

**OPINION  
64-404**

July 31, 1964 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Secrecy of Income Tax Returns - Disclosure of Names

This is in reply to your letter of July 13, 1964, relative to disclosure of the names and addresses of each person who filed a North Dakota individual income tax return for the year 1963 with the Tax Commissioner. You state the following facts relative to this matter:

The organization which has made the request is a non-profit, national organization which engages in various medical research projects and in charitable projects related to certain physical or other applications of persons requiring some type of treatment.

The organization wishes to obtain the list for use as a mailing list to solicit contributions from members of the public so that it can continue with its projects.

This organization is willing to pay for the cost of furnishing the list when it is compiled and can be made available through our data processing division late this year."

You note an opinion issued by this office under date of March 21, 1958, holding that section 57-38-57 of the North Dakota Century Code does not prohibit the Tax Commissioner from disclosing the fact that a specified person has not filed a tax return. You also note an opinion issued by this office under date of June 8, 1964, holding that the Workmen's Compensation Bureau may not, under the provisions of section 65-04-15 of the North Dakota Century Code, disclose to the Tax Commissioner a list of all employers and their addresses as listed with the North Dakota Workmen's Compensation Bureau for the purpose of assisting the Tax Commissioner in determining whether any income tax liability exists on the part of the employers. Section 65-04-15 is, of course, applicable only to the employers reports made under the provisions of the Workmen's Compensation statutes and would not be pertinent to the question at hand.

Section 57-38-57(1) of the North Dakota Century Code provides:

The secrecy of returns shall be guarded except as follows:

1. Except when otherwise directed by judicial order, or as is otherwise provided by law, the tax commissioner, his deputies, agents, clerks, and other officers and employees, shall not divulge nor make known, in any manner, the amount of income, or any particulars set forth or disclosed in any

report or return required under this chapter. This provision shall not be construed to prohibit the publications of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. Reports and returns shall be preserved for three years and thereafter until the tax commissioner orders them to be destroyed."

The term "particulars" is open to construction and could be construed to include the name and address of the taxpayer as well as other items of information contained on the return. Construing the term in this manner would result in a conclusion similar to that of the opinion holding the Workmen's Compensation Bureau may not disclose the name and address of the employers contained on the report to the Bureau. We would note, however, that the income tax statute (section 57-38-57) uses the term "particulars" while the Workmen's Compensation statute (section 65-04-15) uses the term "information." It is not inconceivable the two terms could be construed in a different manner, i.e., a construction which would provide a narrower meaning to the term "particulars" than is given to the term "information."

We do not, however, find it necessary to determine this point in reaching a conclusion in this matter. We do not believe a State Department is authorized by the North Dakota statutes to prepare a list of taxpayers and their addresses for use by a non-profit, national organization for their use as a mailing list to solicit contributions from members of the public even though the cost of preparing such list is paid by the organization. It is not a function of a State Department to furnish mailing lists to any organization to be used to solicit contributions.

It is therefore our opinion that the Tax Commissioner may not prepare a list of the names and addresses of each person who filed a North Dakota individual income tax return for the year 1963 for the use of a non-profit organization as a mailing list to solicit contributions from members of the public even though such organization is willing to pay the cost of the preparation of such a list.

ATTORNEY GENERAL

Helgi Johanneson