

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 440

(SENATORS PREZIOSO, FACEMIRE, STOLLINGS AND PLYMALE,
ORIGINAL SPONSORS)

[PASSED APRIL 11, 2013; IN EFFECT FROM PASSAGE.]

SB440

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SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

**(SENATORS PREZIOSO, FACEMIRE, STOLLINGS AND PLYMALE,
original sponsors)**

[Passed April 11, 2013; in effect from passage.]

AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended, relating to disclosure of confidential taxpayer information; authorizing the disclosure of specified tax information by the Tax Commissioner to the Attorney General; authorizing the disclosure of specified tax information by the Attorney General to specified persons relevant to enforcement of Tobacco Master Settlement Agreement; authorizing the Tax Commissioner to enter into a written agreement with the State Auditor for disclosure of confidential tax information to the State Auditor to facilitate the State Auditor's participation in federal and state offset programs to collect unpaid taxes; and providing for protection and limited use of confidential information.

Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX AND PROCEDURE
ADMINISTRATION ACT.**

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

1 (a) *Purpose.* – The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as a
3 protection of taxpayers’ privacy rights and to enhance
4 voluntary compliance with the tax law. The Legislature also
5 recognizes the citizens’ right to accountable and efficient
6 state government. To accomplish these ends, the Legislature
7 hereby creates certain exceptions to the general principle of
8 confidentiality of taxpayer information.

9 (b) *Exceptions to confidentiality.* –

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

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

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

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

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

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

23 and

24 (F) More than \$1 million.

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

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

38 (B) A summary of the compromise;

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

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

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

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

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

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

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

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

83 Disclosure of this information shall begin as soon as
84 practicable after the effective date of this subsection and may
85 be used only for the purpose of recovery and disposition of

86 unclaimed property in accordance with the provisions of
87 article eight, chapter thirty-six of this code. The provisions
88 of this subsection do not preclude or limit disclosure of tax
89 information authorized by other provisions of this code.
90 Confidential return information disclosed hereunder or
91 thereunder remains confidential as provided by section five-d
92 of this article and by other applicable federal or state laws.

93 (6) Notwithstanding any provision of this code to the
94 contrary, the Tax Commissioner may disclose to the Attorney
95 General any tax return, report, declaration or tax return
96 information, including the identity of a taxpayer, that relates
97 to any taxpayer's sales of tobacco products subject to state
98 excise tax or to such sales of tobacco products that were
99 manufactured or imported by a nonparticipating manufacturer
100 as defined in section two, article nine-d of chapter sixteen of
101 this code, for the purpose of enforcement of articles nine-b
102 and nine-d, chapter sixteen of this code, or for the purpose of
103 representing the State of West Virginia in any arbitration or
104 litigation arising under the Tobacco Master Settlement
105 Agreement or articles nine-b and nine-d, chapter sixteen of
106 this code. Nothing herein shall authorize the disclosure of
107 any taxpayer's income tax returns or business franchise tax
108 returns, or authorize the use of the disclosed information for
109 any purpose other than as specified herein.

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

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

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

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

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

134 **(E) Any information disclosed pursuant to this**
135 **subdivision is subject to the following restrictions:**

136 **(i) specific identifiers shall first be redacted or otherwise**
137 **removed from any such information that was reported by a**
138 **taxpayer who is not a party to any proceeding, arbitration or**
139 **litigation;**

140 **(ii) No such disclosure shall be made unless it is subject**
141 **to a protective order or agreement restricting the use of the**
142 **disclosed information to such proceeding, arbitration or**
143 **litigation;**

144 **(F) For purposes of this section, “specific identifiers”**
145 **shall mean the name, address, telephone number, taxpayer**
146 **identification number, logo, trademark or other markings**
147 **unique to the taxpayer.**

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

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

155 (B) The state offset program, as authorized by subsection
156 (h), section thirty-seven, article one, chapter fourteen of this
157 code, for the purpose of protecting return information as
158 defined in section five-d, article ten of this chapter and
159 collecting debts, fees and penalties due the state, its
160 departments, agencies or institutions.

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

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

170 (i) Name;

171 (ii) Address;

172 (iii) Social Security number or tax identification number;

173 (iv) Amount of the tax liability; and

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

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

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

184 (c) *Tax expenditure reports.* – Beginning on January 15,
185 1992, and every January 15 thereafter, the Governor shall
186 submit to the President of the Senate and the Speaker of the
187 House of Delegates a tax expenditure report. This report
188 shall expressly identify all tax expenditures. Within
189 three-year cycles, the reports shall be considered together to
190 analyze all tax expenditures by describing the annual revenue
191 loss and benefits of the tax expenditure based upon
192 information available to the Tax Commissioner. For
193 purposes of this section, the term “tax expenditure” means a
194 provision in the tax laws administered under this article
195 including, but not limited to, exclusions, deductions, tax
196 preferences, credits and deferrals designed to encourage
197 certain kinds of activities or to aid taxpayers in special
198 circumstances. The Tax Commissioner shall promulgate
199 rules setting forth the procedure by which he or she will
200 compile the reports and setting forth a priority for the order
201 in which the reports will be compiled according to type of tax
202 expenditure.

203 (d) *Federal and state return information confidential.* –
204 Notwithstanding any other provisions of this section or of this
205 code, no return information made available to the Tax

206 Commissioner by the Internal Revenue Service or department
207 or agency of any other state may be disclosed to another
208 person in a manner inconsistent with the provisions of
209 Section 6103 of the Internal Revenue Code of 1986, as
210 amended, or of the other states' confidentiality laws.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member Rocky Figueira
Chairman Senate Committee

Tommy Wells
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Minard
Clerk of the Senate

Suzanne B. By
Clerk of the House of Delegates

Joseph V. K.
President of the Senate

[Signature]
Speaker of the House of Delegates

2013 APR 30 PM 2:43
SECRETARY OF STATE
FILED

The within is approved this the 30th
Day of April, 2013.

Carl Roy Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 25 2013

Time 3:35 p