

CSHB

58

SENATE COMMITTEE REPORT

FURTHER

4/19/88

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

Finance Committee considered CSHB 58(Fin) am

confidential tax information; relating to the filing of tax returns; efd

and recommended

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] same title  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted \_\_\_\_\_

Committee [ ] attached or [ ] adopted fiscal note(s)

[ ] new [ ] updated or [ ] previous  
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

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Chairman signature and recommendation

[ ] Committee Backup attached

5-0321T

SENATE COMMITTEE REPORT

FURTHER: FINANCE

5/1/87

DATE TURNED INTO OFFICE 4-19-88

Mr. President:

STATE AFFAIRS Committee considered CSHB 58(Fin)am  
confidential tax information; relating to the filing of tax returns; efd.

and recommended:

replace with 5 CS FOR CSHB 58(SA),  same title <sup>(-F)</sup>  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title  
 attached amendment(s) and *reports it back as follows*

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

*FN*

Committee  attached or  adopted fiscal note(s)  
 new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

2 Joe P. Josephson

1 [Signature]

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1 [Signature]  
Chairman signature and recommendation

Committee Backup Attached

SENATE COMMITTEE REPORT

FURTHER:

STATE AFFAIRS  
FINANCE

3/17/87

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

Senate Sp. Com. on Oil & Gas Committee considered CSHB 58(Fin) am  
confidential tax information; relating to the filing of tax returns; efd.

and recommended:

replace with S CS FOR CSHB 58 (OK) )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous

zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

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Paul Fair. No Pass  
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Betty Lahrenberg Do Pass  
Chairman signature and recommendation

Committee Backup Attached

Original sponsor: Rules/Legislative  
Budget and Audit

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 58 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

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

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

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

12 (1) tax revenue is essential to enable the state to provide  
13 essential services for its citizens and to ensure the public health and  
14 welfare;

15 (2) the great majority of the state's tax revenue is derived  
16 from certain critical taxes imposed on taxpayers in the oil and gas indus-  
17 try, including in particular, the production and severance taxes levied  
18 under AS 43.55 and AS 43.57, the income taxes levied under AS 43.20 when  
19 AS 43.20.072 applies, and the income taxes levied under former AS 43.21;

20 (3) the relatively small number of taxpayers of these critical  
21 taxes often makes it difficult or impossible for the Department of Revenue  
22 to review the administration and operation of these taxes with the legisla-  
23 ture without disclosing information that allows a particular taxpayer to be  
24 identified;

25 (4) the legislature must be able to review and supervise the  
26 administration and operation of these critical taxes in order to be assured  
27 that the state is receiving its proper tax revenue and that these critical  
28 tax laws are operating in the manner intended by the legislature;

29 (5) the legislature must exercise its supervisory authority to  
S

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

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

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

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

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

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

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

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

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

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

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

1 regarding tax information are not jeopardized;

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

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

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

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

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

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

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

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

1 proceedings of the committee are modified as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 be in writing and may identify a particular taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (3) estimate future state revenue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) acknowledge that the confidential return or return

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

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

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

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

15 (1) "critical tax" means

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

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

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

19 applies when determining the amount of the tax and the taxpayer  
20 is not a corporation established under 43 U.S.C. 1606;

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

24 (3) "return information" has the meaning given in 26 U.S.C.  
25 6103(b)(2)(A), except that "secretary" is read as "department" and  
26 "this title" means AS 43 and the former provisions of AS 43; "return  
27 information" does not include transactional documents prepared during  
28 a tax period that ended within two years of the date of the transfer  
29 of the "return information" under AS 43.05.231 - 43.05.235;

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

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

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

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

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

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

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

27 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).  
28  
29

Offered: 5/1/87  
Referred: State Affairs & Finance

5-0321N

Original sponsor: Rules/Legislative  
Budget and Audit

1 IN THE HOUSE

BY THE SENATE SPECIAL COMMITTEE  
ON OIL AND GAS

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

S HB0058e

- 1 -

SCS CSHB 58(O&G)

COMMITTEE COPY

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

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

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

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

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

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

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

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

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

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

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

23 (6) tax programs are administered fairly; and

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

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

28 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or  
29 former employee or agent of the legislature may not disclose tax  
SCS CSHB 56(06G)

1 information contained in a report or return filed under AS 43 and  
2 furnished to the person under AS 43.05.232.

3 \* Sec. 3. AS 24.60.069 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

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

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

1 except

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

5 (2) in connection with official investigations or proceed-  
6 ings of the child support enforcement agency, whether judicial or  
7 administrative, involving child support obligations imposed or im-  
8 possible under AS 15 or AS 47;

9 (3) as provided in AS 36.05.036 pertaining to audit func-  
10 tions; and

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

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

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

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

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

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

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

1 responsibilities to consider tax legislation;

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

5 (C) to estimate future state revenue;

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

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

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

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

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

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

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

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

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

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

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

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

1 whose return or return information is to be transferred of the pro-  
2 posed transfer and the content of the return or return information to  
3 be transferred, and, if the transfer is under (c) of this section,  
4 provide the taxpayer with a copy of the commissioner's determination.  
5 Within 10 days after receiving the determination and notification of a  
6 transfer proposed under (c) of this section, or within five days after  
7 receiving the notification of a transfer proposed under (b) of this  
8 section, the taxpayer may submit additional analysis, comment, or  
9 other information to the department, unless the legislative request or  
10 commissioner's determination is made after the 24th day of a regular  
11 session of the legislature or during a special session of the legisla-  
12 ture, in which case the time period for the taxpayer to submit addi-  
13 tional information is three days. When the period for submitting  
14 additional information has expired, the commissioner shall transfer to  
15 the committee the return or return information, including the addi-  
16 tional information, if any, received by the commissioner from the  
17 taxpayer under this subsection. A taxpayer may waive the provisions  
18 of this subsection by providing the commissioner with a written waiver  
19 signed by the taxpayer.

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

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

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

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

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

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

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

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

14 (k) In this section

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

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

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

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

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

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

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

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

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

17 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).  
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Offered: 3/6/87  
 Referred: Rules

Original sponsor: Rules/Legislative  
 Budget and Audit

*new*

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (6) tax programs are administered fairly; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           except

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

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

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

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

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

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

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

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

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

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

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

1 litigation, or settlements; or

2 (C) to estimate future state revenue;

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) acknowledge that the return or return information is  
28 confidential and that a disclosure of the return or return information  
29 contrary to the provisions of this section is prohibited by law; and  
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1 (2) execute an agreement with the department to keep the  
2 return or return information confidential, to abide by regulations  
3 adopted by the department under (h) of this section, and to return the  
4 documents to the department.

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

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

13 (j) In this section

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

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

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

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

27 \* Sec. 9. AS 43.05.232, as enacted by sec. 7 of this Act, applies to  
28 all confidential tax returns and return information in the possession of  
29 the department on or after the effective date of this Act.  
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1 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

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COMMITTEE COPY

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to confidential tax information; effective date."  
Sponsor: Rules/Legislative Budget & Audit  
Requestor: Senate.State Affairs

Agency Affected: Revenue  
BkU: Commissioner's Office  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

\* Undeterminable (see attached).

Prepared by: Royce b. Weller Phone: 465-2300  
Division: Commissioner's Office Date: 04/15/88

Approved by Commissioner: Hugh Malone Date: 04/15/88  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

SCS CS HB 58

Due to the adoption of 43.05.235 (e) in Section 7 of the bill, the Department of Revenue has under review the costs associated with complying with this provision.

The Department will be submitting an amendment in Senate Finance that would require the requestor (tax payer) to cover the costs of transferring the confidential information to the legislature.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

AB

REQUEST

Bill Version: Senate CS for CS for HB 58 (oil + gas)  
Publish Date: 5-1-87

Revision Date: 4/30/87  
Title: An Act Relating to Confidential Tax Info.; relating to filing/tax rtns.  
Sponsor: Legislative Budget & Audit  
Requestor: Senate Oil & Gas Comm.

Agency Affected: Revenue  
BRU: \_\_\_\_\_

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS:

Prepared By: Royce Weller  
Division: Office of the Commissioner  
Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Phone: 465-2300  
Date: April 30, 1987  
Date: April 30, 1987

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary





ALASKA STATE LEGISLATURE

15th Legislature FIRST Session

HOUSE BILL NO. 58

By THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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

CSHB 58 (Fin) BY FINANCE

Offered: 3/6/87  
Referred: Rules

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

Introduced in the House ... 1/20 ..., 1987.

HISTORY IN THE HOUSE

1987	Jan 20	Read first time and referred to Committee on JUDICIARY AND FINANCE
	Feb 2	Reported back with recommendation that Judiciary - CS/Fin - 5 days 1 do not pass, zero fin. 2, fin
	Mar 6	Finance - CS/Fin - 8 days 2 no rec, 3 do fin - 20 Rules
	Mar 13	Read second time and CS/Fin adopted amended code
	Mar 13	Read third time and
	Mar 16	Reconsideration Taken up
	Mar 13	PASS ed Effective Date Yeas 25 Nays 7 Excused 3 Absent 0
	Mar 13	Reconsideration
	Mar 16	PASS ed Effective Date Yeas 27 Nays 8 Excused 4 Absent 1
	3/16	Reported correctly engrossed
	3/16	Signed by Speaker
	3/16	Sent to Senate
		<i>Bernice Pastorek</i>
		CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

1987	3/17	Read first time and referred to Committee on <i>Click Pass, S.A., Finance</i>
	5/1	Reported back with recommendation that <i>replace w/SCS (OTG), 1 do pass, 1 no rec, zero fin to S.A.</i>
	4/19	<i>replace w/SCS, 2 no rec, 1 do pass, OTG to fin</i>
		Read second time and
		Read third time and
		PASS Effective Date Yeas Nays Excused Absent
		Reconsideration
		PASS Effective Date Yeas Nays Excused Absent
		Reported correctly engrossed
		Signed by President
		Returned to House
		SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. ....

*Not copied  
for SFC  
files*

TESTIMONY OF  
STANDARD ALASKA PRODUCTION COMPANY  
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's 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 occasioned 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 risk 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 occasioned 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.

ATLANTIC RICHFIELD COMPANY TESTIMONY ON HB 58

HOUSE OF REPRESENTATIVES FINANCE COMMITTEE

MARCH 5, 1987

MY NAME IS ROBERT NELSON. I AM A TAX ATTORNEY WITH ATLANTIC RICHFIELD COMPANY IN ANCHORAGE. I AM HERE TODAY TO OFFER TESTIMONY OPPOSING HB 58.

FIRST, LET ME EXPRESS OUR APPRECIATION FOR THE OPPORTUNITY TO STATE OUR CONCERNS ABOUT HB 58 AND TO OFFER INPUT DURING THE LEGISLATIVE DRAFTING PROCESS OVER THE PAST TWO WEEKS.

ALTHOUGH ARCO UNDERSTANDS THE LEGISLATURE'S CONCERNS ABOUT CERTAIN CONFIDENTIAL TAXPAYER INFORMATION, WE OPPOSE HB 58. THE LEGISLATION, AS CURRENTLY DRAFTED, GOES BEYOND WHAT WE CONSIDER ACCEPTABLE, PARTICULARLY IN THE CONTEXT OF ALASKA'S UNIQUE AND SMALL TAXPAYER POPULATION AND THE UNIQUE BUSINESS RELATIONSHIP THAT THE OIL INDUSTRY HAS WITH THE STATE.

ARCO IS OPPOSED TO ANY TAXPAYER INFORMATION DISCLOSURE LEGISLATION WHICH WOULD PERMIT THE TRANSFER OF "TRANSACTIONAL DOCUMENTS". SIMILARLY WE MUST OPPOSE ANY LEGISLATION WHICH WOULD

PERMIT THE DEPARTMENT OF REVENUE TO TRANSFER SUMMARY DOCUMENTS WHICH WOULD HAVE THE EFFECT OF DISCLOSING THE IDENTITY OF THE TAXPAYER OR THE TAXPAYER'S TRADING PARTNERS OR WHICH WOULD ATTRIBUTE THE COMMERCIAL DETAILS OF A PARTICULAR TRANSACTION TO A PARTICULAR PRODUCER. THESE TRANSACTIONAL DOCUMENTS AND THE DETAILS OF TO WHOM AND IN WHAT MANNER WE BUY AND SELL IN CARRYING OUT OUR BUSINESS ARE SENSITIVE AND VALUABLE ASSETS.

PARTICULARLY TROUBLING IS THE POTENTIAL ANTI-TRUST AND ANTI-COMPETITIVE CONSEQUENCES OF PROVIDING SPECIFIC CRUDE OIL SALES AND PRICING INFORMATION TO A BODY SUCH AS THE LEGISLATURE WHICH HAS ALSO ASSUMED AUTHORITY TO REVIEW AND APPROVE THE STATE'S SALES OF ROYALTY OIL. BECAUSE THE LEGISLATURE HAS CHOSEN TO ACT ON BEHALF OF THE STATE IN REVIEWING AND APPROVING SALES CONTRACTS OF THE STATE'S ROYALTY OIL, THE LEGISLATURE SHOULD NOT SEEK TO OBTAIN PROPRIETARY DATA THAT COULD BE USED TO THE ECONOMIC DISADVANTAGE OF ITS COMPETITORS IN THE CRUDE OIL MARKET. ANY DISSEMINATION OF THIS SENSITIVE TRANSACTIONAL INFORMATION BEYOND THE DEPARTMENT OF REVENUE CREATES, IN OUR VIEW, AN UNACCEPTABLE RISK THAT IS CENTRAL TO OUR OPPOSITION TO HB 58.

FURTHER, ARCO IS OPPOSED TO HB 58'S PROVISIONS UNDER WHICH THE DEPARTMENT OF REVENUE WOULD BE PERMITTED TO TRANSFER CONFIDENTIAL TAXPAYER INFORMATION WITHOUT THE LEGISLATURE'S EVEN HAVING EXPRESSED ITS DESIRE OR NEED FOR THE INFORMATION. WE ARE CONCERNED THAT SUCH A PROVISION UNNECESSARILY COMPROMISES THE BALANCE BETWEEN PROTECTING THE TAXPAYER'S RIGHTS TO PRIVACY AND TO PROTECT CONFIDENTIAL BUSINESS DATA ON THE ONE HAND, AGAINST THE LEGISLATURE'S NEEDS AND DESIRES TO EXAMINE THIS SENSITIVE AND CONFIDENTIAL INFORMATION ON THE OTHER. ARCO OPPOSES ANY LEGISLATION WHICH PERMITS SUCH UNREQUESTED TRANSFERS OF INFORMATION.

THANK YOU.

Testimony of  
MARY L. JENSEN  
Exxon Company, U.S.A.

House Finance Committee  
CSHB-58  
March 5, 1986

My name is Mary Jensen. I am the Alaska Tax Attorney for Exxon Company, U.S.A. We wish to thank the House Finance Subcommittee for the opportunity to seek improvements to HB-58. We appreciate the committee members' and other participants efforts to balance the interests of the legislature in reviewing tax information with the privacy interests of the taxpayer.

While we have a greater appreciation of each others' interests, we were unable to agree on these issues:

- o The definition of taxpayer return and return information.
- o The commissioner's role in providing unrequested taxpayer information to the legislature.
- o The security procedures governing the transmittal of taxpayer information to the legislature.

The first and most important issue is the virtually unlimited proposed definition of taxpayer return and return information subject to disclosure.

We believe this definition should be narrowed to, at a minimum, exclude transactional documents. Without this exclusion, taxpayers

(Attach.)

would be discouraged from freely providing the Department of Revenue with proprietary documents whose release could result in substantial harm to their competitive position. This would unnecessarily interfere with resolution of tax disputes within the current audit process.

Second, the current proposal allows the commissioner to become an active participant in the legislative process. We believe the separation of powers mandates that his role be limited to providing the information requested by the legislature by simple resolution.

Finally, the current proposal requires the adoption of regulations governing the transmittal of taxpayer information to the legislature. We believe that Section 7(h) should be expanded to provide for:

- o Centralized safekeeping of taxpayer information.
- o An accounting of the transferred information to the taxpayer.
- o Sanctions imposed upon the Department and its employees for non-compliance with Section 7(h).

Again, we appreciate the opportunity to contribute to the Finance Subcommittee's efforts on this bill and regret that we cannot support the resulting committee substitute.

MLJ/3266:DAG

**TESTIMONY OF**  
**MARY L. JENSEN**  
**EXXON COMPANY, U.S.A.**

**BEFORE**

**HOUSE FINANCE COMMITTEE**  
**ON**  
**HOUSE BILL 58**

**JUNEAU, ALASKA**  
**FEBRUARY 17, 1987**

MY NAME IS MARY JENSEN. I AM THE ALASKA TAX ATTORNEY FOR EXXON COMPANY, U.S.A. WE APPRECIATE THE OPPORTUNITY TO PRESENT TESTIMONY IN OPPOSITION OF HOUSE BILL 58.

HOUSE BILL 58 WOULD PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE CONFIDENTIAL TAXPAYER INFORMATION TO LEGISLATIVE COMMITTEES, THEIR EMPLOYEES AND AGENTS. WE OPPOSE THIS BILL FOR THE FOLLOWING REASONS:

- WE BELIEVE THIS BILL IS UNNECESSARY;
- IT WOULD INCREASE THE RISK OF UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL TAXPAYER INFORMATION TO THE PUBLIC AND TO INDIVIDUALS;
- IT WOULD IMPEDE THE EFFECTIVE ADMINISTRATION OF THE STATE'S TAX LAWS.

WE WOULD LIKE TO DISCUSS EACH OF THESE POINTS IN MORE DETAIL.

**HB 58 IS UNNECESSARY**

THE LEGISLATURE CURRENTLY HAS SUFFICIENT STATUTORY AUTHORITY TO MONITOR THE OPERATIONS OF THE DEPARTMENT OF REVENUE. AS 24.20.271 PROVIDES THE LEGISLATURE OVERSIGHT AUTHORITY OVER THE TAX REVENUE COLLECTION FUNCTION OF THE DEPARTMENT OF REVENUE. IN ADDITION, AS 43.05.010 REQUIRES THE COMMISSIONER OF REVENUE ANNUALLY TO REPORT AND MAKE RECOMMENDATIONS TO THE GOVERNOR AND LEGISLATURE CONCERNING THE EFFICIENCY AND EFFECTIVENESS OF THE DEPARTMENT AND THE ADMINISTRATION OF THE TAX LAWS. THEREFORE, HB 58 IS UNNECESSARY AND, AS WRITTEN, WOULD BLUR THE CONSTITUTIONAL BOUNDARIES BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT.

**UNWARRANTED RISK OF DISCLOSURE OF HIGHLY SENSITIVE TAXPAYER INFORMATION**

DURING THE AUDIT PROCESS, THE DEPARTMENT OF REVENUE REVIEWS HIGHLY PROPRIETARY BUSINESS INFORMATION TO

DETERMINE THE ACCURACY OF A TAXPAYER'S REPORTED TAX LIABILITY. HB 58 WOULD PERMIT DISCLOSURE OF ALL THIS INFORMATION TO A LEGISLATIVE COMMITTEE, ITS EMPLOYEES AND AGENTS, INCLUDING TEMPORARY, CONTRACT EMPLOYEES. THIS GREATLY EXPANDED DISTRIBUTION OF HIGHLY PROPRIETARY INFORMATION INCREASES THE RISK OF UNAUTHORIZED DISCLOSURE TO THE PUBLIC AND TO COMPETITORS.

IN ADDITION, NO BILL CAN PROVIDE TAXPAYERS WITH COMPLETE PROTECTION FROM DISCLOSURE OF PROPRIETARY TAXPAYER INFORMATION. THE ALASKA CONSTITUTION PROVIDES TO LEGISLATORS IMMUNITY FROM CRIMINAL AND CIVIL SANCTIONS FOR UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IF MADE IN THE EXERCISE OF THEIR LEGISLATIVE DUTIES. ALSO, DISCLOSURE MAY OCCUR IN A MANNER THAT PRECLUDES IDENTIFICATION OF THE RESPONSIBLE PARTY. THE TAXPAYER'S ONLY REAL PROTECTION IS TO LIMIT THE INFORMATION PROVIDED.

**IMPEDE EFFECTIVE ADMINISTRATION OF TAX LAWS**

THE DEPARTMENT OF REVENUE RECEIVES FROM TAXPAYERS A BROAD RANGE OF INFORMATION, SOME OF WHICH IS EXTREMELY CONFIDENTIAL. DISCLOSURE TO THE PUBLIC AND, POTENTIALLY, TO COMPETITORS COULD BE DAMAGING. HB 58 WOULD MAKE THE TAXPAYER MORE RELUCTANT TO PROVIDE SUCH CONFIDENTIAL INFORMATION.

FURTHERMORE, SINCE HB 58 DOES NOT LIMIT THE SCOPE AND PURPOSE OF THE LEGISLATIVE REVIEW OF TAX MATTERS, THE LEGISLATURE COULD INTRUDE IN THE AUDIT AND SETTLEMENT PROCESS WHICH IS THE RESPONSIBILITY OF THE DEPARTMENT OF REVENUE. SUCH AN INTRUSION WOULD INCREASE THE STATE'S ADMINISTRATIVE COSTS AND FURTHER DELAY THE RESOLUTION OF TAX DISPUTES.

HB 58 IS NOT IN THE BEST INTERESTS OF THE STATE OR THE TAXPAYER, AND WE URGE THE HOUSE FINANCE COMMITTEE TO REJECT THIS PROPOSAL.

# Alaska State Legislature

REPRESENTATIVE  
PAT POURCHOT

HOUSE FINANCE COMMITTEE  
COMMITTEE ON OIL AND GAS



House of Representatives

ANCHORAGE  
P.O. BOX 10488  
ANCHORAGE, ALASKA 99511  
PHONE 373-2118  
FAX 373-2425  
FEDERAL BUREAU OF INVESTIGATION  
ANCHORAGE OFFICE  
307-468-1710

March 5, 1987

## CSHB 58 (Fin) Relating to confidential tax information of the Department of Revenue

The subcommittee's work sessions resulted in consensus being reached on several points. The following are points on which the subcommittee members agree, but on which the industry representatives who attended the work session do not:

### 1) Definition of "tax return" and "return information."

The subcommittee agreed to use the federal definition, which is very inclusive and would allow legislative access to a wide range of information filed with the Department of Revenue. Industry representatives expressed concern that this would include proprietary information such as specific transactional agreements with third parties. They argued that possible subsequent illegal disclosure of such information would be very damaging to a company's competitive position. Additionally, industry argued that such sensitive information was not of the type the Legislature needs to investigate tax laws and policies.

In an attempt to address this concern, the subcommittee added language to HB 58 which: a) Increases the penalties for disclosure (page 4, lines 14-17); b) Requires the commissioner to transfer the least commercially sensitive information that meets the legislature's request (page 7, lines 9-12); c) Requires the implementation of regulations that govern the transmittal and safekeeping of confidential documents (page 7, line 29 through page 8, line 3); and d) Minimizes the number of legislative employees and agents who would have access to the information (page 6, lines 21-22).

### 2) The commissioner's ability to initiate the transfer of information.

The subcommittee agreed to authorize the commissioner, under certain conditions, to come forward with confidential information (i.e., passage by the legislature of a simple resolution would not be required). The subcommittee felt this would provide a needed avenue when the legislature may not be aware of specific problems, as in the case of the Administration advancing its own tax legislation.

Industry representatives felt that the scrutiny associated with passage of a simple resolution provides a needed "control" over the scope and purposes of a request for information. They argued that no such parallel control would be placed on the commissioner, possibly resulting in abuses at some future time.

In an attempt to address this concern, the subcommittee strengthened language in HB 58 to require that the commissioner: a) Consider a number of criteria in a written finding that precedes the transfer (page 5, line 25 through page 6, line 12); b) Notify the taxpayer of the content of the information being transferred (page 7, lines 1-2); and c) Transfer information only when consistent with the purposes outlined in the act (page 4, line 24 through page 5, line 6). In addition, the safeguards discussed in #1 (definition) apply here also.

- 3) Access to information currently covered under "protective orders."

Industry representatives expressed concern that existing protective agreements (which generally provide an additional layer of protection beyond that currently provided in statute) were entered into with "one set of rules in mind," and the agreements should not change even if the rules do.

The Attorney General has advised that protective agreements ordered by the court (for example, due to ongoing litigation) will probably not be changed by passage of HB 58, but that administrative protective orders (for example, issued by Department of Revenue hearing officers during administrative hearings) could be affected. Should the legislature seek access to information currently covered by an administrative protective order, and should the taxpayer sue to block access, the court might decide that the protective agreement is of a contractual nature and thus unaffected by HB 58.

The subcommittee did not wish to explicitly prevent information from being transferred simply because it was covered by some type of protective order. The subcommittee recognized that some court orders might take precedence over a legislative request for information, but did not want to comment on, or prejudice any "separation of powers" argument, at this time.

# Alaska State Legislature

REPRESENTATIVE  
PAT POURCHOT

HOUSE FINANCE COMMITTEE  
COMMITTEE ON OIL AND GAS



ANCHORAGE  
P.O. BOX 104836  
ANCHORAGE, AK 99510  
(W) (907) 276-6818  
(H) (907) 338-2425

JUNEAU  
POUCH V  
STATE CAPITOL  
JUNEAU, AK 99811  
(907) 465-3712

## House of Representatives

March 5, 1987

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

### Changes to CSHB 58 (Jud):

AS 43.05.230(f). Establishes penalties for violation of the confidentiality provisions. A "knowing" violation is a class A misdemeanor; a "negligent" violation is subject to a civil penalty of \$5000. The Judiciary CS contained a penalty (class A misdemeanor) only for an "intentional" violation.

AS 43.05.232. Creates a new section of statute to deal specifically with the transfer of confidential tax information. The Judiciary CS proposed amendments to existing AS 43.05.230. This is simply a change in drafting style.

(a) Establishes purposes for which tax information may be transferred to the legislature (to assist in consideration of tax legislation, oversight of the administration of tax laws, including the review of settlements, litigation, and audits, or estimation of future state revenues), and purposes for which information may not be transferred (to direct the executive branch in its audit, litigation, or settlement efforts, or to embarrass, harass, or discriminate against a taxpayer). Judiciary CS did not contain purposes.

(b) Clarifies that the committee chair or co-chair may request information from the department once a Simple Resolution has been adopted by the legislature. Judiciary CS allowed the "committee" to request.

(c) Requires the commissioner to provide affected taxpayers with a copy of his written finding that the transfer of information is in the best interest of the state. Lists points the commissioner must consider in making his finding (whether the information would demonstrate the application of a tax or the effect of a change in tax law, assist in estimating revenues, or clarify information provided by a taxpayer, and the potential harm a taxpayer may suffer by the possible subsequent illegal disclosure of the information). Judiciary CS did not require that a copy of the finding be provided, and listed the above points as criteria which the information must meet before it could be transferred, rather than as considerations the commissioner must make.

(Attach. 3)

(d) Clarifies that confidential information may be considered only in executive session, and that all legislators may attend the session. Authorizes the chair or co-chair to designate employees and agents to review the tax information and attend the executive session, and directs the chair/co-chair to seek to minimize the number of employees designated. Authorizes the chair/co-chair to allow the taxpayer whose returns are being considered to attend the executive session. Because of the drafting style used in the Judiciary CS, it was not clear as to when executive session was required. The Judiciary CS contained no language on keeping employees/agents to a minimum, and expressly allowed the taxpayer to attend the executive session.

(e) Requires that the commissioner notify the taxpayer of the contents of the information transferred to the committee. Judiciary CS required notice of transfer, but not a content list.

(f) Requires that, when more than one type of information will satisfy the legislature's request, the commissioner choose the information which is the least commercially sensitive. Judiciary CS contained no such provision.

(g) Specifies that prior to receiving confidential information, legislators, employees, and agents must sign a form acknowledging that disclosure of the information is prohibited by law, and agreeing to abide by safekeeping procedures adopted by the department. The Judiciary CS did not include the provision regarding departmental procedures.

(h) Requires that the commissioner adopt regulations governing the transmittal, receipt, safekeeping, duplication, and accounting for return of the information. Judiciary CS provided for the commissioner and each legislative committee to adopt procedures.

(j) Defines "return" and "return information" as it is defined in federal law. Judiciary CS provided no definition.

Section 8. Amends existing law to allow the department to grant taxpayers an extension for filing their returns. Judiciary CS contained no such provision.

Section 9. Specifies that the act applies to all returns and return information in the possession of the department on the effective date of the act. Judiciary CS contained no such provision.

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.

Mike Greany, Director  
Legislative Finance Division

January 17, 1986  
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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