

H. B. 2912

(By Delegates White, Marcum and Moore)

(By Request of the State Tax Division)

[Introduced March 12, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended, relating to disclosure of confidential taxpayer information; authorizing the disclosure of specified tax information by the Tax Commissioner to the Attorney General; authorizing the disclosure of specified tax information by the Attorney General to specified persons relevant to enforcement of Tobacco Master Settlement Agreement; authorizing the Tax Commissioner to enter into a written agreement with the State Auditor for disclosure of confidential tax information to the State Auditor to facilitate the State Auditor's participation in federal and state offset programs to collect unpaid taxes; and providing for protection and limited use of confidential information.

Be it enacted by the Legislature of West Virginia:

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

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

4 **§11-10-5s. Disclosure of certain taxpayer information.**

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

13 (b) *Exceptions to confidentiality.* --

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

22 (A) More than \$1 but not more than \$50,000;

23 (B) More than \$50,000 but not more than \$100,000;

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

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

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

17 (B) A summary of the compromise;

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

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

22 Under no circumstances may the tax return of the taxpayer or
23 any other information which would otherwise be confidential under

1 ~~any~~ other provisions of law be disclosed pursuant to the provisions
2 of this subsection.

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

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

1 enforced, administered or collected by the respective agencies. The
2 provisions of this subsection ~~shall not be construed to~~ do not
3 preclude or limit disclosure of tax information authorized by other
4 provisions of this code. ~~Any~~ Confidential return information so
5 disclosed ~~shall remain~~ remains confidential in the ~~hands of the~~
6 other division to the extent provided by section five-d of this
7 article and by other applicable federal or state laws.

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

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

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

17 Disclosure of this information shall begin as soon as
18 practicable after the effective date of this subsection and may be
19 used only for the purpose of recovery and disposition of unclaimed
20 property in accordance with the provisions of article eight,
21 chapter thirty-six of this code. The provisions of this subsection
22 ~~shall not be construed to~~ does not preclude or limit disclosure of
23 tax information authorized by other provisions of this code. ~~Any~~

1 Confidential return information disclosed hereunder or thereunder
2 ~~shall otherwise remain confidential to the extent~~ remains
3 confidential as provided by section five-d of this article and by
4 other applicable federal or state laws.

5 (6) Notwithstanding any provision of this code to the
6 contrary, the Tax Commissioner may disclose to the Attorney General
7 any information in the possession of the Tax Commissioner that is
8 necessary or relevant to administration, implementation,
9 enforcement, defense, or settlement and arbitration of the Tobacco
10 Master Settlement Agreement and its related statutory provisions
11 set forth in articles nine-b and nine-d, chapter sixteen of this
12 code, and successor or reenactment provisions, or necessary or
13 relevant to arbitration or litigation arising under the terms of
14 the Tobacco Master Settlement Agreement.

15 (A) The information includes, but is not limited to, return
16 information, audits and other tax information in the possession of
17 the Tax Commissioner originating with tobacco retailers, jobbers,
18 stamping agents, distributors, participating manufacturers as
19 defined in section two, article nine-d, chapter sixteen of this
20 code, nonparticipating manufacturers as defined in section two,
21 article nine-d, chapter sixteen of this code and entities or
22 persons taxable pursuant to article seventeen of this chapter, the
23 Tobacco Products Excise Tax Act.

1 (B) The information also includes, but is not limited to,
2 information in the possession of the Tax Commissioner originating
3 with persons or entities who: (i) Are not parties to the Tobacco
4 Master Settlement Agreement; (ii) who are not parties to any
5 arbitration or litigation relating to the Tobacco Master Settlement
6 Agreement; or (iii) who are not subject to the reporting
7 requirements or tax payment requirements of this article or of
8 article seventeen of this chapter, if the information is necessary
9 or relevant to administration, implementation, enforcement, defense
10 or settlement and arbitration of the Tobacco Master Settlement
11 Agreement and its related statutory provisions or necessary or
12 relevant to arbitration or litigation arising under the terms of
13 the Tobacco Master Settlement Agreement.

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

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

22 (A) To a party or parties participating in arbitration or
23 litigation arising under the terms of the Tobacco Master Settlement

1 Agreement; or

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

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

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

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

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

23 (B) The state offset program, as authorized by subsection (h),

1 section thirty-seven, article one, chapter fourteen of this code,
2 for the purpose of protecting return information as defined in
3 section five-d, article ten of this chapter and collecting debts,
4 fees and penalties due the state, its departments, agencies or
5 institutions.

6 (C) The taxpayer information exchanged or disclosed pursuant
7 to this subdivision is to be used only for the purpose of
8 facilitating the collection of unpaid and delinquent tax
9 liabilities through offset against state payments due and owing to
10 taxpayers, vendors and contractors providing goods or services to
11 the state, its departments, agencies or institutions.

12 (D) The Tax Commissioner may disclose the following taxpayer
13 information:

14 (i) Name;

15 (ii) Address;

16 (iii) Social security number or tax identification number;

17 (iv) Amount of the tax liability; and

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

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

21 (F) The provisions of this section do not preclude or limit
22 disclosure of tax information authorized by other provisions of
23 this code. Any confidential return information disclosed hereunder

1 or thereunder remains confidential to the extent provided by
2 section five-d of this article and by other applicable federal or
3 state laws.

4 (c) *Tax expenditure reports.* -- Beginning on January 15, 1992,
5 and every January 15 thereafter, the Governor shall submit to the
6 President of the Senate and the Speaker of the House of Delegates
7 a tax expenditure report. This report shall expressly identify all
8 tax expenditures. Within three-year cycles, the reports shall be
9 considered together to analyze all tax expenditures by describing
10 the annual revenue loss and benefits of the tax expenditure based
11 upon information available to the Tax Commissioner. For purposes of
12 this section, the term "tax expenditure" ~~shall mean~~ means a
13 provision in the tax laws administered under this article
14 including, but not limited to, exclusions, deductions, tax
15 preferences, credits and deferrals designed to encourage certain
16 kinds of activities or to aid taxpayers in special circumstances.
17 ~~Provided, That~~ The Tax Commissioner shall promulgate rules setting
18 forth the procedure by which he or she will compile the reports and
19 setting forth a priority for the order in which the reports will be
20 compiled according to type of tax expenditure.

21 (d) *Federal and state return information confidential.* --
22 Notwithstanding any other provisions of this section or of this
23 code, no return information made available to the Tax Commissioner

1 by the Internal Revenue Service or department or agency of any
2 other state may be disclosed to another person in ~~any~~ a manner
3 inconsistent with the provisions of Section 6103 of the Internal
4 Revenue Code of 1986, as amended, or of the other states'
5 confidentiality laws.

NOTE: The purpose of this bill is to authorize the disclosure of specified tax information by the Attorney General to specified persons relevant to enforcement of Tobacco Master Settlement Agreement and provide for a written agreement for the disclosure and protection of confidential taxpayer information between the Tax Commissioner and Auditor to be used in offset programs aimed at collecting unpaid and delinquent state taxes.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.