

# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

### MEMORANDUM

February 16, 2012

**SUBJECT:** Confidentiality of information that would be available to the public under CSHB 263( ) (Work Order No. 27-LS1053\D)

**TO:** Representative Berta Gardner  
Attn: Noah Hanson

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You asked whether the amendment to AS 43.55.030(a) in sec. 1 of the above-referenced bill and the amendment to AS 43.55.030(e) in sec. 2 of the above-referenced bill violate a prohibition against the disclosure of the information.

The type of information that would be disclosed under the bill is currently confidential under AS 43.05.230(a). That subsection reads as follows:

- (a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except
  - (1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;
  - (2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47;
  - (3) as provided in AS 38.05.036 pertaining to audit functions of the Department of Natural Resources;
  - (4) as provided in AS 43.05.405 - 43.05.499; and
  - (5) as otherwise provided in this section or AS 43.55.890.

In your bill, the new language in AS 43.55.030(a)(10) in sec. 1 and in AS 43.55.030(e) in sec. 2 each contain the phrase, "**notwithstanding AS 43.05.230(a)**," which means that the information may be disclosed by the Department of Revenue despite a provision that would otherwise protect the information. This allows the Department of Revenue to disclose the information without regard to AS 43.05.230(a).

Representative Berta Gardner

February 16, 2012

Page 2

While the language in the bill removes the disclosure prohibition under AS 43.05.230(a), AS 40.25.100(a) also shields tax information from the public. That subsection reads as follows:

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except as provided in AS 43.05.230(i) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405 - 43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405 - 43.05.499.

In the enclosed CSHB 263( ), I added AS 40.25.100(a) to precede the citation to AS 43.05.230(a) so that the disclosure required in the bill is not subject to either of the two statutes.

If I may be of further assistance, please advise.

DMB:ljw  
12-132.ljw

Enclosure