

HB 1315 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are
4 each reenacted and amended to read as follows:

5 (1) For purposes of this section:

6 (a) "Disclose" means to make known to any person in any manner
7 whatever a return or tax information;

8 (b) "Return" means a tax or information return or claim for refund
9 required by, or provided for or permitted under, the laws of this state
10 which is filed with the department of revenue by, on behalf of, or with
11 respect to a person, and any amendment or supplement thereto, including
12 supporting schedules, attachments, or lists that are supplemental to,
13 or part of, the return so filed;

14 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
15 nature, source, or amount of the taxpayer's income, payments, receipts,
16 deductions, exemptions, credits, assets, liabilities, net worth, tax
17 liability deficiencies, overassessments, or tax payments, whether taken
18 from the taxpayer's books and records or any other source, (iii)
19 whether the taxpayer's return was, is being, or will be examined or
20 subject to other investigation or processing, (iv) a part of a written
21 determination that is not designated as a precedent and disclosed
22 pursuant to RCW 82.32.410, or a background file document relating to a
23 written determination, and (v) other data received by, recorded by,
24 prepared by, furnished to, or collected by the department of revenue
25 with respect to the determination of the existence, or possible
26 existence, of liability, or the amount thereof, of a person under the
27 laws of this state for a tax, penalty, interest, fine, forfeiture, or
28 other imposition, or offense: PROVIDED, That data, material, or
29 documents that do not disclose information related to a specific or
30 identifiable taxpayer do not constitute tax information under this

1 section. Except as provided by RCW 82.32.410, nothing in this chapter
2 shall require any person possessing data, material, or documents made
3 confidential and privileged by this section to delete information from
4 such data, material, or documents so as to permit its disclosure;

5 (d) "State agency" means every Washington state office, department,
6 division, bureau, board, commission, or other state agency;

7 (e) "Taxpayer identity" means the taxpayer's name, address,
8 telephone number, registration number, or any combination thereof, or
9 any other information disclosing the identity of the taxpayer; and

10 (f) "Department" means the department of revenue or its officer,
11 agent, employee, or representative.

12 (2) Returns and tax information shall be confidential and
13 privileged, and except as authorized by this section, neither the
14 department of revenue nor any other person may disclose any return or
15 tax information.

16 (3) (~~The foregoing, however, shall~~) This section does not
17 prohibit the department of revenue from:

18 (a) Disclosing such return or tax information in a civil or
19 criminal judicial proceeding or an administrative proceeding:

20 (i) In respect of any tax imposed under the laws of this state if
21 the taxpayer or its officer or other person liable under Title 82 RCW
22 is a party in the proceeding; or

23 (ii) In which the taxpayer about whom such return or tax
24 information is sought and another state agency are adverse parties in
25 the proceeding;

26 (b) Disclosing, subject to such requirements and conditions as the
27 director shall prescribe by rules adopted pursuant to chapter 34.05
28 RCW, such return or tax information regarding a taxpayer to such
29 taxpayer or to such person or persons as that taxpayer may designate in
30 a request for, or consent to, such disclosure, or to any other person,
31 at the taxpayer's request, to the extent necessary to comply with a
32 request for information or assistance made by the taxpayer to such
33 other person: PROVIDED, That tax information not received from the
34 taxpayer shall not be so disclosed if the director determines that such
35 disclosure would compromise any investigation or litigation by any
36 federal, state, or local government agency in connection with the civil
37 or criminal liability of the taxpayer or another person, or that such
38 disclosure would identify a confidential informant, or that such

1 disclosure is contrary to any agreement entered into by the department
2 that provides for the reciprocal exchange of information with other
3 government agencies which agreement requires confidentiality with
4 respect to such information unless such information is required to be
5 disclosed to the taxpayer by the order of any court;

6 (c) Disclosing the name of a taxpayer with a deficiency greater
7 than five thousand dollars and against whom a warrant under RCW
8 82.32.210 has been either issued or filed and remains outstanding for
9 a period of at least ten working days. The department shall not be
10 required to disclose any information under this subsection if a
11 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
12 a warrant that has not been filed; and (iii) has entered a deferred
13 payment arrangement with the department of revenue and is making
14 payments upon such deficiency that will fully satisfy the indebtedness
15 within twelve months;

16 (d) Disclosing the name of a taxpayer with a deficiency greater
17 than five thousand dollars and against whom a warrant under RCW
18 82.32.210 has been filed with a court of record and remains
19 outstanding;

20 (e) Publishing statistics so classified as to prevent the
21 identification of particular returns or reports or items thereof;

22 (f) Disclosing such return or tax information, for official
23 purposes only, to the governor or attorney general, or to any state
24 agency, or to any committee or subcommittee of the legislature dealing
25 with matters of taxation, revenue, trade, commerce, the control of
26 industry or the professions;

27 (g) Permitting the department of revenue's records to be audited
28 and examined by the proper state officer, his or her agents and
29 employees;

30 (h) Disclosing any such return or tax information to a peace
31 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
32 official purposes. The disclosure may be made only in response to a
33 search warrant, subpoena, or other court order, unless the disclosure
34 is for the purpose of criminal tax enforcement. A peace officer or
35 county prosecuting attorney who receives the return or tax information
36 may disclose that return or tax information only for use in the
37 investigation and a related court proceeding, or in the court

1 proceeding for which the return or tax information originally was
2 sought;

3 (i) Disclosing any such return or tax information to the proper
4 officer of the internal revenue service of the United States, the
5 Canadian government or provincial governments of Canada, or to the
6 proper officer of the tax department of any state or city or town or
7 county, for official purposes, but only if the statutes of the United
8 States, Canada or its provincial governments, or of such other state or
9 city or town or county, as the case may be, grants substantially
10 similar privileges to the proper officers of this state;

11 (j) Disclosing any such return or tax information to the Department
12 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the
13 Department of the Treasury, the Department of Defense, the United
14 States Customs Service, the Coast Guard of the United States, and the
15 United States Department of Transportation, or any authorized
16 representative thereof, for official purposes;

17 (k) Publishing or otherwise disclosing the text of a written
18 determination designated by the director as a precedent pursuant to RCW
19 82.32.410;

20 (l) Disclosing, in a manner that is not associated with other tax
21 information, the taxpayer name, entity type, business address, mailing
22 address, revenue tax registration numbers, North American industry
23 classification system or standard industrial classification code of a
24 taxpayer, and the dates of opening and closing of business. This
25 subsection shall not be construed as giving authority to the department
26 to give, sell, or provide access to any list of taxpayers for any
27 commercial purpose;

28 (m) Disclosing such return or tax information that is also
29 maintained by another Washington state or local governmental agency as
30 a public record available for inspection and copying under the
31 provisions of chapter 42.17 RCW or is a document maintained by a court
32 of record not otherwise prohibited from disclosure;

33 (n) Disclosing such return or tax information to the United States
34 department of agriculture for the limited purpose of investigating food
35 stamp fraud by retailers;

36 (o) Disclosing to a financial institution, escrow company, or title
37 company, in connection with specific real property that is the subject

1 of a real estate transaction, current amounts due the department for a
2 filed tax warrant, judgment, or lien against the real property; ((~~or~~))

3 (p) Disclosing to a person against whom the department has asserted
4 liability as a successor under RCW 82.32.140 return or tax information
5 pertaining to the specific business of the taxpayer to which the person
6 has succeeded; or

7 (q) Disclosing such return or tax information in the possession of
8 the department relating to the administration or enforcement of the
9 real estate excise tax imposed under chapter 82.45 RCW, including
10 information regarding transactions exempt or otherwise not subject to
11 tax.

12 (4)(a) The department may disclose return or taxpayer information
13 to a person under investigation or during any court or administrative
14 proceeding against a person under investigation as provided in this
15 subsection (4). The disclosure must be in connection with the
16 department's official duties relating to an audit, collection activity,
17 or a civil or criminal investigation. The disclosure may occur only
18 when the person under investigation and the person in possession of
19 data, materials, or documents are parties to the return or tax
20 information to be disclosed. The department may disclose return or tax
21 information such as invoices, contracts, bills, statements, resale or
22 exemption certificates, or checks. However, the department may not
23 disclose general ledgers, sales or cash receipt journals, check
24 registers, accounts receivable/payable ledgers, general journals,
25 financial statements, expert's workpapers, income tax returns, state
26 tax returns, tax return workpapers, or other similar data, materials,
27 or documents.

28 (b) Before disclosure of any tax return or tax information under
29 this subsection (4), the department shall, through written
30 correspondence, inform the person in possession of the data, materials,
31 or documents to be disclosed. The correspondence shall clearly
32 identify the data, materials, or documents to be disclosed. The
33 department may not disclose any tax return or tax information under
34 this subsection (4) until the time period allowed in (c) of this
35 subsection has expired or until the court has ruled on any challenge
36 brought under (c) of this subsection.

37 (c) The person in possession of the data, materials, or documents
38 to be disclosed by the department has twenty days from the receipt of

1 the written request required under (b) of this subsection to petition
2 the superior court of the county in which the petitioner resides for
3 injunctive relief. The court shall limit or deny the request of the
4 department if the court determines that:

5 (i) The data, materials, or documents sought for disclosure are
6 cumulative or duplicative, or are obtainable from some other source
7 that is more convenient, less burdensome, or less expensive;

8 (ii) The production of the data, materials, or documents sought
9 would be unduly burdensome or expensive, taking into account the needs
10 of the department, the amount in controversy, limitations on the
11 petitioner's resources, and the importance of the issues at stake; or

12 (iii) The data, materials, or documents sought for disclosure
13 contain trade secret information that, if disclosed, could harm the
14 petitioner.

15 (d) The department shall reimburse reasonable expenses for the
16 production of data, materials, or documents incurred by the person in
17 possession of the data, materials, or documents to be disclosed.

18 (e) Requesting information under (b) of this subsection that may
19 indicate that a taxpayer is under investigation does not constitute a
20 disclosure of tax return or tax information under this section.

21 (5) Any person acquiring knowledge of any return or tax information
22 in the course of his or her employment with the department of revenue
23 and any person acquiring knowledge of any return or tax information as
24 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
25 section, who discloses any such return or tax information to another
26 person not entitled to knowledge of such return or tax information
27 under the provisions of this section, is guilty of a misdemeanor. If
28 the person guilty of such violation is an officer or employee of the
29 state, such person shall forfeit such office or employment and shall be
30 incapable of holding any public office or employment in this state for
31 a period of two years thereafter.

32 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.07 RCW
33 to read as follows:

34 (1) The secretary of state shall adopt rules requiring any entity
35 that is required to file an annual report with the secretary of state,
36 including entities under Titles 23, 23B, 24, and 25 RCW, to disclose

1 any transfer in the controlling interest of the entity and any interest
2 in real property.

3 (2) This information shall be made available to the department of
4 revenue upon request for the purposes of tracking the transfer of the
5 controlling interest in real property and to determine when the real
6 estate excise tax is applicable in such cases.

7 (3) For the purposes of this section, "controlling interest" has
8 the same meaning as provided in RCW 82.45.033.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.45 RCW
10 to read as follows:

11 An organization that fails to report a transfer of the controlling
12 interest in the organization under section 2 of this act to the
13 secretary of state and is later determined to be subject to real estate
14 excise taxes due to the transfer, shall be subject to the provisions of
15 RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(6)."

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16 On page 1, line 2 of the title, after "taxes;" strike the remainder
17 of the title and insert "reenacting and amending RCW 82.32.330; adding
18 a new section to chapter 43.07 RCW; and adding a new section to chapter
19 82.45 RCW."

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