

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Introduced**

## **Senate Bill 667**

BY SENATORS GAUNCH, PREZIOSO AND PLYMALE

[Introduced March 18, 2017; Referred  
to the Committee on the Judiciary]



1 A BILL to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended, relating  
2 to the authority of the Attorney General to disclose certain information provided by the Tax  
3 Commissioner unless it is subject to a protective order or agreement restricting the use of  
4 the disclosed information to the proceeding, arbitration or litigation.

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

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

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

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

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

6 (b) *Exceptions to confidentiality.* –

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

- 12 (A) More than \$1 but not more than \$50,000;
- 13 (B) More than \$50,000 but not more than \$100,000;
- 14 (C) More than \$100,000 but not more than \$250,000;
- 15 (D) More than \$250,000 but not more than \$500,000;
- 16 (E) More than \$500,000 but not more than \$1 million; and
- 17 (F) More than \$1 million.

18           (2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall  
19 publish in the State Register the following information regarding a compromise of a pending civil  
20 tax case that occurs on or after the effective date of this section in which the Tax Commissioner  
21 is required to seek the written recommendation of the Attorney General and the Attorney General  
22 has not recommended acceptance of the compromise or when the Tax Commissioner  
23 compromises a civil tax case for an amount that is more than \$250,000 less than the assessment  
24 of tax owed made by the Tax Commissioner:

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

26           (B) A summary of the compromise;

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

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

30           Under no circumstances may the tax return of the taxpayer or any other information which  
31 would otherwise be confidential under other provisions of law be disclosed pursuant to the  
32 provisions of this subsection.

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

37           (4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may  
38 enter into written exchange of information agreements with the commissioners of Labor,  
39 Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and  
40 receive timely return information. The Tax Commissioner may promulgate rules pursuant to  
41 chapter twenty-nine-a of this code regarding additional agencies with which written exchange of  
42 information agreements may be sought but may not promulgate emergency rules regarding these  
43 additional agencies. The agreements shall be published in the State Register and are only for the

44 purpose of facilitating premium collection, tax collection and facilitating licensure requirements  
45 directly enforced, administered or collected by the respective agencies. The provisions of this  
46 subsection do not preclude or limit disclosure of tax information authorized by other provisions of  
47 this code. Confidential return information so disclosed remains confidential in the other agency to  
48 the extent provided by section five-d of this article and by other applicable federal or state laws.

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

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

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

55 Disclosure of this information shall begin as soon as practicable after the effective date of  
56 this subsection and may be used only for the purpose of recovery and disposition of unclaimed  
57 property in accordance with the provisions of article eight, chapter thirty-six of this code. The  
58 provisions of this subsection do not preclude or limit disclosure of tax information authorized by  
59 other provisions of this code. Confidential return information disclosed hereunder or thereunder  
60 remains confidential as provided by section five-d of this article and by other applicable federal or  
61 state laws.

62 (6) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may  
63 disclose to the Attorney General any tax return, report, declaration or tax return information,  
64 including the identity of a taxpayer, that relates to any taxpayer's sales of tobacco products subject  
65 to state excise tax or to such sales of tobacco products that were manufactured or imported by a  
66 nonparticipating manufacturer as defined in section two, article nine-d of chapter sixteen of this  
67 code, for the purpose of enforcement of articles nine-b and nine-d, chapter sixteen of this code,  
68 or for the purpose of representing the State of West Virginia in any arbitration or litigation arising  
69 under the Tobacco Master Settlement Agreement or articles nine-b and nine-d, chapter sixteen

70 of this code. Nothing herein shall authorize the disclosure of any taxpayer's income tax returns or  
71 business franchise tax returns, or authorize the use of the disclosed information for any purpose  
72 other than as specified herein.

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

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

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

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

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

88 ~~(E) Any information disclosed pursuant to this subdivision is subject to the following~~  
89 ~~restrictions~~

90 ~~(i) specific identifiers shall first be redacted or otherwise removed from any such~~  
91 ~~information that was reported by a taxpayer who is not a party to any proceeding, arbitration or~~  
92 ~~litigation~~

93 ~~(ii) (E) No such disclosure shall~~ may be made pursuant to this subdivision unless it is  
94 subject to a protective order or agreement restricting the use of the disclosed information to ~~such~~  
95 the proceeding, arbitration or litigation;

96 ~~(F) For purposes of this section, “specific identifiers” shall mean the name, address,~~  
97 ~~telephone number, taxpayer identification number, logo, trademark or other markings unique to~~  
98 ~~the taxpayer~~

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

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

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

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

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

113 (i) Name;

114 (ii) Address;

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

116 (iv) Amount of the tax liability; and

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

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

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

122 hereunder or thereunder remains confidential to the extent provided by section five-d of this article  
123 and by other applicable federal or state laws.

124 (c) *Tax expenditure reports.* – Beginning on January 15, 1992, and every January 15  
125 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House  
126 of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures.  
127 Within three-year cycles, the reports shall be considered together to analyze all tax expenditures  
128 by describing the annual revenue loss and benefits of the tax expenditure based upon information  
129 available to the Tax Commissioner. For purposes of this section, the term “tax expenditure” means  
130 a provision in the tax laws administered under this article including, but not limited to, exclusions,  
131 deductions, tax preferences, credits and deferrals designed to encourage certain kinds of  
132 activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate  
133 rules setting forth the procedure by which he or she will compile the reports and setting forth a  
134 priority for the order in which the reports will be compiled according to type of tax expenditure.

135 (d) *Federal and state return information confidential.* – Notwithstanding any other  
136 provisions of this section or of this code, no return information made available to the Tax  
137 Commissioner by the Internal Revenue Service or department or agency of any other state may  
138 be disclosed to another person in a manner inconsistent with the provisions of Section 6103 of  
139 the Internal Revenue Code of 1986, as amended, or of the other states’ confidentiality laws.

NOTE: The purpose of this bill is to limit the authority of the Attorney General to disclose certain information provided by the Tax Commissioner unless it is subject to a protective order or agreement restricting the use of the disclosed information to the proceeding, arbitration or litigation.

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