
SENATE BILL 5754

State of Washington 62nd Legislature 2011 Regular Session

By Senators Kline, Kohl-Welles, Keiser, Rockefeller, White, and Conway

Read first time 02/09/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to the publication of tax data to ensure the
2 transparency of Washington's tax preferences; amending RCW 84.08.210;
3 and reenacting and amending RCW 82.32.330.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.32.330 and 2010 c 112 s 13 and 2010 c 106 s 104 are
6 each reenacted and amended to read as follows:

7 (1) For purposes of this section:

8 (a) "Disclose" means to make known to any person in any manner
9 whatever a return or tax information;

10 (b) "Return" means a tax or information return or claim for refund
11 required by, or provided for or permitted under, the laws of this state
12 which is filed with the department of revenue by, on behalf of, or with
13 respect to a person, and any amendment or supplement thereto, including
14 supporting schedules, attachments, or lists that are supplemental to,
15 or part of, the return so filed;

16 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
17 nature, source, or amount of the taxpayer's income, payments, receipts,
18 deductions, exemptions, credits, assets, liabilities, net worth, tax
19 liability deficiencies, overassessments, or tax payments, whether taken

1 from the taxpayer's books and records or any other source, (iii)
2 whether the taxpayer's return was, is being, or will be examined or
3 subject to other investigation or processing, (iv) a part of a written
4 determination that is not designated as a precedent and disclosed
5 pursuant to RCW 82.32.410, or a background file document relating to a
6 written determination, and (v) other data received by, recorded by,
7 prepared by, furnished to, or collected by the department of revenue
8 with respect to the determination of the existence, or possible
9 existence, of liability, or the amount thereof, of a person under the
10 laws of this state for a tax, penalty, interest, fine, forfeiture, or
11 other imposition, or offense. However, data, material, or documents
12 that do not disclose information related to a specific or identifiable
13 taxpayer do not constitute tax information under this section. Except
14 as provided by RCW 82.32.410, nothing in this chapter requires any
15 person possessing data, material, or documents made confidential and
16 privileged by this section to delete information from such data,
17 material, or documents so as to permit its disclosure;

18 (d) "State agency" means every Washington state office, department,
19 division, bureau, board, commission, or other state agency;

20 (e) "Taxpayer identity" means the taxpayer's name, address,
21 telephone number, registration number, or any combination thereof, or
22 any other information disclosing the identity of the taxpayer; and

23 (f) "Department" means the department of revenue or its officer,
24 agent, employee, or representative.

25 (2) Returns and tax information are confidential and privileged,
26 and except as authorized by this section, neither the department of
27 revenue nor any other person may disclose any return or tax
28 information.

29 (3) This section does not prohibit the department of revenue from:

30 (a) Disclosing such return or tax information in a civil or
31 criminal judicial proceeding or an administrative proceeding:

32 (i) In respect of any tax imposed under the laws of this state if
33 the taxpayer or its officer or other person liable under this title or
34 chapter 83.100 RCW is a party in the proceeding;

35 (ii) In which the taxpayer about whom such return or tax
36 information is sought and another state agency are adverse parties in
37 the proceeding; or

38 (iii) Brought by the department under RCW 18.27.040 or 19.28.071;

1 (b) Disclosing, subject to such requirements and conditions as the
2 director prescribes by rules adopted pursuant to chapter 34.05 RCW,
3 such return or tax information regarding a taxpayer to such taxpayer or
4 to such person or persons as that taxpayer may designate in a request
5 for, or consent to, such disclosure, or to any other person, at the
6 taxpayer's request, to the extent necessary to comply with a request
7 for information or assistance made by the taxpayer to such other
8 person. However, tax information not received from the taxpayer must
9 not be so disclosed if the director determines that such disclosure
10 would compromise any investigation or litigation by any federal, state,
11 or local government agency in connection with the civil or criminal
12 liability of the taxpayer or another person, or that such disclosure
13 would identify a confidential informant, or that such disclosure is
14 contrary to any agreement entered into by the department that provides
15 for the reciprocal exchange of information with other government
16 agencies which agreement requires confidentiality with respect to such
17 information unless such information is required to be disclosed to the
18 taxpayer by the order of any court;

19 (c) Disclosing the name of a taxpayer against whom a warrant under
20 RCW 82.32.210 has been either issued or filed and remains outstanding
21 for a period of at least ten working days. The department is not
22 required to disclose any information under this subsection if a
23 taxpayer has entered a deferred payment arrangement with the department
24 for the payment of a warrant that has not been filed and is making
25 payments upon such deficiency that will fully satisfy the indebtedness
26 within twelve months;

27 (d) Publishing statistics (~~(so classified as to prevent the)~~) of
28 any number of taxpayers in a classification as long as the publication
29 makes no identification of particular returns or reports or items
30 thereof other than the amount of taxpayer savings;

31 (e) Disclosing such return or tax information, for official
32 purposes only, to the governor or attorney general, or to any state
33 agency, or to any committee or subcommittee of the legislature dealing
34 with matters of taxation, revenue, trade, commerce, the control of
35 industry or the professions;

36 (f) Permitting the department of revenue's records to be audited
37 and examined by the proper state officer, his or her agents and
38 employees;

1 (g) Disclosing any such return or tax information to a peace
2 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
3 official purposes. The disclosure may be made only in response to a
4 search warrant, subpoena, or other court order, unless the disclosure
5 is for the purpose of criminal tax enforcement. A peace officer or
6 county prosecuting attorney who receives the return or tax information
7 may disclose that return or tax information only for use in the
8 investigation and a related court proceeding, or in the court
9 proceeding for which the return or tax information originally was
10 sought;

11 (h) Disclosing any such return or tax information to the proper
12 officer of the internal revenue service of the United States, the
13 Canadian government or provincial governments of Canada, or to the
14 proper officer of the tax department of any state or city or town or
15 county, for official purposes, but only if the statutes of the United
16 States, Canada or its provincial governments, or of such other state or
17 city or town or county, as the case may be, grants substantially
18 similar privileges to the proper officers of this state;

19 (i) Disclosing any such return or tax information to the United
20 States department of justice, including the bureau of alcohol, tobacco,
21 firearms and explosives, the department of defense, the immigration and
22 customs enforcement and the customs and border protection agencies of
23 the United States department of homeland security, the United States
24 coast guard, the alcohol and tobacco tax and trade bureau of the United
25 States department of treasury, and the United States department of
26 transportation, or any authorized representative of these federal
27 agencies, for official purposes;

28 (j) Publishing or otherwise disclosing the text of a written
29 determination designated by the director as a precedent pursuant to RCW
30 82.32.410;

31 (k) Disclosing, in a manner that is not associated with other tax
32 information, the taxpayer name, entity type, business address, mailing
33 address, revenue tax registration numbers, reseller permit numbers and
34 the expiration date and status of such permits, North American industry
35 classification system or standard industrial classification code of a
36 taxpayer, and the dates of opening and closing of business. This
37 subsection may not be construed as giving authority to the department

1 to give, sell, or provide access to any list of taxpayers for any
2 commercial purpose;

3 (l) Disclosing such return or tax information that is also
4 maintained by another Washington state or local governmental agency as
5 a public record available for inspection and copying under the
6 provisions of chapter 42.56 RCW or is a document maintained by a court
7 of record and is not otherwise prohibited from disclosure;

8 (m) Disclosing such return or tax information to the United States
9 department of agriculture for the limited purpose of investigating food
10 stamp fraud by retailers;

11 (n) Disclosing to a financial institution, escrow company, or title
12 company, in connection with specific real property that is the subject
13 of a real estate transaction, current amounts due the department for a
14 filed tax warrant, judgment, or lien against the real property;

15 (o) Disclosing to a person against whom the department has asserted
16 liability as a successor under RCW 82.32.140 return or tax information
17 pertaining to the specific business of the taxpayer to which the person
18 has succeeded;

19 (p) Disclosing real estate excise tax affidavit forms filed under
20 RCW 82.45.150 in the possession of the department, including real
21 estate excise tax affidavit forms for transactions exempt or otherwise
22 not subject to tax;

23 (q) Disclosing to local taxing jurisdictions the identity of
24 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
25 which relief is granted;

26 (r) Disclosing such return or tax information to the court in
27 respect to the department's application for a subpoena under RCW
28 82.32.115;

29 (s) Disclosing to a person against whom the department has asserted
30 liability under RCW 83.100.120 return or tax information pertaining to
31 that person's liability for tax under chapter 83.100 RCW;

32 (t) Disclosing such return or tax information to the streamlined
33 sales tax governing board, member states of the streamlined sales tax
34 governing board, or authorized representatives of such board or states,
35 for the limited purposes of:

36 (i) Conducting on behalf of member states sales and use tax audits
37 of taxpayers; or

1 (ii) Auditing certified service providers or certified automated
2 systems providers; or

3 (u) Disclosing any such return or tax information when the
4 disclosure is specifically authorized under any other section of the
5 Revised Code of Washington.

6 (4)(a) The department may disclose return or taxpayer information
7 to a person under investigation or during any court or administrative
8 proceeding against a person under investigation as provided in this
9 subsection (4). The disclosure must be in connection with the
10 department's official duties relating to an audit, collection activity,
11 or a civil or criminal investigation. The disclosure may occur only
12 when the person under investigation and the person in possession of
13 data, materials, or documents are parties to the return or tax
14 information to be disclosed. The department may disclose return or tax
15 information such as invoices, contracts, bills, statements, resale or
16 exemption certificates, or checks. However, the department may not
17 disclose general ledgers, sales or cash receipt journals, check
18 registers, accounts receivable/payable ledgers, general journals,
19 financial statements, expert's workpapers, income tax returns, state
20 tax returns, tax return workpapers, or other similar data, materials,
21 or documents.

22 (b) Before disclosure of any tax return or tax information under
23 this subsection (4), the department must, through written
24 correspondence, inform the person in possession of the data, materials,
25 or documents to be disclosed. The correspondence must clearly identify
26 the data, materials, or documents to be disclosed. The department may
27 not disclose any tax return or tax information under this subsection
28 (4) until the time period allowed in (c) of this subsection has expired
29 or until the court has ruled on any challenge brought under (c) of this
30 subsection.

31 (c) The person in possession of the data, materials, or documents
32 to be disclosed by the department has twenty days from the receipt of
33 the written request required under (b) of this subsection to petition
34 the superior court of the county in which the petitioner resides for
35 injunctive relief. The court must limit or deny the request of the
36 department if the court determines that:

37 (i) The data, materials, or documents sought for disclosure are

1 cumulative or duplicative, or are obtainable from some other source
2 that is more convenient, less burdensome, or less expensive;

3 (ii) The production of the data, materials, or documents sought
4 would be unduly burdensome or expensive, taking into account the needs
5 of the department, the amount in controversy, limitations on the
6 petitioner's resources, and the importance of the issues at stake; or

7 (iii) The data, materials, or documents sought for disclosure
8 contain trade secret information that, if disclosed, could harm the
9 petitioner.

10 (d) The department must reimburse reasonable expenses for the
11 production of data, materials, or documents incurred by the person in
12 possession of the data, materials, or documents to be disclosed.

13 (e) Requesting information under (b) of this subsection that may
14 indicate that a taxpayer is under investigation does not constitute a
15 disclosure of tax return or tax information under this section.

16 (5) Service of a subpoena issued under RCW 82.32.115 does not
17 constitute a disclosure of return or tax information under this
18 section. Notwithstanding anything else to the contrary in this
19 section, a person served with a subpoena under RCW 82.32.115 may
20 disclose the existence or content of the subpoena to that person's
21 legal counsel.

22 (6) Any person acquiring knowledge of any return or tax information
23 in the course of his or her employment with the department of revenue
24 and any person acquiring knowledge of any return or tax information as
25 provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this
26 section, who discloses any such return or tax information to another
27 person not entitled to knowledge of such return or tax information
28 under the provisions of this section, is guilty of a misdemeanor. If
29 the person guilty of such violation is an officer or employee of the
30 state, such person must forfeit such office or employment and is
31 incapable of holding any public office or employment in this state for
32 a period of two years thereafter.

33 **Sec. 2.** RCW 84.08.210 and 2005 c 274 s 363 are each amended to
34 read as follows:

35 (1) For purposes of this section, "tax information" means
36 confidential income data and proprietary business information obtained
37 by the department in the course of carrying out the duties now or

1 hereafter imposed upon it in this title that has been communicated in
2 confidence in connection with the assessment of property and that has
3 not been publicly disseminated by the taxpayer, the disclosure of which
4 would be either highly offensive to a reasonable person and not a
5 legitimate concern to the public or would result in an unfair
6 competitive disadvantage to the taxpayer.

7 (2) Tax information is confidential and privileged, and except as
8 authorized by this section, neither the department nor any other person
9 may disclose tax information.

10 (3) Subsection (2) of this section, however, does not prohibit the
11 department from:

12 (a) Disclosing tax information to any county assessor or county
13 treasurer;

14 (b) Disclosing tax information in a civil or criminal judicial
15 proceeding or an administrative proceeding in respect to taxes or
16 penalties imposed under this title or Title 82 RCW or in respect to
17 assessment or valuation for tax purposes of the property to which the
18 information or facts relate;

19 (c) Disclosing tax information with the written permission of the
20 taxpayer;

21 (d) Disclosing tax information to the proper officer of the tax
22 department of any state responsible for the imposition or collection of
23 property taxes, or for the valuation of property for tax purposes, if
24 the other state grants substantially similar privileges to the proper
25 officers of this state;

26 (e) Disclosing tax information that is also maintained by another
27 Washington state or local governmental agency as a public record
28 available for inspection and copying under chapter 42.56 RCW or is a
29 document maintained by a court of record not otherwise prohibited from
30 disclosure;

31 (f) Disclosing tax information to a peace officer as defined in RCW
32 9A.04.110 or county prosecutor, for official purposes. The disclosure
33 may be made only in response to a search warrant, subpoena, or other
34 court order, unless the disclosure is for the purpose of criminal tax
35 enforcement. A peace officer or county prosecutor who receives the tax
36 information may disclose the tax information only for use in the
37 investigation and a related court proceeding, or in the court
38 proceeding for which the tax information originally was sought; ((or))

1 (g) Disclosing information otherwise available under chapter 42.56
2 RCW; or

3 (h) Publishing the statistics of any number of taxpayers in a
4 classification as long as the publication makes no identification of
5 particular tax information other than the amount of taxpayer savings.

6 (4) A violation of this section constitutes a gross misdemeanor.

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