

Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1088
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsections 1 and 5 of section 57-38-57 and subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the confidentiality of income tax and sales and use tax returns and return information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. a. Except ~~when otherwise directed by judicial order, or~~ as is otherwise specifically provided by law, the tax commissioner, the tax commissioner's deputies, agents, clerks, and other officers and employees, may not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the 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.
- b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
 - (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;
 - (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
 - (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.
- c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements

of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.

- d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.
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. a. 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.
- b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
 - (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;
 - (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
 - (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.
- c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.
- d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1088.

House Vote: Yeas 82 Nays 7 Absent 5

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State