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FORMAL)
OPINION)
of)
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No. 96-7
October 23, 1996

This opinion responds to a request from Secretary of State Victoria Buckley for an opinion concerning the confidentiality of Social Security numbers provided to the Central Indexing System Board ("Board").

QUESTIONS PRESENTED AND CONCLUSIONS

May the Office of the Secretary of State disclose Social Security numbers in effective financing statements to buyers, commission merchants, selling agents, and authorized state contractors and agencies who have registered an interest in the affected farm products?

Yes.

ANALYSIS

Colorado passed the "Central Filing of Effective Financing Statement Act" in 1988. Section 4-9.5-102, C.R.S. (1988 and 1996 Supp.). The Act was passed to bring Colorado into compliance with the federal "Food Security Act of 1985." Section 4-9.5-102, C.R.S. (1988). The General Assembly established a Central Indexing System Board within the Department of State. The Board "may contract with one or more public or private entities to perform some or all of its duties," except that the Board may not delegate the discretionary power to make rules, conduct public hearings, prescribe forms or establish services and fees. Section 4-9.5-110(3), C.R.S. (1995 Supp.). The contractor may have access to the information.

The Food Security Act of 1985 established a system for the recording of security interests in farm or agricultural products. 7 U.S.C. § 1631. The Act is intended to limit the exposure of purchasers of farm products to double payment. It requires the creation of a central filing system which will be administered by the secretary of state or other designated state official. Congress gave the Act particularly strong teeth -- it invalidates security interests in farm products that are not perfected in accordance with the terms of the Act.

Each state is responsible for collecting and maintaining records of sellers' financing statements and of lists of buyers of farm products. 7 U.S.C. § 1631(c)(2). Pursuant to 7 U.S.C. § 1631, Congress maintained that certain information on the financing statement, including Social Security numbers or federal taxpayer identification numbers, must be included on effective financing statements. These statements are then available for review by a buyer in the ordinary course of business of purchasing agricultural products.

The Secretary of Agriculture has promulgated regulations regarding the implementation of the Food Security Act. See 9 C.F.R. § 205.1, et seq. These regulations encompass the filing requirements for the parties and the information necessary for the effective financing statement. Because the Board is responsible for the maintenance of the central filing system, the Board is also responsible for the dissemination of the master list. The regulations track Congress' direction under the Act and require the minimum information for the master list and the effective financing statements, including the name of the individual farmer or the name of the corporation under which the farmer is doing business. 9 C.F.R. § 205.102. The effective financing agreement must contain the crop year, the farm product, the county in which it is produced, the name and address of the person subjecting the farm product to the security lien, the taxpayer identification number, the name of the secured party, and any other information necessary to distinguish this producer from others. 9 C.F.R. § 205.103. The purchaser is also required to supply the same information, except he is to list what products he is interested in purchasing. Thus, the regulations, consistent with the Act, require that taxpayer identification information be supplied to the Board.

The regulations that govern the distribution of the master list are of critical importance to this question. 9 C.F.R. § 205.105(a) requires that the:

master list must contain the information on all the EFS's filed in the system, so

arranged that it is possible to deliver to any registrant all such information relating to any product, produced in any county or parish . . . for any crop year, covered by the system.

(emphasis added).

The regulations also require that "the system must be able to deliver all such information to any registrant, either in alphabetical order . . . in numerical order by Social Security number . . . or in both alphabetical or numerical orders, as requested by the registrant." 9 C.F.R. § 205.105(a) (emphasis added). Therefore, any person who is a registered purchaser of farm products may have access to the seller's taxpayer identification number.

Generally, Social Security numbers are confidential by law. 42 U.S.C. § 405(C)(viii)(I) states, "Social Security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such Social Security account number or related record."

The Food Security Act of 1985 became law on December 23, 1985, and became effective one year later. Because the Food Security Act was enacted five years prior to the October 1, 1990 deadline contained in 42 U.S.C. § 405, the Social Security numbers Congress required to be supplied pursuant to the Food Security Act of 1985 are not confidential. Therefore, the Board may release the Social Security or federal taxpayer identification numbers on the Master list for agriculture security liens, as required by Congress under the Food Security Act of 1985. It is important to note that the numbers will be released only to those persons authorized to review the information.

SUMMARY

The Central Indexing System Board, its contractors, and authorized state agencies and private individuals may have access to Social Security numbers contained in the Board's records. The

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Social Security numbers may be disclosed in accordance with 7 U.S.C. § 1631, § 4-9.3-101, et seq., and § 4-9.5-101, et seq.

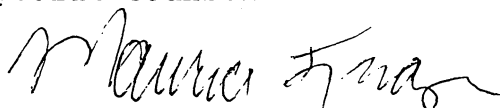
Sincerely,



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RECORDS
COUNTIES
STATE AGENCIES
DEPARTMENTS
PROGRAMS

7 U.S.C. § 1631

Section 4-9.3-106, C.R.S. (1996 Supp.)
Section 4-9.5-101, et seq.

SECRETARY OF STATE
CORPORATION, DIV. OF

The Central Indexing System Board its contractors, and authorized state agencies and private individuals may have access to Social Security numbers contained in the Board's records. The Social Security numbers may be disclosed in accordance with 7 U.S.C. § 1631, § 4-9.3-101, et seq., and § 4-9.5-101, et seq.