

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 440**

5 (SENATORS PREZIOSO, FACEMIRE, STOLLINGS AND PLYMALE, *original sponsors*)

6 _____
7 [Passed April 11, 2013; in effect from passage.]
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12 AN ACT to amend and reenact §11-10-5s of the Code of West Virginia,
13 1931, as amended, relating to disclosure of confidential
14 taxpayer information; authorizing the disclosure of specified
15 tax information by the Tax Commissioner to the Attorney
16 General; authorizing the disclosure of specified tax
17 information by the Attorney General to specified persons
18 relevant to enforcement of Tobacco Master Settlement
19 Agreement; authorizing the Tax Commissioner to enter into a
20 written agreement with the State Auditor for disclosure of
21 confidential tax information to the State Auditor to
22 facilitate the State Auditor's participation in federal and
23 state offset programs to collect unpaid taxes; and providing

1 for protection and limited use of confidential information.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §11-10-5s of the Code of West Virginia, 1931, as amended,
4 be amended and reenacted to read as follows:

5 **ARTICLE 10. WEST VIRGINIA TAX AND PROCEDURE ADMINISTRATION ACT.**

6 **§11-10-5s. Disclosure of certain taxpayer information.**

7 (a) *Purpose.* - The Legislature hereby recognizes the
8 importance of confidentiality of taxpayer information as a
9 protection of taxpayers' privacy rights and to enhance voluntary
10 compliance with the tax law. The Legislature also recognizes the
11 citizens' right to accountable and efficient state government. To
12 accomplish these ends, the Legislature hereby creates certain
13 exceptions to the general principle of confidentiality of taxpayer
14 information.

15 (b) *Exceptions to confidentiality.* -

16 (1) Notwithstanding any provision in this code to the
17 contrary, the Tax Commissioner shall publish in the State Register
18 the name and address of every taxpayer and the amount, by category,
19 of any credit asserted on a tax return under articles thirteen-c,
20 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q,
21 thirteen-r and thirteen-s of this chapter and article one, chapter
22 five-e of this code. The categories by dollar amount of credit
23 received are as follows:

- 1 (A) More than \$1 but not more than \$50,000;
- 2 (B) More than \$50,000 but not more than \$100,000;
- 3 (C) More than \$100,000 but not more than \$250,000;
- 4 (D) More than \$250,000 but not more than \$500,000;
- 5 (E) More than \$500,000 but not more than \$1 million; and
- 6 (F) More than \$1 million.

7 (2) Notwithstanding any provision in this code to the
8 contrary, the Tax Commissioner shall publish in the State Register
9 the following information regarding a compromise of a pending civil
10 tax case that occurs on or after the effective date of this section
11 in which the Tax Commissioner is required to seek the written
12 recommendation of the Attorney General and the Attorney General has
13 not recommended acceptance of the compromise or when the Tax
14 Commissioner compromises a civil tax case for an amount that is
15 more than \$250,000 less than the assessment of tax owed made by the
16 Tax Commissioner:

17 (A) The names and addresses of taxpayers that are parties to
18 the compromise;

19 (B) A summary of the compromise;

20 (C) Any written advice or recommendation rendered by the
21 Attorney General regarding the compromise; and

22 (D) Any written advice or recommendation rendered by the Tax
23 Commissioner's staff.

1 Under no circumstances may the tax return of the taxpayer or
2 any other information which would otherwise be confidential under
3 other provisions of law be disclosed pursuant to the provisions of
4 this subsection.

5 (3) Notwithstanding any provision in this code to the
6 contrary, the Tax Commissioner may disclose any relevant return
7 information to the prosecuting attorney for the county in which
8 venue lies for a criminal tax offense when there is reasonable
9 cause, based upon and substantiated by the return information, to
10 believe that a criminal tax law has been or is being violated.

11 (4) Notwithstanding any provision in this code to the
12 contrary, the Tax Commissioner may enter into written exchange of
13 information agreements with the commissioners of Labor, Employment
14 Security, Alcohol Beverage Control and Workers' Compensation to
15 disclose and receive timely return information. The Tax
16 Commissioner may promulgate rules pursuant to chapter twenty-nine-a
17 of this code regarding additional agencies with which written
18 exchange of information agreements may be sought but may not
19 promulgate emergency rules regarding these additional agencies.
20 The agreements shall be published in the State Register and are
21 only for the purpose of facilitating premium collection, tax
22 collection and facilitating licensure requirements directly
23 enforced, administered or collected by the respective agencies.

1 The provisions of this subsection do not preclude or limit
2 disclosure of tax information authorized by other provisions of
3 this code. Confidential return information so disclosed remains
4 confidential in the other agency to the extent provided by section
5 five-d of this article and by other applicable federal or state
6 laws.

7 (5) Notwithstanding any provision of this code to the
8 contrary, the Tax Commissioner may enter into a written agreement
9 with the State Treasurer to disclose to the State Treasurer the
10 following business registration information:

11 (A) The names, addresses and federal employer identification
12 numbers of businesses which have registered to do business in West
13 Virginia; and

14 (B) The type of business activity and organization of those
15 businesses.

16 Disclosure of this information shall begin as soon as
17 practicable after the effective date of this subsection and may be
18 used only for the purpose of recovery and disposition of unclaimed
19 property in accordance with the provisions of article eight,
20 chapter thirty-six of this code. The provisions of this subsection
21 do not preclude or limit disclosure of tax information authorized
22 by other provisions of this code. Confidential return information
23 disclosed hereunder or thereunder remains confidential as provided

1 by section five-d of this article and by other applicable federal
2 or state laws.

3 (6) Notwithstanding any provision of this code to the
4 contrary, the Tax Commissioner may disclose to the Attorney General
5 any tax return, report, declaration or tax return information,
6 including the identity of a taxpayer, that relates to any
7 taxpayer's sales of tobacco products subject to state excise tax or
8 to such sales of tobacco products that were manufactured or
9 imported by a nonparticipating manufacturer as defined in section
10 two, article nine-d of chapter sixteen of this code, for the
11 purpose of enforcement of articles nine-b and nine-d, chapter
12 sixteen of this code, or for the purpose of representing the State
13 of West Virginia in any arbitration or litigation arising under the
14 Tobacco Master Settlement Agreement or articles nine-b and nine-d,
15 chapter sixteen of this code. Nothing herein shall authorize the
16 disclosure of any taxpayer's income tax returns or business
17 franchise tax returns, or authorize the use of the disclosed
18 information for any purpose other than as specified herein.

19 (7) Notwithstanding any provision of this code to the
20 contrary, the Attorney General, upon the consent of the Tax
21 Commissioner, may disclose information provided by the Tax
22 Commissioner under the authority of subdivision six of this
23 subsection as follows:

1 (A) To a party or parties participating in arbitration or
2 litigation arising under the terms of the Tobacco Master Settlement
3 Agreement; or

4 (B) To a judge, arbitrator, administrative law judge, legal
5 counsel or other officer, official or participant in proceedings
6 for or relating to administration, implementation, enforcement,
7 defense or settlement and arbitration of the provisions of articles
8 nine-b and nine-d of chapter sixteen of this code.

9 (C) Notwithstanding any provision of this code to the
10 contrary, the Attorney General may introduce into evidence or
11 disclose the information in the arbitration or litigation
12 proceedings or an action for administration, implementation,
13 enforcement, defense or settlement and arbitration of the
14 provisions of articles nine-b and nine-d of chapter sixteen of this
15 code.

16 (D) This subdivision does not apply to a document, tax return
17 or other information subject to disclosure restrictions imposed by
18 federal statute or regulation.

19 (E) Any information disclosed pursuant to this subdivision is
20 subject to the following restrictions:

21 (i) specific identifiers shall first be redacted or otherwise
22 removed from any such information that was reported by a taxpayer
23 who is not a party to any proceeding, arbitration or litigation;

1 (ii) No such disclosure shall be made unless it is subject to
2 a protective order or agreement restricting the use of the
3 disclosed information to such proceeding, arbitration or
4 litigation;

5 (F) For purposes of this section, "specific identifiers" shall
6 mean the name, address, telephone number, taxpayer identification
7 number, logo, trademark or other markings unique to the taxpayer.

8 (8) Notwithstanding any provision of this code to the
9 contrary, the Tax Commissioner may enter into a written exchange
10 agreement with the Auditor to disclose certain taxpayer information
11 to facilitate participation in the following:

12 (A) The federal offset program authorized by section
13 thirty-seven, article one, chapter fourteen of this code; and

14 (B) The state offset program, as authorized by subsection (h),
15 section thirty-seven, article one, chapter fourteen of this code,
16 for the purpose of protecting return information as defined in
17 section five-d, article ten of this chapter and collecting debts,
18 fees and penalties due the state, its departments, agencies or
19 institutions.

20 (C) The taxpayer information exchanged or disclosed pursuant
21 to this subdivision is to be used only for the purpose of
22 facilitating the collection of unpaid and delinquent tax
23 liabilities through offset against state payments due and owing to

1 taxpayers, vendors and contractors providing goods or services to
2 the state, its departments, agencies or institutions.

3 (D) The Tax Commissioner may disclose the following taxpayer
4 information:

5 (i) Name;

6 (ii) Address;

7 (iii) Social Security number or tax identification number;

8 (iv) Amount of the tax liability; and

9 (v) Any other information required by the written agreement.

10 (E) Disclosure of this information begins as soon as
11 practicable after the effective date of this subdivision.

12 (F) The provisions of this section do not preclude or limit
13 disclosure of tax information authorized by other provisions of
14 this code. Any confidential return information disclosed hereunder
15 or thereunder remains confidential to the extent provided by
16 section five-d of this article and by other applicable federal or
17 state laws.

18 (c) *Tax expenditure reports.* - Beginning on January 15, 1992,
19 and every January 15 thereafter, the Governor shall submit to the
20 President of the Senate and the Speaker of the House of Delegates
21 a tax expenditure report. This report shall expressly identify all
22 tax expenditures. Within three-year cycles, the reports shall be
23 considered together to analyze all tax expenditures by describing

1 the annual revenue loss and benefits of the tax expenditure based
2 upon information available to the Tax Commissioner. For purposes
3 of this section, the term "tax expenditure" means a provision in
4 the tax laws administered under this article including, but not
5 limited to, exclusions, deductions, tax preferences, credits and
6 deferrals designed to encourage certain kinds of activities or to
7 aid taxpayers in special circumstances. The Tax Commissioner shall
8 promulgate rules setting forth the procedure by which he or she
9 will compile the reports and setting forth a priority for the order
10 in which the reports will be compiled according to type of tax
11 expenditure.

12 (d) *Federal and state return information confidential.* -
13 Notwithstanding any other provisions of this section or of this
14 code, no return information made available to the Tax Commissioner
15 by the Internal Revenue Service or department or agency of any
16 other state may be disclosed to another person in a manner
17 inconsistent with the provisions of Section 6103 of the Internal
18 Revenue Code of 1986, as amended, or of the other states'
19 confidentiality laws.