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DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007
September 8, 1977

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Robert L. Merrill, Administrator
Department of Revenue
Income Tax Division
West Capitol Wing
Phoenix, Arizona 85007

Re: Required Disclosure of Social Security Numbers of
Third Persons. (R77-266) - 77-178

Dear Mr. Merrill:

You asked for our opinion whether the Privacy Act of 1974 (Pub.L. No. 93-579), as amended by the Tax Reform Act of 1976 (Pub.L. No. 94-455), prohibits your Department from requiring that a claimant for property tax credit disclose on that claimant's claim form the social security number of a third person who may have claimed such claimant as a dependent on such third person's individual income tax return.

Section 7 of the Privacy Act of 1974 made it unlawful (with two exceptions not here relevant) for government agencies to condition the exercise of any right or the receipt of any benefit by any person upon the disclosure of that person's social security number. Section 7 provides, in part:

(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

The Tax Reform Act of 1976 (Pub. L. 94-455, §1211(b); 42 U.S.C. § 405(c)(2)(C)), among other things, amended the Privacy Act to grant government agencies the right to require the disclosure of social security numbers in four general program areas. That amendment provides:

It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction,

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utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such state (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary. 42 U.S.C. § 405(c)(2)(C)(i).

Conceivably, the Privacy Act of 1974 was not designed to protect the social security numbers of third persons. Nevertheless, we do not think it should be given such a narrow reading. Rather, although there may be some doubt, we think Congress was concerned with the privacy of all individuals, and not just those individuals claiming the benefits. Consequently, we think that the Privacy Act, without reference to the 1976 amendment, protects the social security numbers of third persons under the circumstances outlined in your request.

The question then becomes whether the required disclosure of a third person's social security number under the circumstances outlined in your letter is now permissible in light of the 1976 amendment. In answering this question, an interpretative problem arises which is identical to that which arose with respect to the Privacy Act as originally enacted: That is, does the 1976 amendment apply to the social security numbers of third persons as well as the individuals claiming benefits. Since the phraseology used in the 1974 Act ("his social security account number") and the 1976 amendment ("the social security account number ... issued to him") is virtually identical, we think that the scope of both the original protection of the 1974 Act, and the 1976 amendment, insofar as coverage of the social security numbers of third persons is concerned, is the same; and, thus, that the withdrawal from coverage effected by the 1976 amendment in the four program areas covers the social security numbers of third persons.

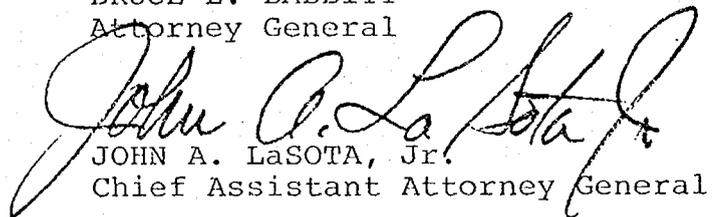
Accordingly, we conclude that the required disclosure of the social security number of a third person under these circumstances falls within the exemption provided in 42 U.S.C. § 405(c)(2)(C)(i) (the 1976 amendment) to state governmental agencies in connection with the administration of a state tax law. We have reached that conclusion because the Legislature required the

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disclosure of a third person's social security number in order for the State properly to administer an audit program in connection with the State income tax. A.R.S. § 43-128.01. The third person obviously is a person "affected" by the State income tax statute because whether that person obtains an extra dependency exemption will affect the amount of income tax that person is required to pay.

Very truly yours,

BRUCE E. BABBITT
Attorney General



JOHN A. LaSOTA, Jr.
Chief Assistant Attorney General

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