WEST VIRGINIA CODE: §11-10-5s

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

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

(b) Exceptions to confidentiality. —

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

(A) More than $1 but not more than $50,000;

(B) More than $50,000 but not more than $100,000;

(C) More than $100,000 but not more than $250,000;

(D) More than $250,000 but not more than $500,000;

(E) More than $500,000 but not more than $1 million; and

(F) More than $1 million.

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

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

(B) A summary of the compromise;

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

WV Legislature

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

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

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

(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and receive timely return information. The Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding additional agencies with which written exchange of information agreements may be sought but may not promulgate emergency rules regarding these additional agencies. The agreements shall be published in the State Register and are only for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information so disclosed remains confidential in the other agency to the extent provided by section five-d of this article and by other applicable federal or state laws.

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

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

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

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

(6) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may disclose to the Attorney General any tax return, report, declaration or tax return

WV Legislature

information, including the identity of a taxpayer, that relates to any taxpayer's sales of tobacco products subject to state excise tax or to such sales of tobacco products that were manufactured or imported by a nonparticipating manufacturer as defined in section two, article nine-d of chapter sixteen of this code, for the purpose of enforcement of articles nine-b and nine-d, chapter sixteen of this code, or for the purpose of representing the State of West Virginia in any arbitration or litigation arising under the Tobacco Master Settlement Agreement or articles nine-b and nine-d, chapter sixteen of this code. Nothing herein shall authorize the disclosure of any taxpayer's income tax returns or business franchise tax returns, or authorize the use of the disclosed information for any purpose other than as specified herein.

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

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

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

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

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

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

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

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

(B) The state offset program, as authorized by subsection (h), section thirty-seven, article one, chapter fourteen of this code, for the purpose of protecting return information as

WV Legislature

defined in section five-d, article ten of this chapter and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

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

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

(i) Name;

(ii) Address;

(iii) Social Security number or tax identification number;

(iv) Amount of the tax liability; and

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

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

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

(c) Tax expenditure reports. — Beginning on January 15, 1992, and every January 15 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year cycles, the reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the Tax Commissioner. For purposes of this section, the term "tax expenditure" means a provision in the tax laws administered under this article including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

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

WV Legislature

confidentiality laws.

WV Legislature