



AMENDMENT # 6

OFFERED IN THE HOUSE
TO: CSHB 118(FIN)

BY REPRESENTATIVE GRUENBERG

1 Page 2, lines 12 - 18:

2 Delete all material and insert:

3 "(e) The department shall make an annual report to the legislature that states
4 the number of taxpayers who claimed credits under this section and the total amount
5 of credits granted to all taxpayers under this section in the immediately preceding
6 year.

7 (f) Notwithstanding AS 40.25.100 and AS 43.05.230(a), at the time the report
8 is made to the legislature under (e) of this section, the department shall submit a
9 confidential report to the legislature that states, for each taxpayer, the amount of credit
10 granted, a description of each qualified research and development project for which
11 the credit was granted, and the number of employees conducting the qualified research
12 and development for which the credit was granted. Although the report submitted
13 under this subsection must include information for each taxpayer that has been granted
14 a credit under this section, the report may not include the name of a taxpayer."

15

16 Reletter the following subsection accordingly.

Collateral references. — “Records” of agency which must be made available under state freedom of information act. 27 ALR4th 680.

Sec. 40.25.100. Disposition of tax information. (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.

(b) If a copy of a record of tax information is requested under (a) of this section for the purposes of child support administration, the copy may be released only to the child support services agency created in AS 25.27.010 or a child support enforcement agency of another state. The Department of Revenue shall provide the requesting agency with a copy of the record. The requesting agency receiving information under this subsection may use it only for child support purposes authorized under law. (§ 3.21 ch 101 SLA 1962; am § 2 ch 108 SLA 1996; am §§ 10, 11 ch 87 SLA 1997; am § 1 ch 37 SLA 1998; am § 61 ch 163 SLA 2004)

Revisor's notes. — Formerly AS 09.25.100. Re-numbered in 2000.

In 2004, “child support enforcement agency created in AS 25.27.010” was changed to “child support services agency created in AS 25.27.010” in (b) of this section in accordance with § 12(a), ch. 107, SLA 2004.

Opinions of attorney general. — The department can publish decisions that have not been appealed or for which confidentiality was not voluntarily waived if it establishes guidelines for publication to protect a taxpayer's identity. June 16, 1983 Op. Att'y Gen.

Determinations of the State Assessment Review Board made under AS 43.56.130 (oil and gas property taxes) are public records and are not subject to the confidentiality requirements of AS 09.25.100 (now AS 40.25.100) and AS 43.05.230. Were the procedures and records involved in property tax assessment not public, the taxpayer would be unable to determine whether a particular property was fairly valued in comparison to other properties. Also, the entire record on which the determinations are based is open to the public, since the hearing is open to third parties. July 11, 1983 Op. Att'y Gen.

Corporate records relating to a mining development project submitted to the Department of Revenue by a mining task force were not received “under law”; i.e., they were not related to the department's statutory duties, and were not received in connection with the transaction of official business, meaning, as part of the department's statutorily established duties and responsibilities. Thus, they were not records of the department and could not be protected by statutes relating to confidentiality of revenue records, but the portion of the information which was bona fide proprietary or trade secret in nature may have been confidential under Art. I, sec. 22 of the Alaska Constitution. Nov. 3, 1983 Op. Att'y Gen.

Documents received under two Department of Revenue programs not covered by Title 43 — permits for games of chance and contests of skill (AS 05.15) and fishing and hunting licenses (AS 16.05) — reveal none of the particulars of a taxpayer's business or affairs, relate to licensed activity, are public records, and are not made confidential by this section. July 9, 1984 Op. Att'y Gen.

The Department of Revenue could disclose information obtained in the audit of Big Three Industries, Inc., to Big Three Lincoln Alaska, Inc., in the course of the hearing process on Big Three Lincoln's administrative appeal of the determination that it was engaged in a unitary business with Big Three Industries. September 10, 1986 Op. Att'y Gen.

The Department of Revenue must provide to the municipality of Anchorage, from permanent fund dividend (PFD) application records, addresses of Anchorage residents identified by the municipality who owe municipal fines, as the public purpose served — facilitating the collection of public funds — outweighs any possible privacy interests of the individual debtors. Information contained in (PFD) applications is not protected from disclosure under either this section or AS 43.05.230 (disclosure of tax returns) and, although most of the information contained in PFD applications may, in some cases, be kept confidential under the privacy provisions of the Alaska Constitution (Art. I, sec. 22), the names of PFD applicants are not protected under the constitution. With respect to all other information contained on a PFD application, the department must analyze each public records request on a case-by-case basis, balancing the privacy interest of the individual against the public interest in disclosure. July 15, 1987 Op. Att'y Gen.

Under limited circumstances, the Department of Revenue may disclose confidential tax records to members of the legislative branch under this section

and AS 43.05.230. January 12, 1989 Op. Att'y Gen., overruling 1986 Inf. Att'y Gen. Op. (Jan. 17) to the distinguishing 1972 Op. Att'y Gen. No. 8 (Nov. 21) and extent that it conflicts with this opinion.

NOTES TO DECISIONS

Cited in Rollins v. Ulmer, 13 P.3d 715 (Alaska 2000).

Collateral references. — Validity, construction, and effect of state laws requiring state officials to protect confidentiality of income tax returns and information. 1 ALR4th 959.

Sec. 40.25.105. Disclosure of information for compliance with the tobacco product Master Settlement Agreement. (a) Notwithstanding the provisions of AS 40.25.100(a), the Department of Revenue may disclose information submitted to the Department of Revenue relating to cigarette and tobacco products, cigarette and tobacco product manufacturers, and cigarette and tobacco product retailers to the attorney general and to other parties as the Department of Revenue determines necessary to monitor and enforce compliance by cigarette and tobacco product manufacturers with the tobacco product Master Settlement Agreement described in AS 45.53.010 — 45.53.100.

(b) A person receiving information under this section shall maintain the confidentiality that the Department of Revenue is required to extend under AS 43.05.230 to the returns, reports, documents, determinations, and workpapers furnished to that person under this section. (§ 2 ch 88 SLA 2001)

Collateral references. — Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs. 118 ALR5th 1.

Sec. 40.25.110. Public records open to inspection and copying; fees. (a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of \$5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics and the library archives in the Department of Education and Early Development may continue to charge the same fees that they were charging on September 25, 1990, for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the agency immediately before September 25, 1990. Notwithstanding other provisions of this section to the contrary, the Department of Commerce, Community, and Economic Development may continue to charge the same fees that the former Department of Commerce and Economic Development was charging on July 1, 1999, for performing record searches for matters related to banking, securities, and corporations, and may increase the fees as necessary to recover

Editor's notes. — Section 6, ch. 23, SLA 1991, provides that, beginning on October 31, 1991, interest accrues on underpayments and overpayments of taxes, and on any interest accrued on them before October 31, 1991, "at the rates and in the manner specified in AS 43.05.225, as amended by § 2, ch. 23, SLA 1991."

Legislative history reports. — For the governor's transmittal letter concerning the amendment of this section by § 2, ch. 23, SLA 1991 (CSSB 158 (FIN)(eff am)), see 1991 Senate Journal, p. 405.

NOTES TO DECISIONS

Cited in *Vokacek v. Vokacek*, 933 P.2d 544 (Alaska 1997).

Sec. 43.05.230. Disclosure of tax returns and reports. (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.

(b) The department, upon written request, shall furnish to the taxpayer a copy of the taxpayer's tax return upon payment of a fee of \$1 per page.

(c) The department may permit the proper officer of the United States or of a state, territory or possession of the United States or of Canada or of a province or territory of Canada, or the officer's authorized representative, to inspect tax returns or reports filed with the department, or may furnish to the officer or representative a copy of the tax return, if the other jurisdiction grants substantially similar privileges to the department or its representative or to counsel for the state, and if the department determines that the other jurisdiction provides adequate safeguards for the confidentiality of the returns and reports, and that the returns and reports will be used for tax purposes only. The department may also permit the employment security division of the state Department of Labor and Workforce Development to inspect tax returns or reports filed with the department or may furnish a copy of the tax returns for tax purposes only.

(d) The commissioner may furnish to the Multistate Tax Commission or other authorized agent information contained in the tax returns, reports, related schedules and documents filed under an audit or investigation of a multistate business made by the department. This information may be furnished for tax purposes only. The Multistate Tax Commission or other authorized agent may make the information available to the tax officials of other states, the District of Columbia, and the United States and its territories for tax purposes only.

(e) Nothing in this section prohibits the publication of statistics so classified as to prevent the identification of particular returns or reports or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information which in the opinion of the department may assist in the collection of delinquent taxes.

(f) A wilful violation of the provisions of this section or of a condition imposed under AS 43.55.040(1)(B) is punishable by a fine of not more than \$5,000, or by imprisonment for not more than two years, or by both.

(g) The information contained in a license issued by the commissioner of revenue or the commissioner of commerce, community, and economic development under AS 43.50, AS 43.60, AS 43.65, AS 43.70, and AS 43.75 is public information.