

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1088

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsections 1 and 5 of section 57-38-57 and
2 subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the
3 confidentiality of income tax and sales and use tax returns and return information.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 57-38-57 of the North
6 Dakota Century Code are amended and reenacted as follows:

7 1. Except ~~when otherwise directed by judicial order, or~~ as is otherwise specifically
8 provided by law, the tax commissioner, the tax commissioner's deputies, agents,
9 clerks, and other officers and employees, may not divulge nor make known, in any
10 manner, whether or not any report or return required under this chapter has been
11 filed, the amount of income, or any particulars set forth or disclosed in any report or
12 return required under this chapter, including the copy or any portion thereof or
13 information reflected in the taxpayer's federal income tax return that the tax
14 commissioner may require to be attached to, furnished with, or included in the
15 taxpayer's state income tax return. This provision may not be construed to prohibit
16 the publication of statistics, so classified as to prevent the identification of particular
17 reports or returns, and the items thereof, or the inspection by the attorney general
18 or other legal representatives of the state of the report or return of any taxpayer
19 who shall bring action to set aside or review the tax based thereon, or against
20 whom an action or proceeding has been instituted to recover any tax or any
21 penalty imposed by this chapter. This section does not prohibit disclosure of the
22 fact that a report or return required under this chapter has not been filed if the
23 disclosure is made to further a tax investigation being conducted by the tax

commissioner. Reports and returns must be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.

Except as provided in this section, returns and return information are not otherwise subject to disclosure to federal, state, or local law enforcement authorities for any purpose unless the disclosure is for the purposes of enforcing state tax laws and may not be obtained through subpoena or order issuing from any federal or state courts or proceedings unless the return or return information which is the subject of the order or subpoena is directly at issue in the proceedings and is for the purpose of enforcing state tax laws. The commissioner may disclose state tax return information pursuant to an order or subpoena issued by a court of competent jurisdiction when the requested return information is necessary for the purpose of:

a. The investigation or prosecution of a felony offense involving:

(1) Violence, intimidation, or threat of physical injury to a person; threat of damage to an inhabited structure or vital public facility as defined in section 12.1-21-08; or threat of substantial interruption or impairment of public communications, transportation, or supply of water, gas, power, or other public services;

(2) Physical injury to a person; damage to an inhabited structure or vital public facility as defined in section 12.1-21-08; or substantial interruption or impairment of public communications, transportation, or supply of water, gas, power, or other public service; or

(3) Kidnapping, abduction, or removal of a child from this state in violation of a custody order; or

b. National security.

If a federal, state, or local law enforcement agency provides written verification to the commissioner that disclosure of the return information is necessary for the purpose of national security or to prevent or to protect against a felony offense involving physical injury to a person; damage to an inhabited structure or vital public facility as defined in section 12.1-21-08; substantial interruption or impairment of public communications, transportation, or supply of

water, gas, power, or other public service; or kidnapping, abduction, or removal of a child from this state in violation of a custody order, which is imminent and would be likely to occur if immediate disclosure is not made to the requesting law enforcement agency, the commissioner may disclose the necessary information without first receiving a court order or subpoena.

5. Notwithstanding any other provision of law relating to confidentiality of information contained on returns, the tax commissioner may use information for income and withholding tax compliance purposes contained on any federal form W-2; or federal form 1099 filed under subsection 3 or 4 of section 57-38-60, a fiduciary return filed under section 57-38-07, a return filed by a subchapter S corporation under section 57-38-32, or a an information at the source return filed under section 57-38-42.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or an individual having an administrative duty under this chapter may not divulge or make known in any manner whatever the business affairs, operations, or information obtained from any person under any reporting requirement of this chapter, or by an investigation of any person in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any return, or permit any return or copy or any book containing any abstract of particulars to be seen or examined by any individual. Except as provided in this section, returns and return information are not otherwise subject to disclosure to federal, state, or local law enforcement authorities for any purpose unless the disclosure is for the purposes of enforcing state tax laws and may not be obtained through subpoena or order issuing from any federal or state courts or proceedings unless the return or return information which is the subject of the order or subpoena is directly at issue in the proceedings and is for the purpose of enforcing state tax law. The commissioner may disclose state tax return information pursuant to an order or subpoena issued by a court of competent jurisdiction when the requested return information is necessary for the purpose of:

1 a. The investigation or prosecution of a felony offense involving:

2 (1) Violence, intimidation, or threat of physical injury to a person; threat of
3 damage to an inhabited structure or vital public facility as defined in
4 section 12.1-21-08; or threat of substantial interruption or impairment of
5 public communications, transportation, or supply of water, gas, power,
6 or other public services;

7 (2) Physical injury to a person; damage to an inhabited structure or vital
8 public facility as defined in section 12.1-21-08; or substantial
9 interruption or impairment of public communications, transportation, or
10 supply of water, gas, power, or other public service; or

11 (3) Kidnapping, abduction, or removal of a child from this state in violation
12 of a custody order; or

13 b. National security.

14 If a federal, state, or local law enforcement agency provides written verification to
15 the commissioner that disclosure of the return information is necessary for the
16 purpose of national security or to prevent or to protect against a felony offense
17 involving physical injury to a person; damage to an inhabited structure or vital
18 public facility as defined in section 12.1-21-08; substantial interruption or
19 impairment of public communications, transportation, or supply of water, gas,
20 power, or other public service; or kidnapping, abduction, or removal of a child from
21 this state in violation of a custody order; which is imminent and would be likely to
22 occur if immediate disclosure is not made to the requesting law enforcement
23 agency, the commissioner may disclose the necessary information without first
24 receiving a court order or subpoena.