

Sixty-first
Legislative Assembly
of North Dakota

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

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

- 3 b. The commissioner shall disclose state tax return information pursuant to an
4 order or subpoena issued by a court of competent jurisdiction upon
5 application by a local, state, or federal law enforcement official if the court
6 determines on the basis of the facts submitted by the applicant that:
7 (1) There is reasonable cause to believe, based upon information believed
8 to be reliable, that a specific criminal act has been committed;
9 (2) There is reasonable cause to believe that the return or return
10 information is or may be relevant to a matter relating to the commission
11 of such act;
12 (3) The return or return information is sought exclusively for use in a
13 criminal investigation or proceeding concerning such act; and
14 (4) The information sought to be disclosed cannot reasonably be obtained
15 under the circumstances, from another source.

- 16 c. The application provided for under subdivision b must be served on the tax
17 commissioner and a hearing on the application must be held no later than ten
18 days from the date the tax commissioner received the application. The tax
19 commissioner may appear at the hearing and provide the court information
20 relating to the information contained on the return, and whether the
21 application meets paragraphs 1 through 4 of subdivision b.

- 22 d. If a federal, state, or local law enforcement agency provides written
23 verification to the commissioner that disclosure of the return information is
24 necessary for the purpose of national security or to prevent or to protect
25 against a felony offense involving physical injury to a person; damage to an
26 inhabited structure or vital public facility as defined in section 12.1-21-08;
27 substantial interruption or impairment of public communications,
28 transportation, or supply of water, gas, power, or other public service; or
29 kidnapping, abduction, or removal of a child from this state in violation of a
30 custody order, which is imminent and would be likely to occur if immediate
31 disclosure is not made to the requesting law enforcement agency, the

1 commissioner may disclose the necessary information without first receiving a
2 court order or subpoena.

- 3 5. Notwithstanding any other provision of law relating to confidentiality of information
4 contained on returns, the tax commissioner may use information for income and
5 withholding tax compliance purposes contained on any federal form W-2; or
6 federal form 1099 filed under subsection 3 or 4 of section 57-38-60, a fiduciary
7 return filed under section 57-38-07, a return filed by a subchapter S corporation
8 under section 57-38-32, or a an information at the source return filed under section
9 57-38-42.

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

- 12 1. a. The commissioner or an individual having an administrative duty under this
13 chapter may not divulge or make known in any manner whatever the
14 business affairs, operations, or information obtained from any person under
15 any reporting requirement of this chapter, or by an investigation of any person
16 in the discharge of official duty, or the amount or sources of income, profits,
17 losses, expenditures, or any particulars set forth or disclosed in any return, or
18 permit any return or copy or any book containing any abstract of particulars to
19 be seen or examined by any individual.
- 20 b. The commissioner shall disclose state tax return information pursuant to an
21 order or subpoena issued by a court of competent jurisdiction upon
22 application by a local, state, or federal law enforcement official if the court
23 determines on the basis of the facts submitted by the applicant that:
- 24 (1) There is reasonable cause to believe, based upon information believed
25 to be reliable, that a specific criminal act has been committed;
- 26 (2) There is reasonable cause to believe that the return or return
27 information is or may be relevant to a matter relating to the commission
28 of such act;
- 29 (3) The return or return information is sought exclusively for use in a
30 criminal investigation or proceeding concerning such act; and

(4) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.

c. The application provided for under subdivision b must be served on the tax commissioner and a hearing on the application must be held no later than ten days from the date the tax commissioner received the application. The tax commissioner may appear at the hearing and provide the court information relating to the information contained on the return, and whether the application meets paragraphs 1 through 4 of subdivision b.

d. 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.