

Exchanging Taxpayer Information from the Department of Revenue (DOR) to the
Legislative Fiscal Analyst (LFD) and Office of Budget and Program Planning (OBPP)

Dan Bucks, Director of Revenue
January 12, 2006

Primary Concern

The primary concern of the administration is that the right of individual privacy under the Article 10, Section 2 of the Montana Constitution be protected. That section reads as follows:

The right of individual privacy is essential to the well-being of society and shall not be infringed without the showing of a compelling state interest.

Background on Statutory Law

From the standpoint of relevant federal and state law, there are four categories of information that need to be separately understood:

1. **Social Security Numbers:** Social security numbers are given special protection under the Federal Privacy Act and under proposed state legislation from Economic Affairs Committee.
2. **Federal Tax Information:** This is information provided to state tax administration agencies (e.g. Montana Department of Revenue) by the IRS. Pursuant to federal law, the DOR is prohibited from re-disclosing this information, except to its legal representatives, contractors and the Legislative Auditor. This means the DOR is prohibited from providing this information to the LFD and OBPP.
3. **Federal "Wrap-Around Information":** This is information provided by Montana taxpayers on state returns. This information can be exchanged by the DOR with other agencies for any legitimate state purpose, including revenue modeling, provided that state law authorizes the inter-agency disclosure and protects the information as confidential.
4. **State Tax Information:** This is information provided by Montana taxpayers on state returns pursuant to state tax law and that has no connection or basis in federal returns. This information is subject to exchange pursuant to state law.

Please note that any state laws and procedures on exchange of information are subject to potential taxpayer claims based on various provisions of the Montana and U.S. Constitutions, including the privacy and due process clauses of the Montana Constitution, the due process clause of the U.S. Constitution and to claims based on federal law.

State employees are subject to federal criminal penalties and private civil suits under federal law if they improperly disclose federal tax information.

The Internal Revenue Service may also stop sharing federal tax information with a state's tax agency if the state does not properly safeguard federal tax information

Summary of Administration Position on Legislation

The circumstance that originally gave rise to this legislation is an ambiguity in the state law concerning the exchange of corporate tax information among these agencies. In the course of developing the legislation, other areas that would benefit from clarification were identified.

The Administration recommends that legislation should be drafted that:

- A. Ensures that any federal “wrap-around” information can be exchanged with the LFD and OBPP. By federal law, state law must protect this information as confidential to be eligible for sharing with the LFD and OBPP. This provision aids the exchange of information in cases of non-income taxes the returns for which are otherwise public under state law.
- B. Coordinates with federal law prohibiting the exchange of federal tax information with the LFD and OBPP.
- C. Authorizes the exchange of taxpayer return information for publicly traded business entities with the LFD and OBPP, *including* names, addresses and tax identification numbers.
- D. In general, authorizes the exchange of taxpayer return data for privately held business entities (including private C-corps, S-corps, and private LLCs) with the LFD and OBPP, *without* names, addresses and taxpayer supplied identification numbers—but *with* a state accounting record identifier that allows for multi-year tracking to improve revenue estimating without revealing the identity of the business entity.
- E. In general, maintains *current state law* that allows the exchange of individual income tax return data with the LFD and OBPP, *without* names, addresses and taxpayer supplied identification numbers—but *with* a state accounting record identifier that allows for multi-year tracking to improve revenue estimating without revealing the identity of the taxpayer.
- F. Establishes a procedure under which the LFD or OBPP could access, as an exception to items D & E, the names and address for selected tax return records provided that they certify to that the specific disclosure meets the standards of the privacy clause of the Montana Constitution.
- G. Allows the LFD and OBPP to exchange state tax information and federal “wrap-around” information with each other, subject to proper control of this information and record-keeping to track the exchanges.
- H. Clarifies penalties for state officials and employees if they improperly disclose taxpayer information. Such penalties will apply if the disclosure is purposeful or knowing.