

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1315

59th Legislature
2005 Regular Session

Passed by the House April 19, 2005
Yeas 97 Nays 1

Speaker of the House of Representatives

Passed by the Senate April 14, 2005
Yeas 40 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1315** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1315

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Representatives Tom, Clibborn, Jarrett, Hunter, Priest, Lantz,
Conway, Rodne, Orcutt and Linville

Read first time 01/20/2005. Referred to Committee on Finance.

1 AN ACT Relating to disclosure of information related to real estate
2 excise taxes; reenacting and amending RCW 82.32.330; adding a new
3 section to chapter 43.07 RCW; and adding a new section to chapter 82.45
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are
7 each reenacted and amended to read as follows:

8 (1) For purposes of this section:

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

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

17 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
18 nature, source, or amount of the taxpayer's income, payments, receipts,
19 deductions, exemptions, credits, assets, liabilities, net worth, tax

1 liability deficiencies, overassessments, or tax payments, whether taken
2 from the taxpayer's books and records or any other source, (iii)
3 whether the taxpayer's return was, is being, or will be examined or
4 subject to other investigation or processing, (iv) a part of a written
5 determination that is not designated as a precedent and disclosed
6 pursuant to RCW 82.32.410, or a background file document relating to a
7 written determination, and (v) other data received by, recorded by,
8 prepared by, furnished to, or collected by the department of revenue
9 with respect to the determination of the existence, or possible
10 existence, of liability, or the amount thereof, of a person under the
11 laws of this state for a tax, penalty, interest, fine, forfeiture, or
12 other imposition, or offense: PROVIDED, That data, material, or
13 documents that do not disclose information related to a specific or
14 identifiable taxpayer do not constitute tax information under this
15 section. Except as provided by RCW 82.32.410, nothing in this chapter
16 shall require any person possessing data, material, or documents made
17 confidential and privileged by this section to delete information from
18 such data, material, or documents so as to permit its disclosure;

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

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

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

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

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

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

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

37 (ii) In which the taxpayer about whom such return or tax

1 information is sought and another state agency are adverse parties in
2 the proceeding;

3 (b) Disclosing, subject to such requirements and conditions as the
4 director shall prescribe by rules adopted pursuant to chapter 34.05
5 RCW, such return or tax information regarding a taxpayer to such
6 taxpayer or to such person or persons as that taxpayer may designate in
7 a request for, or consent to, such disclosure, or to any other person,
8 at the taxpayer's request, to the extent necessary to comply with a
9 request for information or assistance made by the taxpayer to such
10 other person: PROVIDED, That tax information not received from the
11 taxpayer shall not be so disclosed if the director determines that such
12 disclosure would compromise any investigation or litigation by any
13 federal, state, or local government agency in connection with the civil
14 or criminal liability of the taxpayer or another person, or that such
15 disclosure would identify a confidential informant, or that such
16 disclosure is contrary to any agreement entered into by the department
17 that provides for the reciprocal exchange of information with other
18 government agencies which agreement requires confidentiality with
19 respect to such information unless such information is required to be
20 disclosed to the taxpayer by the order of any court;

21 (c) Disclosing the name of a taxpayer with a deficiency greater
22 than five thousand dollars and against whom a warrant under RCW
23 82.32.210 has been either issued or filed and remains outstanding for
24 a period of at least ten working days. The department shall not be
25 required to disclose any information under this subsection if a
26 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
27 a warrant that has not been filed; and (iii) has entered a deferred
28 payment arrangement with the department of revenue and is making
29 payments upon such deficiency that will fully satisfy the indebtedness
30 within twelve months;

31 (d) Disclosing the name of a taxpayer with a deficiency greater
32 than five thousand dollars and against whom a warrant under RCW
33 82.32.210 has been filed with a court of record and remains
34 outstanding;

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

37 (f) Disclosing such return or tax information, for official
38 purposes only, to the governor or attorney general, or to any state

1 agency, or to any committee or subcommittee of the legislature dealing
2 with matters of taxation, revenue, trade, commerce, the control of
3 industry or the professions;

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

7 (h) Disclosing any such return or tax information to a peace
8 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
9 official purposes. The disclosure may be made only in response to a
10 search warrant, subpoena, or other court order, unless the disclosure
11 is for the purpose of criminal tax enforcement. A peace officer or
12 county prosecuting attorney who receives the return or tax information
13 may disclose that return or tax information only for use in the
14 investigation and a related court proceeding, or in the court
15 proceeding for which the return or tax information originally was
16 sought;

17 (i) Disclosing any such return or tax information to the proper
18 officer of the internal revenue service of the United States, the
19 Canadian government or provincial governments of Canada, or to the
20 proper officer of the tax department of any state or city or town or
21 county, for official purposes, but only if the statutes of the United
22 States, Canada or its provincial governments, or of such other state or
23 city or town or county, as the case may be, grants substantially
24 similar privileges to the proper officers of this state;

25 (j) Disclosing any such return or tax information to the Department
26 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the
27 Department of the Treasury, the Department of Defense, the United
28 States Customs Service, the Coast Guard of the United States, and the
29 United States Department of Transportation, or any authorized
30 representative thereof, for official purposes;

31 (k) Publishing or otherwise disclosing the text of a written
32 determination designated by the director as a precedent pursuant to RCW
33 82.32.410;

34 (l) Disclosing, in a manner that is not associated with other tax
35 information, the taxpayer name, entity type, business address, mailing
36 address, revenue tax registration numbers, North American industry
37 classification system or standard industrial classification code of a
38 taxpayer, and the dates of opening and closing of business. This

1 subsection shall not be construed as giving authority to the department
2 to give, sell, or provide access to any list of taxpayers for any
3 commercial purpose;

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

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

12 (o) Disclosing to a financial institution, escrow company, or title
13 company, in connection with specific real property that is the subject
14 of a real estate transaction, current amounts due the department for a
15 filed tax warrant, judgment, or lien against the real property; (~~or~~)

16 (p) Disclosing to a person against whom the department has asserted
17 liability as a successor under RCW 82.32.140 return or tax information
18 pertaining to the specific business of the taxpayer to which the person
19 has succeeded; or

20 (q) Disclosing such return or tax information in the possession of
21 the department relating to the administration or enforcement of the
22 real estate excise tax imposed under chapter 82.45 RCW, including
23 information regarding transactions exempt or otherwise not subject to
24 tax.

25 (4)(a) The department may disclose return or taxpayer information
26 to a person under investigation or during any court or administrative
27 proceeding against a person under investigation as provided in this
28 subsection (4). The disclosure must be in connection with the
29 department's official duties relating to an audit, collection activity,
30 or a civil or criminal investigation. The disclosure may occur only
31 when the person under investigation and the person in possession of
32 data, materials, or documents are parties to the return or tax
33 information to be disclosed. The department may disclose return or tax
34 information such as invoices, contracts, bills, statements, resale or
35 exemption certificates, or checks. However, the department may not
36 disclose general ledgers, sales or cash receipt journals, check
37 registers, accounts receivable/payable ledgers, general journals,

1 financial statements, expert's workpapers, income tax returns, state
2 tax returns, tax return workpapers, or other similar data, materials,
3 or documents.

4 (b) Before disclosure of any tax return or tax information under
5 this subsection (4), the department shall, through written
6 correspondence, inform the person in possession of the data, materials,
7 or documents to be disclosed. The correspondence shall clearly
8 identify the data, materials, or documents to be disclosed. The
9 department may not disclose any tax return or tax information under
10 this subsection (4) until the time period allowed in (c) of this
11 subsection has expired or until the court has ruled on any challenge
12 brought under (c) of this subsection.

13 (c) The person in possession of the data, materials, or documents
14 to be disclosed by the department has twenty days from the receipt of
15 the written request required under (b) of this subsection to petition
16 the superior court of the county in which the petitioner resides for
17 injunctive relief. The court shall limit or deny the request of the
18 department if the court determines that:

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

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

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

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

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

35 (5) Any person acquiring knowledge of any return or tax information
36 in the course of his or her employment with the department of revenue
37 and any person acquiring knowledge of any return or tax information as
38 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this

1 section, who discloses any such return or tax information to another
2 person not entitled to knowledge of such return or tax information
3 under the provisions of this section, is guilty of a misdemeanor. If
4 the person guilty of such violation is an officer or employee of the
5 state, such person shall forfeit such office or employment and shall be
6 incapable of holding any public office or employment in this state for
7 a period of two years thereafter.

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

10 (1) The secretary of state shall adopt rules requiring any entity
11 that is required to file an annual report with the secretary of state,
12 including entities under Titles 23, 23B, 24, and 25 RCW, to disclose
13 any transfer in the controlling interest of the entity and any interest
14 in real property.

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

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

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

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

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