
Coates' Canons Blog: Confidentiality of Taxpayer Income Information

By Chris McLaughlin

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The General Assembly avoided messing with the Machinery Act during their

session that just ended, which means that you don't need to worry about any big property tax law changes this year. The only ratified bill relating to local property taxes worth mentioning is one that affects the confidentiality of taxpayer income information contained in local tax records. The new law presents a nice opportunity to review the rules concerning this important category of non-public information.

G.S. 153A-148.1 and G.S. 160A-208.1 have long made records containing taxpayer income or gross receipt information non-public. A record containing this information need not be disclosed in response to a public records request, and if it is disclosed then the income or gross receipt information first must be redacted (crossed-out). A local government employee who discloses taxpayer income or gross receipt information in violation of the statute risks being fired and prosecuted for a criminal offense. I've previously blogged about how these laws could affect county board of equalization and review appeals.

These two statutes identify several circumstances in which taxpayer income or gross receipt information may be shared legally. They include sharing that information internally to help administer a tax, disclosing it to the state Department of Revenue, and complying with a court order.

Senate Bill 803, which as of this writing has been ratified by both houses of the General Assembly but not yet signed by the governor, slightly modifies G.S. 153A-148.1 and G.S. 160A-208.1 by adding one additional circumstance in which a local government may disclose taxpayer income information. Counties are now permitted to share taxpayer income information with municipal finance officers from towns and cities within their borders, and vice-versa, if the purpose of the disclosure is "necessary to administer a tax." Previously, sharing taxpayer income information between local governments was prohibited. The changes will become effective if and when the bill becomes law, either when the governor signs the bill or takes no action on it for thirty days.

As I've been told, Senate Bill 803 was motivated by a desire to help officials in Charlotte and Mecklenburg County jointly administer their occupancy taxes. But the new law is not limited to the Queen City. Tax officials statewide may now share

income information with their local government counterparts to help them administer their taxes. I assume that most often this information sharing will relate to occupancy taxes, but the law applies to income information involving any local tax.

Here are few common questions and scenarios concerning the confidentiality of taxpayer income information (and a couple new ones based on how I think the new law will work).

The Bedbug Inn is a small hotel located in Blue Devil City, which is part of Carolina County. Both the city and the county levy occupancy taxes. The hotel has not paid its city occupancy taxes in several months. The city finance officer asks the county tax office if the hotel has been paying its county occupancy taxes and, if so, if the county could share with the city the amount of gross receipts the hotel has been reporting. May the county share this information with the city finance officer?

Yes, under the new law this information sharing is permissible. It would not have been legal previously.

Wanda Wolfpack submits an application for the elderly & disabled exclusion to Carolina County. Her application includes a copy of her most recent federal income tax return to prove that she satisfies the exclusion's income restriction. Wanda resides in Blue Devil City, which offers a utility subsidy to its elderly low-income residents. The city finance officer asks the county to share Wanda's federal tax information so that the city can verify whether Wanda is eligible for the city's utility subsidy. May the county share this information with the city?

No, because the information is not being shared for the purpose of helping the city administer a tax. The new law limits the sharing of income information between local governments only when that information will be used for tax administration purposes. In this example, the city wants Wanda's income information for a public program that has nothing to do with city taxes.

The local newspaper calls the Carolina County and asks for a list of all hotels with delinquent occupancy taxes and the amount of taxes owed by each. It also asks for list of the ten hotels that have paid the most occupancy taxes over the past year, including the amounts paid by those hotels. May the county share this information with the newspaper?

Of the four types of records requested by the newspaper, the only one the county may disclose is the list of hotels with delinquent occupancy taxes (assuming the county has such a list or can easily create one by sorting a database). The fact that a hotel has or has not paid its occupancy taxes is not confidential. However, the county may not release the estimated amount of occupancy owed by those hotels, because that would reveal the estimated amount of gross receipts earned by those hotels. (Why do I describe those amounts as estimated? Because the county doesn't know exactly how much tax a hotel owes until it knows that hotel's gross receipts for the period in question.) Nor may the county reveal the hotels with the highest occupancy tax payments and the amounts of those payments, because that data would also reveal some information about their gross receipts.

The Carolina County Tourism Development Authority (TDA) board, which controls how Carolina County's occupancy tax proceeds are spent, asks the county finance officer for a list of all hotels with delinquent occupancy taxes and the estimated amounts owed by each hotel. May the county share this information with the TDA?

Yes for the list of delinquent hotels but no for the (estimated) amounts of taxes owed by those hotels. The TDA is a separate legal entity from the county. Although the TDA decides how occupancy tax proceeds are spent, it does not "administer" the tax and therefore has no special right to taxpayer income and gross receipt information. Disclosing that confidential taxpayer information to the TDA would be the legal equivalent of disclosing it to a newspaper or any other member of the public.

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