

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 440**

4 (By Senators Prezioso, Facemire, Stollings and Plymale)

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported March 21, 2013.]
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12 A BILL to amend and reenact §11-10-5s of the Code of West Virginia,
13 1931, as amended, relating to disclosure of confidential
14 taxpayer information; authorizing the disclosure of specified
15 tax information by the Tax Commissioner to the Attorney
16 General; authorizing the disclosure of specified tax
17 information by the Attorney General to specified persons
18 relevant to enforcement of Tobacco Master Settlement
19 Agreement; authorizing the Tax Commissioner to enter into a
20 written agreement with the State Auditor for disclosure of
21 confidential tax information to the State Auditor to
22 facilitate the State Auditor's participation in federal and
23 state offset programs to collect unpaid taxes; and providing

1 for protection and limited use of confidential information.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §11-10-5s of the Code of West Virginia, 1931, as amended,
4 be amended and reenacted to read as follows:

5 **ARTICLE 10. WEST VIRGINIA TAX AND PROCEDURE ADMINISTRATION ACT.**

6 **§11-10-5s. Disclosure of certain taxpayer information.**

7 (a) *Purpose.* - The Legislature hereby recognizes the
8 importance of confidentiality of taxpayer information as a
9 protection of taxpayers' privacy rights and to enhance voluntary
10 compliance with the tax law. The Legislature also recognizes the
11 citizens' right to accountable and efficient state government. To
12 accomplish these ends, the Legislature hereby creates certain
13 exceptions to the general principle of confidentiality of taxpayer
14 information.

15 (b) *Exceptions to confidentiality.* -

16 (1) Notwithstanding any provision in this code to the
17 contrary, the Tax Commissioner shall publish in the State Register
18 the name and address of every taxpayer and the amount, by category,
19 of any credit asserted on a tax return under articles thirteen-c,
20 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q,
21 thirteen-r and thirteen-s of this chapter and article one, chapter
22 five-e of this code. The categories by dollar amount of credit
23 received ~~shall be~~ are as follows:

- 1 (A) More than \$1 but not more than \$50,000;
- 2 (B) More than \$50,000 but not more than \$100,000;
- 3 (C) More than \$100,000 but not more than \$250,000;
- 4 (D) More than \$250,000 but not more than \$500,000;
- 5 (E) More than \$500,000 but not more than \$1 million; and
- 6 (F) More than \$1 million.

7 (2) Notwithstanding any provision in this code to the
8 contrary, the Tax Commissioner shall publish in the State Register
9 the following information regarding ~~any~~ a compromise of a pending
10 civil tax case that occurs on or after the effective date of this
11 section in which the Tax Commissioner is required to seek the
12 written recommendation of the Attorney General and the Attorney
13 General has not recommended acceptance of the compromise or when
14 the Tax Commissioner compromises ~~any~~ a civil tax case for an amount
15 that is more than \$250,000 less than the assessment of tax owed
16 made by the Tax Commissioner:

- 17 (A) The names and addresses of taxpayers that are parties to
- 18 the compromise;
- 19 (B) A summary of the compromise;
- 20 (C) Any written advice or recommendation rendered by the
- 21 Attorney General regarding the compromise; and
- 22 (D) Any written advice or recommendation rendered by the Tax
- 23 Commissioner's staff.

1 Under no circumstances may the tax return of the taxpayer or
2 any other information which would otherwise be confidential under
3 ~~any~~ other provisions of law be disclosed pursuant to the provisions
4 of this subsection.

5 (3) Notwithstanding any provision in this code to the
6 contrary, the Tax Commissioner may disclose any relevant return
7 information to the prosecuting attorney for the county in which
8 venue lies for a criminal tax offense when there is reasonable
9 cause, based upon and substantiated by the return information, to
10 believe that a criminal tax law has been or is being violated.

11 (4) Notwithstanding any provision in this code to the
12 contrary, the Tax Commissioner may enter into written exchange of
13 information agreements with the commissioners of Labor, Employment
14 Security, Alcohol Beverage Control and Workers' Compensation to
15 disclose and receive timely return information. ~~Provided, That~~ The
16 Tax Commissioner may promulgate rules pursuant to chapter
17 twenty-nine-a of this code regarding ~~further~~ additional agencies
18 with which written exchange of information agreements may be sought
19 ~~Provided, however, That the Tax Commissioner may not promulgate~~
20 ~~emergency rules regarding further agencies with which written~~
21 ~~exchange of information agreements may be sought.~~ but may not
22 promulgate emergency rules regarding these additional agencies. The
23 agreements shall be published in the State Register and ~~shall only~~

1 ~~be~~ are only for the purpose of facilitating premium collection, tax
2 collection and facilitating licensure requirements directly
3 enforced, administered or collected by the respective agencies. The
4 provisions of this subsection ~~shall not be construed to~~ do not
5 preclude or limit disclosure of tax information authorized by other
6 provisions of this code. ~~Any~~ Confidential return information so
7 disclosed ~~shall remain~~ remains confidential in the ~~hands of the~~
8 other ~~division~~ agency to the extent provided by section five-d of
9 this article and by other applicable federal or state laws.

10 (5) Notwithstanding any provision of this code to the
11 contrary, the Tax Commissioner may enter into a written agreement
12 with the State Treasurer to disclose to the State Treasurer the
13 following business registration information:

14 (A) The names, addresses and federal employer identification
15 numbers of businesses which have registered to do business in West
16 Virginia; and

17 (B) The type of business activity and organization of those
18 businesses.

19 Disclosure of this information shall begin as soon as
20 practicable after the effective date of this subsection and may be
21 used only for the purpose of recovery and disposition of unclaimed
22 property in accordance with the provisions of article eight,
23 chapter thirty-six of this code. The provisions of this subsection

1 ~~shall not be construed to~~ do not preclude or limit disclosure of
2 tax information authorized by other provisions of this code. ~~Any~~
3 Confidential return information disclosed hereunder or thereunder
4 ~~shall otherwise remain confidential to the extent~~ remains
5 confidential as provided by section five-d of this article and by
6 other applicable federal or state laws.

7 (6) Notwithstanding any provision of this code to the
8 contrary, the Tax Commissioner may disclose to the Attorney General
9 any tax return, report, declaration or tax return information,
10 including the identity of a taxpayer, that relates to any
11 taxpayer's sales of tobacco products subject to state excise tax or
12 to such sales of tobacco products that were manufactured or
13 imported by a nonparticipating manufacturer as defined in section
14 two, article nine-d of chapter sixteen of this code, for the
15 purpose of enforcement of articles nine-b and nine-d, chapter
16 sixteen of this code, or for the purpose of representing the State
17 of West Virginia in any arbitration or litigation arising under the
18 Tobacco Master Settlement Agreement or articles nine-b and nine-d,
19 chapter sixteen of this code. Nothing herein shall authorize the
20 disclosure of any taxpayer's income tax returns or business
21 franchise tax returns, or authorize the use of the disclosed
22 information for any purpose other than as specified herein.

23 (7) Notwithstanding any provision of this code to the

1 contrary, the Attorney General, upon the consent of the Tax
2 Commissioner, may disclose information provided by the Tax
3 Commissioner under the authority of subdivision six of this
4 subsection as follows:

5 (A) To a party or parties participating in arbitration or
6 litigation arising under the terms of the Tobacco Master Settlement
7 Agreement; or

8 (B) To a judge, arbitrator, administrative law judge, legal
9 counsel or other officer, official or participant in proceedings
10 for or relating to administration, implementation, enforcement,
11 defense or settlement and arbitration of the provisions of articles
12 nine-b and nine-d of chapter sixteen of this code.

13 (C) Notwithstanding any provision of this code to the
14 contrary, the Attorney General may introduce into evidence or
15 disclose the information in the arbitration or litigation
16 proceedings or an action for administration, implementation,
17 enforcement, defense or settlement and arbitration of the
18 provisions of articles nine-b and nine-d of chapter sixteen of this
19 code.

20 (D) This subdivision does not apply to a document, tax return
21 or other information subject to disclosure restrictions imposed by
22 federal statute or regulation.

23 (E) Any information disclosed pursuant to this subdivision is

1 subject to the following restrictions:

2 (i) specific identifiers shall first be redacted or otherwise
3 removed from any such information that was reported by a taxpayer
4 who is not a party to any proceeding, arbitration or litigation;

5 (ii) No such disclosure shall be made unless it is subject to
6 a protective order or agreement restricting the use of the
7 disclosed information to such proceeding, arbitration or
8 litigation;

9 (F) For purposes of this section, "specific identifiers" shall
10 mean the name, address, telephone number, taxpayer identification
11 number, logo, trademark or other markings unique to the taxpayer.

12 (8) Notwithstanding any provision of this code to the
13 contrary, the Tax Commissioner may enter into a written exchange
14 agreement with the Auditor to disclose certain taxpayer information
15 to facilitate participation in the following:

16 (A) The federal offset program authorized by section
17 thirty-seven, article one, chapter fourteen of this code; and

18 (B) The state offset program, as authorized by subsection (h),
19 section thirty-seven, article one, chapter fourteen of this code,
20 for the purpose of protecting return information as defined in
21 section five-d, article ten of this chapter and collecting debts,
22 fees and penalties due the state, its departments, agencies or
23 institutions.

1 (C) The taxpayer information exchanged or disclosed pursuant
2 to this subdivision is to be used only for the purpose of
3 facilitating the collection of unpaid and delinquent tax
4 liabilities through offset against state payments due and owing to
5 taxpayers, vendors and contractors providing goods or services to
6 the state, its departments, agencies or institutions.

7 (D) The Tax Commissioner may disclose the following taxpayer
8 information:

9 (i) Name;

10 (ii) Address;

11 (iii) Social Security number or tax identification number;

12 (iv) Amount of the tax liability; and

13 (v) Any other information required by the written agreement.

14 (E) Disclosure of this information begins as soon as
15 practicable after the effective date of this subdivision.

16 (F) The provisions of this section do not preclude or limit
17 disclosure of tax information authorized by other provisions of
18 this code. Any confidential return information disclosed hereunder
19 or thereunder remains confidential to the extent provided by
20 section five-d of this article and by other applicable federal or
21 state laws.

22 (c) *Tax expenditure reports.* - Beginning on January 15, 1992,
23 and every January 15 thereafter, the Governor shall submit to the

1 President of the Senate and the Speaker of the House of Delegates
2 a tax expenditure report. This report shall expressly identify all
3 tax expenditures. Within three-year cycles, the reports shall be
4 considered together to analyze all tax expenditures by describing
5 the annual revenue loss and benefits of the tax expenditure based
6 upon information available to the Tax Commissioner. For purposes of
7 this section, the term "tax expenditure" ~~shall mean~~ means a
8 provision in the tax laws administered under this article
9 including, but not limited to, exclusions, deductions, tax
10 preferences, credits and deferrals designed to encourage certain
11 kinds of activities or to aid taxpayers in special circumstances.
12 ~~Provided, That~~ The Tax Commissioner shall promulgate rules setting
13 forth the procedure by which he or she will compile the reports and
14 setting forth a priority for the order in which the reports will be
15 compiled according to type of tax expenditure.

16 (d) *Federal and state return information confidential.* -
17 Notwithstanding any other provisions of this section or of this
18 code, no return information made available to the Tax Commissioner
19 by the Internal Revenue Service or department or agency of any
20 other state may be disclosed to another person in ~~any~~ a manner
21 inconsistent with the provisions of Section 6103 of the Internal
22 Revenue Code of 1986, as amended, or of the other states'
23 confidentiality laws.

