

**OPINION NO. 91-053****Syllabus:**

1. For purposes of R.C. 149.43, federal tax return information filed by an individual pursuant to R.C. 3113.215(B)(5) and a local rule of court is a public record.
2. 26 U.S.C. §6103, imposing confidentiality on federal income tax returns, is not applicable to a federal income tax return submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court.

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**To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio**  
**By: Lee Fisher, Attorney General, December 31, 1991**

You have requested an opinion concerning federal income tax returns filed in common pleas court domestic relations proceedings. Specifically, you have asked:

1. Does the Ohio Open Records Act, as set forth in O.R.C. Chapter 149, mandate public access to federal income tax returns filed in domestic relations cases?
  2. Does [Lucas County Common Pleas Court] Domestic Rule 11...conflict with Title 26 U.S.C. Section 6103, *et. seq.*?
  3. Does O.R.C. Section 3113.215...conflict with Title 26 U.S.C. Section 6103 *et. seq.*?
  4. When a litigant in a domestic relations case, pursuant to order of the court, discloses Federal tax information to the adverse party, does such disclosure constitute a waiver of confidentiality of said return to the general public?
- I. Application Of R.C. 149.43 To Federal Tax Return Information Filed By An Individual Pursuant To R.C. 3113.215(B)(5) And A Local Rule Of Court**

R.C. 149.43(B) requires public access to public records by mandating that all "public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." For purposes of the Public Records Act,

"[p]ublic record" means any record that is kept by any public office,...except medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

R.C. 149.43(A)(1).

Most court records have been held to be public records. *See, e.g., State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170, 527 N.E.2d 1230 (1988) (a report prepared by a court administrator from factual information contained in public records is a public record even though the compilation was made for the use of a judge for sentencing purposes); *State ex rel. Harmon v. Bender*, 25 Ohio St. 3d 15, 494 N.E.2d 1135 (1986) (videotape record of trial proceedings recorded by court is a public record); *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St. 3d 30, 485 N.E.2d 706 (1985) (any document pertaining to or recording the proceedings of a court is a public record). *But see State ex rel. Thompson Newspapers, Inc. v. Martin* 47 Ohio St. 3d 28, 546 N.E.2d 939 (1989) (confidential law enforcement investigation records submitted to support request for appointment of special prosecutor do not become public record merely because they are submitted to trial court). *Cf. also* R.C. 2151.85 (juvenile court abortion consent records); R.C. 2953.31-.36 (sealed arrest and trial records); R.C. 3107.17 (adoption records). Accordingly, any record kept by the domestic relations court is a public record unless one of the six exceptions contained within the Public Records Act applies.

Application of the Public Records Act first requires an examination of the records that are the subject of your inquiry. The specific records involved are the federal income tax returns and supporting documentation of the litigants in a child support determination or modification proceeding. These records may be filed with the domestic relations court pursuant to R.C. 3113.215(B)(5), which states, in pertinent part:

When a court computes the amount of child support required to be paid under a child support order, all of the following apply:

(a) The parents shall verify current and past income and personal earnings with suitable documents, including, but not limited to, paystubs, employer statements, receipts and expense vouchers related to self-generated income, tax returns, and all supporting documentation and schedules for the tax returns. (Emphasis added.)

R.C. 3113.215(B)(5) is amplified and implemented by Lucas County Court of Common Pleas Domestic Relations Division Rule 11.09 which states in pertinent part that the "following documents shall be filed with any motion to modify or establish child support and/or modify spousal support;...the preceding year's W-2 [statement of wages] or 1040 [personal federal income tax return]." (Emphasis added.)

The first five specific exceptions listed in R.C. 149.43(A) do not apply to federal income tax returns or W-2 forms. The sixth exception — "records the release of which is prohibited by state or federal law" — serves to incorporate any state or federal provision of law that prohibits the release of a particular record or specific class of information. Thus, a search for applicable state or federal laws about the confidentiality of tax return information is required.

An examination of state law reveals that no general provision makes all tax information confidential. *See generally* 1990 Op. Att'y Gen. No. 90-102. Although some Revised Code sections make federal tax returns confidential under

certain circumstances, *see, e.g.*, R.C. 5747.18, no such statute exists for federal tax returns filed with an Ohio trial court.

**II. The Confidentiality Requirements Of 26 U.S.C. §6103 Do Not Apply To A Federal Income Tax Return Submitted To A Court Of Common Pleas By A Litigant In Connection With A Child Support Determination Or Modification Proceeding**

Turning to federal law, the primary provisions making federal tax return information confidential appear at 26 U.S.C. §6103. This detailed statute prohibits release of such information by all officers and employees of the United States government and any officer or employee of a state or local government, or other person who has access to returns or return information from the *Internal Revenue Service*. *See also* 26 U.S.C. §7213 (describing the various criminal penalties that may be imposed upon individuals who make unauthorized disclosures of tax returns or return information in violation of §6103); §7431 (providing a civil action for damages against the United States for a knowing or negligent disclosure of tax returns or return information in violation of §6103). Where, as here, the tax return is provided by the taxpayer to a state or local agency, the prohibitions of 26 U.S.C. §6103 do not apply. *Stokwitz v. U.S.*, 831 F.2d 893 (9th Cir. 1987), *cert. denied*, 485 U.S. 1033 (1988). The rationale of the *Stokwitz* rule was favorably applied under Ohio law by my predecessor in 1988 Op. Att'y Gen. No. 88-103. There, at 2-510 to 2-511, it was stated as follows:

[N]umerous provisions of both state and federal law prohibit the direct or indirect disclosure of certain information about recipients of specific public assistance benefits by the agency administering the programs. However,...[the individual may supply such information]...Since there is no federal or state law which makes such information confidential when obtained from the recipient, a strict construction of the exceptions to R.C. 149.43 requires me to find that such information is a public record which is subject to public access. (Footnote omitted).

Inasmuch as no state statute prohibits the disclosure of federal tax returns by a domestic relations court, and the relevant federal statute granting confidentiality is inapplicable to the subject records, federal tax return information submitted to an Ohio domestic relations court in a child support proceeding is *not* a record "the release of which is prohibited by state or federal law," R.C. 149.43(A)(1). Because none of the R.C. 149.43 exceptions apply, the subject record is a public record.

Your fourth question presumes that the tax return information is confidential. As I have concluded otherwise, I need not address your final question.

**III. Conclusion**

Based on the foregoing discussion, it is my opinion, and you are hereby advised that:

1. For purposes of R.C. 149.43, federal tax return information filed by an individual pursuant to R.C. 3113.215(B)(5) and a local rule of court is a public record.
2. 26 U.S.C. §6103, imposing confidentiality on federal income tax returns, is not applicable to a federal income tax return submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court.