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
ENROLLED

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 investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (n), inclusive, of this section, it shall be unlawful for any officer, employee or agent of this state or of any county, municipality or governmental subdivision to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered under this article or by any rule or regulation of the tax commissioner issued thereunder, or disclosed in any audit or investigation conducted under this article. For purposes of this article, 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 this 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 this article: Provided, That such officers, employees or agents may disclose the information in an official investigation, by a local or municipal governmental authority or agency charged with the duty and responsibility to administer the tax laws of the jurisdiction, into the amount of tax due under any lawful local or municipal tax administered by that authority or agency, or in any proceeding in which the local or municipal governmental subdivision, authority or agency is a party before a court of competent jurisdiction to collect or ascertain the amount of the tax. Unlawful disclosure of the information by any officer, employee or agent of any local, municipal or governmental subdivision is subject to the sanctions set forth in this article.

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

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

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

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

(4) Return. – The term “return” means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the tax commissioner by, on behalf of,
or with respect to any person and any amendment or
supplement thereto, including supporting schedules,
attachments or lists which are supplemental to, or part of,
the return so filed.

(5) Return information. — The term “return information”
means:

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

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

(6) Tax administration. — The term “tax administration”
means:

(A) The administration, management, conduct, direction
and supervision of the execution and application of the tax
laws or related statutes of this state and the development
and formulation of state and local tax policy relating to
existing or proposed state and local tax laws and related
statutes of this state; and

(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under
the laws of this state and of local governments.

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

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

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

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

(d) Disclosure to designee of taxpayer. — Any person
protected by the provisions of this article may, in writing,
waive the secrecy provisions of this section for such
purpose and such period as he shall therein state. The tax
commissioner may, subject to such requirements and
conditions as he or she may prescribe, thereupon release to
designated recipients such taxpayer’s return or other
particulars filed under the provisions of the tax articles
administered under the provisions of this article, but only
to the extent necessary to comply with a request for
information or assistance made by the taxpayer to such
other person. However, return information shall not be
disclosed to such person or persons if the tax commissioner
determines that such disclosure would seriously impair
administration of this state's tax laws.

(e) Disclosure of returns and return information for use
in criminal investigations. –

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

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

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

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

Such inspection or disclosure shall be solely for the use
of such officers and employees in such preparation,
investigation or grand jury proceeding.
(2) Application of order. — Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in said subdivision. Upon the application, the judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that:

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

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

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

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

(f) Disclosure to person having a material interest. — The tax commissioner may, pursuant to legislative regulations promulgated by him or her, and upon such terms as he or she may require, disclose a return or return information to a person having a material interest therein: Provided, That
en. Com. Sub. for S. B. No. 290] 8

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

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

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

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

(j) Exchange with municipalities. – The tax commis-
sioner shall, upon the written request of the mayor or
governing body of any West Virginia municipality, allow
the duly authorized agent of the municipality to inspect
and make copies of the state business and occupation tax
return filed by taxpayers of the municipality and any other
state tax returns (including, but not limited to, consumers
sales and services tax return information and health care
provider tax return information) as may be reasonably
requested by the municipality. Such inspection or copying
shall include disclosure to the authorized agent of the
municipality for tax administration purposes of all
available return information from files of the tax depart­
ment relating to taxpayers who transact business within
the municipality. The tax commissioner shall be permitted
to inspect or make copies of any tax return and any return
information or other information related thereto in the
possession of any municipality or its employees, officers,
agents or representatives that has been submitted to or
filed with the municipality by any person for any tax
including, but not limited to, the municipal business and
occupation tax, public utility tax, municipal license tax,
tax on purchases of intoxicating liquors, license tax on
horse racing or dog racing and municipal amusement tax.

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

(l) Release of taxpayer information. –

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

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.
(C) Who are licensed collection agencies.
(D) Who are licensed to sell drug paraphernalia.
(E) Who are distributors of gasoline or special fuel.
(F) Who are contractors.
(G) Who are transient vendors.
(H) Who are authorized by law to issue a sales or use tax exemption certificate.
(I) Who are required by law to collect sales or use taxes.
(J) Who are foreign vendors authorized to collect use tax.
(K) Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.
(L) Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).
(M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.
(N) Who have been convicted of a criminal violation of this state's tax laws.
(m) Disclosure of return information to child support enforcement division. –

(1) State return information. – The tax commissioner may, upon written request, disclose to the child support enforcement division created by article two, chapter forty-eight-a of this code:

(A) Available return information from the master files of the tax department relating to the social security account number, address, filing status, amounts and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with
respect to whom child support obligations are sought to be enforced; and

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

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

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

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

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the tax commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to the tax commissioner that the lists have been destroyed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Carl Ray Johnson
President of the Senate

Speaker House of Delegates

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

Governor