

Committee Substitute for Senate Bill No. 1836

An act relating to public records; amending s. 213.053, F.S.; providing an exemption from public records requirements for information contained in specified documents received by the Department of Revenue in connection with ch. 202, F.S., the Communications Services Tax Simplification Law; authorizing the department to provide certain information relative to said chapter to local governments imposing a local communications services tax; providing for application of confidentiality and penalty provisions to such local governments; providing for future review and repeal; providing a finding of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(1)(a) The provisions of this section apply to s. 125.0104, county government; s. 125.0108, tourist impact tax; chapter 175, municipal firefighters' pension trust funds; chapter 185, municipal police officers' retirement trust funds; chapter 198, estate taxes; chapter 199, intangible personal property taxes; chapter 201, excise tax on documents; chapter 203, gross receipts taxes; chapter 211, tax on severance and production of minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; chapter 221, emergency excise tax; s. 252.372, emergency management, preparedness, and assistance surcharge; s. 370.07(3), Apalachicola Bay oyster surcharge; chapter 376, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s. 538.09, registration of secondhand dealers; s. 538.25, registration of secondary metals recyclers; ss. 624.501 and 624.509-624.515, insurance code; s. 681.117, motor vehicle warranty enforcement; and s. 896.102, reports of financial transactions in trade or business.

(b) The provisions of this section also apply to chapter 202, the Communications Services Tax Simplification Law. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Except as provided in subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), and (17), all information contained in returns, reports, accounts, or declarations received by the department, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from the provisions of s. 119.07(1). Any officer or employee, or former officer or employee, of the department who divulges any such information in any manner, except for such official purposes, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The department shall permit a taxpayer, his or her authorized representative, or the personal representative of an estate to inspect the taxpayer's return and may furnish him or her an abstract of such return. A taxpayer may authorize the department in writing to divulge specific information concerning the taxpayer's account.

(4) Nothing contained in this section shall prevent the department from publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns or prevent the department from disclosing to the Comptroller the names and addresses of those taxpayers who have claimed an exemption pursuant to s. 199.185(1)(i) or a deduction pursuant to s. 220.63(5).

(5) The department may make available to the Secretary of the Treasury of the United States or his or her delegate, the Commissioner of Internal Revenue of the United States or his or her delegate, the Secretary of the Department of the Interior of the United States or his or her delegate, or the proper officer of any state or his or her delegate, exclusively for official purposes, information to comply with any formal agreement for the mutual exchange of state information with the Internal Revenue Service of the United States, the Department of the Interior of the United States, or any state.

(6) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax, shall be made available by the department to the Auditor General or his or her authorized agent, the Comptroller or his or her authorized agent, the Insurance Commissioner or his or her authorized agent, the Treasurer or his or her authorized agent, or a property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1), in the performance of their official duties, or to designated employees of the Department of Education solely for determination of each school district's price level index pursuant to s. 236.081(2); however, no information shall be disclosed to the Auditor General or his or her authorized agent, the Comptroller or his or her authorized agent, the Insurance Commissioner or his or her authorized agent, the Treasurer or his or her authorized agent, or to a property appraiser or tax collector or their authorized agents, or to designated employees of the Department of Education if such disclosure is prohibited by federal law. The Auditor General or his or her authorized agent, the Comptroller or his or her authorized agent, the Treasurer or his or her authorized agent, and the property appraiser or tax collector and their authorized agents, or designated employees of the Department of Education shall be subject to the same requirements of confidentiality and the same penalties for violation of the requirements as the department. For the purpose of this subsection, "designated employees of the Department of Education" means only those employees directly responsible for calculation of price level indices pursuant to s. 236.081(2). It does not include the supervisors of such employees or any other employees or elected officials within the Department of Education.

(7) Notwithstanding any other provision of this section, the department may provide:

(a) Information relative to chapter 211, chapter 376, or chapter 377 to the proper state agency in the conduct of its official duties.

(b) Names, addresses, and dates of commencement of business activities of corporations to the Division of Corporations of the Department of State in the conduct of its official duties.

(c) Information relative to chapter 212 and chapters 561 through 568 to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation in the conduct of its official duties.

(d) Names, addresses, and sales tax registration information to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the conduct of its official duties.

(e) Names, addresses, taxpayer identification numbers, and outstanding tax liabilities to the Department of the Lottery and the Department of Banking and Finance in the conduct of their official duties.

(f) State tax information to the Nexus Program of the Multistate Tax Commission pursuant to any formal agreement for the exchange of mutual information between the department and the commission.

(g) Tax information to principals, and their designees, of the Revenue Estimating Conference for the purpose of developing official revenue estimates.

(h) Names and addresses of persons paying taxes pursuant to part IV of chapter 206 to the Department of Environmental Protection in the conduct of its official duties.

(i) Information relative to chapters 212 and 326 to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation in the conduct of its official duties.

(j) Information authorized pursuant to s. 213.0535 to eligible participants and certified public accountants for such participants in the Registration Information Sharing and Exchange Program.

(k) Payment information relative to chapters 199, 201, 212, 220, and 221 to the Office of Tourism, Trade, and Economic Development in its administration of the tax refund program for qualified defense contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

(l) Information relative to chapter 212 to the Office of Agriculture Law Enforcement of the Department of Agriculture and Consumer Services in the conduct of the Bill of Lading Program. This information is limited to the business name and whether the business is in compliance with chapter 212.

(m) Information relative to chapter 198 to the Agency for Health Care Administration in the conduct of its official business relating to ss. 409.901-409.910.

(n) Information contained in returns, reports, accounts, or declarations to the Board of Accountancy in connection with a disciplinary proceeding conducted pursuant to chapter 473 when related to a certified public accountant participating in the certified audits project, or to the court in connection with a civil proceeding brought by the department relating to a claim for recovery of taxes due to negligence on the part of a certified public accountant participating in the certified audits project. In any judicial proceeding brought by the department, upon motion for protective order, the court shall limit disclosure of tax information when necessary to effectuate the purposes of this section. This paragraph is repealed on July 1, 2002.

(o) Information relative to ss. 376.70 and 376.75 to the Department of Environmental Protection in the conduct of its official business and to the facility owner, facility operator, and real property owners as defined in s. 376.301.

(p) Information relative to ss. 199.1055, 220.1845, and 376.30781 to the Department of Environmental Protection in the conduct of its official business.

(q) Names, addresses, and sales tax registration information to the Division of Consumer Services of the Department of Agriculture and Consumer Services in the conduct of its official duties.

(r) Information relative to the returns required by ss. 175.111 and 185.09 to the Department of Management Services in the conduct of its official duties. The Department of Management Services is, in turn, authorized to disclose payment information to a governmental agency as necessary in the administration of chapters 175 and 185.

(s) Names, addresses, and federal employer identification numbers, or similar identifiers, to the Department of Highway Safety and Motor Vehicles for use in the conduct of its official duties.

(t) Information relative to the tax exemptions under ss. 212.031, 212.06, and 212.08 for those persons qualified under s. 288.1258 to the Office of the Film Commissioner. The Department of Revenue shall provide the Office of the Film Commissioner with information in the aggregate.

(u) Information relative to chapter 202 to each local government that imposes a tax pursuant to s. 202.19 in the conduct of its official duties as specified in chapter 202. Information provided under this paragraph may include, but is not limited to, any reports required pursuant to s. 202.231, audit files, notices of intent to audit, tax returns, and other confidential tax information in the department's possession relating to chapter 202. A person or an entity designated by the local government in writing to the department as requiring access to confidential taxpayer information shall have reasonable access to information provided pursuant to this paragraph. Such person or entity may disclose such information to other persons or entities with direct responsibility for budget preparation, auditing, revenue or financial administration, or legal counsel. Such information shall only be used for purposes related to budget preparation, auditing, and revenue and financial administration. Any information furnished to a local government, or to any

person or entity designated by the local government as authorized by this paragraph, that is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution pursuant to this section shall continue to be exempt when so provided, and may not be further disclosed except as provided by this paragraph.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

(8) The Department of Revenue shall provide returns, reports, accounts, or declarations received by the department, including investigative reports and information, or information contained in such documents, pursuant to an order of a judge of a court of competent jurisdiction or pursuant to a subpoena duces tecum only when the subpoena is:

(a) Issued by a state attorney, a United States attorney, or a court in a criminal investigation or a criminal judicial proceeding;

(b) Issued by a state or federal grand jury; or

(c) Issued by a state attorney, the Department of Legal Affairs, the State Fire Marshal, a United States attorney, or a court in the course of a civil investigation or a civil judicial proceeding under the state or federal racketeer influenced and corrupt organization act or under chapter 896.

(9)(a) Notwithstanding other provisions of this section, the department shall, subject to paragraph (c) and to the safeguards and limitations of paragraphs (b) and (d), disclose to the governing body of a municipality, a county, or a subcounty district levying a local option tax, or any state tax which is distributed to units of local government based upon place of collection, which the department is responsible for administering, names and addresses only of the taxpayers granted a certificate of registration pursuant to s. 212.18(3) who reside within or adjacent to the taxing boundaries of such municipality, county, or subcounty district when sufficient information is supplied by the municipality, the county, or subcounty district as the department by rule may prescribe, provided such governing bodies are following s. 212.18(3) relative to the denial of an occupational license after the department cancels a dealer's sales tax certificate of registration.

(b) Such information shall be disclosed only if the department receives an authenticated copy of a resolution adopted by the governing body requesting it.

(c) After receipt of such information, the governing body and its officers and employees are subject to the same requirements of confidentiality and the same penalties for violating confidentiality as the department and its employees. The resolution requesting such information shall provide assurance that the governing body and its officers and employees are aware of

those requirements and of the penalties for their violation of such requirements, and the resolution shall describe the measures that will be put into effect to ensure such confidentiality. The officer of the department who is authorized to receive, consider, and act upon such requests shall, if satisfied that the assurances in the resolution are adequate to assure confidentiality, grant the request.

(d) Nothing in this subsection authorizes disclosure of any information prohibited by federal law from being disclosed.

(10) Notwithstanding any other provision of this section, with respect to a request for verification of a certificate of registration issued pursuant to s. 212.18 to a specified dealer or taxpayer or with respect to a request by a law enforcement officer for verification of a certificate of registration issued pursuant to s. 538.09 to a specified secondhand dealer or pursuant to s. 538.25 to a specified secondary metals recycler, the department may disclose whether the specified person holds a valid certificate or whether a specified certificate number is valid or whether a specified certificate number has been canceled or is inactive or invalid and the name of the holder of the certificate. This subsection shall not be construed to create a duty to request verification of any certificate of registration.

(11) The department may provide to a United States Trustee, or his or her designee, for any United States Bankruptcy Court, exclusively for official purposes in connection with administering a bankruptcy estate, information relating to payment or nonpayment of taxes imposed by any revenue law of this state by a trustee, debtor, or debtor in possession, including any amount paid or due.

(12) The department may disclose certain state sales tax information relating to the cancellation or revocation of sales and use tax certificates of registration for the failure to collect and remit sales tax. This information is limited to the sales tax certificate number, trade name, owner's name, business location address, and the reason for the cancellation or revocation.

(13) Notwithstanding the provisions of s. 896.102(2), the department may allow full access to the information and documents required to be filed with it under s. 896.102(1) to federal, state, and local law enforcement and prosecutorial agencies, and to the Department of Banking and Finance, and any of those agencies may use the information and documents in any civil or criminal investigation and in any court proceedings.

(14)(a) Notwithstanding any other provision of this section, the department shall, subject to the safeguards specified in paragraph (c), disclose to the Division of Corporations of the Department of State the name, address, federal employer identification number, and duration of tax filings with this state of all corporate or partnership entities which are not on file or have a dissolved status with the Division of Corporations and which have filed tax returns pursuant to either chapter 199 or chapter 220.

(b) The Division of Corporations shall use such information only in the pursuit of its official duties relative to nonqualified foreign or dissolved corporations in the recovery of fees and penalties due and owing the state.

(c) All information exchanged between the Division of Corporations and the department shall be subject to the same requirements of confidentiality as the Department of Revenue.

(15) The department may disclose confidential taxpayer information contained in returns, reports, accounts, or declarations filed with the department by persons subject to any state or local tax to the child support enforcement program, to assist in the location of parents who owe or potentially owe a duty of support pursuant to Title IV-D of the Social Security Act, their assets, their income, and their employer, and to the Department of Children and Family Services for the purpose of diligent search activities pursuant to chapter 39. Nothing in this subsection authorizes the disclosure of information if such disclosure is prohibited by federal law. Employees of the child support enforcement program and of the Department of Children and Family Services are bound by the same requirements of confidentiality and the same penalties for violation of the requirements as the department.

(16) The department may provide to the person against whom transferee liability is being asserted pursuant to s. 212.10(1) information relating to the basis of the claim.

(17) The department may disclose to a person entitled to compensation pursuant to s. 213.30 the amount of any tax, penalty, or interest collected as a result of information furnished by such person.

Section 2. The Legislature finds that it is a public necessity that any information or material contained in returns, reports, accounts, or declarations received by the Department of Revenue pursuant to chapter 202, Florida Statutes, be exempt from public records requirements. The disclosure of such information or material would adversely affect the business interests of communications service companies providing the information by harming them in the marketplace and compromising the security of the communications network. Further, disclosure of such information or material would impair competition in the communications industry. Disclosure of data which reveals the business interests of communications service companies creates a competitive disadvantage and an unfair advantage for its competitors. Competitors can use such information to impair full and fair competition and impede competition in the communications marketplace to the disadvantage of the consumers of communications services. Thus, the public and private harm in disclosing this information significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize or monitor agency action is not diminished by nondisclosure of this information.

Section 3. This act shall take effect October 1, 2001, if Committee Substitute for Senate Bill 1878 or similar legislation nullifying the repeal of chapter 202, Florida Statutes, is adopted in the same legislative session or an extension thereof and takes effect.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.