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## Coates' Canons Blog: Open Meetings and Confidential Taxpayer Information

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What happens when the open meetings requirement clashes with the obligation to keep taxpayer income information confidential? This conflict most commonly involves county boards of equalization and review, but the issue could easily arise at the city level as well with privilege license taxes or occupancy taxes. Here's an example from the county perspective:

Tina Taxpayer has appealed Carolina County's denial of her property tax exclusion application. Tina believes she is eligible for the "elderly and disabled" exclusion, which is available to taxpayers who earn less than \$27,100 per year and who are either disabled or at least 65 years old. When Tina appears before the county's Board of Equalization and Review ("E&R") to argue her appeal, she looks around the room and asks, "Why are all of these other people here?" The chairperson gently explains that the board's hearings are required to be open to the public. Tina says, "No, sir, that just isn't right. I came here to talk with y'all about how much money I made last year, and you want me to do that in front of all of these people? That's just not fair."

The chairperson pauses for a moment and then says, "Well, Ms. Taxpayer, that seems like a reasonable request. Unless our attorney here tells me otherwise, I think we can agree to go into closed session." Before the attorney can reply, Scoop Jackson, a reporter for the *Carolina County Crier*, stands up and says, "I object. E&R meetings are subject to open meetings law. We have a right to be here. You can't kick us out."

How should the county attorney respond?

As a general matter, the chairperson and the reporter are both correct: county boards of equalization and review are subject to the state open meetings law. All E&R meetings, including the board's deliberations on specific appeals, must occur in properly noticed public sessions. The *state* board of equalization and review, known as the Property Tax Commission, can deliberate in private because it is exempt from open meetings law under NCGS 143-318.18(7). But there is no such exemption for *local* boards of E&R.

Public bodies are permitted to go into closed sessions under nine scenarios listed in NCGS 143-318.11. The first of these scenarios seems to apply to Tina Taxpayer's situation, as it allows closed sessions "to prevent the disclosure of information that is privileged or confidential pursuant to the law of this state or of the United States or not considered a public record within the meaning of Chapter 132 of the General Statutes."

Local tax records containing taxpayer income information are exempted from the public record law by NCGS 153-148.1 (counties) and NCGS 160A-208.1 (cities). The income information on those documents must be kept confidential by local governments. Because Tina Taxpayer's exclusion application and her income tax return contain information about Tina's income, those documents are not public records. Thus the county board of E&R could go into closed session to prevent disclosure of Tina's non-public, confidential income information.

NCGS 143-318.11 says a public body *may* go into closed session when one of the nine scenarios exist, not *must*. Does this mean that the board could choose to hear Tina's appeal in public session? Possibly, but I think that approach would be very risky due to the board's obligation under NCGS 153-148.1 not to disclose Tina's income information.

In theory, the board could hold a public discussion of Tina's exclusion eligibility without disclosing specific income information by referencing only line numbers on Tina's tax return and application rather than actual income amounts. Tina

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would be free to mention income amounts, of course, but the board would need to take great care not to do so first. And the board of course could not distribute unredacted copies of Tina's confidential documents to the audience nor include unredacted copies in the minutes of the hearing. The board has an obligation independent of the open meetings law to maintain the confidentiality of the Tina's income information.

In my view, the risk of an accidental violation of NCGS 153-148.1 seems too great to justify a decision to hold a public hearing on a matter that concerns a taxpayer's income. The best approach would be for the board to move into closed session on its own motion whenever it is faced with an appeal that will involve taxpayer income information. There is no need to wait for the taxpayer to raise the issue or to seek the taxpayer's permission.

What if for some reason the taxpayer insists on holding the hearing in public? While the board would not be obligated to honor such a request, it could. But the board still would be obligated not to disclose Tina's income information. A taxpayer cannot waive the confidentiality obligations created by NCGS 153-148.1.

## Links

- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-318.10.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-318.18.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.18.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-318.11.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.11.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-148.1.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-148.1.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-208.1.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-208.1.html)