

A defendant has been charged with tax evasion. The prosecution alleged that the defendant failed to report income from all his rental properties on his tax returns. The defendant pleaded not guilty, claiming that he reported all his properties and the income each generated. At trial, the prosecutor seeks to introduce into evidence a copy of the state register of deeds listing the defendant as the owner of a house that was not included on his tax return. The copy is not signed, sealed, or certified. The defendant has objected to the admission of the state register of deeds on the ground that it has not been properly authenticated.

Should the court admit the register of deeds?

- A. No, because it is hearsay not within any exception.
- B. No, unless the prosecutor introduces evidence that the register was recorded or filed in a public office or that the register is from the office where items of that kind are kept.
- C. Yes, because the register is self-authenticating despite not being signed, sealed, or certified.
- D. Yes, provided the prosecutor offers testimony detailing the chain of custody for the register.

Explanation:

Authenticating documents

(FRE 901)

Common methods	Stipulation or eyewitness testimony
Ancient documents & data compilation	At least 20 years old when offered condition creates no suspicion about authenticity <i>and</i> was in place where authentic document would likely be
Public records	Record was recorded or filed in public office as authorized by law or in office where that type of item is kept
Reply letter	Document written in response to communication <i>and</i> contents make it unlikely response was written by someone other than recipient of first communication
Handwriting	Comparison – expert witness or trier of fact compares authenticated against disputed handwriting (or fingerprints, hair, cloth fibers) <i>or</i> Non-expert opinion – witness with personal knowledge of authentic handwriting not acquired for litigation gives opinion on disputed handwriting
Self-authenticating	Public documents with official's signature & authorized by official or seal Certified copies of public records & records of regularly conducted activities Newspapers, periodicals & official publications Documents with trade inscription Acknowledged documents Commercial papers, including signature & related documents

FRE = Federal Rule of Evidence.

Documentary evidence must be **authenticated** before it can be **admitted** into evidence. This requires that the proponent produce evidence sufficient to support a finding that the document is what the proponent claims it is. Public records that do not qualify for self-authentication (as seen here) may still be **authenticated through evidence that the document:**

was recorded or filed in a public office as authorized by law *or*
is from the office where items of that kind are kept.

Here, the prosecutor seeks to introduce the state register of deeds (public record) listing the defendant as the owner of a house that was not included on his tax return. But the register must be properly authenticated before it can be admitted. And since the register is not self-authenticating, the court should not admit it unless the prosecutor can provide evidence that the register was recorded or filed in a public office or is from the office where items of that kind are kept.

(Choice A) The rule against hearsay bars the admission of out-of-court statements (eg, register of deeds) offered to prove the truth of the matter asserted therein (eg, ownership of house). However, an exception to this rule applies to *existing public records* (as seen here).

(Choice C) A public record is *self-authenticating* only if it is (1) certified as correct by a custodian or person authorized to do so, (2) sealed and signed by a government entity, or (3) signed by an employee of the government entity whose signature is certified as genuine by another public officer (not seen here).

(Choice D) *Chain of custody* must be used to authenticate physical evidence that could easily be tampered with or is not readily identifiable—eg, gun, knife, blood sample. Here, the copy of the register of deeds is unlikely to have been tampered with, as there is an original for comparison, and it is readily identifiable. Therefore, chain-of-custody authentication is unnecessary.

Educational objective:

Public records may be authenticated through evidence that the document (1) was recorded or filed in a public office as authorized by law or (2) is from the office where items of that kind are kept.

References

Fed. R. Evid. 901(b)(7) (authenticating or identifying public records).

Fed. R. Evid. 902(4) (certified copies of public records).