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Budget and Audit

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 58 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND 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) tax revenue is essential to enable the state to provide  
13 essential services for its citizens and to ensure the public health and  
14 welfare;  
15 (2) the great majority of the state's tax revenue is derived  
16 from certain critical taxes imposed on taxpayers in the oil and gas indus-  
17 try, including in particular, the production and severance taxes levied  
18 under AS 43.55 and AS 43.57, the income taxes levied under AS 43.20 when  
19 AS 43.20.072 applies, and the income taxes levied under former AS 43.21;  
20 (3) the relatively small number of taxpayers of these critical  
21 taxes often makes it difficult or impossible for the Department of Revenue  
22 to review the administration and operation of these taxes with the legisla-  
23 ture without disclosing information that allows a particular taxpayer to be  
24 identified;  
25 (4) the legislature must be able to review and supervise the  
26 administration and operation of these critical taxes in order to be assured  
27 that the state is receiving its proper tax revenue and that these critical  
28 tax laws are operating in the manner intended by the legislature;  
29 (5) the legislature must exercise its supervisory authority to

1 ensure that the collection of this critical tax revenue by the Department  
2 of Revenue is efficient, fair, prompt, and in the best interest of the  
3 state;

4           (6) tax returns and return information are confidential and  
5 often contain information of a proprietary or sensitive business nature;

6           (7) taxpayers are entitled to protections against public disclo-  
7 sure of their confidential tax returns and return information;

8           (8) exchange agreements with the Internal Revenue Service pre-  
9 vent certain tax information from being publicly disclosed;

10           (9) protection of confidential tax returns and return informa-  
11 tion fosters and allows for full disclosure by taxpayers to taxing author-  
12 ities and, therefore, promotes effective administration of, and compliance  
13 with, tax programs; and

14           (10) legislators and legislative employees who are given access  
15 to confidential tax returns and return information and who improperly  
16 breach that confidentiality by disclosing or allowing the information to be  
17 disclosed should be subject to the same sanctions that are imposed for the  
18 violations by employees of the executive branch.

19           (b) The purposes of this Act are to ensure that

20           (1) the public health and welfare of the citizens of the state  
21 are provided for through the receipt and expeditious collection of all tax  
22 revenue that the state is entitled to receive under its tax laws;

23           (2) the legislature is able to fulfill effectively its respon-  
24 sibilities to monitor and review the administration of the state's tax laws  
25 and to consider changes that may become necessary or desirable from time-  
26 to-time for those laws;

27           (3) taxpayers are protected from improper disclosure of confi-  
28 dential tax returns and return information;

29           (4) the exchange agreements with the Internal Revenue Service

1 regarding tax information are not jeopardized;

2 (5) the tax laws of the state are administered fairly and uni-  
3 formly; and

4 (6) the right to privacy is recognized, respected, and properly  
5 protected.

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

8 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or  
9 former employee or agent of the legislature may not disclose confiden-  
10 tial tax information contained in a report or return filed under  
11 AS 43, or the former provisions of AS 43, without the prior consent of  
12 the person whose tax information is contained in the report or return.

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

14 (b) A person to whom this chapter applies may not disclose or  
15 use for personal gain or for the personal gain of another person the  
16 confidential tax information contained in a report or a return filed  
17 under AS 43, or the former provisions of AS 43, and furnished to the  
18 person under AS 43.05.231 - 43.05.239. A violation of this subsection  
19 is a breach of ethics of the most serious kind.

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

21 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. (a)  
22 If a complaint before the committee involves an allegation that a  
23 person to whom this chapter applies has disclosed confidential tax  
24 information contained in a report or return filed under AS 43, or the  
25 former provisions of AS 43, with the Department of Revenue and fur-  
26 nished to the person under AS 43.05.231 - 43.05.239, and if the tax-  
27 payer or a third party whose tax information is alleged to have been  
28 improperly disclosed does not consent to the public disclosure of the  
29 tax information or of the identity of the taxpayer or third party, the

1 proceedings of the committee are modified as follows:

2 (1) the complaint may be initiated and filed at any time  
3 within one year of the alleged disclosure;

4 (2) the hearing may not be held in open session;

5 (3) proceedings on the complaint that are pending before  
6 the committee on the 60th day before a state primary or general elec-  
7 tion are not stayed;

8 (4) before being made public, a transcript containing the  
9 information shall be edited to prevent the disclosure of the informa-  
10 tion and the identity of the taxpayer or the third party;

11 (5) a decision, if made public, shall be edited to prevent  
12 the disclosure of the information and to protect the identity of the  
13 taxpayer or the third party; and

14 (6) a public statement may not contain information identi-  
15 fying the taxpayer, a third party, or the information.

16 (b) A person whose confidential tax information is alleged to  
17 have been improperly disclosed may consent to the public disclosure of  
18 the person's identity and of certain portions of the information,  
19 without waiving the right to keep confidential the remainder of the  
20 information. The release must be in writing unless given orally by  
21 the person on the record before the committee.

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

23 (a) It is unlawful for a current or former officer, legislator,  
24 employee, or agent of the state to divulge the amount of income or the  
25 particulars set out or disclosed in a report or return made under this  
26 title, except

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

1 (2) in connection with official investigations or proceed-  
2 ings of the child support enforcement agency, whether judicial or  
3 administrative, involving child support obligations imposed or im-  
4 possible under AS 25 or AS 47;

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

7 (4) as otherwise provided in this section or in AS 43.-  
8 05.231 - 43.05.239.

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

10 (f) A person who knowingly violates a provision of this section  
11 is guilty of a class C felony. If the negligence of a member or  
12 former member of the legislature, or a present or former employee or  
13 agent of the legislature results in a violation of this section, the  
14 member, employee, or agent of the legislature is subject to a civil  
15 penalty of \$5,000. The department shall enforce this section and  
16 collect the civil penalty established by this subsection. This sec-  
17 tion is not intended to impair, limit, or abolish a right, claim, or  
18 cause of action that a person may have whose confidential information  
19 is unlawfully disclosed.

20 \* Sec. 7. AS 43.05 is amended by adding new sections to read:

21 Sec. 43.05.231. LEGISLATIVE REQUEST FOR TAX INFORMATION. Sub-  
22 ject to AS 43.05.233, after a legislative committee identifies the  
23 scope of an investigation or inquiry relating to taxes, and after  
24 adoption by either house of the legislature of a simple resolution  
25 giving the committee authority to receive confidential tax information  
26 about critical taxes, the committee chair or co-chair may request  
27 confidential tax returns and return information relating to critical  
28 taxes, and the commissioner of revenue shall provide the requested tax  
29 returns or return information under this section. The request shall

1 be in writing and may identify a particular taxpayer.

2 Sec. 43.05.232. COMMISSIONER'S TRANSFER OF UNREQUESTED TAX  
3 INFORMATION. (a) Subject to AS 43.05.233, the commissioner may  
4 transfer unrequested confidential tax returns or return information  
5 regarding critical taxes to a legislative committee after making a  
6 written determination that the transfer of the tax returns or return  
7 information is in the best interest of the state.

8 (b) In making a determination under (a) of this section, the  
9 commissioner shall consider

10 (1) if the legislative committee is reviewing the adminis-  
11 tration of a critical tax, whether the tax returns or return informa-  
12 tion would demonstrate the application of a critical tax more clearly  
13 than a hypothetical example would, and if so, whether the aspects of  
14 tax administration that would be more clearly demonstrated are materi-  
15 al and significant to the committee's review;

16 (2) if the legislative committee is considering adding a  
17 new tax or amending an existing tax, how necessary it is to transfer  
18 tax returns or return information regarding critical taxes in order to  
19 demonstrate the effect on taxpayers of the tax law change being con-  
20 sidered;

21 (3) whether the tax returns or return information would  
22 clarify or rectify information provided by a taxpayer to a legislative  
23 committee;

24 (4) the potential harm the taxpayer may suffer if the  
25 taxpayer's tax returns or return information is subsequently disclosed  
26 illegally;

27 (5) any other interest of the taxpayer in avoiding the  
28 transfer of the tax returns or return information;

29 (6) if a taxpayer's tax returns or return information is

1 being transferred at the taxpayer's request under AS 43.05.235(e),  
2 whether it is necessary or appropriate to supplement the tax returns  
3 or return information in order to give the committee a balanced and  
4 complete presentation.

5 Sec. 43.05.233. GENERAL LIMITATIONS ON REQUESTS AND TRANSFERS.

6 (a) Confidential tax returns and return information for critical  
7 taxes may be requested by a legislative committee under AS 43.05.231  
8 or transferred to a legislative committee under AS 43.05.232 only if  
9 the purpose of the committee's request or transfer is to

10 (1) assist the committee in carrying out its responsibil-  
11 ities to consider tax legislation;

12 (2) oversee the effective and efficient administration of  
13 the state's laws regarding critical taxes, including the review of  
14 audits, litigation, or settlements; or

15 (3) estimate future state revenue.

16 (b) A request or transfer may not be made under AS 43.05.231 or  
17 43.05.232 if the purpose of the request or transfer is to direct the  
18 executive branch in its audit, litigation, or settlement efforts, or  
19 to collect information to embarrass, harass, or discriminate against a  
20 taxpayer.

21 (c) AS 43.05.231 - 43.05.239 do not permit the transfer to a  
22 legislature of confidential tax returns and return information provid-  
23 ed by the Internal Revenue Service under exchange agreements with the  
24 department, or the transfer to a legislative committee of confidential  
25 tax returns and return information for taxes other than critical  
26 taxes.

27 Sec. 43.05.234. PREPARATION AND TRANSMITTAL OF TAX INFORMATION.

28 (a) Before providing confidential tax return or return information in  
29 response to a legislative request under AS 43.05.231 or under a

1 commissioner's determination made under AS 43.05.232, the commissioner  
2 shall review the purpose of the proposed transfer of the tax returns  
3 or return information to determine what type of confidential tax  
4 return or return information will provide the needed information. If  
5 more than one type of confidential tax return or return information  
6 will provide the needed information, the commissioner shall choose the  
7 return or return information that, in the commissioner's discretion,  
8 is the least commercially sensitive. Whenever possible, instead of  
9 transactional documents, the commissioner shall transfer summary  
10 documents or analyses that have been prepared by the department. In  
11 this subsection, "summary documents or analyses" includes audit narra-  
12 tives, informal conference decisions, and formal hearing decisions.

13 (b) When the period for submitting additional analysis, comment,  
14 or information under AS 43.05.235(b) has expired, the commissioner  
15 shall transfer to the committee the tax return or return information,  
16 including the additional analysis, comment, or information, if any,  
17 received by the commissioner from the taxpayer under AS 43.05.235(b).

18 (c) If a taxpayer submits analysis, comment, and other written  
19 information to a committee under AS 43.05.235(d), the department shall  
20 transfer the analysis, comment, or other information to the committee  
21 within 24 hours after receiving it and the request.

22 (d) The commissioner shall transfer all the tax returns and  
23 return information requested to be transferred by the taxpayer under  
24 AS 43.05.235(e) within 24 hours after receiving the request, except  
25 for return information that needs to be extracted or compiled by the  
26 department from other materials. Return information that needs to be  
27 extracted or compiled by the department shall be transferred within  
28 five days after the request. The chair or co-chair of the committee  
29 to which the return information is to be transferred may for good

1 cause grant a reasonable extension of time for making the transfer and  
2 shall immediately notify the taxpayer of the extension.

3 (e) The department has exclusive responsibility for duplicating  
4 and numbering the copies of confidential tax returns and return infor-  
5 mation provided to a legislature under AS 43.05.231 - 43.05.235.

6 Sec. 43.05.235. TAXPAYER NOTIFICATION AND SUBMISSION OF TAX  
7 INFORMATION. (a) Before transferring a confidential tax return or  
8 return information under AS 43.05.231 or 43.05.232, the commissioner  
9 shall notify the taxpayer whose tax return or return information is to  
10 be transferred of the proposed transfer and the content of the tax  
11 return or return information to be transferred, and, if the transfer  
12 is under AS 43.05.232, shall provide the taxpayer with a copy of the  
13 commissioner's determination.

14 (b) Within seven days after receiving the notice of a transfer  
15 proposed under AS 43.05.231 or the notice and determination of a  
16 transfer proposed under AS 43.05.232, the taxpayer may submit addi-  
17 tional analysis, comment, or other information to the department.

18 (c) A taxpayer may waive the provisions of (a) - (b) of this  
19 section by providing the commissioner with a written waiver signed by  
20 the taxpayer.

21 (d) If, in addition to the additional analysis, comment, and  
22 other information filed by the taxpayer with the department under (b)  
23 of this section, a taxpayer wants to provide the legislative committee  
24 with analysis, comment, and other written information regarding the  
25 taxpayer's tax return or return information being considered by the  
26 committee under this section, the taxpayer shall file the analysis,  
27 comment, or other information with the department and request that the  
28 department transfer the information to the legislative committee.

29 (e) A taxpayer may at any time request the commissioner to

1 transfer the taxpayer's confidential tax returns or return information  
2 to a legislative committee. The request must be in writing, must  
3 state which tax returns or return information is to be transferred,  
4 and must state the legislative committee to which the tax returns or  
5 return information is to be transferred. A taxpayer's request under  
6 this subsection is not a waiver of confidentiality, and the tax re-  
7 turns and return information transferred under this subsection are  
8 subject to the same sanctions and safeguards against disclosure as  
9 other tax returns and return information transferred under AS 43.05.-  
10 231 - 43.05.235.

11 Sec. 43.05.236. CONSIDERATION OF TAX INFORMATION BY LEGISLATIVE  
12 COMMITTEE. (a) A legislative committee shall consider confidential  
13 tax returns and return information transferred under AS 43.05.231 -  
14 43.05.235 in executive session only, unless the taxpayer and any third  
15 party whose tax return or return information is being considered in  
16 conjunction with the taxpayer's return or return information consent  
17 in writing to a disclosure in open session. The executive session  
18 must be open to all legislators.

19 (b) The committee chair or co-chair may designate legislative  
20 employees and agents to inspect the confidential tax returns and  
21 return information, but the chair or co-chair shall limit the number  
22 of employees and agents designated to the fewest number necessary that  
23 is consistent with the need of the committee and its individual mem-  
24 bers to analyze and understand the tax return and return information  
25 fully. The designated employees and agents may attend the executive  
26 session.

27 (c) If tax returns or return information regarding only one  
28 taxpayer is being presented to the committee or is being discussed by  
29 it, the chair or co-chair shall allow the taxpayer to attend the

1 portions of the executive session when the taxpayer's confidential tax  
2 return or return information is presented or discussed, and the tax-  
3 payer shall have a reasonable opportunity to address the committee at  
4 the conclusion of the presentation or discussion.

5 (d) If tax returns or return information regarding more than one  
6 taxpayer is being presented to or considered by the committee at one  
7 time, a transcript of the executive session shall be prepared and  
8 presented to each taxpayer within 48 hours after the executive ses-  
9 sion. The portions of the transcript pertaining to tax returns and  
10 return information of a taxpayer other than the one to whom it is  
11 presented shall be blanked out or otherwise deleted while at the same  
12 time preserving the coherence of the transcript as much as possible.

13 (e) At the request of the taxpayer, a taxpayer receiving an  
14 edited transcript under (d) of this section shall be given a reason-  
15 able opportunity as soon as practicable to address the committee in  
16 executive session about the presentation and discussion of the tax-  
17 payer's tax returns and return information.

18 Sec. 43.05.237. PROHIBITION AGAINST DISCLOSURE. (a) Disclosure  
19 contrary to the provisions of AS 43.05.231 - 43.05.239 by a member or  
20 former member of the legislature or by a present or former employee or  
21 agent of the legislature of all or part of a return or return informa-  
22 tion that is confidential under AS 43.05.230 and transferred to a  
23 legislative committee under AS 43.05.231 - 43.05.235 is a violation of  
24 AS 43.05.230.

25 (b) Before receiving or reviewing a confidential return or  
26 return information provided by the commissioner under AS 43.05.231 -  
27 43.05.235, a member of the legislature or an employee or agent of the  
28 legislature shall, on a form prepared by the commissioner,

29 (1) acknowledge that the confidential return or return

1 information is confidential and that a disclosure of part or all of  
2 the return or return information contrary to the provisions of this  
3 section is prohibited by law; and

4 (2) execute an agreement with the department to keep the  
5 return or return information confidential, to abide by regulations  
6 adopted by the department under AS 43.05.238, and to return the docu-  
7 ments to the department.

8 Sec. 43.05.238. REGULATIONS. To ensure confidentiality, the  
9 commissioner shall adopt regulations governing the transmittal, re-  
10 ceipt, safekeeping, removal from storage or filing location, account-  
11 ing for possession, and return to the department of confidential tax  
12 return and return information transferred under AS 43.05.231 - 43.05.-  
13 235.

14 Sec. 43.05.239. DEFINITIONS. In AS 43.05.231 - 43.05.239

15 (1) "critical tax" means

16 (A) a tax imposed under AS 43.55 or AS 43.57;

17 (B) the tax imposed under former AS 43.21; and

18 (C) the tax imposed under AS 43.20 if AS 43.20.072

19 applies when determining the amount of the tax and the taxpayer

20 is not a corporation established under 43 U.S.C. 1606;

21 (2) "return" has the meaning given in 26 U.S.C. 6103(b)(1),

22 except that "secretary" is read as "department" and "this title" means

23 AS 43 and the former provisions of AS 43;

24 (3) "return information" has the meaning given in 26 U.S.C.

25 6103(b)(2)(A), except that "secretary" is read as "department" and

26 "this title" means AS 43 and the former provisions of AS 43; "return

27 information" does not include transactional documents prepared during

28 a tax period that ended within two years of the date of the transfer

29 of the "return information" under AS 43.05.231 - 43.05.235;

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

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

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

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

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

16 \* Sec. 9. TRANSITIONAL PROVISIONS. (a) AS 43.05.231 - 43.05.239, as  
17 added by sec. 7 of this Act, apply to all confidential tax returns and  
18 return information for critical taxes, as defined in AS 43.05.239, in the  
19 possession of the Department of Revenue on or after the effective date of  
20 this Act.

21           (b) The Department of Revenue shall adopt the regulations required by  
22 AS 43.05.238, enacted by sec. 7 of this Act, before the department trans-  
23 fers a confidential tax return or return information to a legislative  
24 committee under AS 43.05.231 - 43.05.239. Initial regulations adopted  
25 under this subsection to implement or interpret AS 43.05.231 - 43.05.239  
26 may not be adopted as emergency regulations.

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