HB

58

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

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Mary Van Nimwegen

House Judiciary:

1/29/87

1/30/87

MEMORANDUM State of Alaska

TO: Louann Cutler
House Finance Committee

DATE: February 21, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

By: Deborah Vogt DV
Assistant Attorney General
Oil, Gas and Mining-Juneau

SUBJECT: Disclosure of confidential tax information

HB 502, as currently drafted, would permit the Department of Revenue to disclose to the legislature the name of a taxpayer and the amount of an assessment levied against that taxpayer by the Department. You have asked me to look into what the United States and other states permit in the way of legislative oversight of tax matters, and to consider whether Alaska might follow those examples. You have further asked me to draft a proposed committee substitute for HB 502 permitting disclosure to the legislature, but prohibiting disclosure to the public.

26 U.S.C. 6103 is the Internal Revenue statute dealing with the confidentiality of tax information on the federal level. Like AS 43.05.230, it generally requires that information on a federal tax return be kept confidential. Section (f) of that statute permits the IRS to disclose otherwise confidential material to designated committees of Congress. Those committees are the "tax writing" committees -- House Ways and Means, Senate Finance and the Joint Committee on Taxation. Like Alaska's law, if the information does not identify particular taxpayers, it may simply be given to Congress. If, however, the information would disclose or identify a particular taxpayer, it may only be provided to those committees in executive session. Taxpayer-specific information may also be provided to the chief of staff of the joint committee, to other committees under more limited circumstances, and to the "agents" of the tax-writing committees (staff) that are designated by the chairman.

I have made a cursory survey of the laws of other states, and have located one (California) which permits disclosure to the legislature. Corporate income tax information is disclosable under California Statute § 26453, and personal income tax information under § 19285. I have attached copies of those statutes for your review. California provides that it is a misdemeanor for a member of

a committee or its staff to disclose the particulars of tax information.

Considerations.

1. Accountability. The present confidentiality statute imposes criminal penalties for unauthorized disclosure of tax information. That criminal penalty is probably an effective deterrent to unintentional disclosure: I know it makes me take very seriously the confidentiality of taxpayer information. It may be that here in Alaska it is especially important to consider accountability since our major taxpayers are few in number, and as a result the contents of their tax returns may be more memorable than would be any particular return in a state like California or at the federal level. Although neither California nor the United States appear to have dealt with the question of legislative immunity, I believe it is appropriate to consider whether a criminal penalty would have any effect should a legislator disclose confidential tax information in the course of legislative debate. (I do not believe that any question of immunity arises in the event that a legislator were to disclose information in another context -- for example, to a friend or relative in a social context.)

The speech and debate immunity appearing in the Alaska Constitution, like that in the United States Constitution, was designed to "preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities." United States v. Helstoski, 442 U.S. 477, 490. Thus, the immunity is more than an individual privilege protecting legislators; its purpose is to protect, as well, the constituents of those legislators, who have an interest in ensuring free debate by their legislature. As a result, since it is not a personal privilege, it is not clear whether the immunity may be waived by a legislative body.

In Helstoski, the Court suggested (but did not decide) that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its

members." Id. at 492. Although the issue apparently has never arisen, the Internal Revenue Service takes the position that Congress has done just that in section 6103, so that members of Congress are not immune from penalties for disclosure. The attached draft bill, then, specifically provides that a legislator would not be immune from penalties for unauthorized disclosure of tax information.

The legislature may, of course, take any action it deems appropriate to regulate the conduct of its own members. The draft bill, then, provides that disclosure of tax information is a violation of the standards of conduct set out in AS 24.60. Thus, even if a legislator who disclosed confidential information were to successfully argue that he or she was immune from the penalties of AS 43.05.230, that legislator would nonetheless have violated the legislature's standards of conduct, and would be subject to the provisions of that chapter.

2. Information exchange with the Internal Revenue Service. The state is currently entitled to information from the IRS, so long as the state has certain confidentiality protections. In amending the confidentiality provisions, it is appropriate to consider whether the exchange of information with the IRS would be affected. There are two relevant provisions of federal law.

The first is 26 U.S.C. § 6103 (d), which authorizes the IRS to disclose information generated by the IRS directly to the states so long as the information is protected by the state. An example of this type of information would be the results of a federal a Windfall Profit Tax audit. The information is available only to the agency charged with administering the tax laws; it may not even be disclosed to the governor. Thus, information received by Alaska under this section would not be available to the legislature under the draft bill. However, the draft bill would not effect the receipt of this information by the state.

The second relevant provision is more indirect, and deals with federal tax information that is provided to the state by the taxpayer. For example, a state may require that the federal return be attached to the state return, or that certain information from the federal return be entered on the state return. Since this information comes directly

from the taxpayer, the United States has no control over the use to which the information is put. However, § 6103(p)(8) provides that if the state does not protect the confidentiality of this information, the IRS will no longer provide the direct information under § 6103(d). I have checked with the IRS disclosure attorneys in Washington, and they tell me that disclosure to the legislature, but not to the public, should have no effect on the exchange of information. They have also said that the IRS will work with us to determine the potential effect of any legislation before it is passed. I also spoke with California, which discloses information to its legislature, and the attorney there told me that disclosure did not effect the exchange of information with the IRS.

3. Effect of proposed bill on legislative involvement in settlement of tax disputes. The confidential nature of the recent settlement of severance tax issues with Arco raises the question of what the the effect of the proposed bill would be on the settlement process. The bill would permit (subject to the restrictions against public disclosure) legislators to review settlements to the extent that they now may do so with respect to non-tax matters. In other words, the bill removes the bar of tax confidentiality, no more and no less. The bill would not expand the legislature's ability to participate in the settlement process beyond its present parameters in non-tax matters.

Summary of the Proposed Bill

The draft bill provides that confidential information will be provided to a committee designated by the speaker of the house or the senate president. For example, the speaker might request that information be provided to the house finance committee. The committee may review and consider confidential information only in a closed, executive session (unless the taxpayer consents to an open hearing). If the committee desires that legislative staff have access to materials, it must first define the scope of an inquiry or investigation and then designate specific staff members who are authorized to review otherwise confidential information. Legislative employees would include, for example, the house research agency, so long as the committee, acting as a whole, designated those employees. The proposed bill restates that disclosure of information received under the subsection is not permitted,

and specifically notes that this is true notwithstanding the statute setting out legislative immunity. 1/ It further would require that any individual, before receiving or reviewing information, must sign a statement acknowledging that he or she knows the information is confidential and that disclosure is prohibited.

The bill would add a new subsection in the legislative standards of conduct chapter, prohibiting disclosure of information received under the amendments proposed in the bill. Thus, even if a legislator successfully argued immunity under the speech and debate clause, he or she would still be subject to the provisions of that chapter.

DV:jf

1/ The intent, here, is to waive the speech and debate immunity, not the protections from being subjected to court proceedings during the legislative session. A court would probably find that the latter protection was not waived by the draft bill, but it may be that this should be clarified.

it shall be a misdemeanor for such committee or any member, clerk or other officer or employee thereof to divulge or make known in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violations of this part.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 1st sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 1st par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 349, ch 351 § 23 p 1400.

Cross References:

Definition of misdemeanor and penalties therefor: Pen C §§ 17, 19, 19a.

Collateral References:

71 Am Jur 2d State and Local Taxation §§ 590, 601.
Corresponding federal statute: 26 USCS § 6103(d).

§ 26453b. Inspection of returns by Attorney General or other legal representatives of State

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

Added Stats 1949 ch 557 § 1, effective July 1, 1951; Amended Stats 1969 ch 603 § 8.

Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 2d sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 2d par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 249, ch 351 § 23 p 1400.

Amendments:

1969 Amendment: Added the second sentence.

Note—See note 1 to § 24837 respecting the applicability of the provisions of Stats 1969 ch 603 effecting changes in the computation of taxes.

Cross References:

Nonprofit corporation generally: Corp C §§ 9000 et seq.
Attorney General's powers generally: Gov C §§ 12510 et seq.

Added Stats 1943 ch 659 § 1, effective June 5, 1945

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Witkin Evidence 2d pp 805, 806.

Cal Jur 2d Income Taxes § 48.

NOTES OF DECISIONS

Copies of income tax reports filed with State and federal government, as best evidence procurable, were competent, in grand jury investigation of lobbying and bribery of State legislators. Samish v Superior Court (1938) 28 CA2d 685, 83 P2d 305.

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. Webb v Standard Oil Co. (1957) 49 C2d 509, 319 P2d 621; Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18; Davis v Lucas (1960) 180 CA2d 407, 4 Cal Rptr 479.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18.

§ 19284. Furnishing information to committee of Legislature: Disclosure by committee a misdemeanor

Such information may upon request of a committee appointed by either the Assembly or the Senate, or both, be furnished to the committee, but it is a misdemeanor for the committee or any member, clerk, or other officer or employee thereof to disclose in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this part.

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Cal Jur 2d Income Taxes § 48.

§ 19285. Inspection by Attorney General or other legal representative of state

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling

CALIFORNIA

§ 26452. "Business affairs"

The term "business affairs," as used in this article means the details relative to the business activities of the taxpayer as disclosed by the return but shall exclude extraneous matters, such as the exact corporate title, corporate number, the date of commencement of business in this State, taxable year adopted, filing date of return, name, date and title of persons signing affidavit to the return, due date of taxes, taxes unpaid, taxpayer's address, private address of officers and directors.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 2d par p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 3d par p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 249, ch 351 § 23 p 1400.

§ 26453. Disclosure of information under judicial order

Such information may be disclosed in accordance with proper judicial order in cases or actions instituted for the enforcement of this part or for the prosecution of violations of this part.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 1st sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 1st par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 349, ch 351 § 23 p 1400.

Collateral References:

Witkin Evidence 2d p 806.
Cal Jur 2d Taxation § 384.
71 Am Jur 2d State and Local Taxation §§ 590, 601.

NOTES OF DECISIONS

The "cases or actions" are those brought by the state. Franchise Tax Board v Superior Court (1950) 36 C2d 538, 225 P2d 905.

A taxpayer in asserting a claim for a refund does not "enforce" the statute within the exception of this provision permitting disclosure, in actions to enforce the statute, of certain information required in tax returns. Franchise Tax Board v Superior Court (1950) 36 C2d 538, 225 P2d 905.

§ 26453a. Furnishing information to Assembly and Senate committees

Such information may upon request of the committee appointed by either the Assembly or the Senate be furnished to the committee, but

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 17, 1986

Mike Greany, Director
Legislative Finance Division
Legislative Budget and Audit Committee
Pouch WF - State Capitol
Juneau, Alaska 99811

Dear Mr. Greany:

You have asked whether the Departments of Law and Revenue are prohibited, under AS 43.05.230, from disclosing to the Legislature or the public information relating to outstanding assessments against corporate taxpayers, including the identity of those taxpayers. You have further asked whether, if the statute currently prohibits that disclosure, it would be legal to amend it to permit disclosure. We conclude that AS 43.05.230 prohibits the contemplated disclosure, but that, within certain limitations, it might be possible to amend the statute to permit some disclosure to the Legislature.

AS 43.05.230 provides that, with certain exceptions, it is unlawful to divulge the particulars set out or disclosed on a return or report made under Title 43. The exceptions include disclosure to the taxpayer or in connection with an official investigation of the Department of Revenue, and exchange agreements with other states, the United States and the Multistate Tax Commission. The exceptions, then, do not include disclosure to the Legislature or to the public.

AS 43.05.230(e) provides that the section does not prohibit the publication of statistics that do not disclose particular taxpayers. Thus, under this language, the Department may disclose the aggregate amounts that have been assessed against categories of taxpayers under various taxes. I understand that this information is currently available to the Legislature.

That subsection further permits publication of the names of delinquent taxpayers. Our office has recently analyzed this section, and concluded that publication should not be made until the appeal period under AS 43.05.240 has run. Inf. A.G. Op. August 21, 1985. Thus, a taxpayer who has filed a protest and appealed an assessment is not a "delinquent taxpayer" for the purposes of this section.

Thus, AS 43.05.230, as presently drafted, prohibits the release of the contemplated information to the Legislature or to the public. Your question then becomes whether the constitutions of Alaska and the United States would permit amendment of the statute to authorize the disclosure.

Before turning to the constitutional analysis, it will be helpful to set out the rationale for laws protecting the confidentiality of tax information. There are several. The most obvious is the protection of the privacy interest of the taxpayer, coupled with concern with protection from self-incriminatory demands. Since tax returns are mandatory, governments have long been sensitive to the "substantial and difficult constitutional questions [posed by obligatory reports which] touch upon intimate areas of an individual's personal affairs [and which] can reveal much about a person's activities, associations, and beliefs." California Bankers Assn. v. Shultz, 416 U.S. 21, 78-79 (1973). Thus, tax confidentiality statutes reflect legislative protection of an individual's Fifth Amendment (self-incrimination), Fourth Amendment (search and seizure), and First Amendment (free association) rights, as well as the right to privacy.

Tax confidentiality statutes are also based on a legislative recognition that our tax laws rely heavily on voluntary assessment and compliance, and that compliance is enhanced when the information provided is protected. Thus, the "purpose of ... statutory provisions prohibiting disclosure is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that these

statements will be revealed or used against him for other purposes." Webb v. Standard Oil Co., 319 P.2d 621, 624.

The constitutional underpinnings of confidentiality statutes primarily protect the rights of individuals. At least under the United States Constitution, these protections may not as strong for corporations. California Bankers, supra, at 55, 65-66. However, the United States Supreme Court has held that the Fourth Amendment protection from unreasonable searches and seizures extends to business premises at least to the extent of requiring a warrant before a search. G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977). Probably the strongest constitutional protection at issue here would be the right to privacy set out in the Alaska Constitution, article I, section 22.

Former Attorney General John Havelock expressed the opinion that Alaska's tax confidentiality statute protected information "within the ambit of the protection intended to be afforded by the Right of Privacy" in the Alaska Constitution. 1972 Op. Att'y Gen. #8. It is not clear whether that provision protects corporations. In Hilbers v. Municipality of Anchorage, 611 P.2d 31, 43 (Alaska 1980), the court held that the "'[c]ommercial and public' aspects of appellants' massage parlor activities remove the shield of privacy from these activities." However, in Woods & Rohde, Inc. v. State, Dept. of Labor, 565 P. 2d 138 (Alaska 1977), the court, in holding that the Alaska constitution prohibits warrantless searches of business premises, stated that its conclusion was "bottomed on the amendment to our constitution found in article I, section 22..." We will assume that Alaska's privacy protection extends, at least to some degree, to corporations. It may be that our court would hold, for example, that the constitutional provision protects a corporation's proprietary or sensitive information. In addition, the line between personal activity and corporate activity may be a thin one, particularly in the case of small, closely held corporations.

Further, a business may have a privacy interest unrelated to proprietary information: it could be argued that the simple disclosure of the existence of an assessment could be embarrassing, since it might imply delinquency or tax evasion. The Department of Revenue tells me that a great many assessments against taxpayers are reduced during the review process within the department. That is, the taxpayer may prevail, before the department, on one or more issues at the informal conference

level, after a formal conference, or after a hearing. A taxpayer who is making a legitimate, good faith (and perhaps successful) argument that an assessment is not due is in a very different position from one against whom the issues have been decided and who still does not pay. If the Department were to disclose the amounts of contested assessments, taxpayers would likely challenge that disclosure as an invasion of a privacy interest.

The test for interests protected under the Alaska Constitution's privacy amendment is that a person have an actual expectation of privacy, and that the expectation be one society is prepared to recognize as reasonable. Hilbers, supra, 611 P.2d at 42. If a privacy interest is implicated, then that interest must be balanced against the public interest in disclosure. At least as far as certain competitive information is concerned, it is likely that our court would hold that the privacy interest in non-disclosure is fairly strong -- at least unless and until a taxpayer is actually delinquent. Your request for an opinion does not articulate any particular legislative need-to-know, or public interest, against which to balance this privacy interest. As a result, it is difficult to predict how our court would balance the competing interests.

The Department of Revenue has expressed concern that the simple disclosure of the amount of an assessment might reveal sensitive information about taxpayers. As an example, the fisheries business tax involves a very simple calculation, and revealing a taxpayer's liability under that act would be tantamount to revealing the volume of fish processed by the taxpayer. Similarly, in the oil industry, it is possible that disclosure of assessments could allow one taxpayer to learn valuable information about the transportation costs or valuation practices of its competitors.

It is possible that some disclosure could be made to the legislature that would not reveal sensitive or proprietary information. At least in the case of a large, publicly held corporation, whose shareholders are often entitled to tax records (see, 26 U.S.C. 6103(e)), an expectation of privacy with regard to at least some tax information might not be very strong, and might be outweighed by legitimate public interest. However, in view of the potential for the inadvertent revelation of sensitive information, I believe that the legislature should approach any amendment to the non-disclosure statute with caution.

One final consideration should be discussed. The state presently receives tax information from the United States -- and is authorized to receive information from other states -- so long as that information is kept strictly confidential. Federal regulations adopted under 26 U.S.C. 6103 authorize the IRS to terminate the exchange of information if the state makes unauthorized disclosure of federal tax return information received under the agreement. The Department of Revenue is concerned that the disclosure contemplated by this opinion request may jeopardize the exchange agreement with the IRS.

In conclusion, without an articulation of the public purpose to be accomplished by the proposed changes, it is impossible to assess whether our supreme court would find a violation of the state's privacy amendment. It is possible that a fairly strong public purpose would outweigh the privacy interests of at least some types of corporate taxpayers, with respect to at least some types of information. If this legislation is pursued, the public purpose sought to be accomplished should be clearly articulated. It then would be advisable to limit an amendment to AS 43.05.230 to the narrowest range of situations that would meet the legislature's need for information. The Department of Revenue should be consulted concerning the potential for inadvertent disclosure of proprietary information. Legislation might be limited to public corporations, and/or to assessments in excess of a certain dollar amount, or in excess of a certain fraction of the taxpayer's reported income. In any event, disclosure should be limited to the name of the taxpayer and the amount of the assessment, and not include the underlying data or calculations that went into making the assessment, since that information is often proprietary.

Please let me know if our office can be of any further assistance.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:
Deborah Vogt
Assistant Attorney General

DV:jf

LEGISLATIVE LEGAL: changing law on confidentiality of current taxpayer information

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M December 17, 1985

SUBJECT: Legislative access to certain taxpayer information
(Work Order No. 14-1468)

TO: Mike Greany, Director
Legislative Finance Division

FROM: Richard A. Bradley
Legislative Counsel

You have requested that we comment on the extent of legislative and public access to certain information regarding taxpayers. The information that you seek is the identity of corporate taxpayers against whom assessments have been issued. I gather that the disclosure you seek is not of a confidential legislative oversight character and that your request is essentially that there be a public disclosure of the facts involved.

Your request notes the provisions of AS 43.05.230(1); the section establishes criminal penalties 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;
> >
> > * * *

While considering this section, however, note the provisions of sec. 230(e); it provides, in part:

> (e) Nothing in this section prohibits 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.

This latter subsection appears to reflect a present legislative determination that information regarding taxpayers who are delinquent in their responsibilities to the state does not enjoy a privileged status and the Department of Revenue may disclose that information if the department believes that the disclosure will assist in the collection of the taxes.

In my opinion, the department may disclose that information under existing law on the date that the taxes due are delinquent. I agree that an assessment will typically occur before there is any delinquency and thus sec. 230(e) is not wholly responsive to your request; I also agree that a disclosure that remains within the discretion of the Department of Revenue is not a solution to your request.

A solution is to provide that the identity of a taxpayer against whom an assessment has been made is a public record, whether the taxpayer agrees that the amount is due or not and regardless of delinquency.

It should be noted that the timing of the disclosure of the assessment raises valid public policy issues that may be complex considering the different kinds of taxes collected by the state. As the economic and business incidents that become the occasion of a tax become more complex and perhaps more ambiguous, the time at which the events give rise to an assessment may similarly become more ambiguous.

What I consider clear is that the taxpayer has no valid claim for protection from this disclosure under the "privacy amendment" [art. 1, sec. 22 of the Alaska Constitution] or under similar provisions or concepts of the U.S. Constitution. While the Alaska Constitution offers an explicit guarantee of privacy (art. I, sec. 22), unlike the Federal Constitution, the tests for the existence of the right to privacy in a particular context are first, whether the person has exhibited an actual (or subjective) expectation of privacy and, second, whether there is an expectation that

society is prepared to recognize that as a reasonable right. Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980). Whether a corporation has a lesser expectation of privacy than an individual in the matters that are the subject of this memorandum or not, it is clear that the assessment of taxation by properly constituted taxing authorities is a responsibility of government that, once done, is not expected to remain private and, in fact, public policy concerns demand that it be done publicly.

The department may, of course, maintain as confidential proprietary information submitted by a taxpayer in appropriate circumstances.

A bill amending sec. 230(e) in the manner suggested is enclosed.

If I may be of further assistance, please advise.

RAB:mkr
M1:141

Enclosure

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811

February 19, 1986

The Honorable Al Adams
Chairman, House Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Time Frames From Audit Through Appeal and Estimates for Resolution of Appealed Assessments

Dear Representative Adams:

The Division of Audit was requested to provide an outline of the period of time required to perform the audit process in a typical oil and gas case and estimates for the resolution of appealed assessments.

TIME FRAMES

Following is the outline of the process from the filing of the return through the completion of the formal hearing proceedings:

Three Year Audit Period

It has been the practice of the Division of Audit to audit every oil and gas return filed under Chapters 20, 21, and 55, with certain exceptions related to revenue materiality. Each return filed under these chapters is initially reviewed when received to determine whether an adjustment is necessary for errors or omissions apparent on the face of the return. The return is then assigned to the lead auditor of the audit team that is responsible for that particular taxpayer. Information pertaining to the return is then data captured at the direction of the audit team for analysis and eventual use for the audit of that and other taxpayers. Generally, the audit team will examine Chapter 21 and 55 returns for the same periods in tandem.

AS 43.05.260(a) prescribes a three year period for the assessment of tax following the filing of the return. The assessment of additional tax will, with only few exceptions, take place at the end of this three year period or later pursuant to an extension of the assessment period under AS

43.05.260(c)(3). This is attributable to the fact that audits must be designed to conclude within this statute of limitations period. Thus, the Division must allocate all resources to those cases that are otherwise approaching the end of the three year period. The audit depth and complexity of the issues, as well as the voluminous books and records involved in these audits, is in large part governed by the three year period. The Division requires the full three years under normal circumstances to perform a standard audit and, regardless, would utilize any otherwise available time to increase the audit scope. Therefore, in all cases the audit scope would increase rather than the audit period decrease.

As indicated previously, the Notice of Assessment will be issued approximately three years from the filing of the return. The taxpayer then has a period of 60 days in which to file a written protest to the assessment action. In many cases, taxpayers may request additional time in which to complete this filing. The case enters an appeal status with the filing of the protest.

One Year Conference Mode

An Appeals Officer is assigned the case upon conclusion of the normal processing function performed by the control unit. This may take about one month. A one year period is then required to conclude the informal conference proceedings with the issuance of the written conference decision. During this one year period, the Appeals Officer will generally correspond and meet with the taxpayer and its representatives. The function of the Appeals Officer is to review the assessment action and to receive, or further develop as the case may be, further facts, information, and argument with relevance to the matters in dispute. The taxpayer is fully afforded the right to present facts and information pertaining to each of the many audit issues and, generally, will require additional time to submit information and documentation requested by the Appeals Officer. The Appeals Officer will attempt to narrow the issues during the conference and, following a full review of all accumulated evidence and argument, will perform technical research as may be necessary to render a decision. The decision is conveyed to the taxpayer in the form of a comprehensive written report addressing each of the issues raised during the conference.

One Year Formal Hearing Mode

The taxpayer then has 30 days in which to appeal the informal conference decision to the formal hearing level of the administrative appeal process. We can generally estimate a one year period in which to complete the closing of the hearing record. It will then take about another six months for the Hearing Officer to render a written decision.

The formal hearing is equivalent to a trial court of original jurisdiction since the record must be presented at this level. Functions the Appeals Officer performs at this level include the preparation and response to motions, legal research, utilization of discovery devices, negotiation, drafting, review and critique of proposed stipulations, verification or reconciliation of factual information, negotiation with opposing counsel, and participation in pre-hearing conferences. Upon conclusion of those matters the actual hearing can be conducted. The Appeals Officer is responsible for the presentation of the audit case and will make opening and closing statements as well as conduct direct and cross examination of witnesses. A legal brief may then be required to be filed before the hearing record can close.

Six Months to Formal Hearing Decision

The Hearing Officer will then take the case under advisement following the closing of the record. The hearing officers project a six month period from the closing of the record to the issuance of the formal hearing decision. The Hearing Officer must consider the evidence presented, the arguments made by both parties, and conduct independent legal research to support the decision to be rendered.

A taxpayer has 30 days from which to appeal the formal hearing decision to Superior Court. The tax must be paid or a bond filed pursuant to the court rules at that point.

Summary

In summary, we are projecting approximately a five and one-half year period from the filing of the tax return to the completion of the administrative processes. This assumes there is no change in the overall appeal considerations nor in the staffing of Appeals Officers and Hearing Officers.

RESOLUTION OF CHAPTER 21 INCOME TAXES APPEALED

In conjunction with the time frames for finalization of tax disputes, we were asked to provide an estimate showing the time periods in which the assessed oil and gas separate accounting income taxes might be finalized. We are projecting the following:

	TAX
Within One and One-Half Years	1%
Within Two Years	6%
Within Two and One-Half Years	93%
Total	100%

The percentages shown above do not include penalty or interest but are instead intended to reflect only the amount of the tax deficiencies. The penalty and interest figures will follow the underlying tax assessment. Of the total assessed, approximately 72% entered the appeal process in the 1985 calendar year.

Cordially,

Martin J. Richard
Director of Audit

cc: Members of the House Finance Committee

86-45

in conducting official duties." *Post*, at 496. Revealing information as to a legislative act—speaking or debating—to a jury would subject a Member to being "questioned" in a place other than the House or Senate, thereby violating the explicit prohibition of the Speech or Debate Clause.

As to what restrictions the Clause places on the admission of evidence, our concern is not with the "specificity" of the reference. Instead, our concern is whether there is mention of a legislative act. To effectuate the intent of the Clause, the Court has construed it to protect other "legislative acts" such as utterances in committee hearings and reports. *E. g., Doe* v. *McMillan*, 412 U. S. 306 (1973). But it is clear from the language of the Clause that protection extends only to an act that has already been performed. A promise to deliver a speech, to vote, or to solicit other votes at some future date is not "speech or debate." Likewise, a *promise* to introduce a bill is not a legislative act. Thus, in light of the strictures of *Johnson* and *Brewster*, the District Court order prohibiting the introduction of evidence "of the performance of a *past* legislative act" was redundant.

The Government argues that the prohibition of the introduction of evidence should not apply in this case because the protections of the Clause have been waived. The Government suggests two sources of waiver: (a) Helstoski's conduct and utterances, and (b) the enactment of 18 U. S. C. § 201 by Congress. The Government argues that Helstoski waived the protection of the Clause by testifying before the grand juries and voluntarily producing documentary evidence of legislative acts. The Government contends that Helstoski's conduct is sufficient to meet whatever standard is required for a waiver of that protection. We cannot agree.

Like the District Court and the Court of Appeals, we perceive no reason to decide whether an individual Member may waive the Speech or Debate Clause's protection against being prosecuted for a legislative act. Assuming that is possible,

we hold that waiver can be found only after explicit and unequivocal renunciation of the protection. The ordinary rules for determining the appropriate standard of waiver do not apply in this setting. See generally *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938) ("intentional relinquishment or abandonment of a known right or privilege"); *Garner* v. *United States*, 424 U. S. 648, 654 n. 9, 657 (1976).

The Speech or Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities. The importance of the principle was recognized as early as 1808 in *Coffin* v. *Coffin*, 4 Mass. 1, 27, where the court said that the purpose of the principle was to secure to every member "*exemption* from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office." (Emphasis added.)

This Court has reiterated the central importance of the Clause for preventing intrusion by Executive and Judiciary into the legislative sphere.

> "[I]t is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits . . . but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary.
>
> . . . . .
>
> "There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech

or Debate Clause." *United States* v. *Johnson*, 383 U. S., at 180–181, 182.

We reaffirmed that principle in *Gravel* v. *United States*, 408 U. S. 606, 618 (1972), when we noted that the "fundamental purpose" of the Clause was to free "the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator."

On the record before us, Helstoski's words and conduct cannot be seen as an explicit and unequivocal waiver of his immunity from prosecution for legislative acts—assuming such a waiver can be made. The exchanges between Helstoski and the various United States Attorneys indeed indicate a willingness to waive the protection of the Fifth Amendment; but the Speech or Debate Clause provides a separate, and distinct, protection which calls for at least as clear and unambiguous an expression of waiver. No such showing appears on this record.

The Government also argues that there has been a sort of institutional waiver by Congress in enacting § 201. According to the Government, § 201 represents a collective decision to enlist the aid of the Executive Branch and the courts in the exercise of Congress' powers under Art. I, § 5, to discipline its Members. This Court has twice declined to decide whether a Congressman could, consistent with the Clause, be prosecuted for a legislative act as such, provided the prosecution were "founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members." *Johnson*, *supra*, at 185. *United States* v. *Brewster*, 408 U. S., at 529 n. 18. We see no occasion to resolve that important question. We hold only that § 201 does not amount to a congressional waiver of the protection of the Clause for individual Members.

We recognize that an argument can be made from precedent and history that Congress, as a body, should not be free to strip individual Members of the protection guaranteed by the

Clause from being "questioned" by the Executive in the courts. The controversy over the Alien and Sedition Acts reminds us how one political party in control of both the Legislative and the Executive Branches sought to use the courts to destroy political opponents.

The Supreme Judicial Court of Massachusetts noted in *Coffin* that "the privilege secured . . . is not so much the privilege of the house as an organized body, as of each individual member composing it, who is entitled to this privilege, *even against the declared will of the house.*" 4 Mass., at 27 (emphasis added). In a similar vein in *Brewster* we stated:

> "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by *insuring the independence of individual legislators.*" 408 U. S., at 507 (emphasis added).

See also *id.*, at 524. We perceive no reason to undertake, in this case, consideration of the Clause in terms of separating the Members' rights from the rights of the body.

Assuming, *arguendo*, that the Congress could constitutionally waive the protection of the Clause for individual Members, such waiver could be shown only by an explicit and unequivocal expression. There is no evidence of such a waiver in the language or the legislative history of § 201 or any of its predecessors.[8]

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[8] Section 201 was enacted in 1962. Pub. L. 87–849, 76 Stat. 1119. It replaced a section that had remained unchanged since its original enactment in 1862. Ch. 180, 12 Stat. 577. See Rev. Stat. § 1781; 18 U. S. C. § 205 (1958 ed.). The debates on the 1862 Act reveal no discussion of the speech or debate privilege. See, *e. g.*, Cong. Globe, 37th Cong., 2d Sess., 3260 (1862). As explained in the House Report accompanying the 1962 Act, the purpose of the Act was "to render uniform the law describing a bribe and prescribing the intent or purpose which makes its transfer unlawful." H. R. Rep. No. 748, 87th Cong., 1st Sess., 15 (1961). The

We conclude that there was neither individual nor institutional waiver and that the evidentiary barriers erected by the Speech or Debate Clause must stand. Accordingly, the judgment of the Court of Appeals is

Affirmed.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part.

The Court holds that *United States* v. *Brewster*, 408 U. S. 501, and *United States* v. *Johnson*, 383 U. S. 169, preclude the Government from introducing evidence of a legislative act by a Member of Congress. I agree that those cases do prevent the prosecution from attempting to prove that a legislative act was performed. I do not believe, however, that they require rejection of evidence that merely refers to legislative acts when that evidence is not offered for the purpose of proving the legislative act itself.

In *Johnson*, the Court held that a Member of Congress could not be prosecuted for conspiracy against the United States based on his preparation and delivery of an improperly motivated speech in the House of Representatives. After noting that the attention given to the speech was not merely "an incidental part of the Government's case," but rather was "an intensive judicial inquiry" into the speech's substance and motivation, *id.*, at 176–177, the Court held that the prosecu-

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Senate Report expanded the explanation and said that a purpose of the Act was the "substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery. This consolidation would make no significant changes of substance and, more particularly, would not restrict the broad scope of the present bribery statutes as construed by the courts." S. Rep. No. 2213, 87th Cong., 2d Sess., 4 (1962).

Other states permitting disclosure to the legislature

LEGISLATURE

Alabama	§ 40-1-33
California	§ 19284
Idaho	§ 63-3077
Minnesota	§ 290-61 - abstracted info only
Oregon	§ 314.840 - name + amount of tax of corporations only
Washington	§ 8232.330
Wisconsin	§ 71.11 (44)

§ 40-1-31. Distribution of revenues collected.

All revenues collected under the provisions of sections 40-12-128, 40-12-310 through 40-12-319, 40-25-1 through 40-25-28 and 40-25-140 through 40-25-147 shall, after deduction of the cost of collection, be deposited in the state treasury to the credit of the Alabama special educational trust fund. All revenues collected under the provisions of sections 40-21-56, 40-21-57, 40-21-58, 40-21-60 and 40-21-61 shall, after deduction of the cost of collection, be distributed in the following manner:

(1) Fifty-eight percent of the balance remaining after deduction of the cost of collection shall be deposited in the special mental health fund to be used for mental health purposes; and

(2) Forty-two percent of the balance remaining after deduction of the cost of collection shall be deposited in the state treasury to the credit of the Alabama special educational trust fund to be used for educational purposes. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 910; Acts 1971, No. 1414, p. 2410.)

§ 40-1-32. Alabama special educational trust fund surplus account.

There is hereby set up in the state treasury a fund to be known as the Alabama special educational trust fund surplus account.

Any surplus heretofore accrued in the state treasury to the credit of the Alabama special educational trust fund and which has been transferred to the property tax relief fund is hereby transferred into and shall become a part of the Alabama special educational trust fund surplus account.

Any surplus in the Alabama special educational trust fund on September 30 of each fiscal year, beginning September 30, 1943, remaining after all appropriations now or hereafter payable from the Alabama special educational trust fund have been paid in full, shall be transferred into and become a part of the Alabama special educational trust fund surplus account. (Acts 1943, No. 39, p. 31.)

§ 40-1-33. Confidentiality of returns, statements, etc.

All tax returns, financial statements and information secured by the department of revenue officials or employees thereof for the purpose of arriving at the amount of ad valorem, franchise, income or license tax shall be kept under lock and key by the department of revenue, and any official or employee of the department of revenue who shall divulge the contents or permit the examination thereof except for the purpose of properly administering the tax laws of this state or upon order of the commissioner of the department of revenue and except under the order of the court or for the information of the legislature shall be guilty of a misdemeanor and shall thereafter be ineligible to be an employee or agent of the department of revenue; provided, that the provisions of this section shall not apply to returns filed and information secured under laws of this state levying or imposing excise

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Witkin Evidence 2d pp 805, 806.
Cal Jur 2d Income Taxes § 48.

NOTES OF DECISIONS

Copies of income tax reports filed with State and federal government, as best evidence procurable, were competent, in grand jury investigation of lobbying and bribery of State legislators. Samish v Superior Court (1938) 28 CA2d 685, 83 P2d 305.

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. Webb v Standard Oil Co. (1957) 49 C2d 509, 319 P2d 621; Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18; Davis v Lucas (1960) 180 CA2d 407, 4 Cal Rptr 479.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18.

§ 19284. Furnishing information to committee of Legislature: Disclosure by committee a misdemeanor

Such information may upon request of a committee appointed by either the Assembly or the Senate, or both, be furnished to the committee, but it is a misdemeanor for the committee or any member, clerk, or other officer or employee thereof to disclose in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this part.

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Cal Jur 2d Income Taxes § 48.

§ 19285. Inspection by Attorney General or other legal representative of state

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling

contained in such returns may be furnished or made accessible to the officers or representatives of the state or county charged with the duty of prosecuting or defending the same, under such rules and regulations as the state tax commission shall prescribe; and all such returns and the statements and correspondence relating thereto may be produced in evidence in any action or proceeding, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such return.

(b) Any officer, agent, clerk or employee violating any of the provisions of this section shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not less than $100 nor more than $5,000, or by imprisonment for not more than five (5) years. Such officer, agent, clerk or employee upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of two (2) years thereafter. [1959, ch. 299, § 76, p. 613; am. 1969, ch. 319, § 20, p. 982.]

Compiler's notes. For words "this act" see compiler's notes, § 63-3001.

Section 19 of S. L. 1969, ch. 319 is compiled as § 63-3073.

Sec. to sec. ref. This section is referred to in §§ 14-418, 63-2562, 63-3634.

Collateral References.

71 Am. Jur. 2d, State and Local Taxation, § 590.

63-3077. Information furnished to certain officials. — The state tax commission, under such rules as it may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States or his delegate or the proper officer of any state imposing a tax on or according to income or the multistate tax commission or its delegate to inspect the income tax returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract of any income tax return or any matter contained in any affidavit, statement, or certificate made or filed in connection with any return or any tax or credit claimed as an offset against any tax or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer or his representatives only if the statutes of the United States or such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

Notwithstanding the provisions of this act as to secrecy, any duly constituted committee of either branch of the state legislature shall have the right to inspect returns upon request. Nothing in this act shall prohibit a taxpayer, or his authorized representative, upon proper identification, from inspecting or copying his own income tax returns. Any taxpayer making a return, whether accrual or cash basis, shall furnish the state tax commission with the figure or figures representing the value of his inventory of stock of goods in trade. In the event the taxpayer shall have more than one place of business, then and in that event the taxpayer shall give the amount of

to State Commissioner of Taxation does
ent Commissioner from proceeding
axpayer on information received
any other source. Id.

re taxpayer's time for appealing from
l Tax Court's decision that there were
ncies in his federal income tax return for a
xpired after running of the statute of
ions in state's income tax law, assessment
ther state tax was barred. Id.

re requisite 90-day period following notifi-
from the Internal Revenue Service had
pired prior to the running of the normal
ar statute of limitations prescribed by
49, the power to assess the taxpayer pur-
to subsecs. (B) and (C) of this section could
invoked. Op.Atty.Gen., 531-q, Nov. 18,

nd determinations, the commissioner
me tax examiners, as he may deem
ible, he may request the legislative
audit such returns and conduct such
ner. Upon such request being made,
ax examiners as he may deem neces-

the commissioner or by the legislative
reference to the examining of books,
witnesses, administering of oaths and
pon the commissioner by this chapter.
miner, shall issue a subpoena for the
books, papers, records, or memoranda
issue such subpoenas. The commis-
a board of review, the reports of the
f taxpayers, and report on them to the
nder this chapter shall be punished by
bpoena is issued, or in the case of a
trict court of the district in which the
me manner as contempt of the district

), § 11; Laws 1983, c. 359, § 23.

hich is barred by statute of limitations on
1, 1983.

ws 1983, c. 359, removed obsolete refer
s to justice of the peace and magistrate

requested to conduct examinations as
such additional help, or purchase such
ures in the enforcement of this chapter

as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the commissioner, where appointed by him, and by the legislative auditor, where appointed by him, subject to the approval of the commissioner of administration.

Amended by Laws 1973, c. 492, § 14.

290.60. Repealed by Laws 1981, c. 178, § 119

Laws 1981, c. 178, § 120 provides in part that sections 1 to 111 and 119 are effective for taxable years beginning after December 31, 1980.

290.61. Publicity of returns, information

It shall be unlawful for the commissioner or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any information concerning, the taxpayer's affairs acquired from his or its records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return or to comply with the provisions of sections 290.612 and 302A.821. The commissioner may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein. The commissioner may disclose information from withholding tax returns received from the taxpayer to the Minnesota department of economic security for purposes of auditing unemployment tax. Prior to the release of any information to any official of the United States or any other state or the department of economic security under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that he will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. Upon request of a majority of the members of the senate tax committee or of the house tax committee or the tax study commission, the commissioner shall furnish abstracted financial information to those committees for research purposes from returns or reports filed pursuant to this chapter, provided that he shall not disclose the name, address, social security number, business identification number or any other item of information associated with any return or report which the commissioner believes is likely to identify the taxpayer. The commissioner shall not furnish the actual return, or a portion thereof, or a reproduction or copy of any return or portion thereof. "Abstracted financial information" means only the dollar amounts set forth on each line on the form including the filing status.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

In order to locate the named payee on state warrants issued pursuant to this chapter or chapter 290A and undeliverable by the United States postal service, the commissioner may publish in any English language newspaper of general circulation in this state a list of the name and last known address of the payee as shown on the reports or returns filed with the commissioner. The commissioner may exclude the names of payees whose refunds are in an amount which is less than a minimal amount to be determined by the

officers or employes, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. As used in this section, "officer," "employe" or "person" includes an authorized representative of the officer, employe or person, or any former officer, employe or person, or an authorized representative of such former officer, employe or person. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.789 §13; 1979 c.690 §1]

314.840 Persons to whom information may be furnished. (1) The department may:

(a) Furnish any taxpayer or authorized representative, upon request of the taxpayer or representative, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employe of the Executive Department duly authorized or employed to prepare revenue estimates, or a person contracting with the Executive Department to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.202 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342 to 291.348. The information disclosed or to which access is given under this subparagraph shall be confined to the identity of a corporate taxpayer, the amount of the corporate tax liability of the corporate taxpayer and the amount of the payments made by the corporation to the Department of Revenue under the corporate excise and income tax laws of this state. Any officer, employe or person furnished or granted access to information under this subparagraph shall not remove the information from the premises of the Department of Revenue.

(b) The Commissioner of Internal Revenue or authorized representative, for tax purposes only.

(c) The proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if such state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(d) The Multistate Tax Commission or its authorized representatives, for tax purposes only. However, the Multistate Tax Commission may make such information available to the Commissioner of Internal Revenue or the proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if the state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(e) The Attorney General, assistants and employes in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employes of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department

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1983 Amendment. Rewrote the first paragraph.

Effective dates—Laws 1983, 1st Ex. Sess., ch. 55: See Historical Note following § 82.08.010.

82.32.230. Agent of the department of revenue may execute

In the discretion of the department of revenue, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant.

Amended by Laws 1983, 1st Ex.Sess., ch. 55, § 11, eff. July 1, 1983.

1983 Amendment. Near the beginning, substituted "an order of execution" for "a warrant".

Effective dates—Laws 1983, 1st Ex. Sess., ch. 55: See Historical Note following § 82.08.010.

82.32.235. Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default

Notes of Decisions

1. In general

Peters v. Sjoholm (1979) 25 Wash.App. 39, 604 P.2d 527 [main volume] affirmed 95 Wash.2d 871, 631 P.2d 937, appeal dismissed, certiorari denied 102 S.Ct. 1267, 455 U.S. 914, 71 L.Ed.2d 455.

2. Search and seizure

Peters v. Sjoholm (1979) 25 Wash.App. 39, 604 P.2d 527 [main volume] affirmed 95 Wash.2d 871, 631 P.2d 987, appeal dismissed, certiorari denied 102 S.Ct. 1267, 455 U.S. 914, 71 L.Ed.2d 455.

82.32.300. Department of revenue to administer

The administration of this and chapters 82.04 through 82.27 RCW of this title is vested in the department of revenue which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The department of revenue shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce their provisions, which shall have the same force and effect as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees shall be fixed by the department and shall be charged to the proper appropriation for the department.

The department shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper.

Amended by Laws 1983, ch. 3, § 222.

1983 Amendment. In the first paragraph, near the beginning of the first sentence, substituted "through 82.27" for "inclusive".

Administrative Code References

In general, see WAC 458-20-100.

Notes of Decisions

4. Validity of regulations

Department of revenue rule promulgating "primary purpose test" for determining whether an item is subject to sales tax was invalid insofar as it impermissibly imposed a tax on items which actually became ingredients or components of a newly created article. Lone Star Industries, Inc. v. State, Dept. of Revenue (1982) 97 Wash.2d 630, 647 P.2d 1013.

82.32.330. Secrecy enjoined—Exceptions

Except as hereinafter provided it shall be unlawful for the department of revenue or any member, deputy, clerk, agent, employee, or representative thereof or any other person to make known or reveal any facts or information contained in any return filed by any taxpayer or disclosed in any investigation or examination of the taxpayer's books and records made in connection with the administration hereof. The foregoing, however, shall not be construed to prohibit the department of revenue or a member or employee thereof from: (1) Giving such facts or information in evidence in any court action involving tax imposed hereunder or involving a violation of the provisions hereof or involving another state department and the taxpayer; (2) giving such facts and information to the taxpayer or his duly authorized agent; (3) publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof; (4) giving such facts or information, for official purposes only, to the governor or attorney general, or to any state department, agency, board, commission, council, or any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions; (5) permitting its records to be audited and examined by the proper state officer, his agents and employees; (6) giving any such facts or information to the proper officer of the internal revenue service of the United States or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state; or (7) giving any such facts or information to the Department of Justice or the army or navy departments of the United States, or any authorized representative thereof, for official purposes.

Any person acquiring knowledge of such facts or information in the course of his employment with the department of revenue and any person acquiring knowledge of such facts and information as provided under (4), (5), (6) and (7) above, who reveals or makes known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine of not exceeding one thousand dollars and, if the offender or person guilty of such violation is an officer or employee of the state, he shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

Amended by Laws 1984, ch. 138, § 12, eff. March 7, 1984.

1984 Amendment. Inserted, in subd. (4) of the second sentence of the first paragraph, " agency, board, commission, council," following "any state department".

WISL

ident of the state, and whether the information is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by par. (c).

(c) Subject to regulations of the department, any income tax or gift tax returns, or any schedules, exhibits, writings, or audit reports pertaining to the same, on file with the department of taxation or assessor of incomes shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized; provided that the use of information so obtained is restricted to the discharge of duties imposed upon said persons by law or by the duties of their office, and any of said persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office or by order of a court as set forth in subd. 6 shall be deemed in violation of this subsection:

1. The commissioner of taxation, or any officer, agent or employe of the department of taxation or assessor of incomes;

2. Public officers of this state or its political subdivisions or the authorized agents of such officers when deemed by them necessary in the performance of the duties of their office;

3. Members of any legislative committee or its authorized agents where deemed by them necessary to accomplish the purpose for which the committee was organized;

4. Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state;

5. The person who filed or submitted such return, or to whom the same relates or by his authorized agent or attorney;

6. Any person examining such return pursuant to a court order duly obtained upon a showing to the court that the information contained in such return is relevant to a pending court action.

(cm) At the time of or within 30 days after a distribution of income tax collections pursuant to s. 71.14(1) the department of taxation may file, in an income tax assessment district office, a statement setting forth only the names, addresses, identification numbers and reported income taxes of persons other than corporations whose reported taxes were included in the total income taxes attributed to a county, town, village or city as used in the calculation of the income tax collections allocated and as so distributed thereto. Upon the filing with such district office of a certified copy of a resolution, adopt-

GOVERNOR

Indiana	§ 6-8.1-7-1
New Hampshire	§ 77-A:16
North Carolina	§ 105-259

Income Tax Bulletins. Extension to File Indiana Corporation Income Tax Returns and Recognition of the Federal Extension of Time to File Indiana Corporation Income Tax Returns, 4 IR 2593.

6-8.1-6-4. Returns and forms to be certified true. — All returns and forms that a person is required to file under the provisions of law relating to any of the listed taxes must be certified true under penalties of perjury. [IC 6-8.1-6-4, as added by Acts 1980, P.L. 61, § 1.]

Indiana Am. Code. For pertinent administrative rules and regulations, see the Statutory Tables in the tables volume of the Indiana Administrative Code.

CHAPTER 7

CONFIDENTIALITY

6-8.1-7-1. Disclosure of information in tax report. — (a) Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to members and employees of the department, or to the governor, or to the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes, or to any duly authorized officers of the United States, when it is agreed that such information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when such state, district, territory, or possession permits the exchange of like information with the taxing officials of the state of Indiana and when it is agreed that such information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the administrator of the state department of public welfare, and to any county welfare director located in this state, upon receipt of a written request from that administrator or director for such information. The information shall be treated as confidential by the administrator or county welfare director. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

II. Delivery to a taxpayer or his duly authorized representative of a copy of any return or other paper filed by the taxpayer pursuant to this chapter;

III. Publication of statistics so classified as to prevent the identification of a particular return and the items of the return;

IV. Exchange of information with the United States internal revenue service in accordance with compacts made and provided for such cases;

V. Disclosure in confidence to the governor and council or their agent in the exercise of their general supervisory powers, or to any person authorized to audit the accounts of the commission in pursuance of such audit, or the attorney general or other legal representative of the state in connection with an action or proceeding under this chapter.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.

77-B: 27 Preference. The taxes and interest imposed by this chapter have preference in any distribution of the assets of the taxpayer, whether in insolvency or otherwise.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.

77-B: 28 Dissolution of Corporations. No corporation organized under any law of this state may be dissolved until all taxes and interest required to be withheld by said corporation under this chapter have been fully paid. The secretary of state shall not issue a certificate of dissolution, and no decree of dissolution shall be signed in any court without a certificate from the commission that no taxes and interest imposed by this chapter are due and unpaid.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.

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summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt.

In any action, proceeding, or matter of any kind, to which the Secretary of Revenue is a party or in which he may have an interest, all pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other legal documents may be signed and verified on behalf of the Secretary by the assistant commissioner or by any director or assistant director of any division of the Department of Revenue or by any other agent or employee of the Department so authorized by the Secretary of Revenue. (1939, c. 158, s. 927; 1943, c. 400, s. 9; 1955, c. 435; 1959, c. 1259, s. 8A; 1973, c. 476, s. 193.)

§ 105-259. Secrecy required of officials; penalty for violation. — With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax authorities (as defined in G.S. 105-289(e)) and former local tax authorities; (iii) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (iv) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of said persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether the same be set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to such taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning such taxpayer, whether or not such list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152(e) to file their separate returns on a single form, or in order to determine an exemption allowable under G.S. 105-149(a)(2), any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on such single return or on separate returns shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/20/87

FURTHER REFERRALS: Finance

DATE: 1/30/87

The Judiciary Committee has considered HB 58

"An Act relating to the disclosure of certain state tax assessment information by the Department of Revenue."

RECOMMENDS:

[✓] replace with CS HB 58 (Judiciary)

[ ] attached amendment(s)

[ ] the same title

[✓] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[✓] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811

February 19, 1986

The Honorable Al Adams
Chairman, House Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Time Frames From Audit Through Appeal and Estimates for Resolution of Appealed Assessments

Dear Representative Adams:

The Division of Audit was requested to provide an outline of the period of time required to perform the audit process in a typical oil and gas case and estimates for the resolution of appealed assessments.

TIME FRAMES

Following is the outline of the process from the filing of the return through the completion of the formal hearing proceedings:

Three Year Audit Period

It has been the practice of the Division of Audit to audit every oil and gas return filed under Chapters 20, 21, and 55, with certain exceptions related to revenue materiality. Each return filed under these chapters is initially reviewed when received to determine whether an adjustment is necessary for errors or omissions apparent on the face of the return. The return is then assigned to the lead auditor of the audit team that is responsible for that particular taxpayer. Information pertaining to the return is then data captured at the direction of the audit team for analysis and eventual use for the audit of that and other taxpayers. Generally, the audit team will examine Chapter 21 and 55 returns for the same periods in tandem.

AS 43.05.260(a) prescribes a three year period for the assessment of tax following the filing of the return. The assessment of additional tax will, with only few exceptions, take place at the end of this three year period or later pursuant to an extension of the assessment period under AS

43.05.260(c)(3). This is attributable to the fact that audits must be designed to conclude within this statute of limitations period. Thus, the Division must allocate all resources to those cases that are otherwise approaching the end of the three year period. The audit depth and complexity of the issues, as well as the voluminous books and records involved in these audits, is in large part governed by the three year period. The Division requires the full three years under normal circumstances to perform a standard audit and, regardless, would utilize any otherwise available time to increase the audit scope. Therefore, in all cases the audit scope would increase rather than the audit period decrease.

As indicated previously, the Notice of Assessment will be issued approximately three years from the filing of the return. The taxpayer then has a period of 60 days in which to file a written protest to the assessment action. In many cases, taxpayers may request additional time in which to complete this filing. The case enters an appeal status with the filing of the protest.

One Year Conference Mode

An Appeals Officer is assigned the case upon conclusion of the normal processing function performed by the control unit. This may take about one month. A one year period is then required to conclude the informal conference proceedings with the issuance of the written conference decision. During this one year period, the Appeals Officer will generally correspond and meet with the taxpayer and its representatives. The function of the Appeals Officer is to review the assessment action and to receive, or further develop as the case may be, further facts, information, and argument with relevance to the matters in dispute. The taxpayer is fully afforded the right to present facts and information pertaining to each of the many audit issues and, generally, will require additional time to submit information and documentation requested by the Appeals Officer. The Appeals Officer will attempt to narrow the issues during the conference and, following a full review of all accumulated evidence and argument, will perform technical research as may be necessary to render a decision. The decision is conveyed to the taxpayer in the form of a comprehensive written report addressing each of the issues raised during the conference.

One Year Formal Hearing Mode

The taxpayer then has 30 days in which to appeal the informal conference decision to the formal hearing level of the administrative appeal process. We can generally estimate a one year period in which to complete the closing of the hearing record. It will then take about another six months for the Hearing Officer to render a written decision.

The formal hearing is equivalent to a trial court of original jurisdiction since the record must be presented at this level. Functions the Appeals Officer performs at this level include the preparation and response to motions, legal research, utilization of discovery devices, negotiation, drafting, review and critique of proposed stipulations, verification or reconciliation of factual information, negotiation with opposing counsel, and participation in pre-hearing conferences. Upon conclusion of those matters the actual hearing can be conducted. The Appeals Officer is responsible for the presentation of the audit case and will make opening and closing statements as well as conduct direct and cross examination of witnesses. A legal brief may then be required to be filed before the hearing record can close.

Six Months to Formal Hearing Decision

The Hearing Officer will then take the case under advisement following the closing of the record. The hearing officers project a six month period from the closing of the record to the issuance of the formal hearing decision. The Hearing Officer must consider the evidence presented, the arguments made by both parties, and conduct independent legal research to support the decision to be rendered.

A taxpayer has 30 days from which to appeal the formal hearing decision to Superior Court. The tax must be paid or a bond filed pursuant to the court rules at that point.

Summary

In summary, we are projecting approximately a five and one-half year period from the filing of the tax return to the completion of the administrative processes. This assumes there is no change in the overall appeal considerations nor in the staffing of Appeals Officers and Hearing Officers.

RESOLUTION OF CHAPTER 21 INCOME TAXES APPEALED

In conjunction with the time frames for finalization of tax disputes, we were asked to provide an estimate showing the time periods in which the assessed oil and gas separate accounting income taxes might be finalized. We are projecting the following:

	TAX
Within One and One-Half Years	1%
Within Two Years	6%
Within Two and One-Half Years	93%
Total	100%

The percentages shown above do not include penalty or interest but are instead intended to reflect only the amount of the tax deficiencies. The penalty and interest figures will follow the underlying tax assessment. Of the total assessed, approximately 72% entered the appeal process in the 1985 calendar year.

Cordially,

Martin J. Richard
Director of Audit

cc: Members of the House Finance Committee

86-45

1/29/87

ALASKA DEPARTMENT OF REVENUE
PROPOSED AMENDMENTS FOR CS HB 58

Amendment No. 1

Page 3, Change section 5 to read:

* Sec. 5. AS 43.05.230(f) is amended to read:

(f) An intentional [WILFUL] violation of the provisions of this section is a class A misdemeanor . . .

Amendment No. 2

Page 4, insert a new subsection (h) to read:

(h) The commissioner may transfer information made confidential under this section to a legislative committee after a written finding by the commissioner that such transfer is in the best interest of the public. The transfer of the confidential information is in the best interest of the public under the following circumstances:

(1) A taxpayer has testified before a legislative committee, either orally or in writing or has otherwise provided information to a committee concerning the administration of a tax under this title and the department has confidential information of that taxpayer which is in direct conflict with the testimony or information offered by the taxpayer; or

(2) A legislative committee is reviewing the administration of a tax imposed under this title and confidential information is necessary to demonstrate taxpayer compliance with the tax under review; or

(3) The legislature has under consideration a bill proposing to add an additional tax or to amend a tax administered by this department and confidential information is required to determine the fiscal impact of the proposed new tax or amendment; or

[(4) The commissioner makes a written determination after a hearing with the taxpayer that the interest of the public in transferring the information to the legislative committee outweighs the interest of the taxpayer in avoiding the transfer of the information.]

Reletter remaining subsections (h) through (k) to (i) through (l).

Amendment No. 3

Page 2, Line 24: insert:

(7) The right of the people to privacy is recognized and shall not be infringed.

Amendment No. 4.

Page 3, Line 1 amend citation to AS 43.05.230(h) and (i).

Amendment No. 5.

Page 3, Line 6: amend citation to AS 43.05.230(h) and (i).

Amendment No. 6

Page 3, Line 13: amend citation to AS 43.05.230(h) and (i).

Amendment No. 7

Page 5, Relettered AS 43.05.230(k): amend citation to (h) and (i)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM January 28, 1987

SUBJECT: Constitutional speech and debate issue in CSHB 58(Jud)

TO: Representative John Sund
Chair, House Judiciary Committee

FROM: Theresa L. Bannister
Legislative Counsel

This memorandum accompanies the draft of the committee substitute that you requested for HB 58. Please be aware that sec. 6 of the draft raises a constitutional question. Proposed subsection (i) added by sec. 6 could be challenged as violating the speech and debate immunity clause appearing in art. II, sec. 6 of the Alaska Constitution. Subsection (i) would subject legislators to liability enforceable by other branches of the government for acts occurring during the exercise of their legislative duties during the session or while going to or returning from the session.

It is not clear whether sec. 6 would be held to be constitutional. There does not appear to be any Alaska case law on this specific issue. In United States v. Helstoski, 442 U.S. 477, 490 (1979), the U.S. Supreme court suggested with regard to the speech and debate immunity provision of the U.S. Constitution that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members". Id. at 492. Although the issue apparently has never arisen in court, the Internal Revenue Service appears to have taken the position that Congress has done just that in an Internal Revenue law, so that members of Congress are not immune from penalties for disclosure. However, since the Alaska Supreme Court has not addressed this specific issue, the outcome of a challenge to sec. 6 of the draft is unknown.

If I may be of further assistance, please advise.

TLB:mkr
m8/055

Enclosure

Can you contract away a constitutional right.

5-0321B
Bannister
1/28/87

Original sponsor: Rules/Legislative
Budget and Audit

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 58 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information of the Department of Revenue; and providing for an effective date."

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

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

(1) the majority of the state's revenue is derived from taxation;

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

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

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

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

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

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

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

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

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

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

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

(2) oversight of the tax revenue collection function is effectively provided;

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

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

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized; and Amend #3

(6) tax programs are administered fairly.

Proposed # Sec. 2. AS 24.10 is amended by adding a new section to article 2 to Amend read:

Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or former employee or agent of the legislature may not disclose tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under

AS 43.05.230(h).

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

(b) A person to whom this chapter applies may not disclose tax information contained within a report or a return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.230(h).

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

~~Sec.~~ 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained within a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.230(h) and the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

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

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

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

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5. AS 43.05.230(f) is amended to read:

(f) An intentional [A WILFUL] violation of the provisions of this section is a class C felony [PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN TWO YEARS, OR BY

#1 Class A misdemeanor 3-

Amend #2 pending. in addition.

BOTH].

* Sec. 6. AS 43.05.230 is amended by adding new subsections to read:

(h) A legislative committee, after identifying the scope of an investigation or inquiry relating to matters of taxation and the adoption by either house of a simple resolution giving the committee authority to receive confidential tax information, may request the commissioner of revenue to provide confidential taxpayer returns or return information; the request by the committee shall be in writing and may identify, directly or indirectly, a particular taxpayer. On adoption of the resolution, the commissioner of revenue shall provide the committee with the requested returns or return information. If specific returns or return information concerning a particular taxpayer are provided to a legislative committee under this subsection, the commissioner of revenue shall notify the particular taxpayer of the request and of the delivery to the committee of the information. The committee may designate legislative employees or agents to inspect returns and return information. The committee may consider information made available under this subsection only in executive session unless the taxpayer and any third party whose tax information is being considered consent in writing to a disclosure in open session.

(i) The disclosure of information made confidential by this section by a member or former member of the legislature or by a present or former employee or agent of the legislature is a violation of this section. A member of the legislature and an employee or agent of the legislature, before receiving or reviewing information provided by the commissioner under (h) of this section, shall acknowledge, on a form prepared by the commissioner, that the information is confidential, and that a disclosure of the information is prohibited by law.

(j) The legislative committee and the commissioner of revenue

shall establish procedures governing the transmittal, receipt, safekeeping, and use of the confidential information provided by the commissioner under (h) of this section.

(k) This section does not permit the disclosure to the legislature of confidential information provided by the Internal Revenue Service under exchange agreements with the department.

* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

5-0321N
Bannister
4/16/87

Original sponsor: Rules/Legislative
Budget and Audit

IN THE HOUSE

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

SENATE CS FOR CS FOR HOUSE BILL NO. 58 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(1) the majority of the state's revenue is derived from taxation;

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

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

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

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

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

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

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

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

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

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

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

(2) oversight of the tax revenue collection function is effectively provided;

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

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

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

(6) tax programs are administered fairly; and

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

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

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

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

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

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

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

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

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

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

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

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

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

(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; and

(4) as otherwise provided in this section or in AS 43.05.232.

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

(f) A person who knowingly violates a provision of this section is guilty of a class A misdemeanor. If the negligence of a member or former member of the legislature, or a present or former employee or agent of the legislature results in a violation of this section, the member, employee, or agent is subject to a civil penalty of $5,000. The department shall enforce this section and collect the civil penalty established by this subsection.

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

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

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

(A) to assist the committee in carrying out its

responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits, litigation, or settlements; or

(C) to estimate future state revenue;

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

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

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee after making a written determination that the transfer of the return or return information is in the best interest of the state. In determining whether the transfer of the return or return information is in the best interest of the state, the commissioner shall consider

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

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

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

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

(4) whether the return or return information would clarify or rectify information provided by a taxpayer to a legislative committee;

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

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

(d) Before providing confidential tax return or return information under (b), (c), or (e) of this section, the commissioner shall review the purpose of the proposed transfer of the return or return information to determine what types of confidential tax return or return information will provide the needed information. If more than one type of confidential tax return or return information will provide the needed information, the commissioner shall choose the return or return information that, in the commissioner's discretion, is the least commercially sensitive. Whenever possible, instead of transactional documents, the commissioner shall transfer summary documents or analyses that have been prepared by the department. In this subsection, "summary documents or analyses" includes audit narratives, informal conference decisions, and formal hearing decisions.

(e) Before transferring the return or return information under (c) of this section, the commissioner shall provide a copy of the commissioner's determination to the taxpayer whose return or return

information is to be transferred and a notification of the content of the return or return information to be transferred. Within 10 days after receiving the determination and notification, the taxpayer may submit additional analysis, comment, or other information to the department, unless the determination is made after the 84th day of a regular session of the legislature or during a special session of the legislature, in which case the time period for the taxpayer to submit additional information is three days after receipt of the determination and notification. When the period for submitting additional information has expired, the commissioner shall transfer to the committee the return or return information, including the additional information, if any, received by the commissioner from the taxpayer under this subsection.

(f) When confidential tax returns or return information concerning a specific taxpayer are provided to a legislative committee under (b) of this section, the commissioner shall notify the taxpayer of the content and delivery of the return and return information to the committee.

(g) A legislative committee shall consider tax returns and return information transferred under (b), (c), or (e) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair may designate legislative employees and agents to inspect the confidential tax returns and return information, but the chair or co-chair shall limit the number of employees and agents designated. The designated employees and agents may attend the executive session. The chair or

co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(h) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature or an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b), (c), or (e) of this section, shall, on a form prepared by the commissioner,

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

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

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

(j) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the

Internal Revenue Service under exchange agreements with the department.

(k) In this section

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

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

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

(A) constitutes all or part of a contract or agreement concerning the transfer; or

(B) summarizes one or more of the terms of the transfer and has been prepared or provided by the taxpayer.

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

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

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

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

Offered: 3/6/87
Referred: Rules

5-0321L

= New in Fin CS

[ ] = Deleted From Judiciary CS

Original sponsor: Rules/Legislative Budget and Audit

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 58 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(1) the majority of the state's revenue is derived from taxation;

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

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

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

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

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

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

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

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

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

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

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

(2) oversight of the tax revenue collection function is effectively provided;

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

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

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

(6) tax programs are administered fairly; and

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

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

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

[AS 43 with the Dept of Revenue]

information contained in a report or return filed under AS 43.05.230 and furnished to the person under AS 43.05.232. [43.05.230(h) or (i)]

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

(b) A person to whom this chapter applies may not disclose tax information contained in a report or a return filed under AS 43 and furnished to the person under AS 43.05.232. [43.05.230(h) or (i)]

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

Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.232 [43.05.230(h) or (i)], and if the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

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

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

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

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

New section 5

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

(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; and

(4) as otherwise provided in this section or in AS 43.05.232.

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

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

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

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

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

(A) to assist the committee in carrying out its responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits,

New language

New section

Jud CS: An intentional violation is a class A misdemeanor (Nothing on a negligent violation)

litigation, or settlements; or

(C) to estimate future state revenue;

may not.....

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

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

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee after making a written determination that the transfer of the return or return information is in the best interest of the state. Before the return or return information is transferred, the commissioner shall provide a copy of the commissioner's determination to the taxpayer whose return or return information is to be transferred. In determining whether the transfer of the return or return information is in the best interest of the state, the commissioner shall consider

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

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

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

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

(4) whether the return or return information would clarify or rectify information provided by a taxpayer to a legislative committee;

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

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

(d) A legislative committee shall consider tax returns and return information transferred under (b) or (c) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair may designate legislative employees and agents to inspect the confidential tax returns and return information, but the chair or co-chair shall seek to minimize the number of employees and agents designated. The designated employees and agents may attend the executive session. The chair or co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(e) When confidential tax returns or return information concerning a specific taxpayer are provided to a legislative committee under

Leaves out, CS HB 58 (Jud) Pg 5, L12-16 subsec (4)

"After giving the taxpayer a hearing... the cmsr shall..."

New

Jud CS: Pg 5, L18-19 "the taxpayer may attend"

this section, the commissioner shall notify the taxpayer of the content and delivery of the return and return information to the committee.

(f) Before providing confidential tax return or return information under (b) or (c) of this section, the commissioner shall review the purpose of the proposed transfer of the return or return information to determine what types of confidential tax return or return information will provide the needed information. If more than one type of confidential tax return or return information will provide the needed information, the commissioner shall choose the return or return information that, in the commissioner's discretion, is the least commercially sensitive.

NEW

(g) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature or an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b) or (c) of this section, shall, on a form prepared by the commissioner,

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

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

(h) The commissioner shall adopt regulations governing the

transmittal, receipt, safekeeping, duplication, accounting for, and return of the confidential tax return and return information transferred under (b) and (c) of this section.

(i) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the Internal Revenue Service under exchange agreements with the department.

(j) In this section

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

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

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

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

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

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

New

#1

A M E N D M E N T

Offered in the HOUSE

By Davis
LARSON

TO: CSHB 58 (Finance)

adopted

Page 5, line 14, following "taxpayer.":

Insert "During the interim between legislative sessions, the chair or co-chair of the Legislative Budget and Audit Committee may request confidential tax returns and return information under this subsection without a simple resolution, if a majority of the members of the Legislative Budget and Audit Committee vote to approve making the request."

MALONE 11-9-87

ALASKA DEPARTMENT OF REVENUE
PROPOSED AMENDMENTS FOR CS HB 58

Amendment No. 1

Page 3, Change section 5 to read:

* Sec. 5. AS 43.05.230(f) is amended to read:

(f) An intentional [WILFUL] violation of the provisions of this section is a class A misdemeanor . . .

Amendment No. 2

Page 4, insert a new subsection (h) to read:

(h) The commissioner may transfer information made confidential under this section to a legislative committee after a written finding by the commissioner that such transfer is in the best interest of the public. The transfer of the confidential information is in the best interest of the public under the following circumstances:

(1) A taxpayer has testified before a legislative committee, either orally or in writing or has otherwise provided information to a committee concerning the administration of a tax under this title and the department has confidential information of that taxpayer which is in direct conflict with the testimony or information offered by the taxpayer; or

(2) A legislative committee is reviewing the administration of a tax imposed under this title and confidential information is necessary to demonstrate taxpayer compliance with the tax under review; or

(3) The legislature has under consideration a bill proposing to add an additional tax or to amend a tax administered by this department and confidential information is required to determine the fiscal impact of the proposed new tax or amendment; or

alternative

[(4) The commissioner makes a written determination after a hearing with the taxpayer that the interest of the public in transferring the information to the legislative committee outweighs the interest of the taxpayer in avoiding the transfer of the information.]

Reletter remaining subsections (h) through (k) to (i) through (l).

Amendment No. 3

Page 2, Line 24: insert:

(7) The right of the people to privacy is recognized and shall not be infringed.

Amendment No. 4.

Page 3, Line 1 amend citation to AS 43.05.230(h) and (i).

Amendment No. 5.

Page 3, Line 6: amend citation to AS 43.05.230(h) and (i).

Amendment No. 6

Page 3, Line 13: amend citation to AS 43.05.230(h) and (i).

Amendment No. 7

Page 5, Relettered AS 43.05.230(k): amend citation to (h) and (i)

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 58
REQUEST — Publish Date:

Revision Date: 1/22/87
Title: An Act relating to the disclosure of certain state tax assessment info
Sponsor: Rules Committee
Requestor: Legislative Budget & Audit

Agency Affected: Revenue
BRU: Audit
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TRAVEL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CONTRACTUAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
SUPPLIES	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
EQUIPMENT	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
LANDS & STRUCTURES	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
GRANTS, CLAIMS	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
MISCELLANEOUS	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
OTHER	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Prepared By: Steven E. Kettel — Phone: 465-2320
Division: Audit — Date: 1/22/87

Approved by Commissioner: Hugh Malone — Date: 1/27/87
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

January 29, 1987

The Honorable John Sund
Chairman, House Judiciary
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Sund:

The Department of Revenue supports CS for HB 58 - "An Act relating to Confidential tax information of the Department of Revenue...".

The Department concurs in the bill's Legislative findings and purpose section, specifically:

> "there is a legitimate and compelling governmental interest in the legislature having adequate access to tax related information to allow responsible oversight..."

I would like, however, to propose a few amendments - see enclosure.

Sincerely,

Hugh Malone
Commissioner of Revenue

HM:RBW:mll
87-15

Enclosure

04-D2LH

LEGISLATIVE LEGAL: changing law on confidentiality of current taxpayer information

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M December 17, 1985

SUBJECT: Legislative access to certain taxpayer information
(Work Order No. 14-1468)

TO: Mike Greany, Director
Legislative Finance Division

FROM: Richard A. Bradley
Legislative Counsel

You have requested that we comment on the extent of legislative and public access to certain information regarding taxpayers. The information that you seek is the identity of corporate taxpayers against whom assessments have been issued. I gather that the disclosure you seek is not of a confidential legislative oversight character and that your request is essentially that there be a public disclosure of the facts involved.

Your request notes the provisions of AS 43.05.230(1); the section establishes criminal penalties 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;
>
> * * *

While considering this section, however, note the provisions of sec. 230(e); it provides, in part:

> (e) Nothing in this section prohibits 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.

This latter subsection appears to reflect a present legislative determination that information regarding taxpayers who are delinquent in their responsibilities to the state does not enjoy a privileged status and the Department of Revenue may disclose that information if the department believes that the disclosure will assist in the collection of the taxes.

In my opinion, the department may disclose that information under existing law on the date that the taxes due are delinquent. I agree that an assessment will typically occur before there is any delinquency and thus sec. 230(e) is not wholly responsive to your request; I also agree that a disclosure that remains within the discretion of the Department of Revenue is not a solution to your request.

A solution is to provide that the identity of a taxpayer against whom an assessment has been made is a public record, whether the taxpayer agrees that the amount is due or not and regardless of delinquency.

It should be noted that the timing of the disclosure of the assessment raises valid public policy issues that may be complex considering the different kinds of taxes collected by the state. As the economic and business incidents that become the occasion of a tax become more complex and perhaps more ambiguous, the time at which the events give rise to an assessment may similarly become more ambiguous.

What I consider clear is that the taxpayer has no valid claim for protection from this disclosure under the "privacy amendment" [art. 1, sec. 22 of the Alaska Constitution] or under similar provisions or concepts of the U.S. Constitution. While the Alaska Constitution offers an explicit guarantee of privacy (art. I, sec. 22), unlike the Federal Constitution, the tests for the existence of the right to privacy in a particular context are first, whether the person has exhibited an actual (or subjective) expectation of privacy and, second, whether there is an expectation that

society is prepared to recognize that as a reasonable right. Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980). Whether a corporation has a lesser expectation of privacy than an individual in the matters that are the subject of this memorandum or not, it is clear that the assessment of taxation by properly constituted taxing authorities is a responsibility of government that, once done, is not expected to remain private and, in fact, public policy concerns demand that it be done publicly.

The department may, of course, maintain as confidential proprietary information submitted by a taxpayer in appropriate circumstances.

A bill amending sec. 230(e) in the manner suggested is enclosed.

If I may be of further assistance, please advise.

RAB:mkr
M1:141

Enclosure

MEMORANDUM State of Alaska

TO: Louann Cutler
House Finance Committee

DATE: February 21, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

By: Deborah Vogt DV
Assistant Attorney General
Oil, Gas and Mining-Juneau

SUBJECT: Disclosure of confidential tax information

HB 502, as currently drafted, would permit the Department of Revenue to disclose to the legislature the name of a taxpayer and the amount of an assessment levied against that taxpayer by the Department. You have asked me to look into what the United States and other states permit in the way of legislative oversight of tax matters, and to consider whether Alaska might follow those examples. You have further asked me to draft a proposed committee substitute for HB 502 permitting disclosure to the legislature, but prohibiting disclosure to the public.

26 U.S.C. 6103 is the Internal Revenue statute dealing with the confidentiality of tax information on the federal level. Like AS 43.05.230, it generally requires that information on a federal tax return be kept confidential. Section (f) of that statute permits the IRS to disclose otherwise confidential material to designated committees of Congress. Those committees are the "tax writing" committees -- House Ways and Means, Senate Finance and the Joint Committee on Taxation. Like Alaska's law, if the information does not identify particular taxpayers, it may simply be given to Congress. If, however, the information would disclose or identify a particular taxpayer, it may only be provided to those committees in executive session. Taxpayer-specific information may also be provided to the chief of staff of the joint committee, to other committees under more limited circumstances, and to the "agents" of the tax-writing committees (staff) that are designated by the chairman.

I have made a cursory survey of the laws of other states, and have located one (California) which permits disclosure to the legislature. Corporate income tax information is disclosable under California Statute § 26453, and personal income tax information under § 19285. I have attached copies of those statutes for your review. California provides that it is a misdemeanor for a member of

a committee or its staff to disclose the particulars of tax information.

Considerations.

1. Accountability. The present confidentiality statute imposes criminal penalties for unauthorized disclosure of tax information. That criminal penalty is probably an effective deterrent to unintentional disclosure: I know it makes me take very seriously the confidentiality of taxpayer information. It may be that here in Alaska it is especially important to consider accountability since our major taxpayers are few in number, and as a result the contents of their tax returns may be more memorable than would be any particular return in a state like California or at the federal level. Although neither California nor the United States appear to have dealt with the question of legislative immunity, I believe it is appropriate to consider whether a criminal penalty would have any effect should a legislator disclose confidential tax information in the course of legislative debate. (I do not believe that any question of immunity arises in the event that a legislator were to disclose information in another context -- for example, to a friend or relative in a social context.)

Art 2, sec 6

The speech and debate immunity appearing in the Alaska Constitution, like that in the United States Constitution, was designed to "preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities." United States v. Helstoski, 442 U.S. 477, 490. Thus, the immunity is more than an individual privilege protecting legislators; its purpose is to protect, as well, the constituents of those legislators, who have an interest in ensuring free debate by their legislature. As a result, since it is not a personal privilege, it is not clear whether the immunity may be waived by a legislative body.

In Helstoski, the Court suggested (but did not decide) that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its

members." Id. at 492. Although the issue apparently has never arisen, the Internal Revenue Service takes the position that Congress has done just that in section 6103, so that members of Congress are not immune from penalties for disclosure. The attached draft bill, then, specifically provides that a legislator would not be immune from penalties for unauthorized disclosure of tax information.

The legislature may, of course, take any action it deems appropriate to regulate the conduct of its own members. The draft bill, then, provides that disclosure of tax information is a violation of the standards of conduct set out in AS 24.60. Thus, even if a legislator who disclosed confidential information were to successfully argue that he or she was immune from the penalties of AS 43.05.230, that legislator would nonetheless have violated the legislature's standards of conduct, and would be subject to the provisions of that chapter.

2. Information exchange with the Internal Revenue Service. The state is currently entitled to information from the IRS, so long as the state has certain confidentiality protections. In amending the confidentiality provisions, it is appropriate to consider whether the exchange of information with the IRS would be affected. There are two relevant provisions of federal law.

The first is 26 U.S.C. § 6103 (d), which authorizes the IRS to disclose information generated by the IRS directly to the states so long as the information is protected by the state. An example of this type of information would be the results of a federal a Windfall Profit Tax audit. The information is available only to the agency charged with administering the tax laws; it may not even be disclosed to the governor. Thus, information received by Alaska under this section would not be available to the legislature under the draft bill. However, the draft bill would not effect the receipt of this information by the state.

The second relevant provision is more indirect, and deals with federal tax information that is provided to the state by the taxpayer. For example, a state may require that the federal return be attached to the state return, or that certain information from the federal return be entered on the state return. Since this information comes directly

from the taxpayer, the United States has no control over the use to which the information is put. However, § 6103(p)(8) provides that if the state does not protect the confidentiality of this information, the IRS will no longer provide the direct information under § 6103(d). I have checked with the IRS disclosure attorneys in Washington, and they tell me that disclosure to the legislature, but not to the public, should have no effect on the exchange of information. They have also said that the IRS will work with us to determine the potential effect of any legislation before it is passed. I also spoke with California, which discloses information to its legislature, and the attorney there told me that disclosure did not effect the exchange of information with the IRS.

3. Effect of proposed bill on legislative involvement in settlement of tax disputes. The confidential nature of the recent settlement of severance tax issues with Arco raises the question of what the the effect of the proposed bill would be on the settlement process. The bill would permit (subject to the restrictions against public disclosure) legislators to review settlements to the extent that they now may do so with respect to non-tax matters. In other words, the bill removes the bar of tax confidentiality, no more and no less. The bill would not expand the legislature's ability to participate in the settlement process beyond its present parameters in non-tax matters.

Summary of the Proposed Bill

The draft bill provides that confidential information will be provided to a committee designated by the speaker of the house or the senate president. For example, the speaker might request that information be provided to the house finance committee. The committee may review and consider confidential information only in a closed, executive session (unless the taxpayer consents to an open hearing). If the committee desires that legislative staff have access to materials, it must first define the scope of an inquiry or investigation and then designate specific staff members who are authorized to review otherwise confidential information. Legislative employees would include, for example, the house research agency, so long as the committee, acting as a whole, designated those employees. The proposed bill restates that disclosure of information received under the subsection is not permitted,

and specifically notes that this is true notwithstanding the statute setting out legislative immunity. 1/ It further would require that any individual, before receiving or reviewing information, must sign a statement acknowledging that he or she knows the information is confidential and that disclosure is prohibited.

The bill would add a new subsection in the legislative standards of conduct chapter, prohibiting disclosure of information received under the amendments proposed in the bill. Thus, even if a legislator successfully argued immunity under the speech and debate clause, he or she would still be subject to the provisions of that chapter.

DV:jf

1/ The intent, here, is to waive the speech and debate immunity, not the protections from being subjected to court proceedings during the legislative session. A court would probably find that the latter protection was not waived by the draft bill, but it may be that this should be clarified.

January 29, 1987

TESTIMONY OF

STANDARD ALASKA PRODUCTION COMPANY

ON H.B. 58

CONFIDENTIALITY OF CERTAIN TAX INFORMATION

The Standard Alaska Production Company recognizes Alaska's right to administer the audit, assessment and collection of tax revenues. However, we believe that the requirement of confidentiality imposed upon the State in matters relating to the audit and collection of taxes is essential in order to protect the sensitive and propriety business information of taxpayers.

THE BILL WOULD INHIBIT THE AUDIT PROCESS

ORIGINALLY, H.B. 58 would have simply allowed the disclosure of a taxpayer's name and the amount of an assessment. an objection could have been made to that proposal on the grounds that the only practical result would be to embarrass the taxpayer and that would serve no useful purpose. The proposed Committee Substitute however, is not designed to embarrass the taxpayer but is far more sweeping in scope. We believe it poses a very real economic threat to the taxpayer and does serious damage to the relationship between the taxpayer and the Department of Revenue during the audit process. There is a very real concern that the hearing process may be besieged by motions, discovery requests, delay tactics, objections and jurisdictional challenges, if

information supplied by the taxpayer is subject to disclosure outside the Department of Revenue.

The duties of the Department of Revenue will be made more difficult by permitting a legislative panel to intervene, at any point in the audit process, and to question and challenge assumptions, calculations and compromises.

The audit procedure will be come far more formal and adversarial at a much earlier stage. Books and records that are now routinely submitted to the State to settle minor valuation or accounting problems will probably be produced only as a result of lengthy discovery motions. Audits will consume even more time delay even further the time when the State receives its tax revenues.

THE BILL RISKS DISCLOSURE OF PROPRIETY INFORMATION

There is a significant risk inherent in the proposed legislation that a taxpayer' highly confidential information may be disclosed. Proprietary information would be available to legislators, legislative employees and their agents. Any number of copies of taxpayer information will inevitably be made and circulated. Certain pieces of this information, in the hands of an experienced analyst, would allow a competitor to anticipate our marketing and pricing strategies and thereby gain an unfair competitive advantage. some of this information is so sensitive that it is currently subject to a protective court order. H.B.

58 would make it very difficult for SAPC to continue to protect this type of highly confidential information.

PENALTIES FOR DISCLOSURE ARE INADEQUATE

The penalties for disclosure are inadequate. For example, the penalties apply only to intentional disclosure of confidential information and not disclosure that is occassioned through inadvertence or carelessness.

Moreover, the penalties for disclosure apply only to those persons who would be specifically entitled to receive the tax information pursuant to the legislation. The sanctions do not apply to anyone who is not authorized to receive the information but simply sees a copy in the House or Senate chamber or in a Representative's office. Those persons may disclose any of this information with impunity. A newspaperman, for example, who publishes the information but refuses to reveal his sources, is effectively beyond any sanctions.

Obviously, a company always has the rish that a disgruntled employee may disclose some proprietary information. However, in the case of an employee, the Company has the recourse of terminating employment or possibly bringing a civil action for damages because of the breach of a fiduciary duty. The Company has no such remedies if its most confidential marketing information suddenly appears in the daily newspaper.

These fears are real. As noted in the January 17, 1986 letter from the Attorney General's office to the Legislative Budget and Audit Committee:

> "The Department of Revenue has expressed concern that simple disclosure of the amount of an assessment might reveal sensitive information about taxpayers....
>
> In the oil industry, it is possible that disclosure of assessments could allow one taxpayer to learn valuable information about the transportation costs or valuation practices of its competitors."

If the simple disclosure of an assessment can be that harmful, then the risk of damage occassioned by the distribution of entire tax returns and supporting information is obviously far, far greater.

SEPARATION OF POWERS

Under the Alaskan Constitution and general Separation of Power doctrine, we believe that tax law enforcement is a function of the Executive Branch -- through the Department of Revenue. Under the broad powers conferred by H.B. 58, a chosen legislative panel would appear capable of participating actively and perhaps controlling the tax audit process, including the negotiation of tax disputes. There is no limitation in H.B. 58 as to when, in the audit process, the tax returns and tax information may be requested by the designated legislative committee. the power could be invoked immediately at the onset of an audit with the

taxpayer required to supply every record, invoice and strategy that is in its files, to the Legislative panel.

Additionally, H.B. 58 is conspicuously silent on what constitutes the exercise of legislative oversight. The Legislature has certain oversight functions. For example, the collection of information necessary for tax writing purposes or the review of charges of negligence or conflict or interest within the Department of Revenue. However, we believe that H.B. 59 is so broad, so all encompassing, that it could be used to raise new issues on audit and essentially perform a secondary review of proposed audit settlements. In so doing, H.B. 58 would allow a legislative panel to perform executive functions and second guess the tax professionals in the Department of Revenue.

H.B. 58 ignores the fact that the Department of Revenue has spent years familiarizing itself with the facts and law associated with the disputed issues. Tax settlements should be reached in an environment free from the pressures of the political arena and with professionals whose backgrounds and training have prepared them to deal with unbelievably complicated tax issues. Under H.B. 58, Standard would view negotiations with the Department of Revenue as merely preliminary, and not final. while the ultimate tax payment would probably be the same, the time period would be extended, manpower and costs unnecessarily increased, and the likelihood of litigation heightened.

CONCLUSION

In summary, we object to H.B. 58, because:

1. H.B. 58 empowers a legislative panel to perform functions properly reserved to the Executive Branch and delegated to the Department of Revenue.

2. Despite sanctions against disclosure of confidential information, unauthorized disclosure of confidential material may result and such disclosure could cause Standard Alaska material competitive harm.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

January 29, 1987

The Honorable John Sund
Chairman, House Judiciary
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Sund:

The Department of Revenue supports CS for HB 58 - "An Act relating to Confidential tax information of the Department of Revenue...".

The Department concurs in the bill's Legislative findings and purpose section, specifically:

> "there is a legitimate and compelling governmental interest in the legislature having adequate access to tax related information to allow responsible oversight..."

I would like, however, to propose a few amendments - see enclosure.

Sincerely,

Hugh Malone
Commissioner of Revenue

HM:RBW:mll
87-15

Enclosure

04-D2LH

ALASKA DEPARTMENT OF REVENUE
TAX ACCOUNTS RECEIVABLE SUMMARY
March 9, 1987

TAX TYPE	STATUTE	VALUE OF BILLINGS	NOTICES OF ASSESSMENT	APPEALED	DELINQUENT AND ASSIGNED	CURRENTLY NOT COLLECTABLE
OIL & GAS CORP	AS 43.21	$ 825,351,689.46	$ .00	$ 825,351,689.46	$ .00	$ .00
OIL PRODUCTION	AS 43.55	453,306,753.90	.00	453,306,753.90	.00	.00
OIL & GAS - PRE FY87	AS 43.55	161,963,008.77	.00	161,962,075.96	932.81	.00
CORPORATION	AS 43.20	94,144,097.79	164,470.07	91,986,759.67	1,821,544.43	171,323.62
INDIVIDUAL	AS 43.20	11,677,355.99	210,046.13	3,188,567.12	6,423,325.94	1,855,416.80
FISH, PRE FY 87	AS 43.75	8,832,577.14	.00	1,504,547.83	5,970,063.95	1,357,965.36
MOTOR FUEL-PRE FY 87	AS 43.40	2,843,120.27	.00	426,521.83	2,414,351.16	2,247.28
MINING	AS 43.65	2,764,360.14	270,992.00	2,485,320.09	8,048.05	.00
BUSINESS LICENSE	AS 43.70	2,714,218.53	.00	2,308,841.08	192,960.46	212,416.99
WITHHOLDING	AS 43.20	1,428,882.39	.00	.00	1,326,618.57	102,263.82
SALMON ENHAN - SSE	AS 43.76	587,957.55	6,996.96	442,028.23	138,932.36	.00
OIL & GAS PROPERTY	AS 43.56	564,641.70	120,633.06	14,801.57	219,456.70	209,750.37
SALMON ENHAN - COOK	AS 43.76	304,685.10	.00	3,867.54	179,152.36	121,665.20
SEAFOOD MARKETING	AS 16.51	195,430.97	2,257.82	36,526.36	145,252.00	11,394.79
MOTOR FUEL - HWY	AS 43.40	99,203.13	20,392.96	66,816.50	11,993.67	.00
ALCOHOLIC BEVERAGE	AS 43.60	76,398.05	5,324.63	.00	70,915.46	157.96
FISH, ESTAB SHORE	AS 43.75	45,712.92	33,883.72	10,573.02	1,256.18	.00
SALMON ENHAN - PWS	AS 43.76	38,848.97	.00	20,353.64	18,495.33	.00
MOTOR FUEL - AV.	AS 43.40	38,037.13	24,842.50	.00	13,194.63	.00
SALMON ENHAN - NSE	AS 43.76	29,199.11	.00	11,256.39	17,872.04	70.68
FISH, ESTAB FLOATING	AS 43.75	26,319.61	2,775.39	7,904.29	15,639.93	.00
MOTOR FUEL - MARINE	AS 43.40	16,712.37	.00	16,642.33	70.04	.00
ESTATE	AS 43.31	10,300.71	8,727.49	.00	1,573.22	.00
CIGARETTE, GENERAL	AS 43.50	3,082.08	801.63	.00	2,280.45	.00
AVERAGE WHOLESALE	AS 43.80	1,650.00	.00	.00	1,650.00	.00
COIN OP DEVICE	AS 43.35	1,164.50	.00	.00	.00	1,164.50
FISH, DEV FLOATING	AS 43.75	1,055.21	1,055.21	.00	.00	.00
TOTAL TAX ACCOUNTS RECEIVABLE		$1,567,066,463.49	$ 873,199.57	$1,543,151,846.81	$18,995,579.74	$4,045,837.37
PERCENT OF TOTAL VALUE		100.00%	0.06%	98.47%	1.21%	0.26%

TAX TYPE	STATUTE	NUMBER OF BILLINGS	NOTICES OF ASSESSMENT	APPEALED	DELINQUENT AND ASSIGNED	CURRENTLY NOT COLLECTABLE
INDIVIDUAL	AS 43.20	1,117	14	150	734	219
CORPORATION	AS 43.20	618	78	341	145	54
OIL & GAS - PRE FY87	AS 43.55	574	0	573	1	0
WITHHOLDING	AS 43.20	291	0	0	210	81
MOTOR FUEL-PRE FY 87	AS 43.40	220	0	100	112	8
FISH, PRE FY 87	AS 43.75	179	0	27	103	49
BUSINESS LICENSE	AS 43.70	89	0	23	27	39
OIL PRODUCTION	AS 43.55	61	0	61	0	0
SEAFOOD MARKETING	AS 16.51	54	1	7	41	5
MINING	AS 43.65	50	5	43	2	0
OIL & GAS PROPERTY	AS 43.56	42	16	1	21	4
SALMON ENHAN - COOK	AS 43.76	36	0	3	25	8
OIL & GAS CORP	AS 43.21	34	0	34	0	0
SALMON ENHAN - SSE	AS 43.76	32	4	4	24	0
MOTOR FUEL - HWY	AS 43.40	25	6	10	9	0
MOTOR FUEL - AV.	AS 43.40	19	18	0	1	0
SALMON ENHAN - NSE	AS 43.76	18	0	7	10	1
SALMON ENHAN - PWS	AS 43.76	11	0	2	9	0
ALCOHOLIC BEVERAGE	AS 43.60	8	1	0	6	1
FISH, ESTAB FLOATING	AS 43.75	7	2	2	3	0
FISH, ESTAB SHORE	AS 43.75	6	1	3	2	0
MOTOR FUEL - MARINE	AS 43.40	4	0	2	2	0
COIN OP DEVICE	AS 43.35	4	0	0	0	4
ESTATE	AS 43.31	3	2	0	1	0
CIGARETTE, GENERAL	AS 43.50	2	1	0	1	0
FISH, DEV FLOATING	AS 43.75	1	1	0	0	0
AVERAGE WHOLESALE	AS 43.80	1	0	0	1	0
TOTAL TAX BILLINGS		3,506	150	1,393	1,490	473
PERCENT OF TOTAL BILLINGS		100.00%	4.28%	39.73%	42.50%	13.49%

ALASKA DEPARTMENT OF REVENUE
APPEALED TAX ASSESSMENTS BY APPEAL LEVEL
March 9, 1987

TAX TYPE	STATUTE	VALUE OF BILLINGS	CONFERENCE	FORMAL	COURT
OIL & GAS CORP	AS 43.21	$ 825,351,689.46	$ 431,172,988.00	$394,178,701.46	$ .00
OIL PRODUCTION	AS 43.55	453,306,753.90	453,306,753.90	.00	.00
OIL & GAS - PRE FY87	AS 43.55	161,962,075.96	160,482,423.28	1,090,368.28	389,284.40
CORPORATION	AS 43.20	91,986,759.67	33,693,124.33	51,042,719.22	7,250,916.12
INDIVIDUAL	AS 43.20	3,188,567.12	3,100,868.42	87,698.70	.00
MINING	AS 43.65	2,485,320.09	2,485,320.09	.00	.00
BUSINESS LICENSE	AS 43.70	2,308,841.08	1,480,123.45	599,888.19	228,829.44
FISH, PRE FY 87	AS 43.75	1,504,547.83	1,051,235.02	118,267.00	335,045.81
SALMON ENHAN - SSE	AS 43.76	442,028.23	442,028.23	.00	.00
MOTOR FUEL-PRE FY 87	AS 43.40	426,521.83	426,521.83	.00	.00
MOTOR FUEL - HWY	AS 43.40	66,816.50	66,816.50	.00	.00
SEAFOOD MARKETING	AS 16.51	36,526.36	35,206.88	1,319.48	.00
SALMON ENHAN - PWS	AS 43.76	20,353.64	20,353.64	.00	.00
MOTOR FUEL - MARINE	AS 43.40	16,642.33	16,642.33	.00	.00
OIL & GAS PROPERTY	AS 43.56	14,801.57	14,801.57	.00	.00
SALMON ENHAN - NSE	AS 43.76	11,256.39	11,256.39	.00	.00
FISH, ESTAB SHORE	AS 43.75	10,573.02	10,573.02	.00	.00
FISH, ESTAB FLOATING	AS 43.75	7,904.29	7,904.29	.00	.00
SALMON ENHAN - COOK	AS 43.76	3,867.54	3,867.54	.00	.00
TOTAL TAX ACCOUNTS RECEIVABLE		$1,543,151,846.81	$1,087,828,808.71	$447,118,962.33	$ 8,204,075.77
PERCENT OF TOTAL VALUE		100.00%	70.49%	28.97%	0.53%

TAX TYPE	STATUTE	NUMBER OF BILLINGS	CONFERENCE	FORMAL	COURT
OIL & GAS - PRE FY87	AS 43.55	573	504	67	2
CORPORATION	AS 43.20	341	270	53	18
INDIVIDUAL	AS 43.20	150	142	8	0
MOTOR FUEL-PRE FY 87	AS 43.40	100	100	0	0
OIL PRODUCTION	AS 43.55	61	61	0	0
MINING	AS 43.65	43	43	0	0
OIL & GAS CORP	AS 43.21	34	21	13	0
FISH, PRE FY 87	AS 43.75	27	16	4	7
BUSINESS LICENSE	AS 43.70	23	18	3	2
MOTOR FUEL - HWY	AS 43.40	10	10	0	0
SALMON ENHAN - NSE	AS 43.76	7	7	0	0
SEAFOOD MARKETING	AS 16.51	7	5	2	0
SALMON ENHAN - SSE	AS 43.76	4	4	0	0
SALMON ENHAN - COOK	AS 43.76	3	3	0	0
FISH, ESTAB SHORE	AS 43.75	3	3	0	0
MOTOR FUEL - MARINE	AS 43.40	2	2	0	0
SALMON ENHAN - PWS	AS 43.76	2	2	0	0
FISH, ESTAB FLOATING	AS 43.75	2	2	0	0
OIL & GAS PROPERTY	AS 43.56	1	1	0	0
TOTAL TAX BILLINGS		1,393	1,214	150	29
PERCENT OF TOTAL BILLINGS		100.00%	87.15%	10.77%	2.08%

MEMORANDUM

TO: Louann Cutler, Committee Aide,
House Finance Committee

FROM: J. Hartle, Committee Aide,
House Judiciary committee

RE: Sectional Analysis, CSHB 58(Judiciary)

CSHB 58(Jud) is very similar to CSHB 502(Jud)am which passed the House last year. Amendments were added at the request of the Department of Revenue, and the oil industry.

Sectional analysis:

Section 1: A findings and purpose section is included to assist the courts in interpreting the bill in balancing a taxpayer's right to privacy under Alaska Constitution Article 1, Section 22 with the legislature's need for information on how the state's tax laws are operating. Subsection (b) states the purpose of the Act. Page 2, line 24, item (7) was added at DOR's request.

Section 2: Adds a new section to Title 24, Article 2, on legislative employees, stating that a present or former employee or agent of the legislature may not disclose confidential tax information.

Section 3: Adds a new section to the Legislative Standards of Conduct Code, stating that no person covered by the Code may disclose confidential tax information.

Section 4: Also adds to the Legislative Standards of Conduct Code a section to protect confidential information that may have been a source of a complaint before the Legislative Ethics Committee.

Section 5: Changes the penalties for disclosing confidential tax information to a class A misdemeanor. (Maximum penalties: 1 year imprisonment and $5,000.) This is the criminal code classification that most closely approximates current law. Last year, CSHB 502 (Jud)am specified a Class C felony, The change was made at the request of the Department of Revenue.

Section 6: Subsection (h) lays out the procedures for the legislature to deal with confidential tax information. It requires: a simple resolution to be passed authorizing a committee to request the tax information, requests must be in writing, the taxpayer must be notified, and all consideration must be in executive session unless the taxpayer consents in writing to a public meeting.

Subsection (i) was added at the request of the Department of Revenue. The purpose of this section is to allow, under prescribed circumstances, the Commissioner of Revenue to initiate the process

of disclosing confidential tax information to the legislature.

Subsection (j) was added at the request of the oil industry (Jim Palmer, Standard Alaska). It provides that if tax records to be examined by a legislative committee identify a specific taxpayer, that taxpayer may attend the portion of the meeting that considers their particular return.

Subsection (k) makes it a violation of the law for a legislative member, former member, or employee to disclose confidential tax information (see Section 5 for the penalties). This section raises constitutional questions under Alaska Constitution Article II, Section 6 (See memo from Theresa L. Bannister, Legislative Council.) The section is written under the constitutional theory enunciated in the U.S. Supreme Court decision in U.S. v. Helstoski 442 US 477 490. The theory is that the legislature has plenary powers to discipline itself and may enlist the aid of the administrative branch and courts to do so.

Section 6 also requires legislators or employees, before viewing confidential tax information, to sign a form acknowledging that they are aware that the information is confidential and disclosure is prohibited.

Subsection (k) ensures that the exchange of information agreement with the Internal Revenue Service will not be violated.

Section 7: The bill has an immediate effective date.

Items in the referral file include:
Proposed CSHB 58 (JUD)
Memo from Theresa Bannister
Sectional analysis
Februrary 21, 1986 memo from Deborah Vogt to Louann Cutler
Exerpt from U.S. v. Helstoski 442 US 477 490
January 16, 1986 Memo from Deborah Vogt to Mike Greany
Statutes from other states on disclosure of tax information
Zero fiscal note

Alaska State Legislature

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House of Representatives

CSHB 58 (Fin) RELATING TO CONFIDENTIAL TAX INFORMATION OF THE DEPARTMENT OF REVENUE.

Allows the legislature access, under certain conditions, to tax information currently held confidential by the Department of Revenue.

PURPOSES FOR ACCESSING CONFIDENTIAL INFORMATION

1) consideration of tax legislation
2) oversight of the administration of tax laws (including review of settlements, litigation, and audits)
3) estimation of future state revenues

Explicitly not to:

1) direct the executive branch in its audit, litigation, or settlement efforts
2) embarrass, harass, or discriminate against a taxpayer

MECHANICS

1) request by a legislative committee, after identifying the scope of an inquiry and after passage by either house of a simple resolution authorizing the committee to receive the information, or
2) transfer by the commissioner, upon his/her own initiative, after a written consideration of a number of criteria and a determination that the transfer is in the state's best interest

SAFEGUARDS

1) commissioner must transfer the least commercially sensitive information that meets the legislature's purpose
2) commissioner must notify the taxpayer of the content of the information being transferred
3) department must implement regulations that govern the transmittal, safekeeping, duplication, and accounting for the information
4) information must be considered in executive session
5) legislative employees/agents allowed access to the information must be kept to a minimum
6) legislators who illegally disclose confidential information are subject to sanctions under the legislative ethics law
7) persons who negligently disclose confidential information are subject to a civil penalty of $5000; persons who knowingly disclose are guilty of a class A misdemeanor

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 28, 1987

SUBJECT: Constitutional speech and debate issue in CSHB 58(Jud)

TO: Representative John Sund
Chair, House Judiciary Committee

FROM: Theresa L. Bannister TLB
Legislative Counsel

This memorandum accompanies the draft of the committee substitute that you requested for HB 58. Please be aware that sec. 6 of the draft raises a constitutional question. Proposed subsection (i) added by sec. 6 could be challenged as violating the speech and debate immunity clause appearing in art. II, sec. 6 of the Alaska Constitution. Subsection (i) would subject legislators to liability enforceable by other branches of the government for acts occurring during the exercise of their legislative duties during the session or while going to or returning from the session.

It is not clear whether (i) of sec. 6 would be held to be constitutional. There does not appear to be any Alaska case law on this specific issue. In United States v. Helstoski, 442 U.S. 477, 490 (1979), the U.S. Supreme court suggested with regard to the speech and debate immunity provision of the U.S. Constitution that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members". Id. at 492. Although the issue apparently has never arisen in court, the Internal Revenue Service appears to have taken the position that Congress has done just that in an Internal Revenue law, so that members of Congress are not immune from penalties for disclosure. However, since the Alaska Supreme Court has not addressed this specific issue, the outcome of a challenge to sec. 6 of the draft is unknown.

If I may be of further assistance, please advise.

TLB:mkr
m8/055

Enclosure

Syllabus

UNITED STATES v. HELSTOSKI

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 78-349. Argued March 27, 1979—Decided June 18, 1979

During an investigation by several federal grand juries of reported political corruption, including allegations that aliens had paid money for the introduction of private bills in Congress to suspend the application of the immigration laws to allow the aliens to remain in the United States, respondent, then a Member of the House of Representatives, appeared voluntarily before the grand juries on 10 occasions. He testified as to his practices in introducing private immigration bills, voluntarily produced his files on numerous private bills, and provided copies of many such bills introduced on behalf of various aliens. Initially, respondent made no claim of privilege under the Fifth Amendment but eventually invoked that privilege as well as alluding to his privilege under the Speech or Debate Clause. Subsequently, respondent was indicted on charges of accepting money in return for being influenced in the performance of official acts, in violation of 18 U. S. C. § 201. He moved in District Court to dismiss the indictment on the ground, *inter alia*, that it violated the Speech or Debate Clause. The District Court denied the motion, holding that the Clause did not require dismissal, but that the Government was precluded from introducing evidence of past legislative acts in any form. The Court of Appeals affirmed this evidentiary ruling, holding, contrary to the Government's arguments, that legislative acts could not be introduced to show motive, since otherwise the protection of the Speech or Debate Clause would be negated, and that respondent had not waived the protection of that Clause by testifying before the grand juries.

Held: Under the Speech or Debate Clause, evidence of a legislative act of a Member of Congress may not be introduced by the Government in a prosecution under 18 U. S. C. § 201. *United States* v. *Brewster*, 408 U. S. 501; *United States* v. *Johnson*, 383 U. S. 169. Pp. 487–494.

(a) While the exclusion of evidence of past legislative acts undoubtedly will make prosecutions more difficult, nevertheless, the Speech or Debate Clause was designed to preclude prosecution of Members for legislative acts. References to legislative acts of a Member cannot be admitted without undermining the values protected by that Clause. Pp. 488–489.

(b) As to what restrictions the Clause places on the admission of evidence, the concern is with whether there is evidence of a legislative act; the protection of the Clause extends only to an act that has already been performed. A promise to deliver a speech, to vote, or to solicit other votes is not "speech or debate" within the meaning of the Clause, nor is a promise to introduce a bill at some future date a legislative act. Pp. 489–490.

(c) Respondent did not waive the protection of the Clause by testifying before the grand juries and voluntarily producing documentary evidence of legislative acts. Assuming, without deciding, that a Member of Congress may waive the Clause's protection against being prosecuted for a legislative act, such waiver could be found only after explicit and unequivocal renunciation of the protection. On this record, respondent's words and conduct did not constitute such a waiver; his exchanges with the attorneys for the United States indicated at most a willingness to waive the protection of the Fifth Amendment. Pp. 490–492.

(d) Nor does 18 U. S. C. § 201 amount to a congressional waiver of the protection of the Speech or Debate Clause. Assuming, *arguendo*, that Congress could constitutionally waive the protection of the Clause for individual Members, such waiver could be shown only by an explicit and unequivocal legislative expression, and there is no evidence of such a waiver. Pp. 492–493.

576 F. 2d 511, affirmed.

BURGER, C. J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and REHNQUIST, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which STEWART, J., joined, *post*, p. 494. BRENNAN, J., filed a dissenting opinion, *post*, p. 498. POWELL, J., took no part in the consideration or decision of the case.

Solicitor General McCree argued the cause for the United States. With him on the brief were *Assistant Attorney General Heymann, Deputy Solicitor General Frey,* and *Louis M. Fischer.*

Morton Stavis argued the cause for respondent. With him on the briefs was *Louise Halper.*

Stanley M. Brand argued the cause for Thomas P. O'Neill, Jr., Speaker of the United States House of Representatives, et al. as *amici curiae.* With Mr. Brand on the brief was *Neal P. Rutledge.*

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n the brief was *Neal P.*

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause [1] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a Member, accepted money in return for promising to introduce and introducing private bills.[2]

I

Respondent Helstoski is a former Member of the United States House of Representatives from New Jersey. In 1974, while Helstoski was a Member of the House, the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

The investigation was carried on before nine grand juries. The grand juries were called according to the regular practice in the District of New Jersey, which was to have a different grand jury sitting on each of six days during the week; on two days there was a second grand jury. When the United States Attorney was ready to present evidence, he presented it to whichever grand jury was sitting that day. There was therefore no assurance that any grand jury which voted an indictment would see and hear all of the witnesses or see all of the documentary evidence. It was contemplated that the grand jury that was asked to return an indictment would review

[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Art. I, § 6.

[2] This case was argued together with No. 78–546, *Helstoski* v. *Meanor*, *post*, p. 500, which involves the question of whether mandamus is an appropriate means of challenging the validity of an indictment on the ground that it violates the Speech or Debate Clause.

transcripts of relevant testimony presented to other grand juries.

Helstoski appeared voluntarily before grand juries on 10 occasions between April 1974 and May 1976. Each time he appeared, he was told that he had certain constitutional rights. Different terms were used by different attorneys for the United States, but the following exchange, which occurred at Helstoski's first appearance before a grand jury, fairly represents the several exchanges:

> "Q. You were told at that time [at the office of the United States Attorney earlier]—and just to repeat them today—before we begin you were told that you did not have to give any testimony to the Grand Jury or make any statements to any officer of the United States. You understand that, do you not?
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> "A. I come with full and unlimited cooperation.
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> "Q. I understand that. . . .
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> . . . . . .
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> "Q. And that you also know that anything that you may say to any agent of the United States or to this Grand Jury may later be used in a court of law against you; you understand that as well?
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> [Affirmative response given.]
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> . . . . . .
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> "A. Whatever is in my possession, in my files, in its original form, will be turned over. Those files which I have—some of them are very, very old. I've been in Congress since 1965. We mentioned this.
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> . . . . . .
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> "Q. The Grand Jury wants from you simply the records that are in your possession, whether it be in your office in East Rutherford, New Jersey, Washington, D. C., your home, wherever they may be, the Grand Jury would like you to present those documents. Of course, you under-

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stand that if you wish not to present those documents you do not have to and that anything you do present may also, as I have told you about your personal testimony, may be used against you later in a court of law?

"A. I understand that. Whatever I have will be turned over to you with full cooperation of [*sic*] this Grand Jury and with yourself, sir.

. . . . .

"A. I understand that. I promise full cooperation with your office, with the FBI, this Grand Jury.

"Q. The Grand Jury is appreciative of that fact. They also want to make certain that when you are giving this cooperation that you understand, as with anyone else that might be called before a United States Grand Jury, exactly what their constitutional rights are. And that is why I have gone through this step by step carefully so there will be no question and there will be no doubt in anybody's mind.

"A. As I indicated, I come with no request for immunity and you can be assured there won't be any plea of the Fifth Amendment under any circumstances."

Helstoski testified as to his practices in introducing private immigration bills, and he produced his files on numerous private bills. Included in the files were correspondence with a former legislative aide and with individuals for whom bills were introduced. He also provided copies of 169 bills introduced on behalf of various aliens.

Beginning with his fourth appearance before a grand jury, in October 1975, Helstoski objected to the burden imposed by the requests for information. The requests, he claimed, violated his own right of privacy and that of his constituents. In that appearance, he also stated that there were "some serious Constitutional questions" raised by the failure of the United States Attorney to return tax records which Helstoski had voluntarily delivered. He did not, however, assert a privilege

against producing documents until the seventh appearance, on December 12, 1975. Then he declined to answer questions, complaining that the United States Attorney had stated to the District Court that the grand jury had concluded that Helstoski had misapplied campaign funds. He asserted a general invocation of rights under the Constitution and specifically listed the Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments.

At the next, and eighth, appearance on December 29, 1975, he repeated his objections to the conduct of the United States Attorney. After answering questions about campaign financing, personal loans, and other topics, he declined to answer questions about the receipt of a sum of money. That action was based upon his privilege under the Fifth Amendment "and on further grounds that to answer that question would violate my rights under the Constitution."

Because the grand jury considered that Helstoski's invocation of constitutional privileges was too general to be acceptable, it adjourned and reconvened before the District Judge to seek a ruling on Helstoski's claim of privilege "under the Constitution." After questioning Helstoski, the judge stated that the privilege against compulsory self-incrimination was the only privilege available to Helstoski. The judge assisted Helstoski in wording a statement invoking the privilege that was satisfactory to the grand jury. Thereafter, Helstoski invoked his Fifth Amendment privilege in refusing to answer further questions, including a series of questions about private immigration bills.

Not until his ninth, and penultimate, appearance before a grand jury did Helstoski assert any privilege under the Speech or Debate Clause. On May 7, 1976, Helstoski asked if he was a target of the investigation. The prosecutor declined to answer the question, stating "it would be inappropriate for this Grand Jury or indeed for me to say that you are a target." Helstoski then invoked his privilege against compulsory self-

incrimination and declined to answer further questions or to produce documents.[3] He also declined to produce a copy of an insert from the Congressional Record, saying "I consulted with my attorneys and based on the statement that was made on the floor, I don't have any right to be questioned at any other time or place as reference to statements made on the floor of Congress."

Although that was the first instance which can even remotely be characterized as reliance upon the Speech or Debate Clause, Helstoski earlier had indicated an awareness of another aspect of the constitutional privileges afforded Congressmen.[4] During his fourth appearance before a grand jury, in October 1975, Helstoski complained that he had been served with a subpoena directing him to appear before a grand jury on a day that Congress was in session.[5]

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[3] That Helstoski may not have had the extent of his privilege clearly in mind is indicated by the following exchange between him and an Assistant United States Attorney during Helstoski's ninth appearance before a grand jury:

"A. [Helstoski] I stand on my Constitutional privilege regarding the Fifth Amendment.

"Q. And that privilege is against self incrimination?

"A. Whatever the Fifth Amendment is."

[4] The District Court found that "Helstoski was aware of the Speech or Debate Clause at the time he made his first grand jury appearance. He had recently concluded litigation involving his franking privilege in which he had relied upon the Speech or Debate Clause. *Schiaffo* v. *Helstoski*, 350 F. Supp. 1076 (D. N. J. 1972), rev'd in part, aff'd in part and remanded, 492 F. 2d 413 (3d Cir. 1974). In that litigation, Helstoski was represented by the same attorney who represented him throughout his grand jury appearances."

[5] He offered this explanation to an Assistant United States Attorney:

"A. [Helstoski] Do you want to get into the Constitutional question of whether or not you could serve a member of Congress while Congress is in session?

"You know very well that can't be done . . . .

[*Footnote 5 is continued on p. 484*]

At his 10th, and final, appearance before a grand jury, Helstoski invoked his Fifth Amendment privilege. But he also referred repeatedly to "other constitutional privileges which prevail." Nevertheless, he continued to promise to produce campaign and personal financial records as requested by the grand jury and directed by the District Judge.

II

In June 1976, a grand jury returned a multiple-count indictment charging Helstoski and others with various criminal acts. Helstoski moved to dismiss the indictment, contending that the grand jury process had been abused and that the indictment violated the Speech or Debate Clause.

The District Judge denied the motion after examining a transcript of the evidence presented to the indicting grand jury. He held that the Speech or Debate Clause did not require dismissal. He also ruled that the Government would not be allowed to offer evidence of the actual performance of any legislative acts. That ruling prompted the Government to file a motion requesting that the judge pass on the admissibility of 23 categories of evidence. The Government urged that a ruling was necessary to avoid the possibility of a mistrial. Helstoski opposed the motion, arguing that the witnesses would not testify as the Government indicated in its proffer.

The District Judge declined to rule separately on each of the categories. Instead, he ordered:

> "The United States may not, during the presentation of its case-in-chief at the trial of [this] Indictment, introduce evidence of the *performance of a past legislative*

"Q. Congressman, you've used the term 'illegal subpoena.' Who told you it was illegal?

"A. That's my own judgment based on the Constitution and the Rules of Procedure of the House of Representatives."

act on the part of the defendant, Henry Helstoski, derived from any source and for any purpose." (Emphasis added.)

The Government filed a timely appeal from the evidentiary ruling, relying upon 18 U. S. C. § 3731:

> "An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence . . . not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.
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> "The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.
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> . . . . .
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> "The provisions of this section shall be liberally construed to effectuate its purposes."

The Court of Appeals affirmed the District Court's evidentiary ruling. 576 F. 2d 511 (CA3 1978). It first concluded that an appeal was proper under § 3731, relying primarily upon its earlier decision in *United States* v. *Beck*, 483 F. 2d 203 (1973), cert. denied, 414 U. S. 1132 (1974), and upon the language in the section mandating that it be "liberally construed."

Turning to the merits of the Government's appeal, the Court of Appeals rejected both of the Government's arguments: (a) that legislative acts could be introduced to show motive; and (b) that legislative acts could be introduced because Helstoski had waived his privilege by testifying before the grand juries. The court relied upon language in *United States* v. *Brewster*, 408 U. S. 501, 527 (1972), prohibiting the introduction of evidence as to how a Congressman acted on, voted on, or resolved

a legislative issue. The court reasoned that to permit evidence of such acts under the guise of showing motive would negate the protection afforded by the Speech or Debate Clause.

In holding Helstoski had not waived the protection of the Speech or Debate Clause, the Court of Appeals did not decide whether the protection could be waived. Rather, it assumed that a Member of Congress could waive the privilege, but held that any waiver must be "express and for the specific purpose for which the evidence of legislative acts is sought to be used against the member." 576 F. 2d, at 523–524. Any lesser standard, the court reasoned, would frustrate the purpose of the Clause. Having found on the record before it that no waiver was shown, it affirmed the District Court order under which the Government is precluded from introducing evidence of past legislative acts in any form.

In seeking review of the judgment of the Court of Appeals, the Government contends that the Speech or Debate Clause does not bar the introduction of all evidence referring to legislative acts. It concedes that, absent a waiver, it may not introduce the bills themselves. But the Government argues that the Clause does not prohibit it from introducing evidence of discussions and correspondence which describe and refer to legislative acts if the discussions and correspondence did not occur during the legislative process. The Government contends that it seeks to introduce such evidence to show Helstoski's motive for taking money, not to show his motive for introducing the bills. Alternatively, the Government contends that Helstoski waived his protection under the Speech or Debate Clause when he voluntarily presented evidence to the grand juries. Volunteered evidence, the Government argues, is admissible at trial regardless of its content.

Finally, the Government argues, by enacting 18 U. S. C. § 201, Congress has shared its authority with the Executive and the Judiciary by express delegation authorizing the indict-

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ment and trial of Members who violate that section—in short an institutional decision to waive the privilege of the Clause.

III

The Court's holdings in *United States* v. *Johnson*, 383 U. S. 169 (1966), and *United States* v. *Brewster*, *supra*, leave no doubt that evidence of a legislative act of a Member may not be introduced by the Government in a prosecution under § 201.[6] In *Johnson* there had been extensive questioning of both Johnson, a former Congressman, and others about a speech which Johnson had delivered in the House of Representatives and the motive for the speech. The Court's conclusion was unequivocal:

> "We see no escape from the conclusion that such an intensive judicial inquiry, made in the course of a prosecution by the Executive Branch under a general conspiracy statute, violates the express language of the Constitution and the policies which underlie it." 383 U. S., at 177.

In *Brewster*, we explained the holding of *Johnson* in this way:

> "*Johnson* thus stands as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely

[6] We agree with the Court of Appeals that 18 U. S. C. § 3731 authorized the Government to appeal the District Court order restricting the evidence that could be used at trial. All of the requisites of § 3731 were met. There was an order of a District Court excluding evidence; a United States Attorney filed the proper certification; and the appeal was taken within 30 days. In *United States* v. *Wilson*, 420 U. S. 332, 337 (1975), we concluded that the purpose of the section was "to remove all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit." See also *United States* v. *Scott*, 437 U. S. 82, 84–85 (1978); H. R. Conf. Rep. No. 91–1768, p. 21 (1970); S. Rep. No. 91–1296, pp. 2–3 (1970); 116 Cong. Rec. 35659 (1970) (remarks of Sen. Hruska). There are no constitutional barriers to this appeal, and we conclude that the appeal was authorized by § 3731.

on legislative acts or the motivation for legislative acts. A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts." 408 U. S., at 512.

The Government, however, argues that exclusion of references to past legislative acts will make prosecutions more difficult because such references are essential to show the motive for taking money. In addition, the Government argues that the exclusion of references to past acts is not logically consistent. In its view, if jurors are told of promises to perform legislative acts they will infer that the acts were performed, thereby calling the acts themselves into question.

We do not accept the Government's arguments; without doubt the exclusion of such evidence will make prosecutions more difficult. Indeed, the Speech or Debate Clause was designed to preclude prosecution of Members for legislative acts.[7]

[7] MR. JUSTICE STEVENS suggests that our holding is broader than the Speech or Debate Clause requires. In his view, "it is illogical to adopt rules of evidence that will allow a Member of Congress effectively to immunize himself from conviction [for bribery] simply by inserting references to past legislative acts in all communications, thus rendering all such evidence inadmissible." *Post*, at 498. Nothing in our opinion, by any conceivable reading, prohibits excising references to legislative acts, so that the remainder of the evidence would be admissible. This is a familiar process in the admission of documentary evidence. Of course, a Member can use the Speech or Debate Clause as a shield against prosecution by the Executive Branch, but only for utterances within the scope of legislative acts as defined in our holdings. That is the clear purpose of the Clause. The Clause is also a shield for libel, and beyond doubt it "has enabled reckless men to slander and even destroy others with impunity, but that was the conscious choice of the Framers." *United States* v. *Brewster*, 408 U. S. 501, 516 (1972). Nothing in our holding today, however, immunizes

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The Clause protects "against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *Id.*, at 525. It "precludes any showing of how [a legislator] acted, voted, or decided." *Id.*, at 527. Promises by a Member to perform an act in the future are not legislative acts. *Brewster* makes clear that the "compact" may be shown without impinging on the legislative function. *Id.*, at 526.

We therefore agree with the Court of Appeals that references to past legislative acts of a Member cannot be admitted without undermining the values protected by the Clause. We implied as much in *Brewster* when we explained: "To make a prima facie case under [the] indictment, the Government need not show any act of [Brewster] *subsequent* to the corrupt promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act." *Ibid.* (Emphasis altered.) A similar inference is appropriate from *Johnson* where we held that the Clause was violated by questions about motive addressed to others than Johnson himself. That holding would have been unnecessary if the Clause did not afford protection beyond legislative acts themselves.

MR. JUSTICE STEVENS misconstrues our holdings on the Speech or Debate Clause in urging: "The admissibility line should be based on the purpose of the offer rather than the specificity of the reference." *Post*, at 496. The Speech or Debate Clause does not refer to the prosecutor's purpose in offering evidence. The Clause does not simply state, "No proof of a legislative act shall be *offered*"; the prohibition of the Clause is far broader. It provides that Members "shall not be *questioned* in any other Place." Indeed, as MR. JUSTICE STEVENS recognizes, the admission of evidence of legislative acts "may reveal [to the jury] some information about the performance of legislative acts and the legislator's motivation

a Member from punishment by the House or the Senate by disciplinary action including expulsion from the Member's seat.

in conducting official duties." *Post*, at 496. Revealing information as to a legislative act—speaking or debating—to a jury would subject a Member to being "questioned" in a place other than the House or Senate, thereby violating the explicit prohibition of the Speech or Debate Clause.

As to what restrictions the Clause places on the admission of evidence, our concern is not with the "specificity" of the reference. Instead, our concern is whether there is mention of a legislative act. To effectuate the intent of the Clause, the Court has construed it to protect other "legislative acts" such as utterances in committee hearings and reports. *E. g., Doe* v. *McMillan*, 412 U. S. 306 (1973). But it is clear from the language of the Clause that protection extends only to an act that has already been performed. A promise to deliver a speech, to vote, or to solicit other votes at some future date is not "speech or debate." Likewise, a *promise* to introduce a bill is not a legislative act. Thus, in light of the strictures of *Johnson* and *Brewster*, the District Court order prohibiting the introduction of evidence "of the performance of a *past* legislative act" was redundant.

The Government argues that the prohibition of the introduction of evidence should not apply in this case because the protections of the Clause have been waived. The Government suggests two sources of waiver: (a) Helstoski's conduct and utterances, and (b) the enactment of 18 U. S. C. § 201 by Congress. The Government argues that Helstoski waived the protection of the Clause by testifying before the grand juries and voluntarily producing documentary evidence of legislative acts. The Government contends that Helstoski's conduct is sufficient to meet whatever standard is required for a waiver of that protection. We cannot agree.

Like the District Court and the Court of Appeals, we perceive no reason to decide whether an individual Member may waive the Speech or Debate Clause's protection against being prosecuted for a legislative act. Assuming that is possible,

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we hold that waiver can be found only after explicit and unequivocal renunciation of the protection. The ordinary rules for determining the appropriate standard of waiver do not apply in this setting. See generally *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938) ("intentional relinquishment or abandonment of a known right or privilege"); *Garner* v. *United States*, 424 U. S. 648, 654 n. 9, 657 (1976).

The Speech or Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities. The importance of the principle was recognized as early as 1808 in *Coffin* v. *Coffin*, 4 Mass. 1, 27, where the court said that the purpose of the principle was to secure to every member "*exemption* from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office." (Emphasis added.)

This Court has reiterated the central importance of the Clause for preventing intrusion by Executive and Judiciary into the legislative sphere.

> "[I]t is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits . . . but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary.
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> "There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech

or Debate Clause." *United States* v. *Johnson*, 383 U. S., at 180–181, 182.

We reaffirmed that principle in *Gravel* v. *United States*, 408 U. S. 606, 618 (1972), when we noted that the "fundamental purpose" of the Clause was to free "the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator."

On the record before us, Helstoski's words and conduct cannot be seen as an explicit and unequivocal waiver of his immunity from prosecution for legislative acts—assuming such a waiver can be made. The exchanges between Helstoski and the various United States Attorneys indeed indicate a willingness to waive the protection of the Fifth Amendment; but the Speech or Debate Clause provides a separate, and distinct, protection which calls for at least as clear and unambiguous an expression of waiver. No such showing appears on this record.

The Government also argues that there has been a sort of institutional waiver by Congress in enacting § 201. According to the Government, § 201 represents a collective decision to enlist the aid of the Executive Branch and the courts in the exercise of Congress' powers under Art. I, § 5, to discipline its Members. This Court has twice declined to decide whether a Congressman could, consistent with the Clause, be prosecuted for a legislative act as such, provided the prosecution were "founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members." *Johnson*, *supra*, at 185. *United States* v. *Brewster*, 408 U. S., at 529 n. 18. We see no occasion to resolve that important question. We hold only that § 201 does not amount to a congressional waiver of the protection of the Clause for individual Members.

We recognize that an argument can be made from precedent and history that Congress, as a body, should not be free to strip individual Members of the protection guaranteed by the

Clause from being "questioned" by the Executive in the courts. The controversy over the Alien and Sedition Acts reminds us how one political party in control of both the Legislative and the Executive Branches sought to use the courts to destroy political opponents.

The Supreme Judicial Court of Massachusetts noted in *Coffin* that "the privilege secured . . . is not so much the privilege of the house as an organized body, as of each individual member composing it, who is entitled to this privilege, *even against the declared will of the house.*" 4 Mass., at 27 (emphasis added). In a similar vein in *Brewster* we stated:

> "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by *insuring the independence of individual legislators.*" 408 U. S., at 507 (emphasis added).

See also *id.*, at 524. We perceive no reason to undertake, in this case, consideration of the Clause in terms of separating the Members' rights from the rights of the body.

Assuming, *arguendo*, that the Congress could constitutionally waive the protection of the Clause for individual Members, such waiver could be shown only by an explicit and unequivocal expression. There is no evidence of such a waiver in the language or the legislative history of § 201 or any of its predecessors.[8]

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[8] Section 201 was enacted in 1962. Pub. L. 87-849, 76 Stat. 1119. It replaced a section that had remained unchanged since its original enactment in 1862. Ch. 180, 12 Stat. 577. See Rev. Stat. § 1781; 18 U. S. C. § 205 (1958 ed.). The debates on the 1862 Act reveal no discussion of the speech or debate privilege. See, *e. g.*, Cong. Globe, 37th Cong., 2d Sess., 3260 (1862). As explained in the House Report accompanying the 1962 Act, the purpose of the Act was "to render uniform the law describing a bribe and prescribing the intent or purpose which makes its transfer unlawful." H. R. Rep. No. 748, 87th Cong., 1st Sess., 15 (1961). The

We conclude that there was neither individual nor institutional waiver and that the evidentiary barriers erected by the Speech or Debate Clause must stand. Accordingly, the judgment of the Court of Appeals is

Affirmed.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part.

The Court holds that *United States* v. *Brewster*, 408 U. S. 501, and *United States* v. *Johnson*, 383 U. S. 169, preclude the Government from introducing evidence of a legislative act by a Member of Congress. I agree that those cases do prevent the prosecution from attempting to prove that a legislative act was performed. I do not believe, however, that they require rejection of evidence that merely refers to legislative acts when that evidence is not offered for the purpose of proving the legislative act itself.

In *Johnson*, the Court held that a Member of Congress could not be prosecuted for conspiracy against the United States based on his preparation and delivery of an improperly motivated speech in the House of Representatives. After noting that the attention given to the speech was not merely "an incidental part of the Government's case," but rather was "an intensive judicial inquiry" into the speech's substance and motivation, *id.*, at 176–177, the Court held that the prosecu-

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Senate Report expanded the explanation and said that a purpose of the Act was the "substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery. This consolidation would make no significant changes of substance and, more particularly, would not restrict the broad scope of the present bribery statutes as construed by the courts." S. Rep. No. 2213, 87th Cong., 2d Sess., 4 (1962).

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tion violated the express language of the Speech or Debate Clause and the policies that underlie it. The Court carefully emphasized, however, that its decision was limited to a case of that character and "does not touch a prosecution which . . . does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them." *Id.*, at 185.

In *Brewster*, the Court held that the Speech or Debate Clause did not bar prosecution of a former Senator for receiving money in return for being influenced in the performance of a legislative act. The Court read *Johnson* as allowing a prosecution of a Member of Congress so long as the Government's case does not rely on legislative acts or the motivation for such acts. It reasoned that Brewster was not being prosecuted for the performance of a legislative act, but rather for soliciting or agreeing to take money with knowledge that the donor intended to compensate him for an official act. Whether the Senator ever performed the official act was irrelevant.

As a practical matter, of course, it is clear that evidence relating to a legislator's motivation for accepting a bribe will also be probative of his intent in committing the official act for which the bribe was solicited or paid. Nonetheless, the Court made clear in *Brewster* that inquiries into the legislator's motivation in accepting payment are not barred by *Johnson*'s proscription against inquiry into legislative motivation. "[A]n inquiry into the purpose of a bribe," the *Brewster* Court held, "'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'" 408 U. S., at 526, quoting *Johnson, supra*, at 185. Thus, so long as the Government's case does not depend upon the legislator's motivation in committing an official act, inquiries into his motivation in accepting a bribe—which obviously may be revealing as to both the existence of legislative acts and the motivation for

them—are permissible under the Speech or Debate Clause, as interpreted in *Brewster*.

Brewster's recognition of this distinction, in my judgment, provides strong support for the Government's argument in this case. Here, the Government is seeking to introduce written and testimonial evidence as to Helstoski's motivation in soliciting and accepting bribes. Some of this evidence makes reference to past or future legislative acts for which payment is being sought or given. Obviously, this evidence, to the extent it is probative of Helstoski's intent in accepting payment, is an important and legitimate part of the Government's case against the former Congressman. Whether or not he ever committed the legislative acts is wholly irrelevant to the Government's proof, and inquiry into that subject is prohibited by *Johnson* and *Brewster*. But the mere fact that legislative acts are mentioned does not, in my view, require that otherwise relevant and admissible evidence be excluded. The acts may or may not have been performed; the statements in the letters may be true or false. The existence of the statements does not establish that legislative acts were performed; nor does it constitute inquiry into those acts. To be sure, such statements may reveal some information about the performance of legislative acts and the legislator's motivation in conducting official duties. However, that is also true of other evidence making no reference to specific past legislative acts, but rather dealing only with promises of future performance or less specific commitments to legislative action. *Brewster* establishes that such evidence is admissible in bribery prosecutions because it does not draw in question the legislative act itself or its motivation. The admissibility line should be based on the purpose of the offer rather than the specificity of the reference. So long as the jury is instructed that it should not consider the references as proof of legislative acts, and so long as no inquiry is made with respect to the motivations for such acts, *Brewster* does not bar the intro-

duction of evidence simply because reference is made to legislative acts.*

Indeed, I think it important to emphasize that the majority today does not read *Brewster* to foreclose the introduction of any evidence making reference to legislative acts. The Court holds that evidence referring only to acts to be performed in the future may be admitted into evidence. *Ante*, at 490. The Court explains this holding by noting that a promise to perform a legislative act in the future is not itself a legislative act. But it is equally true that the solicitation of a bribe which contains a self-laudatory reference to past performance is not itself a legislative act. Whether the legislator refers to past or to future performance, his statement will be probative of his intent in accepting payment and, in

*In reaching this conclusion, I have not overlooked the language in *Brewster*, relied upon by respondent, that "*Johnson* precludes any showing of how [Brewster] acted, voted, or decided." 408 U. S., at 527. Taken out of context, that language would appear to support Helstoski's claim that all references to legislative action are inadmissible. When placed in its proper context, however, it clearly does not.

The quoted statement was made with respect to the dissent's argument that criminal prosecution should not be permitted since the indictment charged the offense as being in part linked to Brewster's "action, vote and decision on postage rate legislation." In response, the Court pointed out that, while this was true, "[t]he Government, as we have noted, need not *prove* any specific act, speech, debate, or decision to establish a violation of the statute under which appellee was indicted. To accept the arguments of the dissent would be to retreat from the Court's position in *Johnson* that a Member may be convicted if no showing of legislative act is *required*." *Id.*, at 528 (emphasis added). When placed in this context, I think it clear that the statement relied upon by respondent should be read only as establishing—as *Johnson* itself held, and as the *Brewster* Court read *Johnson*—that a Member of Congress may not be prosecuted if proof of a specific legislative act would be required as an element of the Government's case. The recognition by the Court today that evidence referring to future legislative actions *is* admissible, see *ante*, at 490, itself is a rejection of the broad reading respondent attaches to "any showing."

either event, may incidentally shed light on the performance and motivation of legislative acts. The proper remedy, in my judgment, is not automatic inadmissibility for past references and automatic admissibility for future references. Rather, drawing on the language of the Constitution itself, the test should require the trial court to analyze the purpose of the prosecutor's questioning. If the evidentiary references to legislative acts are merely incidental to a proper purpose, the judge should admit the evidence and instruct the jury as to its limited relevance. The Constitution mandates that legislative acts "shall not be questioned"; it does not say they shall not be mentioned.

The Court properly notes that the Government has no valid complaint simply because application of the Speech or Debate Clause renders some prosecution of Members of Congress "difficult." *Ante*, at 488. But I do not believe the Clause was intended to make such prosecution virtually impossible. In light of the Court's holding in *Brewster* that bribery prosecutions are permissible, it is illogical to adopt rules of evidence that will allow a Member of Congress effectively to immunize himself from conviction simply by inserting references to past legislative acts in all communications, thus rendering all such evidence inadmissible. Because I believe the exclusionary rule the Court applies today affords greater protection than is necessary to fulfill the mission of the Speech or Debate Clause, I respectfully dissent to the limited extent indicated above.

MR. JUSTICE BRENNAN, dissenting.

While I have no quarrel with the Court's decision to limit the evidence which the Government may introduce at Helstoski's trial, I would go much further and order the dismissal of Helstoski's indictment altogether. "[P]roof of an agreement to be 'influenced' in the performance of legislative acts is by definition an inquiry into their motives, whether or

not the acts themselves or the circumstances surrounding them are questioned at trial." *United States* v. *Brewster*, 408 U. S. 501, 536 (1972) (BRENNAN J., dissenting). I continue to adhere to the view expressed in my dissent in *Brewster*, and would hold that "a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves, may not be the subject of a general conspiracy prosecution." *Id.*, at 539.

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 17, 1986

Mike Greany, Director
Legislative Finance Division
Legislative Budget and Audit Committee
Pouch WF - State Capitol
Juneau, Alaska 99811

Dear Mr. Greany:

You have asked whether the Departments of Law and Revenue are prohibited, under AS 43.05.230, from disclosing to the Legislature or the public information relating to outstanding assessments against corporate taxpayers, including the identity of those taxpayers. You have further asked whether, if the statute currently prohibits that disclosure, it would be legal to amend it to permit disclosure. We conclude that AS 43.05.230 prohibits the contemplated disclosure, but that, within certain limitations, it might be possible to amend the statute to permit some disclosure to the Legislature.

AS 43.05.230 provides that, with certain exceptions, it is unlawful to divulge the particulars set out or disclosed on a return or report made under Title 43. The exceptions include disclosure to the taxpayer or in connection with an official investigation of the Department of Revenue, and exchange agreements with other states, the United States and the Multistate Tax Commission. The exceptions, then, do not include disclosure to the Legislature or to the public.

AS 43.05.230(e) provides that the section does not prohibit the publication of statistics that do not disclose particular taxpayers. Thus, under this language, the Department may disclose the aggregate amounts that have been assessed against categories of taxpayers under various taxes. I understand that this information is currently available to the Legislature.

That subsection further permits publication of the names of delinquent taxpayers. Our office has recently analyzed this section, and concluded that publication should not be made until the appeal period under AS 43.05.240 has run. Inf. A.G. Op. August 21, 1985. Thus, a taxpayer who has filed a protest and appealed an assessment is not a "delinquent taxpayer" for the purposes of this section.

Thus, AS 43.05.230, as presently drafted, prohibits the release of the contemplated information to the Legislature or to the public. Your question then becomes whether the constitutions of Alaska and the United States would permit amendment of the statute to authorize the disclosure.

Before turning to the constitutional analysis, it will be helpful to set out the rationale for laws protecting the confidentiality of tax information. There are several. The most obvious is the protection of the privacy interest of the taxpayer, coupled with concern with protection from self-incriminatory demands. Since tax returns are mandatory, governments have long been sensitive to the "substantial and difficult constitutional questions [posed by obligatory reports which] touch upon intimate areas of an individual's personal affairs [and which] can reveal much about a person's activities, associations, and beliefs." California Bankers Assn. v. Shultz, 416 U.S. 21, 78-79 (1973). Thus, tax confidentiality statutes reflect legislative protection of an individual's Fifth Amendment (self-incrimination), Fourth Amendment (search and seizure), and First Amendment (free association) rights, as well as the right to privacy.

Tax confidentiality statutes are also based on a legislative recognition that our tax laws rely heavily on voluntary assessment and compliance, and that compliance is enhanced when the information provided is protected. Thus, the "purpose of ... statutory provisions prohibiting disclosure is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that these

statements will be revealed or used against him for other purposes." Webb v. Standard Oil Co., 319 P.2d 621, 624.

The constitutional underpinnings of confidentiality statutes primarily protect the rights of individuals. At least under the United States Constitution, these protections may not as strong for corporations. California Bankers, supra, at 55, 65-66. However, the United States Supreme Court has held that the Fourth Amendment protection from unreasonable searches and seizures extends to business premises at least to the extent of requiring a warrant before a search. G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977). Probably the strongest constitutional protection at issue here would be the right to privacy set out in the Alaska Constitution, article I, section 22.

Former Attorney General John Havelock expressed the opinion that Alaska's tax confidentiality statute protected information "within the ambit of the protection intended to be afforded by the Right of Privacy" in the Alaska Constitution. 1972 Op. Att'y Gen. #8. It is not clear whether that provision protects corporations. In Hilbers v. Municipality of Anchorage, 611 P.2d 31, 43 (Alaska 1980), the court held that the "'[c]ommercial and public' aspects of appellants' massage parlor activities remove the shield of privacy from these activities." However, in Woods & Rohde, Inc. v. State, Dept. of Labor, 565 P. 2d 138 (Alaska 1977), the court, in holding that the Alaska constitution prohibits warrantless searches of business premises, stated that its conclusion was "bottomed on the amendment to our constitution found in article I, section 22..." We will assume that Alaska's privacy protection extends, at least to some degree, to corporations. It may be that our court would hold, for example, that the constitutional provision protects a corporation's proprietary or sensitive information. In addition, the line between personal activity and corporate activity may be a thin one, particularly in the case of small, closely held corporations.

Further, a business may have a privacy interest unrelated to proprietary information: it could be argued that the simple disclosure of the existence of an assessment could be embarrassing, since it might imply delinquency or tax evasion. The Department of Revenue tells me that a great many assessments against taxpayers are reduced during the review process within the department. That is, the taxpayer may prevail, before the department, on one or more issues at the informal conference

level, after a formal conference, or after a hearing. A taxpayer who is making a legitimate, good faith (and perhaps successful) argument that an assessment is not due is in a very different position from one against whom the issues have been decided and who still does not pay. If the Department were to disclose the amounts of contested assessments, taxpayers would likely challenge that disclosure as an invasion of a privacy interest.

The test for interests protected under the Alaska Constitution's privacy amendment is that a person have an actual expectation of privacy, and that the expectation be one society is prepared to recognize as reasonable. Hilbers, supra, 611 P.2d at 42. If a privacy interest is implicated, then that interest must be balanced against the public interest in disclosure. At least as far as certain competitive information is concerned, it is likely that our court would hold that the privacy interest in non-disclosure is fairly strong -- at least unless and until a taxpayer is actually delinquent. Your request for an opinion does not articulate any particular legislative need-to-know, or public interest, against which to balance this privacy interest. As a result, it is difficult to predict how our court would balance the competing interests.

The Department of Revenue has expressed concern that the simple disclosure of the amount of an assessment might reveal sensitive information about taxpayers. As an example, the fisheries business tax involves a very simple calculation, and revealing a taxpayer's liability under that act would be tantamount to revealing the volume of fish processed by the taxpayer. Similarly, in the oil industry, it is possible that disclosure of assessments could allow one taxpayer to learn valuable information about the transportation costs or valuation practices of its competitors.

It is possible that some disclosure could be made to the legislature that would not reveal sensitive or proprietary information. At least in the case of a large, publicly held corporation, whose shareholders are often entitled to tax records (see, 26 U.S.C. 6103(e)), an expectation of privacy with regard to at least some tax information might not be very strong, and might be outweighed by legitimate public interest. However, in view of the potential for the inadvertent revelation of sensitive information, I believe that the legislature should approach any amendment to the non-disclosure statute with caution.

One final consideration should be discussed. The state presently receives tax information from the United States -- and is authorized to receive information from other states -- so long as that information is kept strictly confidential. Federal regulations adopted under 26 U.S.C. 6103 authorize the IRS to terminate the exchange of information if the state makes unauthorized disclosure of federal tax return information received under the agreement. The Department of Revenue is concerned that the disclosure contemplated by this opinion request may jeopardize the exchange agreement with the IRS.

In conclusion, without an articulation of the public purpose to be accomplished by the proposed changes, it is impossible to assess whether our supreme court would find a violation of the state's privacy amendment. It is possible that a fairly strong public purpose would outweigh the privacy interests of at least some types of corporate taxpayers, with respect to at least some types of information. If this legislation is pursued, the public purpose sought to be accomplished should be clearly articulated. It then would be advisable to limit an amendment to AS 43.05.230 to the narrowest range of situations that would meet the legislature's need for information. The Department of Revenue should be consulted concerning the potential for inadvertent disclosure of proprietary information. Legislation might be limited to public corporations, and/or to assessments in excess of a certain dollar amount, or in excess of a certain fraction of the taxpayer's reported income. In any event, disclosure should be limited to the name of the taxpayer and the amount of the assessment, and not include the underlying data or calculations that went into making the assessment, since that information is often proprietary.

Please let me know if our office can be of any further assistance.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:
Deborah Vogt
Assistant Attorney General

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Other states permitting disclosure to the legislature

LEGISLATURE

Alabama	§ 40-1-33
California	§ 19284
Idaho	§ 63-3077
Minnesota	§ 290-61 - abstracted info only
Oregon	§ 314.840 - name + amount of tax of corporations only
Washington	§ 8232.330
Wisconsin	§ 71.11 (44)

§ 40-1-31. Distribution of revenues collected.

All revenues collected under the provisions of sections 40-12-128, 40-12-310 through 40-12-319, 40-25-1 through 40-25-28 and 40-25-140 through 40-25-147 shall, after deduction of the cost of collection, be deposited in the state treasury to the credit of the Alabama special educational trust fund. All revenues collected under the provisions of sections 40-21-56, 40-21-57, 40-21-58, 40-21-60 and 40-21-61 shall, after deduction of the cost of collection, be distributed in the following manner:

(1) Fifty-eight percent of the balance remaining after deduction of the cost of collection shall be deposited in the special mental health fund to be used for mental health purposes; and

(2) Forty-two percent of the balance remaining after deduction of the cost of collection shall be deposited in the state treasury to the credit of the Alabama special educational trust fund to be used for educational purposes. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 910; Acts 1971, No. 1414, p. 2410.)

§ 40-1-32. Alabama special educational trust fund surplus account.

There is hereby set up in the state treasury a fund to be known as the Alabama special educational trust fund surplus account.

Any surplus heretofore accrued in the state treasury to the credit of the Alabama special educational trust fund and which has been transferred to the property tax relief fund is hereby transferred into and shall become a part of the Alabama special educational trust fund surplus account.

Any surplus in the Alabama special educational trust fund on September 30 of each fiscal year, beginning September 30, 1943, remaining after all appropriations now or hereafter payable from the Alabama special educational trust fund have been paid in full, shall be transferred into and become a part of the Alabama special educational trust fund surplus account. (Acts 1943, No. 39, p. 31.)

§ 40-1-33. Confidentiality of returns, statements, etc.

All tax returns, financial statements and information secured by the department of revenue officials or employees thereof for the purpose of arriving at the amount of ad valorem, franchise, income or license tax shall be kept under lock and key by the department of revenue, and any official or employee of the department of revenue who shall divulge the contents or permit the examination thereof except for the purpose of properly administering the tax laws of this state or upon order of the commissioner of the department of revenue and except under the order of the court or for the information of the legislature shall be guilty of a misdemeanor and shall be subject to a fine of not more than $50.00 and shall thereafter be ineligible to be an employee or agent of the department of revenue; provided, that the provisions of this section shall not apply to returns filed and information secured under laws of this state levying or imposing excise

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Witkin Evidence 2d pp 805, 806.
Cal Jur 2d Income Taxes § 48.

NOTES OF DECISIONS

Copies of income tax reports filed with State and federal government, as best evidence procurable, were competent, in grand jury investigation of lobbying and bribery of State legislators. Smith v Superior Court (1938) 28 CA2d 685, 83 P2d 305.

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. Webb v Standard Oil Co. (1957) 49 C2d 509, 319 P2d 621; Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18; Davis v Lucas (1960) 180 CA2d 407, 4 Cal Rptr 479.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. Vogan v McLaughlin (1959) 172 CA2d 65, 342 P2d 18

§ 19284. Furnishing information to committee of Legislature: Disclosure by committee a misdemeanor

Such information may upon request of a committee appointed by either the Assembly or the Senate, or both, be furnished to the committee, but it is a misdemeanor for the committee or any member, clerk, or other officer or employee thereof to disclose in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this part.

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Cal Jur 2d Income Taxes § 48.

§ 19285. Inspection by Attorney General or other legal representative of state

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling

contained in such returns may be furnished or made accessible to the officers or representatives of the state or county charged with the duty of prosecuting or defending the same, under such rules and regulations as the state tax commission shall prescribe; and all such returns and the statements and correspondence relating thereto may be produced in evidence in any action or proceeding, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such return.

(b) Any officer, agent, clerk or employee violating any of the provisions of this section shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not less than $100 nor more than $5,000, or by imprisonment for not more than five (5) years. Such officer, agent, clerk or employee upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of two (2) years thereafter. [1959, ch. 299, § 76, p. 613; am. 1969, ch. 319, § 20, p. 982.]

Compiler's notes. For words "this act" see compiler's notes, § 63-3001.

Section 19 of S. L. 1969, ch. 319 is compiled as § 63-3073.

Sec. to sec. ref. This section is referred to in §§ 14-418, 63-2562, 63-3634.

Collateral References.

71 Am. Jur. 2d, State and Local Taxation, § 590.

63-3077. Information furnished to certain officials. — The state tax commission, under such rules as it may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States or his delegate or the proper officer of any state imposing a tax on or according to income or the multistate tax commission or its delegate to inspect the income tax returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract of any income tax return or any matter contained in any affidavit, statement, or certificate made or filed in connection with any return or any tax or credit claimed as an offset against any tax or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer or his representatives only if the statutes of the United States or such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

Notwithstanding the provisions of this act as to secrecy, any duly constituted committee of either branch of the state legislature shall have the right to inspect returns upon request. Nothing in this act shall prohibit a taxpayer, or his authorized representative, upon proper identification, from inspecting or copying his own income tax returns. Any taxpayer making a return, whether accrual or cash basis, shall furnish the state tax commission with the figure or figures representing the value of his inventory of stock of goods in trade. In the event the taxpayer shall have more than one place of business, then and in that event the taxpayer shall give the amount of

to State Commissioner of Taxation does ent Commissioner from proceeding taxpayer on information received any other source. Id.

re taxpayer's time for appealing from l Tax Court's decision that there were ncies in his federal income tax return for a xpired after running of the statute of ions in state's income tax law, assessment ther state tax was barred. Id.

re requisite 90-day period following notifi- from the Internal Revenue Service had pired prior to the running of the normal ar statute of limitations prescribed by 49, the power to assess the taxpayer pur- to subsecs. (B) and (C) of this section could invoked. Op.Atty.Gen., 531-q, Nov. 18,

nd determinations, the commissioner me tax examiners, as he may deem ible, he may request the legislative o audit such returns and conduct such ner. Upon such request being made, ax examiners as he may deem neces-

the commissioner or by the legislative reference to the examining of books, witnesses, administering of oaths and pon the commissioner by this chapter. miner, shall issue a subpoena for the books, papers, records, or memoranda issue such subpoenas. The commis- a board of review, the reports of the f taxpayers, and report on them to the nder this chapter shall be punished by bpoena is issued, or in the case of a trict court of the district in which the me manner as contempt of the district

, § 11; Laws 1983, c. 359, § 23.

hich is barred by statute of limitations on 1, 1983.

ws 1983, c. 359, removed obsolete refer s to justice of the peace and magistrate

requested to conduct examinations as such additional help, or purchase such ures in the enforcement of this chapter

as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the commissioner, where appointed by him, and by the legislative auditor, where appointed by him, subject to the approval of the commissioner of administration.

Amended by Laws 1973, c. 492, § 14.

290.60. Repealed by Laws 1981, c. 178, § 119

Laws 1981, c. 178, § 120 provides in part that sections 1 to 111 and 119 are effective for taxable years beginning after December 31, 1980.

290.61. Publicity of returns, information

It shall be unlawful for the commissioner or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any information concerning, the taxpayer's affairs acquired from his or its records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return or to comply with the provisions of sections 290.612 and 302A.821. The commissioner may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein. The commissioner may disclose information from withholding tax returns received from the taxpayer to the Minnesota department of economic security for purposes of auditing unemployment tax. Prior to the release of any information to any official of the United States or any other state or the department of economic security under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that he will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. Upon request of a majority of the members of the senate tax committee or of the house tax committee or the tax study commission, the commissioner shall furnish abstracted financial information to those committees for research purposes from returns or reports filed pursuant to this chapter, provided that he shall not disclose the name, address, social security number, business identification number or any other item of information associated with any return or report which the commissioner believes is likely to identify the taxpayer. The commissioner shall not furnish the actual return, or a portion thereof, or a reproduction or copy of any return or portion thereof. "Abstracted financial information" means only the dollar amounts set forth on each line on the form including the filing status.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

In order to locate the named payee on state warrants issued pursuant to this chapter or chapter 290A and undeliverable by the United States postal service, the commissioner may publish in any English language newspaper of general circulation in this state a list of the name and last known address of the payee as shown on the reports or returns filed with the commissioner. The commissioner may exclude the names of payees whose refunds are in an amount which is less than a minimal amount to be determined by the

officers or employes, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. As used in this section, "officer," "employe" or "person" includes an authorized representative of the officer, employe or person, or any former officer, employe or person, or an authorized representative of such former officer, employe or person. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.789 §13; 1979 c.690 §1]

314.840 Persons to whom information may be furnished. (1) The department may:

(a) Furnish any taxpayer or authorized representative, upon request of the taxpayer or representative, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employe of the Executive Department duly authorized or employed to prepare revenue estimates, or a person contracting with the Executive Department to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.202 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342 to 291.348. The information disclosed or to which access is given under this subparagraph shall be confined to the identity of a corporate taxpayer, the amount of the corporate tax liability of the corporate taxpayer and the amount of the payments made by the corporation to the Department of Revenue under the corporate excise and income tax laws of this state. Any officer, employe or person furnished or granted access to information under this subparagraph shall not remove the information from the premises of the Department of Revenue.

(b) The Commissioner of Internal Revenue or authorized representative, for tax purposes only.

(c) The proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if such state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(d) The Multistate Tax Commission or its authorized representatives, for tax purposes only. However, the Multistate Tax Commission may make such information available to the Commissioner of Internal Revenue or the proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if the state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(e) The Attorney General, assistants and employes in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employes of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department

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1983 Amendment. Rewrote the first paragraph.

Effective dates—Laws 1983, 1st Ex. Sess., ch. 55: See Historical Note following § 82.08.010.

82.32.230. Agent of the department of revenue may execute

In the discretion of the department of revenue, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant.

Amended by Laws 1983, 1st Ex.Sess., ch. 55, § 11, eff. July 1, 1983.

1983 Amendment. Near the beginning, substituted "an order of execution" for "a warrant".

Effective dates—Laws 1983, 1st Ex. Sess., ch. 55: See Historical Note following § 82.08.010.

82.32.235. Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default

Notes of Decisions

1. In general

Peters v. Sjoholm (1979) 25 Wash.App. 39, 604 P.2d 527 [main volume] affirmed 95 Wash.2d 871, 631 P.2d 937, appeal dismissed, certiorari denied 102 S.Ct. 1267, 455 U.S. 914, 71 L.Ed.2d 455.

2. Search and seizure

Peters v. Sjoholm (1979) 25 Wash.App. 39, 604 P.2d 527 [main volume] affirmed 95 Wash.2d 871, 631 P.2d 937, appeal dismissed, certiorari denied 102 S.Ct. 1267, 455 U.S. 914, 71 L.Ed.2d 455.

82.32.300. Department of revenue to administer

The administration of this and chapters 82.04 through 82.27 RCW of this title is vested in the department of revenue which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The department of revenue shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce their provisions, which shall have the same force and effect as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees shall be fixed by the department and shall be charged to the proper appropriation for the department.

The department shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper.

Amended by Laws 1983, ch. 3, § 222.

1983 Amendment. In the first paragraph, near the beginning of the first sentence, substituted "through 82.27" for "[illegible]".

Administrative Code References

In general, see WAC 458-20-100.

Notes of Decisions

4. Validity of regulations

Department of revenue rule promulgating "primary purpose test" for determining whether an item is subject to sales tax was invalid insofar as it imperm[illegible]bly imposed a tax on items which actually became ingredients or components of a newly created article. Lone Star Industries, Inc. v. State, Dept. of Revenue (1982) 97 Wash.2d 630, 647 P.2d 1013.

82.32.330. Secrecy enjoined—Exceptions

Except as hereinafter provided it shall be unlawful for the department of revenue or any member, deputy, clerk, agent, employee, or representative thereof or any other person to make known or reveal any facts or information contained in any return filed by any taxpayer or disclosed in any investigation or examination of the taxpayer's books and records made in connection with the administration hereof. The foregoing, however, shall not be construed to prohibit the department of revenue or a member or employee thereof from: (1) Giving such facts or information in evidence in any court action involving tax imposed hereunder or involving a violation of the provisions hereof or involving another state department and the taxpayer; (2) giving such facts and information to the taxpayer or his duly authorized agent; (3) publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof; (4) giving such facts or information, for official purposes only, to the governor or attorney general, or to any state department, agency, board, commission, council, or any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions; (5) permitting its records to be audited and examined by the proper state officer, his agents and employees; (6) giving any such facts or information to the proper officer of the internal revenue service of the United States or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state; or (7) giving any such facts or information to the Department of Justice or the army or navy departments of the United States, or any authorized representative thereof, for official purposes.

Any person acquiring knowledge of such facts or information in the course of his employment with the department of revenue and any person acquiring knowledge of such facts and information as provided under (4), (5), (6) and (7) above, who reveals or makes known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine of not exceeding one thousand dollars and, if the offender or person guilty of such violation is an officer or employee of the state, he shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

Amended by Laws 1984, ch. 138, § 12, eff. March 7, 1984.

1984 Amendment. Inserted, in subd. (4) of the second sentence of the first paragraph, "agency, board, commission, council," following "any state department".

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ident of the state, and whether the information is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by par. (c).

(c) Subject to regulations of the department, any income tax or gift tax returns, or any schedules, exhibits, writings, or audit reports pertaining to the same, on file with the department of taxation or assessor of incomes shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized; provided that the use of information so obtained is restricted to the discharge of duties imposed upon said persons by law or by the duties of their office, and any of said persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office or by order of a court as set forth in subd. 6 shall be deemed in violation of this subsection:

1. The commissioner of taxation, or any officer, agent or employe of the department of taxation or assessor of incomes;

2. Public officers of this state or its political subdivisions or the authorized agents of such officers when deemed by them necessary in the performance of the duties of their office;

3. Members of any legislative committee or its authorized agents where deemed by them necessary to accomplish the purpose for which the committee was organized;

4. Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state;

5. The person who filed or submitted such return, or to whom the same relates or by his authorized agent or attorney;

6. Any person examining such return pursuant to a court order duly obtained upon a showing to the court that the information contained in such return is relevant to a pending court action.

(cm) At the time of or within 30 days after a distribution of income tax collections pursuant to s. 71.14(1) the department of taxation may file, in an income tax assessment district office, a statement setting forth only the names, addresses, identification numbers and reported income taxes of persons other than corporations whose reported taxes were included in the total income taxes attributed to a county, town, village or city as used in the calculation of the income tax collections allocated and as so distributed thereto. Upon the filing with such district office of a certified copy of a resolution, adopt-

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Indiana	§ 6-8.1-7-1
New Hampshire	§ 77-A:16
North Carolina	§ 105-259

Income Tax Bulletins. Extension to File Indiana Corporation Income Tax Returns and Recognition of the Federal Extension of Time to File Indiana Corporation Income Tax Returns, 4 IR 2593.

6-8.1-6-4. Returns and forms to be certified true. — All returns and forms that a person is required to file under the provisions of law relating to any of the listed taxes must be certified true under penalties of perjury. [IC 6-8.1-6-4, as added by Acts 1980, P.L. 61, § 1.]

Indiana Am. Code. For pertinent administrative rules and regulations, see the Statutory Tables in the tables volume of the Indiana Administrative Code.

CHAPTER 7

CONFIDENTIALITY

6-8.1-7-1. Disclosure of information in tax report. — (a) Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to members and employees of the department, or to the governor, or to the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes, or to any duly authorized officers of the United States, when it is agreed that such information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when such state, district, territory, or possession permits the exchange of like information with the taxing officials of the state of Indiana and when it is agreed that such information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the administrator of the state department of public welfare, and to any county welfare director located in this state, upon receipt of a written request from that administrator or director for such information. The information shall be treated as confidential by the administrator or county welfare director. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

II. Delivery to a taxpayer or his duly authorized representative of a copy of any return or other paper filed by the taxpayer pursuant to this chapter;

III. Publication of statistics so classified as to prevent the identification of a particular return and the items of the return;

IV. Exchange of information with the United States internal revenue service in accordance with compacts made and provided for such cases;

V. Disclosure in confidence to the governor and council or their agent in the exercise of their general supervisory powers, or to any person authorized to audit the accounts of the commission in pursuance of such audit, or the attorney general or other legal representative of the state in connection with an action or proceeding under this chapter.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.

77-B: 27 Preference. The taxes and interest imposed by this chapter have preference in any distribution of the assets of the taxpayer, whether in insolvency or otherwise.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.

77-B: 28 Dissolution of Corporations. No corporation organized under any law of this state may be dissolved until all taxes and interest required to be withheld by said corporation under this chapter have been fully paid. The secretary of state shall not issue a certificate of dissolution, and no decree of dissolution shall be signed in any court without a certificate from the commission that no taxes and interest imposed by this chapter are due and unpaid.

HISTORY

Source. 1970, 20: 1, eff. July 1, 1970.