
Coates' Canons Blog: Using Social Security Numbers for Local Tax Administration

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Continuing with the theme of Kara Millonzi's post last week on the use of Social Security numbers by local governments for utility services, this post focuses on how Social Security numbers can be used by local governments for the administration of taxes.

Social Security numbers are immensely helpful with all types of local taxes, be they property taxes, occupancy taxes, or privilege license taxes. The numbers can help verify a taxpayer's income eligibility for property tax exclusions, facilitate the attachment of bank accounts and the garnishment of wages, and allow for the set-off of state income tax refunds.

Knowing this, tax collectors request Social Security numbers from taxpayers at various steps in the taxation process. Applicants for property tax exclusions are almost always required to provide their Social Security numbers. The same request is sometimes made of applicants for business privilege license taxes and of taxpayers seeking extended payment plans. Tax collectors also routinely obtain Social Security numbers from other local departments and governments as well as from public record search firms such as LexisNexis' Accurint.

Are these efforts legal? If so, what can local governments do with Social Security numbers if they get them?

First question: may North Carolina local governments *request* taxpayers to provide Social Security numbers?

Yes.

State public records law (N.C.G.S. 132-1.10(b)(1)) prohibits local governments from collecting Social Security numbers unless (i) another law specifically authorizes that collection or (ii) the collection is "imperative for the performance of that agency's duties." Thankfully for local governments, federal law specifically authorizes local governments to collect Social Security numbers to assist with "the administration of any tax." 42 U.S.C. 405(c)(2)(C)(i).

Note this authorization covers *any* tax; although local governments most commonly collect Social Security numbers in connection with property taxes, they may also do so for privilege license taxes, occupancy taxes, or any other taxes they levy. This authorization also covers the collection of Social Security numbers from third-party sources such as Accurint as well as the collection directly from taxpayers.

Second question: may North Carolina local governments *require* taxpayers to provide Social Security numbers?

Yes.

Two privacy laws, one federal and one state, affect the mandatory disclosure of Social Security numbers. Both laws prohibit local governments from denying "any right, benefit, or privilege" due to an individual's refusal to disclose his or her Social Security number. See 5 U.S.C. 522a and N.C.G.S. 143-64.60. (Confusingly, the relevant portion of the federal law has not been codified and is contained only in the notes following the codified statute.)

Neither state nor federal courts have opined on what exactly constitutes a "right, benefit or privilege" in the tax context. Based on cases in other contexts, it's a safe assumption that issues such as property tax exemptions and business privilege licenses involve rights or benefits. If so, then the denial of a property tax exemption or a privilege license due to the taxpayer's refusal to provide a Social Security number could violate both laws.

Thankfully for local governments once again, the laws contain exceptions that apply to local tax administration. The laws exclude situations in which the disclosure of Social Security numbers is required or permitted by federal statute. Because 42 U.S.C. 405(c)(2)(C)(i) expressly permits the mandatory disclosure and collection of Social Security numbers for tax administration purposes, neither the state nor the federal privacy law applies to a local government's tax administration. Local governments are therefore authorized under both privacy laws to require taxpayers to disclose their Social Security numbers.

Third question: what notice must North Carolina local governments give to taxpayers when they collect Social Security numbers?

The same federal privacy law discussed above mandates that when local governments obtain Social Security numbers from taxpayers, they must inform the taxpayers of three items:

1. Whether the taxpayer's disclosure of his or her Social Security number is voluntary or mandatory;
2. The statutory authority under which the local government is collecting the Social Security number; and,
3. How the local government plans to use the Social Security number.

I suspect many local governments don't always satisfy these notice requirements. Here's a sample "statement of uses" that a local government might use in the property tax context:

Disclosure of your Social Security number is mandatory under 42 U.S.C. 405(c)(2)(C)(i). Your Social Security number will be used to facilitate collection of property taxes if you do not timely and voluntarily pay such taxes. For collection purposes, your Social Security number may be disclosed to (i) the state to claim payment from any state income tax refund that might otherwise owed to you; (ii) a bank or an employer to attach bank accounts or garnish wages; and, (iii) to other local governments and other departments of this local government to facilitate the collection of taxes and other obligations owed to those governments and departments.

This notice must be given to taxpayers at the time the Social Security number is collected. The best practice is to include the notice on the actual form used to collect the data from taxpayers.

State public records law contains similar notice requirements. Both the state and federal notice requirements apply only when local governments obtain Social Security numbers directly from taxpayers. No notice to the taxpayer is required if a local government obtains a Social Security number from Accurint or any source other than the taxpayer.

Fourth and final question: how can a North Carolina local government use Social Security numbers?

For any legitimate tax administration purpose, with two caveats.

N.C.G.S. 132-1.10 prohibits local governments from (i) disclosing Social Security numbers (and other "personal identifying information" such as bank accounts numbers and drivers license numbers) to the general public and (ii) using a Social Security number obtained from a taxpayer for any purpose not included in the notice given to the taxpayer at the time the number was obtained.

So long as a government respects those two restrictions, it may use the Social Security number as needed during the tax collection process. Most frequently, local tax collectors disclose Social Security numbers to banks and employers to assist with attachments and garnishments and to the Department of Revenue for set-off debt collection from state income tax refunds. Another common use is to share the numbers with other local governments to assist their tax collection efforts, in the hope that those local governments will reciprocate when possible. All of these uses are fine, so long as they are included in the statement of purpose for Social Security numbers obtained from taxpayers.

Local governments need to take care to redact Social Security numbers from all documents it makes public, keeping in mind that the presence of a Social Security number on a document does not by itself make that document exempt from disclosure under public record law. Nor should full Social Security numbers be included on mailings to taxpayers. If reference to the number is necessary, the local government should include just the last four digits.



For a detailed discussion of this issue and public records more generally, I strongly recommend the new book from my colleague David Lawrence, *Public Records Law for North Carolina Local Governments*.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.10
- www.law.cornell.edu/uscode/42/usc_sec_42_00000405---000-.html
- www.law.cornell.edu/uscode/5/usc_sec_05_00000552---a000-.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=143-64.60
- www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition