

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date October 19, 1976

To Norman P. Ledew, Director

Dept. Property Tax Division

From Clifford B. Olson, A.A.G.

Dept. Bureau of Taxation

Subject Request of U.S. Bureau of Census for Information Obtained Under the Real Estate Transfer Tax Law

FACTS:

36 M.R.S.A. Sec. 4641-D requires, with certain exceptions, that parties offering a deed for recording must simultaneously file a "declaration of value" specifying "the consideration for and the value of" the property being transferred. These declarations of value form the basis for assessment of the Maine real estate transfer tax and are, by statute, made available to local assessors. 36 M.R.S.A. Sec. 4641-M provides for confidential treatment of such declarations of value by, among others, the Director of Property Taxation and his employees.

The United States Department of Commerce, Bureau of the Census has requested access to the Bureau of Property Taxation's file of declarations of value as part of their compilation of nationwide statistics relating to property values and taxation. The Bureau of the Census proposes to use, subject to their own "rigorous confidentiality requirements", the declarations of value but not the sales price data therein contained, since the intent is to obtain price data directly from the transferees of the property involved.

QUESTION:

May the Director of Property Taxation allow the Bureau of the Census access to real estate transfer tax declarations of value without violating the confidentiality requirements of the real estate transfer tax law?

ANSWER:

THE STATE DIRECTOR OF PROPERTY TAXATION MAY NOT DISCLOSE TO THE BUREAU OF THE CENSUS INFORMATION PROVIDED IN DECLARATIONS OF VALUE FILED PURSUANT TO THE MAINE REAL ESTATE TRANSFER TAX LAW.

REASONING:

The relevant portions of 36 M.R.S.A. Sec. 4641-M read as follows:

The "declaration of value" . . . shall be confidential and privileged, and neither the State Director of Property Taxation, the register of deeds, the assessors of the municipality or the chief assessor of a primary assessing area nor any employee of said officials shall divulge

or disclose any information from any declaration
of value . . .

Nothing herein contained shall be construed to prevent . . . [t]he publication of statistics so classified as to prevent the identification of a particular declaration of value and the items thereof.

The Director of Property Taxation is clearly prohibited by the first paragraph from revealing not only the sale price of the property transferred but also the name of the transferee, which is apparently the information sought by the Bureau of the Census. Furthermore, the exemption paragraph would not support the disclosure of such information. Although the ultimate result of the Bureau of the Census' current endeavor may be statistics which would conceal the particulars of a given declaration, the intermediate information requested by that organization would not provide the anonymity contemplated by the statistics exemption. This result is not changed by the federal confidentiality requirements which apply to the Bureau of the Census employees. The Maine statute specifically prohibits disclosure, regardless of the reliability of the disclosee.

Also, this is not a situation in which information rendered confidential by tax statute may be released to a limited extent because of overriding considerations or other statutes (e.g. access of state auditors to confidential tax returns in the performance of their statutorily required audit of the Bureau of Taxation). The names of the parties to a real estate transfer, the information ostensibly sought by the Bureau of the Census, is not available only from the source bound to confidentiality but is also a matter of public record in the registry of deeds. Furthermore, the information in question is presumably not available at a central source in those states which do not have a tax comparable to Maine's real estate transfer tax. The information in question is apparently being sought from the Bureau of Taxation not as a matter of necessity but as a matter of convenience. Such a motive does not warrant abrogation of the purpose of the confidentiality requirement of the real estate transfer tax law.

Since Maine law does not authorize disclosure of the requested information, the federal statutes relating to the census of governments must be considered to determine whether conflicting federal legislation justifies application of the Supremacy Clause (Article VI of the U.S. Constitution). The statute requiring the census in

Request of U.S. Bureau of Census for Information Obtained
Under the Real Estate Transfer Tax Law
Page three

question provides that:

[t]he Secretary [of Commerce] shall take, compile and publish for the year 1957 and for every fifth year thereafter a census of governments. Each such census shall include, but shall not be limited to, data on taxes and tax valuations, governmental receipts, expenditures, indebtedness, and employees of States, counties, cities and other governmental units. 13 U.S.C.A. Sec. 161.


Thus, the Bureau of the Census has a general mandate to compile data on tax valuations, which can be reasonably interpreted to include the comparison of assessed and actual values which is the basis of the request at issue. Further, with regard to all censuses, the same title provides that:

[t]he Secretary may acquire by purchase or otherwise from States . . . such copies of records, reports, and other material as may be required for the efficient and economical conduct of . . . censuses and surveys . . . 13 U.S.C.A. Sec. 6(b)

The words "by purchase or otherwise" could arguably be construed to authorize the Bureau of the Census to demand information from states in order to more economically conduct a census. However, it seems unlikely that an organization authorized to commandeer documents would volunteer to purchase them, and the specific authority to purchase therefore seems incongruous with such a construction. From the language used, it seems more likely that a willingness on the part of states to dispense information was contemplated and that Congress intended, by its specific use of the word "purchase", to allow the Bureau of the Census to pay for information as well as to receive that which the states are willing to provide free of charge. This interpretation is strengthened, in the case of censuses of governments, by the provision that enumerated penalties for refusal to provide census information "shall not apply to any censuses or surveys of governments provided for by . . . this title . . ."
13 U.S.C.A. Sec. 225(c). Consequently, I conclude that the Supremacy Clause is inapplicable and that Maine law prevails, with the result that the Director of Property Taxation may not disclose the requested information to the Bureau of the Census.

CBO:gr

cc: Attorney General ✓


Assistant Attorney General