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Budget and Audit

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 58 (Finance) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to confidential tax information;  
7 relating to the filing of tax returns; and providing  
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature  
11 finds that

12 (1) the majority of the state's revenue is derived from taxa-  
13 tion;

14 (2) tax revenue enables the state to provide essential services  
15 to the citizens of the state to ensure the public health and welfare;

16 (3) the elected representatives of the people of the state must  
17 be assured that the state is receiving all of the income to which it is  
18 entitled and that the tax laws are operating in the manner intended by the  
19 legislature;

20 (4) the legislature must exercise its oversight authority to  
21 ensure that tax revenue collection by the Department of Revenue is effi-  
22 cient, fair, prompt, and in the best interest of the state;

23 (5) there is a legitimate and compelling governmental interest  
24 in the legislature having adequate access to tax-related information to  
25 allow responsible oversight;

26 (6) without sufficient information, the legislature cannot  
27 adequately determine that the state's tax revenue collection functions are  
28 properly administered and that tax revenue due the state is promptly re-  
29 ceived;

1 (7) tax returns and return information contain confidential  
2 information, often regarding sensitive business information;

3 (8) taxpayers have protections against public disclosure of  
4 certain tax information;

5 (9) exchange agreements with the Internal Revenue Service re-  
6 quire that certain tax information not be publicly disclosed;

7 (10) protection of confidentiality fosters full disclosure by  
8 taxpayers to taxing authorities and therefore promotes effective adminis-  
9 tration of tax programs; and

10 (11) legislators and legislative employees who improperly dis-  
11 close confidential tax information should be subject to the same sanctions  
12 imposed against executive branch employees.

13 (b) The purpose of this Act is to ensure that

14 (1) the state is receiving all the tax revenue due the state;

15 (2) oversight of the tax revenue collection function is effec-  
16 tively provided;

17 (3) tax revenue due to the state is available to provide for the  
18 public health and welfare of the citizens of the state;

19 (4) taxpayers are protected from improper disclosure of tax  
20 information;

21 (5) the exchange agreements with the Internal Revenue Service  
22 regarding tax information are not jeopardized;

23 (6) tax programs are administered fairly; and

24 (7) the right of the people to privacy is recognized and may not  
25 be infringed.

26 \* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to  
27 read:

28 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or  
29 former employee or agent of the legislature may not disclose tax

1 information contained in a report or return filed under AS 43.05.230  
2 and furnished to the person under AS 43.05.232.

3 \* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

4 (b) A person to whom this chapter applies may not disclose tax  
5 information contained in a report or a return filed under AS 43 and  
6 furnished to the person under AS 43.05.232.

7 \* Sec. 4. AS 24.60 is amended by adding a new section to read:

8 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE.  
9 Notwithstanding AS 24.60.170, if a complaint before the committee  
10 involves an allegation that a person to whom this chapter applies has  
11 disclosed tax information contained in a report or return filed under  
12 AS 43 with the Department of Revenue and furnished to the person under  
13 AS 43.05.232, and if the taxpayer or a third party whose tax informa-  
14 tion is alleged to have been improperly disclosed does not agree to  
15 the public disclosure of the identity of the taxpayer, the third  
16 party, or the tax information,

17 (1) the hearing may not be held in open session;

18 (2) a transcript containing confidential tax information  
19 shall be edited to prevent the disclosure of the confidential informa-  
20 tion;

21 (3) a decision, if made public, shall be edited to prevent  
22 the disclosure of the tax information and to protect the identity of  
23 the taxpayer or the third party; and

24 (4) a public statement may not contain information identi-  
25 fying the taxpayer, a third party, or the tax information.

26 \* Sec. 5. AS 43.05.230(a) is amended to read:

27 (a) It is unlawful for a current or former officer, employee, or  
28 agent of the state to divulge the amount of income or the particulars  
29 set out or disclosed in a report or return made under this title,

1       except

2               (1) in connection with official investigations or proceed-  
3       ings of the department, whether judicial or administrative, involving  
4       taxes due under this title;

5               (2) in connection with official investigations or proceed-  
6       ings of the child support enforcement agency, whether judicial or  
7       administrative, involving child support obligations imposed or im-  
8       posable under AS 25 or AS 47;

9               (3) as provided in AS 38.05.036 pertaining to audit func-  
10      tions; and

11              (4) as otherwise provided in this section or in AS 43.-  
12      05.232.

13   \* Sec. 6. AS 43.05.230(f) is repealed and reenacted to read:

14              (f) A person who knowingly violates a provision of this section  
15      is guilty of a class A misdemeanor. A person whose gross negligence  
16      results in a violation of this section is subject to a civil penalty  
17      of \$5,000.

18   \* Sec. 7. AS 43.05 is amended by adding a new section to read:

19              Sec. 43.05.232. DISCLOSURE OF CONFIDENTIAL TAX RETURNS AND  
20      RETURN INFORMATION TO THE LEGISLATURE. (a) Confidential tax returns  
21      and return information may not be requested by a legislative committee  
22      under (b) of this section or transferred to a legislative committee  
23      under (c) of this section,

24              (1) unless the purpose of the committee's request under (b)  
25      of this section or of the transfer under (c) of this section is

26                      (A) to assist the committee in carrying out its re-  
27                      sponsibilities to consider tax legislation;

28                      (B) to oversee the effective and efficient adminis-  
29                      tration of the state's tax laws, including the review of audits,

1           litigation, or settlements; or

2                           (C) to estimate future state revenue;

3                   (2) if the purpose of the request or transfer is to direct  
4           the executive branch in its audit, litigation, or settlement efforts,  
5           or to collect information to embarrass, harass, or discriminate  
6           against a taxpayer.

7                   (b) After a legislative committee identifies the scope of an  
8           investigation or inquiry relating to matters of taxation, and after  
9           adoption by either house of the legislature of a simple resolution  
10          giving the committee authority to receive confidential tax informa-  
11          tion, the committee chair or co-chair may request confidential tax  
12          returns and return information and the commissioner of revenue shall  
13          provide the requested returns or return information. The request  
14          shall be in writing and may identify a particular taxpayer. During  
15          the interim between legislative sessions, the chair or co-chair of the  
16          Legislative Budget and Audit Committee may request confidential tax  
17          returns and return information under this subsection without a simple  
18          resolution, if a majority of the members of the Legislative Budget and  
19          Audit Committee vote to approve making the request.

20                   (c) When consistent with the purposes set out in (a) of this  
21          section, the commissioner may transfer unrequested confidential tax-  
22          payer returns or return information to a legislative committee after  
23          making a written determination that the transfer of the return or  
24          return information is in the best interest of the state. Before the  
25          return or return information is transferred, the commissioner shall  
26          provide a copy of the commissioner's determination to the taxpayer  
27          whose return or return information is to be transferred. In determin-  
28          ing whether the transfer of the return or return information is in the  
29          best interest of the state, the commissioner shall consider

1           (1) if the legislative committee is reviewing the adminis-  
2           tration of a tax imposed by this title, whether the return or return  
3           information would demonstrate the application of a tax;

4           (2) if the legislative committee is considering adding a  
5           new tax or amending an existing tax, whether the return or return  
6           information would demonstrate the effect on taxpayers of a change in  
7           tax law;

8           (3) whether the return or return information would assist  
9           the legislative committee in estimating future state revenue;

10          (4) whether the return or return information would clarify  
11          or rectify information provided by a taxpayer to a legislative commit-  
12          tee;

13          (5) the potential harm the taxpayer may suffer by the  
14          possible subsequent disclosure of the return or return information  
15          illegally;

16          (6) any other interest of the taxpayer in avoiding the  
17          transfer of the return or return information.

18          (d) A legislative committee shall consider tax returns and  
19          return information transferred under (b) or (c) of this section in  
20          executive session only, unless the taxpayer and any third party whose  
21          tax return or return information is being considered in conjunction  
22          with the taxpayer's return or return information consent in writing to  
23          a disclosure in open session. The executive session must be open to  
24          all legislators. The committee chair or co-chair may designate legis-  
25          lative employees and agents to inspect the confidential tax returns  
26          and return information, but the chair or co-chair shall seek to mini-  
27          mize the number of employees and agents designated. The designated  
28          employees and agents may attend the executive session. The chair or  
29          co-chair may allow a taxpayer whose confidential tax return or return

1 information is being considered to attend the portion of the executive  
2 session that considers that taxpayer's confidential tax return or  
3 return information.

4 (e) When confidential tax returns or return information concern-  
5 ing a specific taxpayer are provided to a legislative committee under  
6 this section, the commissioner shall notify the taxpayer of the con-  
7 tent and delivery of the return and return information to the commit-  
8 tee.

9 (f) Before providing confidential tax return or return informa-  
10 tion under (b) or (c) of this section, the commissioner shall review  
11 the purpose of the proposed transfer of the return or return informa-  
12 tion to determine what types of confidential tax return or return  
13 information will provide the needed information. If more than one  
14 type of confidential tax return or return information will provide the  
15 needed information, the commissioner shall choose the return or return  
16 information that, in the commissioner's discretion, is the least  
17 commercially sensitive.

18 (g) Disclosure contrary to the provisions of this section by a  
19 member or former member of the legislature or by a present or former  
20 employee or agent of the legislature of a return or return information  
21 that is confidential under AS 43.05.230 and transferred to the legis-  
22 lature under this section is a violation of AS 43.05.230. A member of  
23 the legislature or an employee or agent of the legislature, before  
24 receiving or reviewing a return or return information provided by the  
25 commissioner under (b) or (c) of this section, shall, on a form pre-  
26 pared by the commissioner,

27 (1) acknowledge that the return or return information is  
28 confidential and that a disclosure of the return or return information  
29 contrary to the provisions of this section is prohibited by law; and

1                   (2) execute an agreement with the department to keep the  
2 return or return information confidential, to abide by regulations  
3 adopted by the department under (h) of this section, and to return the  
4 documents to the department.

5                   (h) The commissioner shall adopt regulations governing the  
6 transmittal, receipt, safekeeping, duplication, accounting for, and  
7 return of the confidential tax return and return information trans-  
8 ferred under (b) and (c) of this section.

9                   (i) This section does not permit the transfer to the legislature  
10 of confidential tax returns and return information provided by the  
11 Internal Revenue Service under exchange agreements with the depart-  
12 ment.

13                   (j) In this section

14                   (1) "return" has the meaning given in 26 U.S.C. 6103(b)(1),  
15 except that "secretary" is read as "department" and "this title" means  
16 AS 43;

17                   (2) "return information" has the meaning given in 26 U.S.C.  
18 6103(b)(2)(A), except that "secretary" is read as "department" and  
19 "this title" means AS 43.

20 \* Sec. 8. AS 43.20.030 is amended by adding a new subsection to read:

21                   (h) The department may grant an extension for filing a return  
22 required under this section. The extension may not exceed 30 days  
23 beyond the filing date or the extension granted to the taxpayer by the  
24 Internal Revenue Service for filing the taxpayer's federal income tax  
25 return, whichever is later. Granting the extension does not affect  
26 the due dates for payment of the tax.

27 \* Sec. 9. AS 43.05.232, as enacted by sec. 7 of this Act, applies to  
28 all confidential tax returns and return information in the possession of  
29 the department on or after the effective date of this Act.

1 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).