

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ January 21, 1994

SUBJECT: Taxation and Revenue - Disclosure of Social Security Numbers

SYLLABUS: The disclosure provisions of S.C. Code Ann. § 12-54-430(D) (Supp. 1992) do not violate state or federal law.

TO: Rick Handel, Esq.
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FROM: Ronald W. Urban *RWU*
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QUESTION: Do the disclosure provisions of § 12-54-430(D) violate state or federal law?

APPLICABLE LAW: Privacy Act of 1974; Social Security Act; 42 U.S.C. 405, S.C. Code Ann. §§ 12-54-240, 12-54-410, 12-54-430 and 12-54-480 (Supp. 1992).

DISCUSSION:

In 1988, the General Assembly enacted the Setoff Debt Collection Act. See § 12-54-410, et seq. Pursuant to that Act, whenever a delinquent debt is owed a claimant agency, the agency can seek payment by requesting a setoff against the debtor's income tax refund. This setoff is administered by the Department of Revenue and Taxation (formerly known as the South Carolina Tax Commission) upon receiving a request and specified information from the claimant agency.

Included in the Act is § 12-54-430(D). That provision requires the Department of Revenue and Taxation to disclose certain information the Department has obtained from tax returns.¹ More specifically, said section provides:

¹Section 12-54-480(A) also requires the Department to provide the claimant agency a debtor's social security number when transmitting the collected proceeds. Such section, however, is not a disclosure statute. Rather, it should be construed as merely requiring the Department to

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Upon request from a claimant agency, the commission shall furnish the claimant agency the home address, corrected Social Security number or additional Social Security number of any taxpayer whose name has been submitted to the commission for collection of a delinquent debt.

The question posed here is whether the disclosure of a social security number as required in § 12-54-430(D) violates state secrecy statutes or federal law.

Ordinarily, the release of any particulars set forth in a South Carolina tax return is an unlawful disclosure under the secrecy provisions of § 12-54-240. There are, however, exceptions. Section 12-54-420 also states that such information may be released "in accordance with a proper judicial order or as otherwise provided by law"

The phrase "as otherwise provided by law" has previously been construed as permitting disclosure where the Legislature has otherwise directed. New York State Department of Taxation v. New York State Department of Law, 378 N.E.2d 110 (N.Y. 1978). See also OAG 86-11. This is the situation in the instant matter where the General Assembly has permitted disclosure by enacting § 12-54-430(D). Thus, the release of the information specified in that section does not violate § 12-54-240.

There also appears to be no federal provisions that would prevent the disclosure required by § 12-54-430(D). The Privacy Act of 1974 does not prohibit a governmental entity from disclosing social security numbers once those numbers are in its possession. American Federation of State, County, and Mun. Employees, Council 75 v. City of Albany, 81 Or. App. 231, 725 P.2d 381 (1986). Similarly, the secrecy

furnish a social security number when that number was previously provided to the Department by the claimant agency in its request for payment. As stated in § 12-54-480(A), this is done for accounting purposes. The only manner such would serve an accounting purpose is if the agency already had the number and needed the return number to insure the payment was properly matched against the correct debtor. Also, a broader interpretation of § 12-54-480(A) would make it incompatible with the limited disclosure provisions of § 12-54-430(D).

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provisions of the Social Security Act are not germane. They relate to social security numbers that are obtained pursuant to any provisions of a law enacted on or after October 1, 1990. See 42 U.S.C. 405(c)(2)(C)(vii)(I). The numbers here in question are not obtained pursuant to any such law. Rather, they are obtained under the authority of 42 U.S.C. 405(c)(2)(C)(i). Said authority is longstanding and pre-dates October 1, 1990.

It should be noted that caution must be exercised when making disclosure under § 12-54-430(D). As stated, this section is limited solely to providing corrected social security numbers or additional numbers. Further, the furnishing of corrected numbers should not be used as a subterfuge for the mere disclosure of social security numbers in the first instance. In other words, a claimant agency cannot create and submit a bogus number in the hope of receiving a corrected number. Any party knowingly engaged in such activity, whether claimant agency or Department employee, would in all likelihood be guilty of a misdemeanor under § 12-54-240.

CONCLUSION:

The disclosure provisions of S.C. Code Ann. § 12-54-430(D) (Supp. 1992) do not violate state or federal law.

RWU:wcg