

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 58 cont. 224 234

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

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

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

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

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

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

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

Summary of the Proposed Bill

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

Louann Cutler
House Finance Committee

February 21, 1986
Page 5

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

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

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

§ 26453a

BANK AND CORPORATION TAXES

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

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

Prior Law:

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

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

Cross References:

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

Collateral References:

71 Am Jur 2d State and Local Taxation §§ 590, 601.

Corresponding federal statute: 26 USCS § 6103(d).

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

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

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

Prior Law:

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

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

Amendments:

1969 Amendment: Added the second sentence.

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

Cross References:

Nonprofit corporation generally: Corp C §§ 9000 et seq.

Attorney General's powers generally: Gov C §§ 12510 et seq.

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

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

Collateral References:

Witkin Evidence 2d pp 805, 806.

Cal Jur 2d Income Taxes § 48.

NOTES OF DECISIONS

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

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. Webb v

Standard Oil Co. (1937) 49 C2d 509, 319 P2d 621; Vogan v McLaughlin (1939) 172 CA2d 65, 342 P2d 18; Davis v Lucas (1960) 180 CA2d 407, 4 Cal Rptr 479.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. Vogan v McLaughlin (1939) 172 CA2d 65, 342 P2d 18.

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

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

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

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

Collateral References:

Cal Jur 2d Income Taxes § 48.

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

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

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§ 26452. "Business affairs"

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

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

Prior Law:

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

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

§ 26453. Disclosure of information under judicial order

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

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

Prior Law:

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

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

Collateral References:

Witkin Evidence 2d p 806.

Cal Jur 2d Taxation § 384.

71 Am Jur 2d State and Local Taxation §§ 590, 601.

NOTES OF DECISIONS

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

A taxpayer in asserting a claim for a refund does not "enforce" the statute within the exception of

this provision permitting disclosure, in actions to enforce the statute, of certain information required in tax returns. *Franchise Tax Board v Superior Court* (1950) 36 C2d 538, 225 P2d 905.

§ 26453a. Furnishing information to Assembly and Senate committees
Such information may upon request of the committee appointed by either the Assembly or the Senate be furnished to the committee, but

MEMORANDUM

TO: Louann Cutler, Committee Aide,
House Finance Committee

FROM: J. Hartle, ^{JH}Committee Aide,
House Judiciary committee

RE: Sectional Analysis, CSHB 58(Judiciary)

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

Sectional analysis:

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

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

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

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

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

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

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

of disclosing confidential tax information to the legislature.

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

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

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

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

Section 7: The bill has an immediate effective date.

Items in the referral file include:

Proposed CSHB 58 (JUD)

Memo from Theresa Bannister

Sectional analysis

February 21, 1986 memo from Deborah Vogt to Louann Cutler

Exerpt from U.S. v. Helstoski 442 US 477 490

January 16, 1986 Memo from Deborah Vogt to Mike Greany

Statutes from other states on disclosure of tax information

Zero fiscal note

Other states permitting
disclosure to the legislature

LEGISLATURE

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

Alabama § 40-1-31

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

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

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

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

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

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

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

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

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

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

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

Standard Oil Co. (1957) 49 C2d 509, 319 P2d 621; *Vogan v McLaughlin* (1959) 172 CA2d 65, 342 P2d 18; *Davis v Lucas* (1960) 180 CA2d 407, 4 Cal Rptr 479.

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. *Webb v*

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

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

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

Compiler's notes. For words "this act" see compiler's notes, § 63-3001. Section 19 of S. L. 1969, ch. 319 is compiled as § 63-3073.

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

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

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

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



State Commissioner of Taxation does not proceed with taxpayer on information received from any other source. Id.

re taxpayer's time for appealing from Tax Court's decision that there were deficiencies in his federal income tax return for a year expired after running of the statute of limitations in state's income tax law, assessment of that state tax was barred. Id.

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

and determinations, the commissioner may examine tax examiners, as he may deem advisable, he may request the legislative auditor to audit such returns and conduct such an audit. Upon such request being made, the tax examiners as he may deem neces-

the commissioner or by the legislative auditor, reference to the examining of books, witnesses, administering of oaths and upon the commissioner by this chapter. The auditor shall issue a subpoena for the books, papers, records, or memoranda and issue such subpoenas. The commissioner may also issue a board of review, the reports of the auditor of taxpayers, and report on them to the auditor. Under this chapter shall be punished by a subpoena is issued, or in the case of a contempt of court of the district in which the same manner as contempt of the district

§ 11; Laws 1983, c. 359, § 23.

which is barred by statute of limitations on January 1, 1983.

Laws 1983, c. 359, removed obsolete references to justice of the peace and magistrate

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

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

Amended by Laws 1973, c. 492, § 14.

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

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

290.61. Publicity of returns, information

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

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

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

officers or employes, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. As used in this section, "officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.780 §13; 1979 c.690 §1]

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

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

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

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

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

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

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

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

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

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

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for

the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employe of the Executive Department duly authorized or employed to prepare revenue estimates, or a person contracting with the Executive Department to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.202 to 291.226, or required for submission to the Emergency Board.

or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342 to 291.348. The information disclosed or

to which access is given under this subparagraph shall be confined to the identity of a corporate taxpayer, the amount of the corporate tax liability of the corporate taxpayer and the amount of the payments made by the corporation to the Department of Revenue under the corporate excise and income tax laws of this state. Any officer, employee or person furnished or granted access to information under this subparagraph shall not remove the information from the premises of the Department of Revenue.

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

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

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

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

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

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82.32.220

EXCISE TAXES

P. 6

1983 Amendment. Rewrote the first paragraph.

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

82.32.230. Agent of the department of revenue may execute

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

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

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

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

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

Notes of Decisions

1. In general

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

2. Search and seizure

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

82.32.300. Department of revenue to administer

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

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

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

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

Amended by Laws 1983, ch. 3, § 222.

1983 Amendment. In the first paragraph, near the beginning of the first sentence, substituted "through 82.27" for "and chapters 82.04 through 82.27".

Administrative Code References

In general, see WAC 468 20 100.

EXCISE TAXES

82.32.330

Notes of Decisions

4. Validity of regulations

Department of revenue rule promulgating "primary purpose test" for determining whether an item is subject to sales tax was invalid insofar as it imper-

missibly imposed a tax on items which actually became ingredients or components of a newly created article. *Lone Star Industries, Inc. v. State, Dept. of Revenue* (1982) 97 Wash.2d 630, 647 P.2d 1013.

82.32.330. Secrecy enjoined—Exceptions

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

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

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

1984 Amendment. Inserted, in subd. (5) of the second sentence of the first paragraph, the words "council," following "any state department".

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INCOME TAXES

71.11

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

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

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

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

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

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

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

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

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

GOVERNOR

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

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

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

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

CHAPTER 7
CONFIDENTIALITY

- SECTION. 6-8.1-7-1. Disclosure of information in tax report.
SECTION. 6-8.1-7-2. Disclosure of statistical information or results of statistical studies — Information as to whether individual income tax return filed.
SECTION. 6-8.1-7-3. Violations — Penalty.

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

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

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

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

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

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

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

HISTORY

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

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

HISTORY

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

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

HISTORY

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



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N. C. 105-259

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

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

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

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

Offered: 2/2/87
Referred: Finance

Original sponsor: Rules/Legislative
Budget and Audit

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 58 (Judiciary)

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 of
7 the Department of Revenue; and providing for an
8 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
CSHB 58(Jud)

1 information contained in a report or return filed under AS 43 with the
2 Department of Revenue and furnished to the person under AS 43.05.-
3 230(h) or (i).

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

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

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

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

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

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

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

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

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

29 (f) An intentional [A WILFUL] violation of the provisions of

1 this section is a class A misdemeanor [PUNISHABLE BY A FINE OF NOT
2 MORE THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN TWO YEARS, OR
3 BY BOTH].

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

5 (h) A legislative committee, after identifying the scope of an
6 investigation or inquiry relating to matters of taxation and the
7 adoption by either house of a simple resolution giving the committee
8 authority to receive confidential tax information, may request the
9 commissioner of revenue to provide confidential taxpayer returns or
10 return information; the request by the committee shall be in writing
11 and may identify, directly or indirectly, a particular taxpayer. On
12 adoption of the resolution, the commissioner of revenue shall provide
13 the committee with the requested returns or return information. If
14 specific returns or return information concerning a particular taxpay-
15 er are provided to a legislative committee under this subsection, the
16 commissioner of revenue shall notify the particular taxpayer of the
17 request and of the delivery to the committee of the information. The
18 committee may designate legislative employees or agents to inspect
19 returns and return information. The committee may consider informa-
20 tion made available under this subsection only in executive session
21 unless the taxpayer and any third party whose tax information is being
22 considered consent in writing to a disclosure in open session.

23 (i) Notwithstanding (h) of this section, the commissioner may
24 transfer information made confidential under this section to a legis-
25 lative committee after a written finding by the commissioner that the
26 transfer is in the best interest of the public. The transfer of the
27 confidential information is in the best interest of the public if

28 (1) a taxpayer has testified before a legislative commit-
29 tee, either orally or in writing, or has otherwise provided

1 information to a committee concerning the administration of a tax
2 under this title and the department has confidential information of
3 the taxpayer that directly conflicts with the testimony or information
4 offered by the taxpayer;

5 (2) a legislative committee is reviewing the administration
6 of a tax imposed by this title and confidential information is needed
7 to demonstrate the application of the tax to taxpayers;

8 (3) the legislature has under consideration a bill propos-
9 ing to add an additional tax or to amend a tax administered by the
10 department and confidential information is needed to demonstrate the
11 fiscal effect of the proposed new tax or amendment; or

12 (4) after giving the taxpayer a hearing, the commissioner
13 makes a written determination that the interest of the public in
14 transferring the information to the legislative committee outweighs
15 the interest of the taxpayer in avoiding the transfer of the informa-
16 tion.

17 (j) If a return or information that is provided to a committee
18 under (h) or (i) of this section identifies the taxpayer, the taxpayer
19 may attend the portion of the committee meeting that considers the
20 return or information.

21 (k) The disclosure of information made confidential by this
22 section by a member or former member of the legislature or by a pre-
23 sent or former employee or agent of the legislature is a violation of
24 this section. A member of the legislature and an employee or agent of
25 the legislature, before receiving or reviewing information provided by
26 the commissioner under (h) or (i) of this section, shall acknowledge,
27 on a form prepared by the commissioner, that the information is confi-
28 dential, and that a disclosure of the information is prohibited by
29 law.

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(l) The legislative committee and the commissioner of revenue shall adopt procedures governing the transmittal, receipt, safekeeping, and use of the confidential information provided by the commissioner under (h) or (i) of this section.

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

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

Introduced: 1/20/87
Referred: Judiciary and
Finance

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

1 IN THE HOUSE

2

HOUSE BILL NO. 58

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 the disclosure of certain state
tax assessment information by the Department of
Revenue."

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

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

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(1) the natural resources of land owned by the state belong to
the citizens of the state;

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(2) natural resource extraction presently dwarfs all other
taxable economic activity in the state;

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(3) the vast majority of the state's revenue is derived from the
extraction of natural resources; and

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(4) state government provides a wide range of critical services
to the citizens of the state to ensure public health and welfare.

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(b) The legislature further finds that

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(1) the citizens of the state must be assured that the state is
receiving all of the income to which it is entitled;

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(2) because the revenue from the extraction of natural resources
is derived from only a relatively few taxpayers, the consequences of error
in each case are magnified;

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(3) the legislature must exercise its oversight authority to
assure that the administration of revenue collection by the Department of
Revenue is conducted efficiently, fairly, promptly and in the best inter-
ests of the citizens of the state;

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(4) the legislature and the public have a legitimate and

1 compelling interest in having access adequate for responsible oversight to
2 information regarding the revenue owed to the state from the extraction of
3 natural resources;

4 (5) without sufficient information, the legislature cannot
5 adequately determine whether the state's revenue collection functions are
6 properly administered and whether the revenue due to the state is promptly
7 received; and

8 (6) the public interest is best served if the identity of a
9 corporate taxpayer and the amount assessed against the corporate taxpayer
10 are available to the legislature and the public at the time of assessment,
11 whether or not the corporate taxpayer agrees that the amount is due and
12 whether or not any amount is delinquent.

13 * Sec. 2. LEGISLATIVE PURPOSE. The legislature adopts secs. 3, 4, and
14 5 of this Act in response to concerns identified by the findings in sec. 1
15 of this Act to ensure that

16 (1) the state is receiving all revenue that is due to the state;

17 (2) sufficient oversight of the revenue collecting function is
18 provided; and

19 (3) the revenue that is due to the state is available to provide
20 for the public health and welfare of the citizens of the state.

21 * Sec. 3. AS 09.25.100 is amended to read:

22 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in
23 the possession of the Department of Revenue that [WHICH] discloses the
24 particulars of the business or affairs of a taxpayer or other person
25 is not a matter of public record, except for purposes of investigation
26 and law enforcement. The information shall be kept confidential
27 except when its production is required in an official investigation or
28 court proceeding. These restrictions do not prohibit the publication
29 of statistics presented in a manner that prevents the identification

1 of particular reports and items, or prohibit the publication of tax
2 lists showing the names of taxpayers who are delinquent and relevant
3 information that [WHICH] may assist in the collection of delinquent
4 taxes. Notwithstanding the other provisions of this section, the
5 amount of a tax assessment made by the Department of Revenue against a
6 corporate taxpayer and the name of the assessed taxpayer are public
7 information.

8 * Sec. 4. AS 43.05.230 is amended by adding a new subsection to read:

9 (h) The amount of an assessment made by the department against a
10 corporate taxpayer and the name of the assessed taxpayer are public
11 information.

12 * Sec. 5. AS 09.25.100, as amended by sec. 3 of this Act, and AS 43.-
13 05.230(h), as enacted by sec. 4 of this Act, apply to assessments that are
14 either outstanding on the effective date of this Act, or made on or after
15 the effective date of this Act.

*Final version of 1986
legislation*

Offered: 3/21/86
For Today's Calendar

Original sponsor: Rules/Legislative
Budget and Audit

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 502 (Judiciary) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

7

8

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

assure 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; and

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 have protections against improper disclosure of
20 tax information;

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

23 (6) tax programs are administered fairly.

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

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

1 AS 43.05.230(h).

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

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

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 within a report or return filed
12 under AS 43 with the Department of Revenue and furnished to the person
13 under AS 43.05.230(h) and the taxpayer or a third party whose tax
14 information is alleged to have been improperly disclosed does not
15 agree to the public disclosure of the identity of the taxpayer, the
16 third 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 must be edited to prevent the disclosure of the confidential informa-
20 tion;

21 (3) a decision, if made public, must 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(f) is amended to read:

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

1 BOTH].

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

3 (h) A legislative committee, after identifying the scope of an
4 investigation or inquiry relating to matters of taxation and the
5 adoption by either house of a simple resolution giving the committee
6 authority to receive confidential tax information, may request the
7 commissioner of revenue to provide confidential taxpayer returns or
8 return information; the request by the committee shall be in writing
9 and may identify, directly or indirectly, a particular taxpayer. On
10 adoption of the resolution, the commissioner of revenue shall provide
11 the committee with the requested returns or return information. If
12 specific returns or return information concerning a particular taxpay-
13 er are provided to a legislative committee under this subsection, the
14 commissioner of revenue shall notify the particular taxpayer of the
15 request and of the delivery to the committee of the information. The
16 committee may designate legislative employees or agents to inspect
17 returns and return information. The committee may consider informa-
18 tion made available under this subsection only in executive session
19 unless the taxpayer and any third party whose tax information is being
20 considered consent in writing to a disclosure in open session.

21 (i) The disclosure of information made confidential by this
22 section by a member or former member of the legislature or by a
23 present or former employee or agent of the legislature is a violation
24 of this section. A member of the legislature and an employee or agent
25 of the legislature, before receiving or reviewing information provided
26 by the commissioner under (h) of this section, shall acknowledge, on a
27 form prepared by the commissioner, that the information is confiden-
28 tial, and that a disclosure of the information is prohibited by law.

29 (j) The legislative committee and the commissioner of revenue

1 shall establish procedures governing the transmittal, receipt, safe-
2 keeping, and use of the confidential information provided by the
3 commissioner under (h) of this section.

4 (k) This section does not permit the disclosure to the legisla-
5 ture of confidential information provided by the Internal Revenue
6 Service under exchange agreements with the department.

7 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).

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 of 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.

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.

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

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
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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.

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS



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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.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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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
Page 5

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

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

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

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 

Deborah Vogt
Assistant Attorney General

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