

Minnesota Department of Revenue

Revenue Notice # 16-06: Administration and Compliance – Subpoenas – Reimbursement of Third-Party Record Keepers’ Reasonable Costs; Revoking Revenue Notice # 04-06

Introduction

Minnesota Statutes, section 270C.32, subdivision 9, provides that when the Commissioner of Revenue serves a subpoena for records upon an uninvolved third party “. . . the commissioner shall pay the reasonable costs of producing the records.” The purpose of this revenue notice is to set forth which costs the Department of Revenue considers to be reasonable for purposes of reimbursing a third-party record keeper for the costs of furnishing subpoenaed records. This notice revokes and replaces Revenue Notice # 04-06 in order to reorganize it for better readability, provide greater specificity with regard to what costs may be reimbursed, revise the compensation rate for document production work, and address reimbursement of reasonable costs for records that are provided electronically.

Department Position

I. General

- A. The commissioner will reimburse the reasonable cost of producing records, meaning the costs for search and retrieval, production, and delivery or transportation of the documents or other requested information, as defined in sections II, III, and IV below.
- B. The “reasonable cost of producing records” does not include salaries, fees, or similar charges for analysis of responsive materials, nor does it include charges for time spent for managerial or legal oversight, advice, expertise, or research in connection with producing the records. The commissioner will not reimburse these costs.
- C. To receive reimbursement, the third-party record keeper must satisfactorily comply with the subpoena and submit supporting documentation to the commissioner with an invoice separately identifying all of the reasonable costs associated with producing the subpoenaed records.
- D. A third-party record keeper must obtain the commissioner’s prior consent if the third-party record keeper expects that the total reasonable cost of producing the subpoenaed records will exceed \$250.00.

II. Search and Retrieval Costs

The reasonable cost for the time the third-party record keeper spends locating and retrieving documents or other requested information is \$12 per hour. If it is necessary for the third-party record keeper to hire outside help to locate or retrieve the requested information, the commissioner will reimburse the third party up to \$12 per hour, not to exceed the actual cost incurred.

III. Production Costs

A. Electronic Production

The reasonable cost for documents that are produced electronically, whether via portable media (such as a CD-ROM or flash drive) or by secure online delivery (e.g., temporary access to a secure network server) is the lesser of: (1) the actual cost of such electronic media or network access plus \$12 per hour of time spent preparing, converting, or scanning the documents, if itemized separately; or (2) 25 cents per page or page equivalent (based on the number of letter-sized pages that could be printed from each of the documents in the electronic file).

B. Physical Production

The reasonable cost for documents that are reproduced as photocopies or duplicates on paper is 25 cents per page, regardless of the size of the page. The \$12 per hour rate specified above for locating and retrieving records does not include any time spent making or assembling physical copies because those costs are included in the photocopying rate of 25 cents per page.

The reasonable cost for producing photographs, film, and other items that cannot be effectively reproduced electronically or on ordinary copy paper is the actual cost of duplicating such items.

IV. Transportation Costs

Costs associated with transporting necessary people to locate and retrieve subpoenaed records or information from a location separate from the third-party record keeper's place of business will be reimbursed based on the mileage rate set by the Internal Revenue Service for the time period in which the travel takes place. The third-party record keeper's "place of business," for mileage purposes, is the primary work location of the person sent to retrieve the records. The time in transit spent by necessary persons will be reimbursed at the \$12 per hour rate, but this time does not include rest breaks, meals, or any incidental stops or delays.

The reasonable cost for transporting the requested records, either to the requestor's address or to a specified location, is the actual cost of sending the records by standard first class mail. Other methods of transportation may be used if prior authorization is obtained from the commissioner.

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Ryan Church, Deputy Commissioner