

SENATE BILL NO. 33—COMMITTEE ON REVENUE

(ON BEHALF OF THE DEPARTMENT OF TAXATION)

PREFILED DECEMBER 14, 2010

Referred to Committee on Revenue

SUMMARY—Consolidates provisions requiring confidentiality of certain taxpayer-specific records. (BDR 32-435)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; consolidating provisions requiring confidentiality of certain records and files of the Department of Taxation; allowing the disclosure of information in such records and files to a federal agency under certain circumstances; clarifying the taxpayer information that is authorized to be made public concerning certain hearings of the Nevada Tax Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law makes confidential and privileged certain records and files of the Department of Taxation which concern the administration of certain laws of this State and which contain information specifically related to a taxpayer subject to certain specific exemptions. (NRS 360.795, 363A.100, 363A.110, 363B.090, 363B.100, 372.750, 374.755, 375A.835, 375B.450) **Section 1** of this bill consolidates the various provisions providing for such confidentiality and privilege and makes the confidentiality and privilege applicable to all records and files of the Department relating to the administration and collection of a tax, fee, assessment or other amount required by law to be collected, subject to the specific exceptions. In addition, **section 1** allows the Department to disclose in confidence information in those records and files to a federal agency upon request for use in a federal prosecution or criminal investigation.

Existing law requires a public body to provide to members of the public upon request a copy of any supporting material provided to members of the public body for an item on an agenda of an open meeting at the same time the supporting materials are provided to the members of the public body, except certain confidential materials and materials which pertain to a closed portion of such a



meeting. (NRS 241.020) **Section 2** of this bill makes an exception to this requirement when a taxpayer takes an appeal to the Nevada Tax Commission by prohibiting the Commission from providing members of the public with copies of any supplemental materials that the Commission receives relating to a taxpayer's appeal until after the time by which the taxpayer is authorized to request a closed hearing so that the materials are not made public before the taxpayer is able to make such a request.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section and NRS 239.0115 and 360.250, the records and files of the Department concerning the administration or collection of any tax, fee, assessment or other amount required by law to be collected are confidential and privileged. The Department, an employee of the Department and any other person engaged in the administration or collection of any tax, fee, assessment or other amount required by law to be collected or charged with the custody of any such records or files:

(a) Shall not disclose any information obtained from those records or files; and

(b) May not be required to produce any of the records or files for the inspection of any person or governmental entity or for use in any action or proceeding.

2. The records and files of the Department concerning the administration and collection of any tax, fee, assessment or other amount required by law to be collected are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a person in any action or proceeding before the Nevada Tax Commission, the State Board of Equalization, the Department or any court of this State if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a person or his or her authorized representative of a copy of any document filed by the person pursuant to the provisions of any law of this State.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in



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1 such cases, or disclosure in confidence to any federal agency that
2 requests the information for the use of the agency in a federal
3 prosecution or criminal investigation.

4 (e) Disclosure in confidence to the Governor or his or her
5 agent in the exercise of the Governor's general supervisory
6 powers, or to any person authorized to audit the accounts of the
7 Department in pursuance of an audit, or to the Attorney General
8 or other legal representative of the State in connection with an
9 action or proceeding relating to a taxpayer, or to any agency of
10 this or any other state charged with the administration or
11 enforcement of laws relating to workers' compensation,
12 unemployment compensation, public assistance, taxation, labor or
13 gaming.

14 (f) Exchanges of information pursuant to an agreement
15 between the Nevada Tax Commission and any county fair and
16 recreation board or the governing body of any county, city or
17 town.

18 (g) Upon written request made by a public officer of a local
19 government, disclosure of the name and address of a taxpayer who
20 must file a return with the Department. The request must set forth
21 the social security number of the taxpayer about which the request
22 is made and contain a statement signed by the proper authority of
23 the local government certifying that the request is made to allow
24 the proper authority to enforce a law to recover a debt or
25 obligation owed to the local government. Except as otherwise
26 provided in NRS 239.0115, the information obtained by the local
27 government is confidential and privileged and may not be used or
28 disclosed for any purpose other than the collection of a debt or
29 obligation owed to that local government. The Executive Director
30 may charge a reasonable fee for the cost of providing the
31 requested information.

32 (h) Disclosure of information as to amounts of any unpaid tax
33 or amounts of tax required to be collected, interest and penalties to
34 successors, receivers, trustees, executors, administrators, assignees
35 and guarantors, if directly interested.

36 (i) Disclosure of relevant information as evidence in an appeal
37 by the taxpayer from a determination of tax due if the Nevada Tax
38 Commission has determined the information is not proprietary or
39 confidential in a hearing conducted pursuant to NRS 360.247.

40 (j) Disclosure of the identity of a person and the amount of tax
41 assessed and penalties imposed against the person at any time
42 after a determination, decision or order of the Executive Director
43 or other officer of the Department imposing upon the person a
44 penalty for fraud or intent to evade a tax imposed by law becomes
45 final or is affirmed by the Nevada Tax Commission.



1 3. The Executive Director shall periodically, as he or she
2 deems appropriate, but not less often than annually, transmit to
3 the Administrator of the Division of Industrial Relations of the
4 Department of Business and Industry a list of the businesses of
5 which the Executive Director has a record. The list must include
6 the mailing address of the business as reported to the Department.

7 4. The Executive Director may request from any other
8 governmental agency or officer such information as the Executive
9 Director deems necessary to carry out his or her duties with
10 respect to the administration or collection of any tax, fee,
11 assessment or other amount required by law to be collected. If the
12 Executive Director obtains any confidential information pursuant
13 to such a request, he or she shall maintain the confidentiality of
14 that information in the same manner and to the same extent as
15 provided by law for the agency or officer from whom the
16 information was obtained.

17 5. As used in this section:

18 (a) "Records" or "files" means any records and files related to
19 an investigation or audit, financial information, correspondence,
20 advisory opinions, decisions of a hearing officer in an
21 administrative hearing and any other information specifically
22 related to a taxpayer.

23 (b) "Taxpayer" means a person who pays any tax, fee,
24 assessment or other amount required by law to the Department.

25 **Sec. 2.** NRS 360.247 is hereby amended to read as follows:

26 360.247 1. Except as otherwise provided in this section, any
27 appeal to the Nevada Tax Commission which is taken by a taxpayer
28 concerning his or her liability for tax must be heard during a session
29 of the Commission which is open to the public. Upon request by the
30 taxpayer, a hearing on such an appeal ~~may~~ **must** be closed to the
31 public to receive proprietary or confidential information.

32 2. A taxpayer may request a closed hearing pursuant to
33 subsection 1 by submitting the request in writing to the Nevada
34 Tax Commission:

35 (a) Not later than 14 calendar days before the date of the
36 hearing; or

37 (b) If authorized by the Executive Director for good cause
38 shown, not later than 5 calendar days before the date of the
39 hearing.

40 3. Notwithstanding the provisions of NRS 241.020, all
41 information received by the Nevada Tax Commission concerning
42 an appeal taken by a taxpayer pursuant to subsection 1 shall be
43 deemed proprietary and confidential and the Nevada Tax
44 Commission shall not provide a member of the public with any
45 such information until after the date by which the taxpayer may



submit a request for a closed hearing pursuant to subsection 2, even if the information is provided to members of the Nevada Tax Commission. Thereafter the information must be provided to a member of the public upon request unless the taxpayer has made a request for a closed hearing.

4. As soon as practicable after closing a hearing pursuant to subsection 1, the Nevada Tax Commission shall determine whether the information to be presented in the closed hearing is proprietary or confidential information. If the Commission, in its discretion, determines that the information is not proprietary or confidential information, the Commission shall immediately open the hearing to the public. If the Commission, in its discretion, determines that the information is proprietary or confidential information:

(a) The hearing must remain closed to the public and the Commission shall receive the information in a manner that ensures that the members of the Commission have a reasonable and adequate opportunity to review the information and make any inquiries that any member believes to be necessary and appropriate.

(b) After the receipt of and opportunity to review the proprietary or confidential information pursuant to paragraph (a), the Commission shall reopen the hearing to the public and proceed to deliberate toward a decision regarding issues in the appeal that are not proprietary or confidential.

(c) After a hearing has been reopened pursuant to paragraph (b), the Commission shall, upon the request of any member of the Commission who believes that he or she cannot conduct meaningful deliberations with the other members of the Commission on the appeal because the appeal concerns proprietary or confidential information, close the hearing for further deliberations. The definitive vote on the appeal must be taken during a hearing of the Commission that is open to the public.

~~13-1~~ 5. The Nevada Tax Commission shall adopt regulations which establish procedures:

(a) By which a taxpayer may request a closed hearing pursuant to this section.

(b) By which the Commission may determine whether information is proprietary or confidential information during a closed hearing.

~~14-1~~ 6. Not later than 45 days after the Nevada Tax Commission deliberates in a closed hearing and makes a definitive decision on an appeal in a hearing that is open to the public pursuant to this section, the Commission shall prepare an abstract that explains the reasons for the decision, which must be made available to the public upon request. Such an abstract:

(a) Must include, without limitation:



- (1) The name of the taxpayer;
- (2) The amount of the taxpayer's liability, including interest and penalties;
- (3) The type of tax at issue; and
- (4) The general nature of the evidence relied upon by the Commission in reaching its decision.

(b) Must not contain any proprietary or confidential information relating to the taxpayer.

~~15-1~~ 7. A member of the Nevada Tax Commission or an officer, agent or employee of the Department is not subject to any criminal penalty or civil liability for the use or publication of proprietary or confidential information received pursuant to the procedure set forth in subsection ~~12-1~~ 4, regardless of whether the information was received during a closed hearing.

~~16-1~~ 8. The Nevada Tax Commission shall take such actions as it deems necessary to protect the confidentiality of information provided by a taxpayer that the Commission has determined to be proprietary or confidential information, including, without limitation:

(a) Issuing such protective orders as it deems necessary;

(b) Restricting access to any hearing closed to the public and to the records and transcripts of any such hearing, without the prior approval of the Commission; and

(c) Prohibiting any intervener allowed to attend such a hearing or allowed access to the records and transcripts of such a hearing from disclosing such information without prior authorization from the Commission.

~~17-1~~ 9. A person who violates a protective order issued by the Nevada Tax Commission pursuant to subsection ~~16-1~~ 8 is guilty of a misdemeanor, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order.

~~18-1~~ 10. As used in this section:

(a) "Confidential economic information":

(1) Means any information which is not available to the public generally, which confers an economic benefit on the holder of the information as a result of its unavailability and which is the subject of reasonable efforts by the taxpayer to maintain its secrecy.

(2) Includes, without limitation, information relating to the amount or source of any income, profits, losses or expenditures of the taxpayer, such as data relating to costs, prices or customers.

(b) "Proprietary or confidential information":

(1) Means:

(I) Any trade secret, confidential economic information or business information that is submitted to the Nevada Tax



- 1 Commission by the taxpayer and is determined to be proprietary or
2 confidential information by the Commission; or
3 (II) Any information that a specific statute declares to be
4 confidential or prohibits the Commission from making public.
5 (2) Does not include any information that has been published
6 for public distribution or is otherwise available to the public
7 generally or in the public domain.
8 **Sec. 3.** NRS 360.795, 363A.100, 363A.110, 363B.090,
9 363B.100, 372.750, 374.755, 375A.835 and 375B.450 are hereby
10 repealed.
11 **Sec. 4.** This act becomes effective upon passage and approval.

LEADLINES OF REPEALED SECTIONS

360.795 Confidentiality of records and files of Department.
363A.100 Authority of Executive Director to request
information to carry out chapter.
363A.110 Confidentiality of records and files of
Department.
363B.090 Authority of Executive Director to request
information to carry out chapter.
363B.100 Confidentiality of records and files of
Department.
372.750 Disclosure of information unlawful; exceptions.
374.755 Disclosure of information unlawful; exceptions.
375A.835 Confidentiality and disclosure of information and
records.
375B.450 Confidentiality and disclosure of information and
records.

