

CONFIDENTIALITY STATUTES - TAXATION

This memorandum was requested to provide a listing of North Dakota Century Code sections containing confidentiality provisions that may be relevant to the Political Subdivision Taxation Committee's review of economic development tax incentives as directed by Section 54-35-26. Provisions detailing the applicable penalties for improper disclosure of taxpayer information have also been provided.

CONFIDENTIALITY PROVISIONS RELATING TO INCOME TAX

57-38-57. Secrecy as to returns - Penalty.

The secrecy of returns must be guarded except as follows:

1. a. Except 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.
2. Repealed by S.L. 1975, ch. 106, § 673.

3. The tax commissioner, however, may permit the commissioner of internal revenue of the United States or the proper officer of any state or of the District of Columbia or of any territory of the United States, imposing an income tax similar to that imposed by this chapter, or the authorized representative of any such officer or the authorized agent of the multistate tax commission, to inspect the income tax returns of any taxpayer, or may furnish to such officer or the officer's authorized representative an abstract or copy of the return of income of any taxpayer, or supply the officer or representative with information concerning any item contained in any return, or disclosed by the report of any investigation of the income, or return of income, of any taxpayer, but such permission may be granted, or such information furnished, to such officers or representatives only if the statutes of the United States or of such other state or of the District of Columbia or of a territory of the United States, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter; provided, that any information furnished or made available by the tax commissioner to any other person pursuant to this subsection may be used by such person only for tax administration purposes; and provided, further, that similar information furnished or made available to the tax commissioner by a representative or officer of the United States or of any other state or of the District of Columbia or a territory of the United States may be used by the tax commissioner only for tax administration purposes.
4. The tax commissioner is hereby authorized to furnish to workforce safety and insurance, to job service North Dakota, or to the secretary of state, upon their request a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any such list may be used only for the purpose of administering the duties of the requesting governmental unit.
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 an information at the source return filed under section 57-38-42.
6. Upon request, the tax commissioner may furnish to the unclaimed property division of the board of university and school lands, a taxpayer's name, address, and federal identification number for identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.
7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subsections 3, 4, and 5 of section 53-12.1-07.
8. The tax commissioner, upon written request from the secretary of commerce of the United States, may furnish officers and employees of the bureau of census an individual taxpayer's identification number and county of residence as reported on the individual's return. However, any information obtained may be used only for the purpose of establishing migration methodologies in estimating the annual shifts in the state's population. A person who receives return information under this subsection may not disclose the return information to any person other than the taxpayer to whom it relates except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.
9. The tax commissioner may disclose a taxpayer's name, address, and identification number to the Bank of North Dakota for the sole purpose of administering the tax deduction for contributions to the North Dakota higher education savings plan.

10. The tax commissioner may disclose confidential tax information to the insurance commissioner to be used for the sole purpose of suspending, revoking, placing on probation, refusing to continue or refusing to issue an insurance producer license, assessing a civil penalty, or investigating fraudulent insurance acts under the insurance laws of this state. The tax information may be disclosed only upon written request that provides the taxpayer's name, federal identification number, and address. The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38 or has started an investigation of a suspected or actual fraudulent insurance act. Upon receipt of the request, the tax commissioner may disclose whether the taxpayer has complied with the requirements of this chapter. If the taxpayer has not complied with these requirements, the tax commissioner may provide the tax type, the tax period for which a return has not been filed, and if the taxpayer has failed to pay any tax, the amount of tax, penalty, and interest owed. The information obtained under this subsection is confidential and may be used only for the purposes identified in this subsection. For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement.
11. The tax commissioner may provide the department of commerce information obtained in the administration of the income tax under this chapter. A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received North Dakota state economic development assistance. A request under this subsection does not require the tax commissioner to compile or create a record, including compiling or creating a record from electronically stored information, which does not exist. Information received by the department of commerce under this subsection may not be divulged by the department of commerce except in an aggregate format that does not permit taxpayer identification and any information contained in the returns or reports filed by a taxpayer.

40-63-09. Rules and administration - Income tax secrecy exception.

The tax commissioner shall administer this chapter with respect to an income tax exemption or credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. The secrecy provisions of section 57-38-57 do not apply to exemptions or credits received by taxpayers under sections 40-63-04, 40-63-06, and 40-63-07, but only when a local zone authority inquires of the tax commissioner about exemptions or credits claimed under sections 40-63-04, 40-63-06, and 40-63-07 with regard to that local zone authority or to the extent necessary for the tax commissioner to administer the tax exemptions or credits.

CONFIDENTIALITY PROVISIONS RELATING TO SALES AND USE TAX

57-39.2-23. Information deemed confidential - Certain releases of information authorized.

Except as provided by law:

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.
2. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the related report of an audit or investigation, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.
 3. The commissioner may furnish to workforce safety and insurance, the job insurance division of job service North Dakota, and the secretary of state, upon request of the respective agency, a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency. The commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, the name, address, and the permitholder's federal identification number for the sole purpose of identifying the owner of an unclaimed voucher authorized by the commissioner.
 4. The commissioner may furnish to a state agency or private entity a list of names and addresses of holders of permits issued under this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information under section 54-06-04.3. Any information provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.
 5. The commissioner may make information pertaining to city lodging taxes, city lodging and restaurant taxes, or city or county sales and use taxes, contained in tax returns, reports, related schedules and documents, and reports of an audit or investigation available upon request to no more than two duly elected or appointed members of the governing body of a city or county for which collection and administration of the tax is required by statute or a tax collection agreement administered under section 57-01-02.1. The governing body of the city or county or its members may not divulge or make known in any manner the business affairs, operations, or other information acquired from the commissioner under this subsection concerning any person, corporation, limited liability company, or other entity unless the disclosure is by judicial order and for tax administration purposes only.

6. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.
7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subsections 3, 4, and 5 of section 53-12.1-07.
8. Upon request, the commissioner may furnish to the unclaimed property division of the board of university and school lands, a taxpayer's name, address, and federal identification number for identifying the owner of an unclaimed voucher authorized by the commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.
9. The commissioner may provide the department of commerce information obtained through the administration of the sales tax under this chapter or the use tax under chapter 57-40.2. A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received economic development assistance from this state. A request under this subsection does not require the commissioner to compile or create a record, including compiling or creating a record that does not exist from electronically stored information. Information received by the department of commerce under this subsection is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota and may not be disclosed by the department of commerce except in an aggregate format that does not allow the identification of a taxpayer and does not contain any information in the returns or reports filed by a taxpayer.

CONFIDENTIALITY PROVISIONS RELATED TO PROPERTY TAX

57-02-11.2. Confidentiality of information provided by commercial property owners for assessment purposes.

Unless directed otherwise by judicial order or as otherwise provided by law, records and information provided by the owner or occupant of commercial property with regard to income and expenses of the property in connection with an assessment are confidential. This section does not prohibit the publication of statistics classified to prevent the identification of a particular property and information relating to that property or the disclosure of the records or information when an action or proceeding has been brought by the owner or occupant to set aside or review the assessment.

PENALTIES FOR IMPROPER DISCLOSURE OF TAXPAYER INFORMATION

57-01-14. Tax information furnished by United States secretary of the treasury - Penalty for disclosure.

Except as authorized by the United States Internal Revenue Code of 1954, it is unlawful for the state tax commissioner or any of the commissioner's employees or legal representatives to disclose to any person any return or return information opened to inspection by or disclosed by the United States secretary of the treasury pursuant to section 6103 of the United States Internal Revenue Code of 1954 [26 U.S.C. 6103] to the state tax commissioner or any of the commissioner's employees or legal representatives for the administration of the tax laws administered by the state tax commissioner. For the purposes of this section, the terms "return" and "return information" have the same meanings as are provided in section 6103 of the United States Internal Revenue Code of 1954 [26 U.S.C. 6103], and "state tax commissioner" and "any of the commissioner's employees or legal representatives" include a former state tax commissioner and a former employee or legal representative of the state tax commissioner. Any person who violates this section is guilty of a class C felony as provided in section 12.1-13-01.

12.1-13-01. Disclosure of confidential information provided to government.

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.