
Coates' Canons Blog: Obtaining Employee Addresses from State Employers

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Local tax collectors have long known the power of the attachment and garnishment collection remedy. With just two pieces of paper, a tax collector may grab the entire contents of a bank account or garnish 10% of taxpayer's wages until the delinquent taxes are paid. No court involvement, no waiting periods, no need to sell property and hope it produces enough cash to pay the delinquent taxes.

But you can't garnish wages you can't find. To help tax collectors locate where taxpayers work, G.S. 105-368(i) authorizes tax collectors to demand employee names and addresses from any employer. The tax collector can simply compare those employee lists with her list of delinquent taxpayers and then fire off multiple wage garnishment orders.

G.S. 105-368(i) works very well with private employers, especially when the tax office reminds them that employers who refuse to produce such lists can be subject to criminal prosecution.

But state and local government employers have been increasingly hesitant to comply with demands for employee lists for fear of violating state law that makes some public employee information confidential. For example, here's the response from the N.C. Office of the State Controller when Bertie County tax officials requested a list of all state employees in that county:

"According to OSC legal counsel, we can provide you with the names of employees who work in Bertie County. The names of the individuals are attached. However, under GS 126-22(b)(3) an individual's home address and other personal information are specifically made a confidential part of their personnel file. GS 126-27 makes disclosure of confidential personnel file information a class 3 misdemeanor".

The OSC refused to disclose employee addresses for fear of violating state confidentiality law. Plenty of other state agencies and local governments, all of whom fall under the same confidentiality requirements, have similarly refused demands under G.S. 105-368(i) from other counties.

Who's correct, the state agencies who claim employee addresses are confidential or the local tax collectors who claim they have a right to see public employee addresses? Both are, I think, and therein lies the problem. There is a clear contradiction between the personnel file confidentiality provisions of G.S. 126 and the employee list requirement in G.S. 105-368(i). Neither statute makes exceptions for the the other or expressly trumps the other. Which law should prevail?

Way back in 1983, the N.C. Attorney General issued a legal opinion concluding that a local tax collector's right to demand employee addresses should be honored despite public personnel file confidentiality requirements. This opinion has not been withdrawn or superseded and should still be viewed as useful guidance for N.C. state and local government employers who receive requests under G.S. 105-368(i).

I think the A.G.'s opinion makes good sense. The confidentiality requirements for public personnel files was well established when the General Assembly amended G.S. 105-368(i) in 1994 to clarify the criminal penalty for an employer's failure to comply. If the General Assembly wanted the tax collector's authority to be limited by public personnel file confidentiality laws, it could have limited G.S. 105-368(i) only to private employers or excluded public employee addresses from its scope. The General Assembly's decision not to do so strongly suggests that it intended G.S. 105-368(i) to apply equally to private and public employers.

But as the OSC's reply indicates, the attorneys advising public employers don't seem to agree. Based on my conversations with the Attorney General's office and feedback from public agencies and tax collectors across the state, it's clear that the lawyers advising public employers are ignoring that 1983 opinion and advising their clients not to reveal employee addresses. I'm not sure why, because the relevant confidentiality and Machinery Act provisions have not changed since then nor has there been any contradictory court decisions on the issue.

C'est la vie. No amount of cajoling from me or a local tax collector is going to overcome a direct command from a state agency's attorney. A tax collector could press charges against a non-complying state agency and force a court decision on the issue. Or local governments could work with their state legislators to amend G.S. 105-368(i) to make it clear that it applies to public employers regardless of the personnel file confidentiality laws. But unless and until either action occurs, tax collectors have to accept the fact that they won't be getting addresses anytime soon from public employers.

Here are a few suggestions about how to overcome the loss of public employee addresses.

One approach is to simply compare the list of employee names obtained from the public employer to the county's list of delinquent taxpayers and send garnishment notices for all of the matching names. This approach almost guarantees lots of misdirected garnishments for taxpayers with common names. How many John Smiths live in Mecklenburg County? (My search of whitepages.com says 400 John Smiths live in Charlotte alone.) All of those misdirected garnishments will cause headaches for both the tax office and the state agency.

The better approach is for the tax collector to run the list of employee names provided by the public employer against the county's list of delinquent taxpayers. Then send the resulting list of matching names, along with the addresses that the tax collector has for those names, back to the employer and ask it to begin wage attachments for all of the employees on that list whose addresses match those on file with the employer.

For example, assume Bertie County receives a list of employee names from the OSC. Bertie can compare the OSC list of names with its own list of delinquent taxpayer names. Bertie should then create a list of all the names that appear on both lists, along with the addresses for those names that Bertie has on file. Then the county can send that combined list to the OSC and ask the OSC to garnish all employees on that list for whom the address OSC has on file matches the address provided by Bertie County.

This approach should minimize misdirected wage garnishments (if the address for delinquent taxpayer John Smith on file with the tax office matches the address for employee John Smith on file with the employer then likely that is the right John Smith) while allowing the public employer to keep its address list confidential. The tax office may miss some delinquent taxpayers employed by a particular public employer if those taxpayers have different addresses on file with each organization. (For example, John Smith may have moved and told his employer of his new address but not updated his new address with the county tax office.) But that's far better than not attempting to garnish the wages of any public employees due to lack of addresses.

Another option is for tax collectors to obtain employment information for individual taxpayers using the N.C. Employment Security Commission ("ESC") database. (The ESC is the agency that runs the state's unemployment insurance and compensation program.) Once a county obtains access to the database from the ESC, the tax collector can enter a taxpayer's Social Security number and receive current employer information for that taxpayer. (See this [blog post](#) for more on the use of Social Security numbers in local tax collection.) The ESC is an effective remedy but will likely be too time-consuming for counties with many thousands of delinquent taxpayers.

I'm sure tax collectors across state have developed even more ingenious methods of determining where delinquent taxpayers work. Please share your suggestions in the comment box below.

A few quick final notes about G.S. 105-368(i):



Private employers: the confidentiality laws for personnel files apply only to personnel files for public employees. They don't apply to private employees. Private employers may have their own policies about keeping their employee information confidential, but those policies do not permit private employers to ignore requests for employee names and addresses under G.S. 105-368(i).

Social Security numbers: G.S. 105-368(i) requires employers to provide only employee names and addresses, not Social Security numbers. Tax collectors are free to ask employers to also produce Social Security numbers but they have no way of enforcing that request if employers refuse to produce them.

“Employees who may be liable for taxes”: G.S. 105-368(i) does not explicitly require employers to provide names and addresses of all employees. Instead, it requires that info for all employees “who may be liable for taxes.” I think that’s a distinction without a difference. The statute is not limited to taxpayers who are currently delinquent in their taxes. Because any particular employee may be liable for taxes at some point, *all* employees “may” be liable for taxes at some point. And that means employers need to produce names and addresses for *all* employees.

Links

- sogpubs.unc.edu/electronicversions/pdfs/ptb152.pdf
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=126-22
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=126-27
- www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Privacy-of-State-Employee-Personnel-Records;-Acces.aspx
- canons.sog.unc.edu/?p=3881