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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 290

(By Senator Bowman)

PASSED March 9, 2002

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 290

(SENATOR BOWMAN, *original sponsor*)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to specifying information to be provided to local governments and tax returns and return information obtained from the tax commissioner pursuant to an exchange of information agreement or otherwise pursuant to the provisions of subsections (d) through (n), inclusive, of said section which is in the possession of any officer, employee, agent or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in said article; and specifying that unlawful disclosure of such information by any officer, employee or agent of any local, municipal or

governmental subdivision is subject to the sanctions set forth in said article.

Be it enacted by the Legislature of West Virginia:

That section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* – Except when required in an official
2 investigation by the tax commissioner into the amount of
3 tax due under any article administered under this article
4 or in any proceeding in which the tax commissioner is a
5 party before a court of competent jurisdiction to collect or
6 ascertain the amount of such tax and except as provided
7 in subsections (d) through (n), inclusive, of this section, it
8 shall be unlawful for any officer, employee or agent of this
9 state or of any county, municipality or governmental
10 subdivision to divulge or make known in any manner the
11 tax return, or any part thereof, of any person or disclose
12 information concerning the personal affairs of any individ-
13 ual or the business of any single firm or corporation, or
14 disclose the amount of income, or any particulars set forth
15 or disclosed in any report, declaration or return required
16 to be filed with the tax commissioner by any article of this
17 chapter imposing any tax administered under this article
18 or by any rule or regulation of the tax commissioner issued
19 thereunder, or disclosed in any audit or investigation
20 conducted under this article. For purposes of this article,
21 tax returns and return information obtained from the tax
22 commissioner pursuant to an exchange of information
23 agreement or otherwise pursuant to the provisions of
24 subsections (d) through (n), inclusive, of this section which
25 is in the possession of any officer, employee, agent or
26 representative of any local or municipal governmental
27 entity or other governmental subdivision is subject to the

28 confidentiality and disclosure restrictions set forth in this
29 article: *Provided*, That such officers, employees or agents
30 may disclose the information in an official investigation,
31 by a local or municipal governmental authority or agency
32 charged with the duty and responsibility to administer the
33 tax laws of the jurisdiction, into the amount of tax due
34 under any lawful local or municipal tax administered by
35 that authority or agency, or in any proceeding in which the
36 local or municipal governmental subdivision, authority or
37 agency is a party before a court of competent jurisdiction
38 to collect or ascertain the amount of the tax. Unlawful
39 disclosure of the information by any officer, employee or
40 agent of any local, municipal or governmental subdivision
41 is subject to the sanctions set forth in this article.

42 (b) *Definitions*. – For purposes of this section:

43 (1) *Background file document*. – The term “background
44 file document”, with respect to a written determination,
45 includes the request for that written determination, any
46 written material submitted in support of the request and
47 any communication (written or otherwise) between the
48 state tax department and any person outside the state tax
49 department in connection with the written determination
50 received before issuance of the written determination.

51 (2) *Disclosure*. – The term “disclosure” means the
52 making known to any person in any manner whatsoever a
53 return or return information.

54 (3) *Inspection*. – The terms “inspection” and “inspected”
55 means any examination of a return or return information.

56 (4) *Return*. – The term “return” means any tax or
57 information return or report, declaration of estimated tax,
58 claim or petition for refund or credit or petition for
59 reassessment that is required by, or provided for, or
60 permitted under the provisions of this article (or any
61 article of this chapter administered under this article)
62 which is filed with the tax commissioner by, on behalf of,

63 or with respect to any person and any amendment or
64 supplement thereto, including supporting schedules,
65 attachments or lists which are supplemental to, or part of,
66 the return so filed.

67 (5) *Return information.* – The term “return information”
68 means:

69 (A) A taxpayer’s identity; the nature, source or amount
70 of his or her income, payments, receipts, deductions,
71 exemptions, credits, assets, liabilities, net worth, tax
72 liability, tax withheld, deficiencies, overassessments or tax
73 payments, whether the taxpayer’s return was, is being, or
74 will be examined or subject to other investigation or
75 processing, or any other data received by, recorded by,
76 prepared by, furnished to or collected by the tax commis-
77 sioner with respect to a return or with respect to the
78 determination of the existence, or possible existence, of
79 liability (or the amount thereof) or by any person under
80 the provisions of this article (or any article of this chapter
81 administered under this article) for any tax, additions to
82 tax, penalty, interest, fine, forfeiture or other imposition
83 or offense; and

84 (B) Any part of any written determination or any
85 background file document relating to such written deter-
86 mination. “Return information” does not include, how-
87 ever, data in a form which cannot be associated with or
88 otherwise identify, directly or indirectly, a particular
89 taxpayer. Nothing in the preceding sentence, or in any
90 other provision of this code, shall be construed to require
91 the disclosure of standards used or to be used for the
92 selection of returns for examination or data used or to be
93 used for determining such standards.

94 (6) *Tax administration.* – The term “tax administration”
95 means:

96 (A) The administration, management, conduct, direction
97 and supervision of the execution and application of the tax

98 laws or related statutes of this state and the development
99 and formulation of state and local tax policy relating to
100 existing or proposed state and local tax laws and related
101 statutes of this state; and

102 (B) Includes assessment, collection, enforcement, litiga-
103 tion, publication and statistical gathering functions under
104 the laws of this state and of local governments.

105 (7) *Taxpayer identity.* – The term “taxpayer identity”
106 means the name of a person with respect to whom a return
107 is filed, his or her mailing address, his or her taxpayer
108 identifying number or a combination thereof.

109 (8) *Taxpayer return information.* – The term “taxpayer
110 return information” means return information as defined
111 in subdivision (5) of this subsection which is filed with, or
112 furnished to, the tax commissioner by or on behalf of the
113 taxpayer to whom such return information relates.

114 (9) *Written determination.* – The term “written determi-
115 nation” means a ruling, determination letter, technical
116 advice memorandum or letter or administrative decision
117 issued by the tax commissioner.

118 (c) *Criminal penalty.* – Any officer, employee or agent
119 (or former officer, employee or agent) of this state or of
120 any county, municipality or governmental subdivision who
121 violates this section shall be guilty of a misdemeanor and,
122 upon conviction thereof, shall be fined not more than one
123 thousand dollars or imprisoned for not more than one year,
124 or both, together with costs of prosecution.

125 (d) *Disclosure to designee of taxpayer.* – Any person
126 protected by the provisions of this article may, in writing,
127 waive the secrecy provisions of this section for such
128 purpose and such period as he shall therein state. The tax
129 commissioner may, subject to such requirements and
130 conditions as he or she may prescribe, thereupon release to
131 designated recipients such taxpayer’s return or other
132 particulars filed under the provisions of the tax articles

133 administered under the provisions of this article, but only
134 to the extent necessary to comply with a request for
135 information or assistance made by the taxpayer to such
136 other person. However, return information shall not be
137 disclosed to such person or persons if the tax commissioner
138 determines that such disclosure would seriously impair
139 administration of this state's tax laws.

140 (e) *Disclosure of returns and return information for use*
141 *in criminal investigations. -*

142 (1) *In general. -* Except as provided in subdivision (3) of
143 this subsection, any return or return information with
144 respect to any specified taxable period or periods shall,
145 pursuant to and upon the grant of an ex parte order by a
146 federal district court judge, federal magistrate or circuit
147 court judge of this state, under subdivision (2) of this
148 subsection, be open (but only to the extent necessary as
149 provided in such order) to inspection by, or disclosure to,
150 officers and employees of any federal agency, or of any
151 agency of this state, who personally and directly engaged
152 in:

153 (A) Preparation for any judicial or administrative
154 proceeding pertaining to the enforcement of a specifically
155 designated state or federal criminal statute to which this
156 state, the United States or such agency is or may be a
157 party;

158 (B) Any investigation which may result in such a pro-
159 ceeding; or

160 (C) Any state or federal grand jury proceeding pertaining
161 to enforcement of such a criminal statute to which this
162 state, the United States or such agency is or may be a
163 party.

164 Such inspection or disclosure shall be solely for the use
165 of such officers and employees in such preparation,
166 investigation or grand jury proceeding.

167 (2) *Application of order.* – Any United States attorney,
168 any special prosecutor appointed under Section 593 of
169 Title 28, United States Code, or any attorney in charge of
170 a United States justice department criminal division
171 organized crime strike force established pursuant to
172 Section 510 of Title 28, United States Code, may authorize
173 an application to a circuit court judge or magistrate, as
174 appropriate, for the order referred to in subdivision (1) of
175 this subsection. Any prosecuting attorney of this state
176 may authorize an application to a circuit court judge of
177 this state for the order referred to in said subdivision.
178 Upon the application, the judge or magistrate may grant
179 such order if he determines on the basis of the facts
180 submitted by the applicant that:

181 (A) There is reasonable cause to believe, based upon
182 information believed to be reliable, that a specific criminal
183 act has been committed;

184 (B) There is reasonable cause to believe that the return
185 or return information is or may be relevant to a matter
186 relating to the commission of such act; and

187 (C) The return or return information is sought exclu-
188 sively for use in a state or federal criminal investigation or
189 proceeding concerning such act and the information
190 sought to be disclosed cannot reasonably be obtained,
191 under the circumstances, from another source.

192 (3) The tax commissioner may not disclose any return or
193 return information under subdivision (1) of this subsection
194 if he determines and certifies to the court that the disclo-
195 sure would identify a confidential informant or seriously
196 impair a civil or criminal tax investigation.

197 (f) *Disclosure to person having a material interest.* – The
198 tax commissioner may, pursuant to legislative regulations
199 promulgated by him or her, and upon such terms as he or
200 she may require, disclose a return or return information to
201 a person having a material interest therein: *Provided*, That

202 such disclosure shall only be made if the tax commissioner
203 determines, in his or her discretion, that the disclosure
204 would not seriously impair administration of this state's
205 tax laws.

206 (g) *Statistical use.* – This section shall not be construed
207 to prohibit the publication or release of statistics so
208 classified as to prevent the identification of particular
209 returns and the items thereof.

210 (h) *Disclosure of amount of outstanding lien.* – If notice
211 of lien has been recorded pursuant to section twelve of this
212 article, the amount of the outstanding obligation secured
213 by such lien may be disclosed to any person who furnishes
214 written evidence satisfactory to the tax commissioner that
215 such person has a right in the property subject to the lien
216 or intends to obtain a right in such property.

217 (i) *Reciprocal exchange.* – The tax commissioner may,
218 pursuant to written agreement, permit the proper officer
219 of the United States, or the District of Columbia or any
220 other state, or any political subdivision of this state, or his
221 authorized representative, who is charged by law with
222 responsibility for administration of a similar tax, to
223 inspect reports, declarations or returns filed with the tax
224 commissioner or may furnish to such officer or representa-
225 tive a copy of any document, provided any other jurisdic-
226 tion grants substantially similar privileges to the tax
227 commissioner or to the attorney general of this state. The
228 disclosure shall be only for the purpose of, and only to the
229 extent necessary in, the administration of tax laws:
230 *Provided,* That the information may not be disclosed to the
231 extent that the tax commissioner determines that such
232 disclosure would identify a confidential informant or
233 seriously impair any civil or criminal tax investigation.

234 (j) *Exchange with municipalities.* – The tax commis-
235 sioner shall, upon the written request of the mayor or
236 governing body of any West Virginia municipality, allow
237 the duly authorized agent of the municipality to inspect

238 and make copies of the state business and occupation tax
239 return filed by taxpayers of the municipality and any other
240 state tax returns (including, but not limited to, consumers
241 sales and services tax return information and health care
242 provider tax return information) as may be reasonably
243 requested by the municipality. Such inspection or copying
244 shall include disclosure to the authorized agent of the
245 municipality for tax administration purposes of all
246 available return information from files of the tax depart-
247 ment relating to taxpayers who transact business within
248 the municipality. The tax commissioner shall be permitted
249 to inspect or make copies of any tax return and any return
250 information or other information related thereto in the
251 possession of any municipality or its employees, officers,
252 agents or representatives that has been submitted to or
253 filed with the municipality by any person for any tax
254 including, but not limited to, the municipal business and
255 occupation tax, public utility tax, municipal license tax,
256 tax on purchases of intoxicating liquors, license tax on
257 horse racing or dog racing and municipal amusement tax.

258 (k) *Release of administrative decisions.* – The tax
259 commissioner shall release to the public his administrative
260 decisions, or a summary thereof: *Provided*, That unless the
261 taxpayer appeals the administrative decision to circuit
262 court or waives in writing his rights to confidentiality, any
263 identifying characteristics or facts about the taxpayer
264 shall be omitted or modified to an extent so as to not
265 disclose the name or identity of the taxpayer.

266 (l) *Release of taxpayer information.* –

267 (1) If the tax commissioner believes that enforcement of
268 the tax laws administered under this article will be
269 facilitated and enhanced thereby, he shall disclose, upon
270 request, the names and address of persons:

271 (A) Who have a current business registration certificate.

272 (B) Who are licensed employment agencies.

- 273 (C) Who are licensed collection agencies.
- 274 (D) Who are licensed to sell drug paraphernalia.
- 275 (E) Who are distributors of gasoline or special fuel.
- 276 (F) Who are contractors.
- 277 (G) Who are transient vendors.
- 278 (H) Who are authorized by law to issue a sales or use tax
279 exemption certificate.
- 280 (I) Who are required by law to collect sales or use taxes.
- 281 (J) Who are foreign vendors authorized to collect use tax.
- 282 (K) Whose business registration certificate has been
283 suspended or canceled or not renewed by the tax commis-
284 sioner.
- 285 (L) Against whom a tax lien has been recorded under
286 section twelve of this article (including any particulars
287 stated in the recorded lien).
- 288 (M) Against whom criminal warrants have been issued
289 for a criminal violation of this state's tax laws.
- 290 (N) Who have been convicted of a criminal violation of
291 this state's tax laws.
- 292 (m) *Disclosure of return information to child support*
293 *enforcement division. –*
- 294 (1) *State return information. –* The tax commissioner
295 may, upon written request, disclose to the child support
296 enforcement division created by article two, chapter forty-
297 eight-a of this code:
- 298 (A) Available return information from the master files of
299 the tax department relating to the social security account
300 number, address, filing status, amounts and nature of
301 income and the number of dependents reported on any
302 return filed by, or with respect to, any individual with

303 respect to whom child support obligations are sought to be
304 enforced; and

305 (B) Available state return information reflected on any
306 state return filed by, or with respect to, any individual
307 described in paragraph (A) of this subdivision relating to
308 the amount of the individual's gross income, but only if
309 such information is not reasonably available from any
310 other source.

311 (2) *Restrictions on disclosure.* – The tax commissioner
312 shall disclose return information under subdivision (1) of
313 this subsection only for purposes of, and to the extent
314 necessary in, collecting child support obligations from and
315 locating individuals owing such obligations.

316 (n) *Disclosure of names and addresses for purposes of*
317 *jury selection.* –

318 The tax commissioner shall, at the written request of a
319 circuit court or the chief judge thereof, provide to the
320 circuit court within thirty calendar days a list of the names
321 and addresses of individuals residing in the county or
322 counties comprising the circuit who have filed a state
323 personal income tax return for the preceding tax year. The
324 list provided shall set forth names and addresses only. The
325 request shall be limited to counties within the jurisdiction
326 of the requesting court.

327 The court, upon receiving the list or lists, shall direct the
328 jury commission of the appropriate county to merge the
329 names and addresses with other lists used in compiling a
330 master list of residents of the county from which prospec-
331 tive jurors are to be chosen. Immediately after the master
332 list is compiled, the jury commission shall cause the list
333 provided by the tax commissioner and all copies thereof to
334 be destroyed and shall certify to the circuit court and to
335 the tax commissioner that the lists have been destroyed.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *25th*
Day of *March*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/02

Time 9:50am