

SENATE BILL NO. 242
INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PUBLICLY HELD CORPORATION'S NAME, TAX LIABILITY, INCOME ALLOCATION AMOUNTS, AND PROPERTY, PAYROLL, AND SALES FACTORS ARE PUBLIC INFORMATION; AMENDING SECTION 15-31-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality Public information -- confidentiality of tax records. ~~(1) (A) With~~ SUBJECT TO SUBSECTION (1)(B), WITH regard to a publicly held corporation, the following information that is derived from state returns or other state information required for the administration of this chapter is public information:

~~(a)~~(i) the name of the publicly held corporation;

~~(b)~~(ii) its tax liability under this chapter;

~~(c)~~(iii) its total nonbusiness income allocated to Montana under 15-31-304;

~~(d)~~(iv) its total business income allocated to Montana under 15-31-305;

~~(e)~~(v) the numerator of its property factor under 15-31-306;

~~(f)~~(vi) the numerator of its payroll factor under 15-31-308; and

~~(g)~~(vii) the numerator of its sales factor under 15-31-310.

(B) NOTHING IN THIS SUBSECTION (1) MAY BE CONSTRUED TO ALLOW THE DEPARTMENT TO DISCLOSE ANY INFORMATION OBTAINED FROM THE INTERNAL REVENUE SERVICE OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES OR FROM ANOTHER STATE.

~~(1)~~(2) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

~~(2)~~(3) (a) An officer or employee charged with custody of returns and reports required by this chapter

may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or
 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

~~(3)~~(4) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection ~~(4)~~ (5);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

~~(4)~~(5) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection ~~(4)~~ (2); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, ~~but~~ Except as provided in subsection (1), the information furnished to the legislative fiscal

analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection ~~(4)~~ (2).

~~(5)~~(6) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction.

(7) FOR THE PURPOSES OF THIS SECTION, "PUBLICLY HELD CORPORATION" MEANS A REPORTING CORPORATION SUBJECT TO THE FEDERAL SECURITIES EXCHANGE ACT OF 1934, 15 U.S.C. 78A, ET SEQ., WHOSE SHARES ARE PUBLICLY TRADED ON A NATIONAL EXCHANGE, SUCH AS THE NEW YORK STOCK EXCHANGE, NASDAQ, OR THE AMERICAN STOCK EXCHANGE, AND THAT HAS A MARKET CAPITALIZATION OF \$2 BILLION OR MORE."

NEW SECTION. Section 2. Effective date. [This act] is effective January 1, 2008.

NEW SECTION. SECTION 3. APPLICABILITY. [THIS ACT] APPLIES TO RETURNS FILED ON OR AFTER JANUARY 1, 2008.

- END -

