |
| Retirement plan (pension and 401(k)) annual statements (interim statements should be retained until replaced) | Forever |
| IRA annual reports (interim statements should be retained until replaced) | Forever |
| IRA nondeductible contributions documentation | Forever |
| Insurance policies | Duration of ownership or forever (consult with insurance provider or agent) |

Assuming that there is no question of underreporting of gross income by more than 25%, tax fraud or failure to file a tax return, the following minimum guidelines should apply for tax records related to the ownership and disposition of property and investments:

* **From the later of the tax return due date or filing date (all records should be kept for at least six years if there is any concern that the IRS could show a significant understatement of gross income on the tax return).**

### *About the Author*

*Mr. Courie is an associate attorney with the firm and is a member of the firm's Corporate and Financial Services Groups. Mr. Courie is a 1986 graduate of the Pennsylvania State University and a 2000 graduate of the University of Pittsburgh School of Law. Mr. Courie also earned his Master of Business Administration (MBA) degree from the Pennsylvania State University in 1989.*

## *WHEN MILITARY DUTY CALLS EMPLOYEES*

In light of the recent call to active duty received by thousands of United States military reservists, employers and employees alike need to know their obligations to each other when employees serve in the uniformed services. The reemployment rights of military members were revised by Congress in 1994. The main thrust of the legislation is to guarantee the rights of military service members to take a leave of absence from their civilian jobs for active military service and to return to their jobs with accrued seniority and other protections.

The federal law applies to all Armed Forces members, including the Reserves, National Guards, the commissioned corps of the Public Health Service, and any others designated by the President during a war or an emergency. Employees of both private and public employers are protected when they have embarked on and have been honorably discharged from military service consisting of active duty, inactive duty training, fulltime National Guard duty, or absences for fitness examinations. Unlike some other federal employment statutes, the law on reemployment rights of individuals in the Armed Services has no minimum number of employees for there to be coverage.

An employer is prohibited from using a person's military service or application for such service as a motivating factor in any adverse employment action against that person. Nor can an employer retaliate against an employee who participates in the reporting, investigation, or filing of claims asserting that the employer violated the federal statute.

To receive the benefit of the statutory rights and protections, an employee generally must give the employer advance oral or written notice of military service. Exceptions to this requirement are recognized when giving such notice would be impossible, unreasonable, or contrary to military necessity.

Employees leaving their jobs for military service lasting less than 31 days are entitled to continued health insurance coverage at the same cost, if any, that active employees would pay. For service lasting more than 31 days, employees may elect to pay for continuation of their health coverage for up to 18 months, or until their reemployment rights expire, whichever comes first. Upon returning to work after military service, an employee is entitled to immediate health insurance coverage, even if returning employees usually face a waiting period.

For purposes of calculating retirement benefits, a period of military service is the equivalent of time on the job. The returning armed services member has a right to any pension benefits that accrued before the military service began, as well as any additional benefits that were reasonably certain to accrue during the employee's absence. Employees serving their country in uniform must be treated as active participants in benefit plans, rather than as having had a break in service while they were away from work.

When a period of military service has ended, the returning employee has a right to reemployment, subject to some conditions and restrictions. Generally, the cumulative length of military service must not have exceeded five years. In addition, an employee must apply for reemployment within time periods that increase in duration with the length of uniformed service. Similarly, depending on the length of military service, the employee must be given the position he or she is qualified for and would have held but for the military service, or a position of like seniority, status, and pay.

The reemployment obligation will not apply if there has been such a change in circumstances during an employee's absence that rehiring would be impossible or unreasonable. Employers bear the burden of showing such exceptional circumstances, however. Courts can be expected to construe this and other parts of the reemployment law in favor of returning service members, so as to better achieve the statute's purpose of encouraging noncareer military service.