

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 440**

(SENATORS PREZIOSO, FACEMIRE, STOLLINGS AND PLYMALE,  
*ORIGINAL SPONSORS*)

[PASSED APRIL 11, 2013; IN EFFECT FROM PASSAGE.]

**E N R O L L E D**

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[Passed April 11, 2013; in effect from passage.]

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AN ACT 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:*

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

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

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

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

9       (b) *Exceptions to confidentiality.* –

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

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

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

20       (C) More than \$100,000 but not more than \$250,000;

21       (D) More than \$250,000 but not more than \$500,000;

22       (E) More than \$500,000 but not more than \$1 million;

23       and

24 (F) More than \$1 million.

25 (2) Notwithstanding any provision in this code to the  
26 contrary, the Tax Commissioner shall publish in the State  
27 Register the following information regarding a compromise  
28 of a pending civil tax case that occurs on or after the effective  
29 date of this section in which the Tax Commissioner is  
30 required to seek the written recommendation of the Attorney  
31 General and the Attorney General has not recommended  
32 acceptance of the compromise or when the Tax  
33 Commissioner compromises a civil tax case for an amount  
34 that is more than \$250,000 less than the assessment of tax  
35 owed made by the Tax Commissioner:

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

38 (B) A summary of the compromise;

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

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

43 Under no circumstances may the tax return of the  
44 taxpayer or any other information which would otherwise be  
45 confidential under other provisions of law be disclosed  
46 pursuant to the provisions of this subsection.

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

54 (4) Notwithstanding any provision in this code to the  
55 contrary, the Tax Commissioner may enter into written  
56 exchange of information agreements with the commissioners  
57 of Labor, Employment Security, Alcohol Beverage Control  
58 and Workers' Compensation to disclose and receive timely  
59 return information. The Tax Commissioner may promulgate  
60 rules pursuant to chapter twenty-nine-a of this code regarding  
61 additional agencies with which written exchange of  
62 information agreements may be sought but may not  
63 promulgate emergency rules regarding these additional  
64 agencies. The agreements shall be published in the State  
65 Register and are only for the purpose of facilitating premium  
66 collection, tax collection and facilitating licensure  
67 requirements directly enforced, administered or collected by  
68 the respective agencies. The provisions of this subsection do  
69 not preclude or limit disclosure of tax information authorized  
70 by other provisions of this code. Confidential return  
71 information so disclosed remains confidential in the other  
72 agency to the extent provided by section five-d of this article  
73 and by other applicable federal or state laws.

74 (5) Notwithstanding any provision of this code to the  
75 contrary, the Tax Commissioner may enter into a written  
76 agreement with the State Treasurer to disclose to the State  
77 Treasurer the following business registration information:

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

81 (B) The type of business activity and organization of  
82 those businesses.

83 Disclosure of this information shall begin as soon as  
84 practicable after the effective date of this subsection and may  
85 be used only for the purpose of recovery and disposition of

86 unclaimed property in accordance with the provisions of  
87 article eight, chapter thirty-six of this code. The provisions  
88 of this subsection do not preclude or limit disclosure of tax  
89 information authorized by other provisions of this code.  
90 Confidential return information disclosed hereunder or  
91 thereunder remains confidential as provided by section five-d  
92 of this article and by other applicable federal or state laws.

93 (6) Notwithstanding any provision of this code to the  
94 contrary, the Tax Commissioner may disclose to the Attorney  
95 General any tax return, report, declaration or tax return  
96 information, including the identity of a taxpayer, that relates  
97 to any taxpayer's sales of tobacco products subject to state  
98 excise tax or to such sales of tobacco products that were  
99 manufactured or imported by a nonparticipating manufacturer  
100 as defined in section two, article nine-d of chapter sixteen of  
101 this code, for the purpose of enforcement of articles nine-b  
102 and nine-d, chapter sixteen of this code, or for the purpose of  
103 representing the State of West Virginia in any arbitration or  
104 litigation arising under the Tobacco Master Settlement  
105 Agreement or articles nine-b and nine-d, chapter sixteen of  
106 this code. Nothing herein shall authorize the disclosure of  
107 any taxpayer's income tax returns or business franchise tax  
108 returns, or authorize the use of the disclosed information for  
109 any purpose other than as specified herein.

110 (7) Notwithstanding any provision of this code to the  
111 contrary, the Attorney General, upon the consent of the Tax  
112 Commissioner, may disclose information provided by the Tax  
113 Commissioner under the authority of subdivision six of this  
114 subsection as follows:

115 (A) To a party or parties participating in arbitration or  
116 litigation arising under the terms of the Tobacco Master  
117 Settlement Agreement; or

118 (B) To a judge, arbitrator, administrative law judge, legal  
119 counsel or other officer, official or participant in proceedings  
120 for or relating to administration, implementation,  
121 enforcement, defense or settlement and arbitration of the  
122 provisions of articles nine-b and nine-d of chapter sixteen of  
123 this code.

124 (C) Notwithstanding any provision of this code to the  
125 contrary, the Attorney General may introduce into evidence  
126 or disclose the information in the arbitration or litigation  
127 proceedings or an action for administration, implementation,  
128 enforcement, defense or settlement and arbitration of the  
129 provisions of articles nine-b and nine-d of chapter sixteen of  
130 this code.

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

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

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

140 (ii) No such disclosure shall be made unless it is subject  
141 to a protective order or agreement restricting the use of the  
142 disclosed information to such proceeding, arbitration or  
143 litigation;

144 (F) For purposes of this section, “specific identifiers”  
145 shall mean the name, address, telephone number, taxpayer  
146 identification number, logo, trademark or other markings  
147 unique to the taxpayer.

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

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

155 (B) The state offset program, as authorized by subsection  
156 (h), section thirty-seven, article one, chapter fourteen of this  
157 code, for the purpose of protecting return information as  
158 defined in section five-d, article ten of this chapter and  
159 collecting debts, fees and penalties due the state, its  
160 departments, agencies or institutions.

161 (C) The taxpayer information exchanged or disclosed  
162 pursuant to this subdivision is to be used only for the purpose  
163 of facilitating the collection of unpaid and delinquent tax  
164 liabilities through offset against state payments due and  
165 owing to taxpayers, vendors and contractors providing goods  
166 or services to the state, its departments, agencies or  
167 institutions.

168 (D) The Tax Commissioner may disclose the following  
169 taxpayer information:

170 (i) Name;

171 (ii) Address;

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

173 (iv) Amount of the tax liability; and



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

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

178 (F) The provisions of this section do not preclude or limit  
179 disclosure of tax information authorized by other provisions  
180 of this code. Any confidential return information disclosed  
181 hereunder or thereunder remains confidential to the extent  
182 provided by section five-d of this article and by other  
183 applicable federal or state laws.

184 (c) *Tax expenditure reports.* – Beginning on January 15,  
185 1992, and every January 15 thereafter, the Governor shall  
186 submit to the President of the Senate and the Speaker of the  
187 House of Delegates a tax expenditure report. This report  
188 shall expressly identify all tax expenditures. Within  
189 three-year cycles, the reports shall be considered together to  
190 analyze all tax expenditures by describing the annual revenue  
191 loss and benefits of the tax expenditure based upon  
192 information available to the Tax Commissioner. For  
193 purposes of this section, the term “tax expenditure” means a  
194 provision in the tax laws administered under this article  
195 including, but not limited to, exclusions, deductions, tax  
196 preferences, credits and deferrals designed to encourage  
197 certain kinds of activities or to aid taxpayers in special  
198 circumstances. The Tax Commissioner shall promulgate  
199 rules setting forth the procedure by which he or she will  
200 compile the reports and setting forth a priority for the order  
201 in which the reports will be compiled according to type of tax  
202 expenditure.

203 (d) *Federal and state return information confidential.* –  
204 Notwithstanding any other provisions of this section or of this  
205 code, no return information made available to the Tax

206 Commissioner by the Internal Revenue Service or department  
207 or agency of any other state may be disclosed to another  
208 person in a manner inconsistent with the provisions of  
209 Section 6103 of the Internal Revenue Code of 1986, as  
210 amended, or of the other states' confidentiality laws.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2013.

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*Governor*