
SENATE BILL 5312

State of Washington 62nd Legislature 2011 Regular Session

By Senators Kline, Kohl-Welles, Chase, Conway, and Keiser

Read first time 01/20/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to the publication of tax data to ensure the
2 transparency of Washington's tax preferences and structure to the
3 public while protecting confidential taxpayer information; amending RCW
4 43.06.400 and 84.08.210; reenacting and amending RCW 82.32.330; and
5 adding a new section to chapter 43.06 RCW.

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

7 **Sec. 1.** RCW 43.06.400 and 1999 c 372 s 5 are each amended to read
8 as follows:

9 (1) Beginning in January 1984, and in January of every ((fourth))
10 even-numbered year thereafter, the department of revenue ((shall)) must
11 submit to the legislature prior to the regular session a listing of the
12 amount of reduction for the current and next biennium in the revenues
13 of the state or the revenues of local government collected by the state
14 as a result of tax exemptions. In the interest of government
15 transparency, the most current listing must also be published on the
16 department of revenue web site so that it is available as a reference
17 to citizens and businesses that are interested in Washington state tax
18 policy. The listing ((shall)) must include an estimate of the revenue
19 lost from the tax exemption, the purpose of the tax exemption, the

1 persons, organizations, or parts of the population which benefit from
2 the tax exemption, and whether or not the tax exemption conflicts with
3 another state program. The listing (~~shall~~) must include but not be
4 limited to the following revenue sources:

5 ~~((1))~~ (a) Real and personal property tax exemptions under Title
6 84 RCW;

7 ~~((2))~~ (b) Business and occupation tax exemptions, deductions, and
8 credits under chapter 82.04 RCW;

9 ~~((3))~~ (c) Retail sales and use tax exemptions under chapters
10 82.08, 82.12, and 82.14 RCW;

11 ~~((4))~~ (d) Public utility tax exemptions and deductions under
12 chapter 82.16 RCW;

13 ~~((5))~~ (e) Food fish and shellfish tax exemptions under chapter
14 82.27 RCW;

15 ~~((6))~~ (f) Leasehold excise tax exemptions under chapter 82.29A
16 RCW;

17 ~~((7))~~ (g) Motor vehicle and special fuel tax exemptions and
18 refunds under chapters 82.36 and 82.38 RCW;

19 ~~((8))~~ (h) Aircraft fuel tax exemptions under chapter 82.42 RCW;

20 ~~((9))~~ (i) Motor vehicle excise tax exclusions under chapter 82.44
21 RCW; and

22 ~~((10))~~ (j) Insurance premiums tax exemptions under chapter 48.14
23 RCW.

24 (2) The department of revenue (~~shall~~) must prepare the listing
25 required by this section with the assistance of any other agencies or
26 departments as may be required.

27 (3) The department of revenue (~~shall~~) must present the listing to
28 the ways and means committees of each house in public hearings.

29 (4) Beginning in January 1984, and every four years thereafter the
30 governor is requested to review the report from the department of
31 revenue and may submit recommendations to the legislature with respect
32 to the repeal or modification of any tax exemption. The ways and means
33 committees of each house and the appropriate standing committee of each
34 house (~~shall~~) must hold public hearings and take appropriate action
35 on the recommendations submitted by the governor.

36 (5) As used in this section, "tax exemption" means an exemption,
37 exclusion, or deduction from the base of a tax; a credit against a tax;
38 a deferral of a tax; or a preferential tax rate.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06 RCW
2 to read as follows:

3 (1) Beginning in January 2013, and in January of every odd-numbered
4 year thereafter, the department of revenue must submit to the
5 legislature prior to the regular session a current tax reference manual
6 which is a summary of major Washington state or local taxes authorized
7 by current law to provide basic descriptive and historical information
8 about these sources. In the interest of government transparency, the
9 most current manual must also be published on the department of revenue
10 web site so that it is available as a reference to citizens and
11 businesses that are interested in Washington state tax policy.

12 (2) Beginning in January 2013, and every four years thereafter, the
13 governor is requested to review the manual from the department of
14 revenue and may submit recommendations to the legislature with respect
15 to the state and local tax structures. The ways and means committees
16 of each house and the appropriate standing committee of each house must
17 hold public hearings and take appropriate action on the recommendations
18 submitted by the governor.

19 **Sec. 3.** RCW 82.32.330 and 2010 c 112 s 13 and 2010 c 106 s 104 are
20 each reenacted and amended to read as follows:

21 (1) For purposes of this section:

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

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

30 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
31 nature, source, or amount of the taxpayer's income, payments, receipts,
32 deductions, exemptions, credits, assets, liabilities, net worth, tax
33 liability deficiencies, overassessments, or tax payments, whether taken
34 from the taxpayer's books and records or any other source, (iii)
35 whether the taxpayer's return was, is being, or will be examined or
36 subject to other investigation or processing, (iv) a part of a written
37 determination that is not designated as a precedent and disclosed

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

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

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

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

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

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

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

28 (i) In respect of any tax imposed under the laws of this state if
29 the taxpayer or its officer or other person liable under this title or
30 chapter 83.100 RCW is a party in the proceeding;

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

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

35 (b) Disclosing, subject to such requirements and conditions as the
36 director prescribes by rules adopted pursuant to chapter 34.05 RCW,
37 such return or tax information regarding a taxpayer to such taxpayer or
38 to such person or persons as that taxpayer may designate in a request

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

15 (c) Disclosing the name of a taxpayer against whom a warrant under
16 RCW 82.32.210 has been either issued or filed and remains outstanding
17 for a period of at least ten working days. The department is not
18 required to disclose any information under this subsection if a
19 taxpayer has entered a deferred payment arrangement with the department
20 for the payment of a warrant that has not been filed and is making
21 payments upon such deficiency that will fully satisfy the indebtedness
22 within twelve months;

23 (d) Publishing statistics so classified as to prevent the
24 identification of particular returns or reports or items thereof by
25 aggregating the data of at least three taxpayers in the classification;

26 (e) Disclosing such return or tax information, for official
27 purposes only, to the governor or attorney general, or to any state
28 agency, or to any committee or subcommittee of the legislature dealing
29 with matters of taxation, revenue, trade, commerce, the control of
30 industry or the professions;

31 (f) Permitting the department of revenue's records to be audited
32 and examined by the proper state officer, his or her agents and
33 employees;

34 (g) Disclosing any such return or tax information to a peace
35 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
36 official purposes. The disclosure may be made only in response to a
37 search warrant, subpoena, or other court order, unless the disclosure
38 is for the purpose of criminal tax enforcement. A peace officer or

1 county prosecuting attorney who receives the return or tax information
2 may disclose that return or tax information only for use in the
3 investigation and a related court proceeding, or in the court
4 proceeding for which the return or tax information originally was
5 sought;

6 (h) Disclosing any such return or tax information to the proper
7 officer of the internal revenue service of the United States, the
8 Canadian government or provincial governments of Canada, or to the
9 proper officer of the tax department of any state or city or town or
10 county, for official purposes, but only if the statutes of the United
11 States, Canada or its provincial governments, or of such other state or
12 city or town or county, as the case may be, grants substantially
13 similar privileges to the proper officers of this state;

14 (i) Disclosing any such return or tax information to the United
15 States department of justice, including the bureau of alcohol, tobacco,
16 firearms and explosives, the department of defense, the immigration and
17 customs enforcement and the customs and border protection agencies of
18 the United States department of homeland security, the United States
19 coast guard, the alcohol and tobacco tax and trade bureau of the United
20 States department of treasury, and the United States department of
21 transportation, or any authorized representative of these federal
22 agencies, for official purposes;

23 (j) Publishing or otherwise disclosing the text of a written
24 determination designated by the director as a precedent pursuant to RCW
25 82.32.410;

26 (k) Disclosing, in a manner that is not associated with other tax
27 information, the taxpayer name, entity type, business address, mailing
28 address, revenue tax registration numbers, reseller permit numbers and
29 the expiration date and status of such permits, North American industry
30 classification system or standard industrial classification code of a
31 taxpayer, and the dates of opening and closing of business. This
32 subsection may not be construed as giving authority to the department
33 to give, sell, or provide access to any list of taxpayers for any
34 commercial purpose;

35 (l) Disclosing such return or tax information that is also
36 maintained by another Washington state or local governmental agency as
37 a public record available for inspection and copying under the

1 provisions of chapter 42.56 RCW or is a document maintained by a court
2 of record and is not otherwise prohibited from disclosure;

3 (m) Disclosing such return or tax information to the United States
4 department of agriculture for the limited purpose of investigating food
5 stamp fraud by retailers;

6 (n) Disclosing to a financial institution, escrow company, or title
7 company, in connection with specific real property that is the subject
8 of a real estate transaction, current amounts due the department for a
9 filed tax warrant, judgment, or lien against the real property;

10 (o) Disclosing to a person against whom the department has asserted
11 liability as a successor under RCW 82.32.140 return or tax information
12 pertaining to the specific business of the taxpayer to which the person
13 has succeeded;

14 (p) Disclosing real estate excise tax affidavit forms filed under
15 RCW 82.45.150 in the possession of the department, including real
16 estate excise tax affidavit forms for transactions exempt or otherwise
17 not subject to tax;

18 (q) Disclosing to local taxing jurisdictions the identity of
19 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
20 which relief is granted;

21 (r) Disclosing such return or tax information to the court in
22 respect to the department's application for a subpoena under RCW
23 82.32.115;

24 (s) Disclosing to a person against whom the department has asserted
25 liability under RCW 83.100.120 return or tax information pertaining to
26 that person's liability for tax under chapter 83.100 RCW;

27 (t) Disclosing such return or tax information to the streamlined
28 sales tax governing board, member states of the streamlined sales tax
29 governing board, or authorized representatives of such board or states,
30 for the limited purposes of:

31 (i) Conducting on behalf of member states sales and use tax audits
32 of taxpayers; or

33 (ii) Auditing certified service providers or certified automated
34 systems providers; or

35 (u) Disclosing any such return or tax information when the
36 disclosure is specifically authorized under any other section of the
37 Revised Code of Washington.

1 (4)(a) The department may disclose return or taxpayer information
2 to a person under investigation or during any court or administrative
3 proceeding against a person under investigation as provided in this
4 subsection (4). The disclosure must be in connection with the
5 department's official duties relating to an audit, collection activity,
6 or a civil or criminal investigation. The disclosure may occur only
7 when the person under investigation and the person in possession of
8 data, materials, or documents are parties to the return or tax
9 information to be disclosed. The department may disclose return or tax
10 information such as invoices, contracts, bills, statements, resale or
11 exemption certificates, or checks. However, the department may not
12 disclose general ledgers, sales or cash receipt journals, check
13 registers, accounts receivable/payable ledgers, general journals,
14 financial statements, expert's workpapers, income tax returns, state
15 tax returns, tax return workpapers, or other similar data, materials,
16 or documents.

17 (b) Before disclosure of any tax return or tax information under
18 this subsection (4), the department must, through written
19 correspondence, inform the person in possession of the data, materials,
20 or documents to be disclosed. The correspondence must clearly identify
21 the data, materials, or documents to be disclosed. The department may
22 not disclose any tax return or tax information under this subsection
23 (4) until the time period allowed in (c) of this subsection has expired
24 or until the court has ruled on any challenge brought under (c) of this
25 subsection.

26 (c) The person in possession of the data, materials, or documents
27 to be disclosed by the department has twenty days from the receipt of
28 the written request required under (b) of this subsection to petition
29 the superior court of the county in which the petitioner resides for
30 injunctive relief. The court must limit or deny the request of the
31 department if the court determines that:

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

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

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

4 (d) The department must reimburse reasonable expenses for the
5 production of data, materials, or documents incurred by the person in
6 possession of the data, materials, or documents to be disclosed.

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

10 (5) Service of a subpoena issued under RCW 82.32.115 does not
11 constitute a disclosure of return or tax information under this
12 section. Notwithstanding anything else to the contrary in this
13 section, a person served with a subpoena under RCW 82.32.115 may
14 disclose the existence or content of the subpoena to that person's
15 legal counsel.

16 (6) Any person acquiring knowledge of any return or tax information
17 in the course of his or her employment with the department of revenue
18 and any person acquiring knowledge of any return or tax information as
19 provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this
20 section, who discloses any such return or tax information to another
21 person not entitled to knowledge of such return or tax information
22 under the provisions of this section, is guilty of a misdemeanor. If
23 the person guilty of such violation is an officer or employee of the
24 state, such person must forfeit such office or employment and is
25 incapable of holding any public office or employment in this state for
26 a period of two years thereafter.

27 **Sec. 4.** RCW 84.08.210 and 2005 c 274 s 363 are each amended to
28 read as follows:

29 (1) For purposes of this section, "tax information" means
30 confidential income data and proprietary business information obtained
31 by the department in the course of carrying out the duties now or
32 hereafter imposed upon it in this title that has been communicated in
33 confidence in connection with the assessment of property and that has
34 not been publicly disseminated by the taxpayer, the disclosure of which
35 would be either highly offensive to a reasonable person and not a
36 legitimate concern to the public or would result in an unfair
37 competitive disadvantage to the taxpayer.

1 (2) Tax information is confidential and privileged, and except as
2 authorized by this section, neither the department nor any other person
3 may disclose tax information.

4 (3) Subsection (2) of this section, however, does not prohibit the
5 department from:

6 (a) Disclosing tax information to any county assessor or county
7 treasurer;

8 (b) Disclosing tax information in a civil or criminal judicial
9 proceeding or an administrative proceeding in respect to taxes or
10 penalties imposed under this title or Title 82 RCW or in respect to
11 assessment or valuation for tax purposes of the property to which the
12 information or facts relate;

13 (c) Disclosing tax information with the written permission of the
14 taxpayer;

15 (d) Disclosing tax information to the proper officer of the tax
16 department of any state responsible for the imposition or collection of
17 property taxes, or for the valuation of property for tax purposes, if
18 the other state grants substantially similar privileges to the proper
19 officers of this state;

20 (e) Disclosing tax information that is also maintained by another
21 Washington state or local governmental agency as a public record
22 available for inspection and copying under chapter 42.56 RCW or is a
23 document maintained by a court of record not otherwise prohibited from
24 disclosure;

25 (f) Disclosing tax information to a peace officer as defined in RCW
26 9A.04.110 or county prosecutor, for official purposes. The disclosure
27 may be made only in response to a search warrant, subpoena, or other
28 court order, unless the disclosure is for the purpose of criminal tax
29 enforcement. A peace officer or county prosecutor who receives the tax
30 information may disclose the tax information only for use in the
31 investigation and a related court proceeding, or in the court
32 proceeding for which the tax information originally was sought; ((or))

33 (g) Disclosing information otherwise available under chapter 42.56
34 RCW; or

35 (h) Publishing statistics so classified as to prevent the
36 identification of particular tax information by aggregating the data of

1 at least three taxpayers in the classification.

2 (4) A violation of this section constitutes a gross misdemeanor.

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