



Department of Revenue Tax Division Confidentiality



*Presentation to the
Senate Resources Committee
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Alaska Department of Revenue*



Access to Information

- Assessment Process
- Relevant Confidentiality Statutes
- Legislators' Concerns Regarding Confidentiality
- DOR Information Gathering Procedures
- State Assessment Review Board (SARB) Proceedings
- Subpoena Power
- Joint Administrative Agreements
- Municipal Codes
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Assessment Process

- Preliminary Assessment by State Assessor
- Appeal to Department & Informal Conference Decision
- Appeal to SARB & SARB Determination
- Certified Assessment
- Appeal to Superior Court & Superior Court Decision
- Appeal to State Supreme Court & Supreme Court Decision



Relevant Statutes

- AS 43.05.230 states in part
 - "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 . . ."
- AS 40.25.100(a) which also applies to DOR states in part
 - "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 . . ." It further states that this information will be "kept confidential".
- The statutes referenced above are very broad and apply to all information that discloses the business affairs of all persons, not just taxpayers
- AS 43.05.230(f) provides that for each violation of confidentiality there is a penalty of up to \$5,000 or prison sentence of up to 2 years or both



Legislators' Concerns Regarding Confidentiality

- During special legislative session (ACES) in 2007, the topic of confidentiality came up on several occasions
- Industry concerned with DOR's ability to maintain taxpayer confidentiality
- Legislators voiced those same concerns
- Legislators discussed increasing penalties for breaches of confidentiality
- As a result DOR adopted a "Confidentiality Policy" and requires annual confidentiality training of all DOR employees, contractors and others that have legal access to taxpayer information



ADOR Information Gathering Procedures

- DOR compels taxpayers to provide information in a variety of ways
- Tax returns and property tax statements must be signed by the taxpayer as truthful renditions under penalties of perjury
- DOR and DNR receive confidential producer data related to reserves, such as confidential plans of development (for which there are also public versions available) and proprietary production forecasts internal to producer companies
- TAPS assessments by DOR (not SARB) were \$4.5 billion in 2007, \$7.2 billion in 2008 and \$7.7 billion in 2009.
- Using information under the de novo provisions at trial in 2011 that was not actually in existence in 2007, the Superior Court ruled TAPS value at \$8.9 billion in 2007, \$9.6 billion in 2008, and \$9.2 billion in 2009. The Municipalities in contrast argued TAPS value is at least \$13 billion, while the TAPS Owners argued TAPS value is around \$1 billion.
- Based upon the information in existence at the time the Department conducted its property tax assessments for the 2007-2009 tax years, the Department's valuations were reasonable.



SARB Proceedings

- 1983 AG Opinion
 - Determinations of the SARB are public
 - "There is nothing in AS 09.25.100 [renumbered to the current AS 40.25.100] nor AS 43.05.230 that implies that the legislature intended these assessment procedures and records to be confidential. Both of these statutes are aimed at preventing disclosure of information on the amount of income of a taxpayer or the particulars of a business of a taxpayer. These restrictions are not violated by assessing property of the taxpayer and making the valuation of that property open to the public."
 - Information on the amount of income or the particulars of a business of a taxpayer should be held confidential
 - "15 AAC 56.005(b) makes the property statement filed by a person owning property taxable under AS 43.56 a 'report or return for purposes of AS 43.05 and 15 AAC 05.' To the extent that the statement reveals information on the amount of income or the particulars of a business of a taxpayer, the statement should be held confidential in accordance with the dictates of AS 09.25.100 and AS 43.05.230."



SARB Proceedings (cont.)

- In compliance with the 1983 AG opinion, SARB conducts public hearings
- SARB does not, however, hold taxpayer information confidential as required under the statutes and as advised by the AG opinion
- All information would be available to SARB and the municipalities during SARB proceedings if taxpayer information was treated as confidential in accordance with applicable statutes and the AG opinion



Subpoena Power

- AS 43.05.040(a) grants subpoena power to DOR
- Subpoenas are expensive and time consuming
- Subpoenas can be appealed, or DOR may seek a court order to compel a taxpayer to comply with a subpoena
- As such, subpoenas are litigated and can be litigated all the way to the Alaska Supreme Court
- Subpoenas have been utilized by DOR but only when deemed necessary
- Subpoenas have not been used on property tax issues due to statutory deadlines and the reality that any confidential information received under a subpoena would not be reviewed by SARB upon appeal of the Department's assessments



Joint Administrative Agreements

- AS 43.56.060(g) allows the Department to “enter into agreements with a municipality for the cooperative or joint administration of the assessing authority . . .”
- DOR had an agreement for several years with North Slope Borough (NSB)
- DOR ended the agreement with the NSB when NSB’s only two employees working under the agreement retired and the NSB did not hire new employees to continue the cooperative joint administration of the property tax function
- DOR previously engaged in discussions with other municipalities up through 2007 for Memorandums of Understanding (“MOUs”), but agreement on MOU terms could not be reached primarily due to the requirement that the municipalities must provide resources to assist in the assessment function. Since that time, Municipalities have not requested MOUs.



Municipal Codes

- NSB Ordinance - Chapter 3.27.050 states in part
 - "(A) Every person having ownership or control of or an interest in AS 43.56 property must file with the Borough Assessor a copy of the return filed with the Department of Revenue..."
 - "(B) The Assessor is not bound to accept the return rendered by the Department of Revenue as correct but may make an independent investigation whether or not a return has been filed on the AS 43.56 property. In either case, the Assessor may make his own valuation of the AS 43.56 property, which is *prima facie* evidence of value."
- Valdez Ordinance – Chapter 3.28.020 states in part
 - "(A) Every person having ownership or control of or an interest in property taxable under Alaska Statutes chapter 43.56..., shall file with the city assessor a copy of the Alaska Statutes Chapter 43.56 property tax return filed with the State of Alaska Department of Revenue..."
 - "(B) The Assessor is not bound to accept the return rendered to the Department of Revenue as correct. He may make an independent investigation of Alaska Statutes Chapter 43.56 property... In either case, the assessor may make his own valuation of the Alaska Statutes Chapter 43.56 property, which is *prima facie* evidence of value."
- The Department does not know if the Fairbanks North Star Borough has a similar provision, but if not, it certainly has the ability to enact one
- Existing municipal ordinances give municipalities the ability to conduct their own investigations regarding property tax assessments. To DOR's knowledge, municipalities have never done this.



Benefits of Confidentiality

- Leads to cooperation between DOR and its taxpayers
- Fosters trust in us by our taxpayers
- Lends credibility to the Division
- Aids us in obtaining information without costly litigation



Summary of Confidentiality

- Confidentiality statutes are very broad; all information regarding business affairs of any person is confidential
- SARB does not put measures in place, such as issuing protective orders, to protect taxpayer confidential information in administering its AS 43.56 property assessment appeal hearings
- Municipalities have access to all taxpayer information at Superior Court under protective order. In addition, some municipalities have ordinances which allow them to conduct their own investigations regarding property taxes.
- DOR is willing to enter into agreements with municipalities under 43.56.060(g), but in so doing municipalities must assist cooperatively in the assessment process
- The intent of AS 43.56.060(g) is not, nor are MOU agreements executed, to simply to give municipalities information.



Questions?