
SENATE BILL 5885

State of Washington 61st Legislature 2009 Regular Session

By Senators Kline, Franklin, and Keiser

Read first time 02/05/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to the general administrative powers of the
2 department of revenue; and amending RCW 82.32.330.

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

4 **Sec. 1.** RCW 82.32.330 and 2008 c 81 s 11 are each amended to read
5 as follows:

6 (1) For purposes of this section:

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

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

15 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
16 nature, source, or amount of the taxpayer's income, payments, receipts,
17 deductions, (~~exemptions,~~) credits, assets, liabilities, net worth,
18 tax liability deficiencies, overassessments, or tax payments, whether
19 taken from the taxpayer's books and records or any other source, (iii)

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

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

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

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

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

28 (3) This section does not prohibit the department of revenue from:

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

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

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

37 (b) Disclosing, subject to such requirements and conditions as the
38 director shall prescribe by rules adopted pursuant to chapter 34.05

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

17 (c) Disclosing the name of a taxpayer with a deficiency greater
18 than five thousand dollars and against whom a warrant under RCW
19 82.32.210 has been either issued or filed and remains outstanding for
20 a period of at least ten working days. The department shall not be
21 required to disclose any information under this subsection if a
22 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
23 a warrant that has not been filed; and (iii) has entered a deferred
24 payment arrangement with the department of revenue and is making
25 payments upon such deficiency that will fully satisfy the indebtedness
26 within twelve months;

27 (d) Disclosing the name of a taxpayer with a deficiency greater
28 than five thousand dollars and against whom a warrant under RCW
29 82.32.210 has been filed with a court of record and remains
30 outstanding;

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

33 (f) Disclosing such return or tax information, for official
34 purposes only, to the governor or attorney general, or to any state
35 agency, or to any committee or subcommittee of the legislature dealing
36 with matters of taxation, revenue, trade, commerce, the control of
37 industry or the professions;

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

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

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

22 (j) Disclosing any such return or tax information to the Department
23 of Justice, including the Bureau of Alcohol, Tobacco, Firearms and
24 Explosives within the Department of Justice, the Department of Defense,
25 the Immigration and Customs Enforcement and the Customs and Border
26 Protection agencies of the United States Department of Homeland
27 Security, the Coast Guard of the United States, and the United States
28 Department of Transportation, or any authorized representative thereof,
29 for official purposes;

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

33 (l) Disclosing, in a manner that is not associated with other tax
34 information, the taxpayer name, entity type, business address, mailing
35 address, revenue tax registration numbers, North American industry
36 classification system or standard industrial classification code of a
37 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 42.56 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;

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;

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; or

25 (r) Disclosing to local taxing jurisdictions the identity of
26 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
27 which relief is granted.

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

1 disclose general ledgers, sales or cash receipt journals, check
2 registers, accounts receivable/payable ledgers, general journals,
3 financial statements, expert's workpapers, income tax returns, state
4 tax returns, tax return workpapers, or other similar data, materials,
5 or documents.

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

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

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

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

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

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

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

37 (5) Any person acquiring knowledge of any return or tax information
38 in the course of his or her employment with the department of revenue

1 and any person acquiring knowledge of any return or tax information as
2 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
3 section, who discloses any such return or tax information to another
4 person not entitled to knowledge of such return or tax information
5 under the provisions of this section, is guilty of a misdemeanor. If
6 the person guilty of such violation is an officer or employee of the
7 state, such person shall forfeit such office or employment and shall be
8 incapable of holding any public office or employment in this state for
9 a period of two years thereafter.

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