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HOUSE BILL 2574

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Tom, Clibborn, Jarrett, Hunter, Priest, Conway, Shabro, Sehlin, Benson, Moeller, Chase and Rockefeller

Read first time 01/16/2004. Referred to Committee on Finance.

1            AN ACT Relating to disclosure of information related to real estate  
2 excise taxes; and reenacting and amending RCW 82.32.330.

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

4            **Sec. 1.** RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are  
5 each reenacted and amended to read as follows:

6            (1) For purposes of this section:

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

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

15            (c) "Tax information" means (i) a taxpayer's identity, (ii) the  
16 nature, source, or amount of the taxpayer's income, payments, receipts,  
17 deductions, exemptions, credits, assets, liabilities, net worth, tax  
18 liability deficiencies, overassessments, or tax payments, whether taken  
19 from the taxpayer's books and records or any other source, (iii)

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

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

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

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

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

28 (3) (~~The foregoing, however, shall~~) This section does not  
29 prohibit the department of revenue from:

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

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

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

1 (b) Disclosing, subject to such requirements and conditions as the  
2 director shall prescribe by rules adopted pursuant to chapter 34.05  
3 RCW, such return or tax information regarding a taxpayer to such  
4 taxpayer or to such person or persons as that taxpayer may designate in  
5 a request for, or consent to, such disclosure, or to any other person,  
6 at the taxpayer's request, to the extent necessary to comply with a  
7 request for information or assistance made by the taxpayer to such  
8 other person: PROVIDED, That tax information not received from the  
9 taxpayer shall not be so disclosed if the director determines that such  
10 disclosure would compromise any investigation or litigation by any  
11 federal, state, or local government agency in connection with the civil  
12 or criminal liability of the taxpayer or another person, or that such  
13 disclosure would identify a confidential informant, or that such  
14 disclosure is contrary to any agreement entered into by the department  
15 that provides for the reciprocal exchange of information with other  
16 government agencies which agreement requires confidentiality with  
17 respect to such information unless such information is required to be  
18 disclosed to the taxpayer by the order of any court;

19 (c) Disclosing the name of a taxpayer with a deficiency greater  
20 than five thousand dollars and against whom a warrant under RCW  
21 82.32.210 has been either issued or filed and remains outstanding for  
22 a period of at least ten working days. The department shall not be  
23 required to disclose any information under this subsection if a  
24 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued  
25 a warrant that has not been filed; and (iii) has entered a deferred  
26 payment arrangement with the department of revenue and is making  
27 payments upon such deficiency that will fully satisfy the indebtedness  
28 within twelve months;

29 (d) Disclosing the name of a taxpayer with a deficiency greater  
30 than five thousand dollars and against whom a warrant under RCW  
31 82.32.210 has been filed with a court of record and remains  
32 outstanding;

33 (e) Publishing statistics so classified as to prevent the  
34 identification of particular returns or reports or items thereof;

35 (f) Disclosing such return or tax information, for official  
36 purposes only, to the governor or attorney general, or to any state  
37 agency, or to any committee or subcommittee of the legislature dealing

1 with matters of taxation, revenue, trade, commerce, the control of  
2 industry or the professions;

3 (g) Permitting the department of revenue's records to be audited  
4 and examined by the proper state officer, his or her agents and  
5 employees;

6 (h) Disclosing any such return or tax information to a peace  
7 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for  
8 official purposes. The disclosure may be made only in response to a  
9 search warrant, subpoena, or other court order, unless the disclosure  
10 is for the purpose of criminal tax enforcement. A peace officer or  
11 county prosecuting attorney who receives the return or tax information  
12 may disclose that return or tax information only for use in the  
13 investigation and a related court proceeding, or in the court  
14 proceeding for which the return or tax information originally was  
15 sought;

16 (i) Disclosing any such return or tax information to the proper  
17 officer of the internal revenue service of the United States, the  
18 Canadian government or provincial governments of Canada, or to the  
19 proper officer of the tax department of any state or city or town or  
20 county, for official purposes, but only if the statutes of the United  
21 States, Canada or its provincial governments, or of such other state or  
22 city or town or county, as the case may be, grants substantially  
23 similar privileges to the proper officers of this state;

24 (j) Disclosing any such return or tax information to the Department  
25 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the  
26 Department of the Treasury, the Department of Defense, the United  
27 States Customs Service, the Coast Guard of the United States, and the  
28 United States Department of Transportation, or any authorized  
29 representative thereof, for official purposes;

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

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

1 subsection shall not be construed as giving authority to the department  
2 to give, sell, or provide access to any list of taxpayers for any  
3 commercial purpose;

4 (m) Disclosing such return or tax information that is also  
5 maintained by another Washington state or local governmental agency as  
6 a public record available for inspection and copying under the  
7 provisions of chapter 42.17 RCW or is a document maintained by a court  
8 of record not otherwise prohibited from disclosure;

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

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

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

20 (q) Disclosing information in the possession of the department  
21 regarding a claim for an exemption from real estate excise tax imposed  
22 under chapter 82.45 RCW.

23 (4)(a) The department may disclose return or taxpayer information  
24 to a person under investigation or during any court or administrative  
25 proceeding against a person under investigation as provided in this  
26 subsection (4). The disclosure must be in connection with the  
27 department's official duties relating to an audit, collection activity,  
28 or a civil or criminal investigation. The disclosure may occur only  
29 when the person under investigation and the person in possession of  
30 data, materials, or documents are parties to the return or tax  
31 information to be disclosed. The department may disclose return or tax  
32 information such as invoices, contracts, bills, statements, resale or  
33 exemption certificates, or checks. However, the department may not  
34 disclose general ledgers, sales or cash receipt journals, check  
35 registers, accounts receivable/payable ledgers, general journals,  
36 financial statements, expert's workpapers, income tax returns, state  
37 tax returns, tax return workpapers, or other similar data, materials,  
38 or documents.

1 (b) Before disclosure of any tax return or tax information under  
2 this subsection (4), the department shall, through written  
3 correspondence, inform the person in possession of the data, materials,  
4 or documents to be disclosed. The correspondence shall clearly  
5 identify the data, materials, or documents to be disclosed. The  
6 department may not disclose any tax return or tax information under  
7 this subsection (4) until the time period allowed in (c) of this  
8 subsection has expired or until the court has ruled on any challenge  
9 brought under (c) of this subsection.

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

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

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

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

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

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

32 (5) Any person acquiring knowledge of any return or tax information  
33 in the course of his or her employment with the department of revenue  
34 and any person acquiring knowledge of any return or tax information as  
35 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this  
36 section, who discloses any such return or tax information to another  
37 person not entitled to knowledge of such return or tax information  
38 under the provisions of this section, is guilty of a misdemeanor. If

1 the person guilty of such violation is an officer or employee of the  
2 state, such person shall forfeit such office or employment and shall be  
3 incapable of holding any public office or employment in this state for  
4 a period of two years thereafter.

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