

FIRST ENGROSSMENT
with Senate Amendments

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. A court of competent jurisdiction may issue an order or subpoena directing
4 the tax commissioner to disclose state tax return information to a local, state,
5 or federal law enforcement official conducting a criminal investigation if the
6 court determines that the facts submitted by the applicant satisfy the
7 following:
- 8 (1) There is probable cause to believe that a specific criminal act has been
9 committed and that the return or return information constitutes evidence
10 of a criminal offense or may be relevant to a matter relating to the
11 commission of the criminal offense;
- 12 (2) The return or return information is sought exclusively for use in a
13 criminal investigation or proceeding concerning such act; and
- 14 (3) The information sought to be disclosed cannot reasonably be obtained
15 under the circumstances, from another source.
- 16 c. Before obtaining an order under this subsection, a law enforcement official
17 may request information from the tax commissioner as to whether a taxpayer,
18 which is the subject of a criminal investigation for which a return or return
19 information is or may be relevant to the commission of a criminal offense, has
20 complied with the requirements of this chapter. For purposes of this request,
21 the tax commissioner is limited to stating that the taxpayer has or has not
22 complied with these requirements.
- 23 d. Except as required during court proceedings, tax return information disclosed
24 to law enforcement under this section remains confidential during an active
25 criminal investigation, after the investigation, after prosecution concludes, or
26 until the time period for appeals has expired, whichever is later.
- 27 5. Notwithstanding any other provision of law relating to confidentiality of information
28 contained on returns, the tax commissioner may use information for income and
29 withholding tax compliance purposes contained on any federal form W-2; or
30 federal form 1099 filed under subsection 3 or 4 of section 57-38-60, a fiduciary
31 return filed under section 57-38-07, a return filed by a subchapter S corporation

1 under section 57-38-32, or a an information at the source return filed under section
2 57-38-42.

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

5 1. a. The commissioner or an individual having an administrative duty under this
6 chapter may not divulge or make known in any manner whatever the
7 business affairs, operations, or information obtained from any person under
8 any reporting requirement of this chapter, or by an investigation of any person
9 in the discharge of official duty, or the amount or sources of income, profits,
10 losses, expenditures, or any particulars set forth or disclosed in any return, or
11 permit any return or copy or any book containing any abstract of particulars to
12 be seen or examined by any individual.

13 b. A court of competent jurisdiction may issue an order or subpoena directing
14 the tax commissioner to disclose state tax return information to a local, state,
15 or federal law enforcement official conducting a criminal investigation if the
16 court determines that the facts submitted by the applicant satisfy the
17 following:

18 (1) There is probable cause to believe that a specific criminal act has been
19 committed and that the return or return information constitutes evidence
20 of a criminal offense or may be relevant to a matter relating to the
21 commission of the criminal offense;

22 (2) The return or return information is sought exclusively for use in a
23 criminal investigation or proceeding concerning such act; and

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

26 c. Before obtaining an order under this subsection, a law enforcement official
27 may request information from the tax commissioner as to whether a taxpayer,
28 which is the subject of a criminal investigation for which a return or return
29 information is or may be relevant to the commission of a criminal offense, has
30 complied with the requirements of this chapter. For purposes of this request,

- 1 the tax commissioner is limited to stating that the taxpayer has or has not
2 complied with these requirements.
- 3 d. Except as required during court proceedings, tax return information disclosed
4 to law enforcement under this section remains confidential during an active
5 criminal investigation, after the investigation, after prosecution concludes, or
6 until the time period for appeals has expired, whichever is later.