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Budget and Audit

1 IN THE HOUSE BY THE SENATE SPECIAL COMMITTEE
ON OIL AND GAS
2 SENATE CS FOR CS FOR HOUSE BILL NO. 58 (O&G)
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 and
2 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. If the negligence of a member or
16 former member of the legislature, or a present or former employee or
17 agent of the legislature results in a violation of this section, the
18 member, employee, or agent is subject to a civil penalty of \$5,000.
19 The department shall enforce this section and collect the civil penal-
20 ty established by this subsection.

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

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

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

29 (A) to assist the committee in carrying out its

1 responsibilities to consider tax legislation;

2 (B) to oversee the effective and efficient adminis-
3 tration of the state's tax laws, including the review of audits,
4 litigation, or settlements; or

5 (C) to estimate future state revenue;

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

10 (b) After a legislative committee identifies the scope of an
11 investigation or inquiry relating to matters of taxation, and after
12 adoption by either house of the legislature of a simple resolution
13 giving the committee authority to receive confidential tax informa-
14 tion, the committee chair or co-chair may request confidential tax
15 returns and return information and the commissioner of revenue shall
16 provide the requested returns or return information. The request
17 shall be in writing and may identify a particular taxpayer.

18 (c) When consistent with the purposes set out in (a) of this
19 section, the commissioner may transfer unrequested confidential tax-
20 payer returns or return information to a legislative committee after
21 making a written determination that the transfer of the return or
22 return information is in the best interest of the state. In determin-
23 ing whether the transfer of the return or return information is in the
24 best interest of the state, the commissioner shall consider

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

28 (2) if the legislative committee is considering adding a
29 new tax or amending an existing tax, whether the return or return

1 information would demonstrate the effect on taxpayers of a change in
2 tax law;

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

5 (4) whether the return or return information would clarify
6 or rectify information provided by a taxpayer to a legislative commit-
7 tee;

8 (5) the potential harm the taxpayer may suffer by the
9 possible subsequent disclosure of the return or return information
10 illegally;

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

13 (d) Before providing confidential tax return or return informa-
14 tion in response to a legislative request under (b) of this section or
15 under a commissioner's determination made under (c) of this section,
16 the commissioner shall review the purpose of the proposed transfer of
17 the return or return information to determine what types of confiden-
18 tial tax return or return information will provide the needed informa-
19 tion. If more than one type of confidential tax return or return
20 information will provide the needed information, the commissioner
21 shall choose the return or return information that, in the commis-
22 sioner's discretion, is the least commercially sensitive. Whenever
23 possible, instead of transactional documents, the commissioner shall
24 transfer summary documents or analyses that have been prepared by the
25 department. In this subsection, "summary documents or analyses"
26 includes audit narratives, informal conference decisions, and formal
27 hearing decisions.

28 (e) Before transferring the return or return information under
29 (b) or (c) of this section, the commissioner shall notify the taxpayer

1 whose return or return information is to be transferred of the pro-
2 posed transfer and the content of the return or return information to
3 be transferred, and, if the transfer is under (c) of this section,
4 provide the taxpayer with a copy of the commissioner's determination.
5 Within 10 days after receiving the determination and notification of a
6 transfer proposed under (c) of this section, or within five days after
7 receiving the notification of a transfer proposed under (b) of this
8 section, the taxpayer may submit additional analysis, comment, or
9 other information to the department, unless the legislative request or
10 commissioner's determination is made after the 84th day of a regular
11 session of the legislature or during a special session of the legisla-
12 ture, in which case the time period for the taxpayer to submit addi-
13 tional information is three days. When the period for submitting
14 additional information has expired, the commissioner shall transfer to
15 the committee the return or return information, including the addi-
16 tional information, if any, received by the commissioner from the
17 taxpayer under this subsection. A taxpayer may waive the provisions
18 of this subsection by providing the commissioner with a written waiver
19 signed by the taxpayer.

20 (f) If, in addition to the additional analysis, comment, and
21 other information filed by the taxpayer with the department under (e)
22 of this section, a taxpayer wants to provide a legislative committee
23 with analysis, comment, and other written information on the tax-
24 payer's return or return information being considered by the committee
25 under this section, the taxpayer shall file the information with the
26 department and request that the department transfer the information to
27 the legislative committee. The department shall transfer the informa-
28 tion to the committee within 24 hours after receiving the information
29 and the request.

1 (g) A legislative committee shall consider tax returns and
2 return information transferred under (b), (c), (e), or (f) of this
3 section in executive session only, unless the taxpayer and any third
4 party whose tax return or return information is being considered in
5 conjunction with the taxpayer's return or return information consent
6 in writing to a disclosure in open session. The executive session
7 must be open to all legislators. The committee chair or co-chair may
8 designate legislative employees and agents to inspect the confidential
9 tax returns and return information, but the chair or co-chair shall
10 limit the number of employees and agents designated. The designated
11 employees and agents may attend the executive session. The chair or
12 co-chair may allow a taxpayer whose confidential tax return or return
13 information is being considered to attend the portion of the executive
14 session that considers that taxpayer's confidential tax return or
15 return information.

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

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

28 (2) execute an agreement with the department to keep the
29 return or return information confidential, to abide by regulations

1 adopted by the department under (i) of this section, and to return the
2 documents to the department.

3 (i) The commissioner shall adopt regulations governing the
4 transmittal, receipt, safekeeping, removal from storage or filing
5 location, accounting for possession, and return of the confidential
6 tax return and return information transferred under (b), (c), and (e)
7 of this section. The department shall have the exclusive responsibil-
8 ity for the duplication and numbering of the confidential tax return
9 and return information provided to the legislature under this section.

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

14 (k) In this section

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

18 (2) "return information" has the meaning given in 26 U.S.C.
19 6103(b)(2)(A), except that "secretary" is read as "department" and
20 "this title" means AS 43; "return information" does not include trans-
21 actional documents prepared during a tax period that ended within two
22 years of the date of the transfer of the "return information" under
23 (b), (c), or (e) of this section;

24 (3) "transactional document" means a document that relates
25 to the sale, exchange, or other transfer by a taxpayer of real proper-
26 ty or tangible or intangible personal property and that

27 (A) constitutes all or part of a contract or agreement
28 concerning the sale, exchange, or other transfer, including
29 contract amendments, billings, and invoices; or

1 (B) summarizes one or more of the terms of the sale,
2 exchange, or other transfer.

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

4 (h) The department may grant a reasonable extension of time for
5 filing a return under this section. The extension may not be for more
6 than 30 days beyond the maximum period allowable under 26 U.S.C.
7 (Internal Revenue Code) for extensions of time to file federal income
8 tax returns. An extension of time to file a return does not affect
9 the date when the payment is due.

10 * Sec. 9. AS 43.05.232, as added by sec. 7 of this Act, applies to all
11 confidential tax returns and return information in the possession of the
12 department on or after the effective date of this Act.

13 * Sec. 10. The Department of Revenue shall adopt the regulations re-
14 quired by AS 43.05.232(i), enacted by sec. 7 of this Act, before the de-
15 partment transfers a return or return information to a legislative commit-
16 tee under AS 43.05.232.

17 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).