

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

(By Senators Prezioso, Facemire, Stollings and Plymale)

[Originating in the Committee on the Judiciary;
reported March 21, 2013.]

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:

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 ~~shall be~~ 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 ~~any~~ a
28 compromise of a pending civil tax case that occurs on or after
29 the effective date of this section in which the Tax
30 Commissioner is required to seek the written
31 recommendation of the Attorney General and the Attorney
32 General has not recommended acceptance of the compromise

33 or when the Tax Commissioner compromises ~~any~~ a civil tax
34 case for an amount that is more than \$250,000 less than the
35 assessment of tax 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 ~~any~~ 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. ~~Provided, That~~ The Tax Commissioner
60 may promulgate rules pursuant to chapter twenty-nine-a of
61 this code regarding ~~further~~ additional agencies with which
62 written exchange of information agreements may be sought
63 ~~Provided, however, That the Tax Commissioner may not~~
64 ~~promulgate emergency rules regarding further agencies with~~
65 ~~which written exchange of information agreements may be~~
66 ~~sought.~~ but may not promulgate emergency rules regarding
67 these additional agencies. The agreements shall be published
68 in the State Register and ~~shall only be~~ are only for the
69 purpose of facilitating premium collection, tax collection and
70 facilitating licensure requirements directly enforced,

71 administered or collected by the respective agencies. The
72 provisions of this subsection ~~shall not be construed to~~ do not
73 preclude or limit disclosure of tax information authorized by
74 other provisions of this code. ~~Any~~ Confidential return
75 information so disclosed ~~shall remain~~ remains confidential in
76 the ~~hands of the other division~~ agency to the extent provided
77 by section five-d of this article and by other applicable
78 federal or state laws.

79 (5) Notwithstanding any provision of this code to the
80 contrary, the Tax Commissioner may enter into a written
81 agreement with the State Treasurer to disclose to the State
82 Treasurer the following business registration information:

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

86 (B) The type of business activity and organization of
87 those businesses.

88 Disclosure of this information shall begin as soon as
89 practicable after the effective date of this subsection and may

90 be used only for the purpose of recovery and disposition of
91 unclaimed property in accordance with the provisions of
92 article eight, chapter thirty-six of this code. The provisions of
93 this subsection ~~shall not be construed to~~ do not preclude or
94 limit disclosure of tax information authorized by other
95 provisions of this code. ~~Any~~ Confidential return information
96 disclosed hereunder or thereunder ~~shall otherwise remain~~
97 ~~confidential to the extent~~ remains confidential as provided by
98 section five-d of this article and by other applicable federal
99 or state laws.

100 (6) Notwithstanding any provision of this code to the
101 contrary, the Tax Commissioner may disclose to the Attorney
102 General any tax return, report, declaration or tax return
103 information, including the identity of a taxpayer, that relates
104 to any taxpayer's sales of tobacco products subject to state
105 excise tax or to such sales of tobacco products that were
106 manufactured or imported by a nonparticipating manufacturer
107 as defined in section two, article nine-d of chapter sixteen of
108 this code, for the purpose of enforcement of articles nine-b

109 and nine-d, chapter sixteen of this code, or for the purpose of
110 representing the State of West Virginia in any arbitration or
111 litigation arising under the Tobacco Master Settlement
112 Agreement or articles nine-b and nine-d, chapter sixteen of
113 this code. Nothing herein shall authorize the disclosure of
114 any taxpayer's income tax returns or business franchise tax
115 returns, or authorize the use of the disclosed information for
116 any purpose other than as specified herein.

117 (7) Notwithstanding any provision of this code to the
118 contrary, the Attorney General, upon the consent of the Tax
119 Commissioner, may disclose information provided by the
120 Tax Commissioner under the authority of subdivision six of
121 this subsection as follows:

122 (A) To a party or parties participating in arbitration or
123 litigation arising under the terms of the Tobacco Master
124 Settlement Agreement; or

125 (B) To a judge, arbitrator, administrative law judge, legal
126 counsel or other officer, official or participant in proceedings
127 for or relating to 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 (C) Notwithstanding any provision of this code to the
132 contrary, the Attorney General may introduce into evidence
133 or disclose the information in the arbitration or litigation
134 proceedings or an action for administration, implementation,
135 enforcement, defense or settlement and arbitration of the
136 provisions of articles nine-b and nine-d of chapter sixteen of
137 this code.

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

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

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

147 (ii) No such disclosure shall be made unless it is subject
148 to a protective order or agreement restricting the use of the
149 disclosed information to such proceeding, arbitration or
150 litigation;

151 (F) For purposes of this section, “specific identifiers”
152 shall mean the name, address, telephone number, taxpayer
153 identification number, logo, trademark or other markings
154 unique to the taxpayer.

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

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

162 (B) The state offset program, as authorized by subsection
163 (h), section thirty-seven, article one, chapter fourteen of this
164 code, for the purpose of protecting return information as
165 defined in section five-d, article ten of this chapter and

166 collecting debts, fees and penalties due the state, its
167 departments, agencies or institutions.

168 (C) The taxpayer information exchanged or disclosed
169 pursuant to this subdivision is to be used only for the purpose
170 of facilitating the collection of unpaid and delinquent tax
171 liabilities through offset against state payments due and
172 owing to taxpayers, vendors and contractors providing goods
173 or services to the state, its departments, agencies or
174 institutions.

175 (D) The Tax Commissioner may disclose the following
176 taxpayer information:

177 (i) Name;

178 (ii) Address;

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

180 (iv) Amount of the tax liability; and

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

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

185 (F) The provisions of this section do not preclude or limit
186 disclosure of tax information authorized by other provisions
187 of this code. Any confidential return information disclosed
188 hereunder or thereunder remains confidential to the extent
189 provided by section five-d of this article and by other
190 applicable federal or state laws.

191 (c) *Tax expenditure reports.* – Beginning on January 15,
192 1992, and every January 15 thereafter, the Governor shall
193 submit to the President of the Senate and the Speaker of the
194 House of Delegates a tax expenditure report. This report shall
195 expressly identify all tax expenditures. Within three-year
196 cycles, the reports shall be considered together to analyze all
197 tax expenditures by describing the annual revenue loss and
198 benefits of the tax expenditure based upon information
199 available to the Tax Commissioner. For purposes of this
200 section, the term “tax expenditure” ~~shall mean~~ means a
201 provision in the tax laws administered under this article
202 including, but not limited to, exclusions, deductions, tax
203 preferences, credits and deferrals designed to encourage

204 certain kinds of activities or to aid taxpayers in special
205 circumstances. ~~Provided, That~~ The Tax Commissioner shall
206 promulgate rules setting forth the procedure by which he or
207 she will compile the reports and setting forth a priority for the
208 order in which the reports will be compiled according to type
209 of tax expenditure.

210 (d) *Federal and state return information confidential.* –
211 Notwithstanding any other provisions of this section or of
212 this code, no return information made available to the Tax
213 Commissioner by the Internal Revenue Service or department
214 or agency of any other state may be disclosed to another
215 person in ~~any~~ a manner inconsistent with the provisions of
216 Section 6103 of the Internal Revenue Code of 1986, as
217 amended, or of the other states' confidentiality laws.