

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Senate Bill 667

BY SENATORS GAUNCH, PREZIOSO AND PLYMALE

[Passed April 6, 2017; in effect from passage]

1 AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended,
2 relating to the authority of the Attorney General to disclose certain information provided
3 by the Tax Commissioner unless it is subject to a protective order or agreement restricting
4 the use of the disclosed information to the proceeding, arbitration or litigation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

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

1 (a) *Purpose.* — The Legislature hereby recognizes the importance of confidentiality of
2 taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary
3 compliance with the tax law. The Legislature also recognizes the citizens' right to accountable
4 and efficient state government. To accomplish these ends, the Legislature hereby creates certain
5 exceptions to the general principle of confidentiality of taxpayer information.

6 (b) *Exceptions to confidentiality.* —

7 (1) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall
8 publish in the State Register the name and address of every taxpayer and the amount, by
9 category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e,
10 thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter
11 five-e of this code. The categories by dollar amount of credit received are as follows:

- 12 (A) More than \$1 but not more than \$50,000;
- 13 (B) More than \$50,000 but not more than \$100,000;
- 14 (C) More than \$100,000 but not more than \$250,000;
- 15 (D) More than \$250,000 but not more than \$500,000;
- 16 (E) More than \$500,000 but not more than \$1 million; and
- 17 (F) More than \$1 million.

18 (2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall
19 publish in the State Register the following information regarding a compromise of a pending civil
20 tax case that occurs on or after the effective date of this section in which the Tax Commissioner
21 is required to seek the written recommendation of the Attorney General and the Attorney General
22 has not recommended acceptance of the compromise or when the Tax Commissioner
23 compromises a civil tax case for an amount that is more than \$250,000 less than the assessment
24 of tax owed made by the Tax Commissioner:

25 (A) The names and addresses of taxpayers that are parties to the compromise;

26 (B) A summary of the compromise;

27 (C) Any written advice or recommendation rendered by the Attorney General regarding
28 the compromise; and

29 (D) Any written advice or recommendation rendered by the Tax Commissioner's staff.

30 Under no circumstances may the tax return of the taxpayer or any other information which
31 would otherwise be confidential under other provisions of law be disclosed pursuant to the
32 provisions of this subsection.

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

37 (4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may
38 enter into written exchange of information agreements with the commissioners of Labor,
39 Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and
40 receive timely return information. The Tax Commissioner may promulgate rules pursuant to
41 chapter twenty-nine-a of this code regarding additional agencies with which written exchange of
42 information agreements may be sought but may not promulgate emergency rules regarding these
43 additional agencies. The agreements shall be published in the State Register and are only for the

44 purpose of facilitating premium collection, tax collection and facilitating licensure requirements
45 directly enforced, administered or collected by the respective agencies. The provisions of this
46 subsection do not preclude or limit disclosure of tax information authorized by other provisions of
47 this code. Confidential return information so disclosed remains confidential in the other agency to
48 the extent provided by section five-d of this article and by other applicable federal or state laws.

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

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

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

55 Disclosure of this information shall begin as soon as practicable after the effective date of
56 this subsection and may be used only for the purpose of recovery and disposition of unclaimed
57 property in accordance with the provisions of article eight, chapter thirty-six of this code. The
58 provisions of this subsection do not preclude or limit disclosure of tax information authorized by
59 other provisions of this code. Confidential return information disclosed hereunder or thereunder
60 remains confidential as provided by section five-d of this article and by other applicable federal or
61 state laws.

62 (6) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may
63 disclose to the Attorney General any tax return, report, declaration or tax return information,
64 including the identity of a taxpayer, that relates to any taxpayer's sales of tobacco products subject
65 to state excise tax or to such sales of tobacco products that were manufactured or imported by a
66 nonparticipating manufacturer as defined in section two, article nine-d of chapter sixteen of this
67 code, for the purpose of enforcement of articles nine-b and nine-d, chapter sixteen of this code,
68 or for the purpose of representing the State of West Virginia in any arbitration or litigation arising
69 under the Tobacco Master Settlement Agreement or articles nine-b and nine-d, chapter sixteen

70 of this code. Nothing herein shall authorize the disclosure of any taxpayer's income tax returns or
71 business franchise tax returns, or authorize the use of the disclosed information for any purpose
72 other than as specified herein.

73 (7) Notwithstanding any provision of this code to the contrary, the Attorney General, upon
74 the consent of the Tax Commissioner, may disclose information provided by the Tax
75 Commissioner under the authority of subdivision six of this subsection as follows:

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

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

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

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

88 (E) No disclosure may be made pursuant to this subdivision unless it is subject to a
89 protective order or agreement restricting the use of the disclosed information to the proceeding,
90 arbitration or litigation;

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

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

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

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

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

105 (i) Name;

106 (ii) Address;

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

108 (iv) Amount of the tax liability; and

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

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

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

116 (c) *Tax expenditure reports.* — Beginning on January 15, 1992, and every January 15
117 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House
118 of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures.
119 Within three-year cycles, the reports shall be considered together to analyze all tax expenditures
120 by describing the annual revenue loss and benefits of the tax expenditure based upon information
121 available to the Tax Commissioner. For purposes of this section, the term “tax expenditure” means

122 a provision in the tax laws administered under this article including, but not limited to, exclusions,
123 deductions, tax preferences, credits and deferrals designed to encourage certain kinds of
124 activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate
125 rules setting forth the procedure by which he or she will compile the reports and setting forth a
126 priority for the order in which the reports will be compiled according to type of tax expenditure.

127 (d) *Federal and state return information confidential.* — Notwithstanding any other
128 provisions of this section or of this code, no return information made available to the Tax
129 Commissioner by the Internal Revenue Service or department or agency of any other state may
130 be disclosed to another person in a manner inconsistent with the provisions of Section 6103 of
131 the Internal Revenue Code of 1986, as amended, or of the other states' confidentiality laws.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2017.

.....
Governor