
SENATE BILL 5568

State of Washington

61st Legislature

2009 Regular Session

By Senators Tom, Rockefeller, and Shin; by request of Department of Revenue

Read first time 01/27/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to enhancing tax collection tools for the
2 department of revenue in order to promote fairness and administrative
3 efficiency; amending RCW 82.32.330; and adding a new section to chapter
4 82.32 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.32 RCW
7 to read as follows:

8 (1) If there is probable cause to believe that records in the
9 possession of a third party will aid the department in connection with
10 its official duties relating to an audit, collection activity, or a
11 civil or criminal investigation, a superior or district court judge
12 must sign and issue a subpoena for the production of such records to
13 the department. The department may apply for a subpoena under this
14 section to the superior court or district court for Thurston county or
15 for the county in which the third party is located. The subpoena must
16 be served on the third party as in civil actions.

17 (2) Upon application of the third party, the court issuing the
18 subpoena may require the department to reimburse the third party for
19 reasonable costs incurred in producing the records specified in the

1 subpoena, in an amount set by the court. However, the court may not
2 condition compliance with the subpoena on the department's payment of
3 such costs.

4 (3) Unless otherwise provided in the subpoena, a response to a
5 subpoena issued under this section is sufficient if a copy or printout
6 is provided to the department, and the third party also submits a
7 signed declaration, under penalty of perjury, that the copy or printout
8 is a true and correct copy or printout of the declarant's records.

9 (4) This section does not preclude the use of other legally
10 authorized means of obtaining records, nor preclude the assertion of
11 any legally recognized privileges.

12 (5) The department may not disclose any return or tax information,
13 as defined in RCW 82.32.330, obtained in response to a subpoena issued
14 under this section, except as authorized in RCW 82.32.330.

15 (6) A third party may not be held civilly liable for any harm
16 resulting from that person's compliance with the provisions of this
17 section.

18 (7) The entire court file of any proceeding instituted under this
19 section must be sealed and is not open to public inspection by any
20 person except upon order of the court as authorized by law.

21 **Sec. 2.** RCW 82.32.330 and 2008 c 81 s 11 are each amended to read
22 as follows:

- 23 (1) For purposes of this section:
- 24 (a) "Disclose" means to make known to any person in any manner
25 whatever a return or tax information;
- 26 (b) "Return" means a tax or information return or claim for refund
27 required by, or provided for or permitted under, the laws of this state
28 which is filed with the department of revenue by, on behalf of, or with
29 respect to a person, and any amendment or supplement thereto, including
30 supporting schedules, attachments, or lists that are supplemental to,
31 or part of, the return so filed;
- 32 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
33 nature, source, or amount of the taxpayer's income, payments, receipts,
34 deductions, exemptions, credits, assets, liabilities, net worth, tax
35 liability deficiencies, overassessments, or tax payments, whether taken
36 from the taxpayer's books and records or any other source, (iii)
37 whether the taxpayer's return was, is being, or will be examined or

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

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

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

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

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

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

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

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

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

36 (iii) Brought by the department under RCW 18.27.040 or 19.28.071;

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 United
23 States Department of Justice, including the Bureau of Alcohol, Tobacco,
24 Firearms and Explosives (~~((within the Department of Justice))~~), the
25 Department of Defense, the Immigration and Customs Enforcement and the
26 Customs and Border Protection agencies of the United States Department
27 of Homeland Security, the United States Coast Guard (~~((of the United~~
28 ~~States))~~), the Alcohol and Tobacco Tax and Trade Bureau of the United
29 States Department of Treasury, and the United States Department of
30 Transportation, or any authorized representative (~~((thereof))~~) of these
31 federal agencies, for official purposes;

32 (k) Publishing or otherwise disclosing the text of a written
33 determination designated by the director as a precedent pursuant to RCW
34 82.32.410;

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

1 taxpayer, and the dates of opening and closing of business. This
2 subsection shall not be construed as giving authority to the department
3 to give, sell, or provide access to any list of taxpayers for any
4 commercial purpose;

5 (m) Disclosing such return or tax information that is also
6 maintained by another Washington state or local governmental agency as
7 a public record available for inspection and copying under the
8 provisions of chapter 42.56 RCW or is a document maintained by a court
9 of record not otherwise prohibited from disclosure;

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

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

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

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

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

29 (s) Disclosing such return or tax information to the court in
30 respect to the department's application for a subpoena under section 1
31 of this act.

32 (4)(a) The department may disclose return or taxpayer information
33 to a person under investigation or during any court or administrative
34 proceeding against a person under investigation as provided in this
35 subsection (4). The disclosure must be in connection with the
36 department's official duties relating to an audit, collection activity,
37 or a civil or criminal investigation. The disclosure may occur only
38 when the person under investigation and the person in possession of

1 data, materials, or documents are parties to the return or tax
2 information to be disclosed. The department may disclose return or tax
3 information such as invoices, contracts, bills, statements, resale or
4 exemption certificates, or checks. However, the department may not
5 disclose general ledgers, sales or cash receipt journals, check
6 registers, accounts receivable/payable ledgers, general journals,
7 financial statements, expert's workpapers, income tax returns, state
8 tax returns, tax return workpapers, or other similar data, materials,
9 or documents.

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

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

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

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

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

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

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

4 (5) Service of a subpoena issued under section 1 of this act does
5 not constitute a disclosure of return or tax information under this
6 section. Notwithstanding anything else to the contrary in this
7 section, a person served with a subpoena under section 1 of this act
8 may disclose the existence or content of the subpoena to that person's
9 legal counsel.

10 (6) Any person acquiring knowledge of any return or tax information
11 in the course of his or her employment with the department of revenue
12 and any person acquiring knowledge of any return or tax information as
13 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
14 section, who discloses any such return or tax information to another
15 person not entitled to knowledge of such return or tax information
16 under the provisions of this section, is guilty of a misdemeanor. If
17 the person guilty of such violation is an officer or employee of the
18 state, such person shall forfeit such office or employment and shall be
19 incapable of holding any public office or employment in this state for
20 a period of two years thereafter.

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