

**REPORT OF THE  
DEPARTMENT OF TAXATION ON**

**A Study of the Secrecy  
of Tax Information  
Provisions Under Title 58.1**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 27**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1991**



**COMMONWEALTH of VIRGINIA**

*Department of Taxation  
Richmond, Virginia 23282*

**TO:           The Honorable Lawrence Douglas Wilder  
                  Governor of Virginia  
                  and  
                  The General Assembly of Virginia**

**The 1990 General Assembly, by Senate Joint Resolution 128, requested the Tax Commissioner to examine the provisions of the Secrecy of Information statute as contained in Title 58.1 of the Code of Virginia as to inconsistencies in the interpretation and administration of the secrecy of tax information provisions in relation to the Freedom of Information Act.**

**Enclosed for your review and consideration is the report that has been prepared in response to this resolution.**

**Respectfully submitted,**

A handwritten signature in black ink, appearing to read "W. H. Forst".

**W. H. Forst  
Tax Commissioner**

**DEPARTMENT OF TAXATION STUDY  
SECRECY OF TAX INFORMATION UNDER  
TITLE 58.1**

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# EXECUTIVE SUMMARY

Senate Joint Resolution 128 of the 1990 Session of the General Assembly requested the Department of Taxation to study the provisions of Va. Code § 58.1-3 relating to the secrecy of tax information and their interaction with the Virginia Freedom of Information Act.

The Secrecy of Information statute is designed to protect Virginia taxpayers from the disclosure of confidential tax information. The statute provides very few circumstances where confidential tax information may be disclosed. The information contained in the statute which is to remain confidential is very broad and protective and only that information that is specifically excepted may be disclosed.

Since its original enactment in 1926, the Secrecy of Information statute remained basically the same for almost 50 years. From 1972 to the present, the statute has been amended 10 times to provide exceptions to the general rule of confidentiality. The changes over the past 18 years have been enacted primarily to enhance state and local tax enforcement, and to provide information for the administration of state fiscal affairs.

The exceptions allow the disclosure of confidential tax information or allow the exchange of information with not only the Internal Revenue Service, but also with other state agencies, local governing bodies and other states. This enables Virginia to collect debts of the state that would be otherwise uncollectible.

The Virginia Freedom of Information Act was also studied to determine its interaction with the secrecy statutes. It was found that any information protected from disclosure under the secrecy statutes, would be exempt from the Freedom of Information requirements. There is no apparent conflict among these two statutes; however, there is no guarantee that attempts to secure confidential tax information under the Freedom of Information Act will not be attempted.

A state survey was conducted which canvassed all states and the District of Columbia. The results of the survey may be found in Appendix C. It was found that the Virginia secrecy statute is slightly less restrictive than those of other states. This is attributable to Virginia's local government involvement in state tax administration, Virginia's Set-Off Debt Collection program, and the programmatic differences of other states' programs. While Virginia law appears to be somewhat broader in terms of disclosure of information than other states, the law is generally consistent with the provisions of the federal statutes.

This study of the laws relating to the secrecy of tax information has led to the formulation of five recommendations: (1) Va. Code § 58.1-3 should be amended to allow local tax officials to disclose information to the Tax Commissioner upon written request; (2) Further broadening of the secrecy statute by the enactment of additional exceptions should be considered only in cases of absolute necessity for the administration of public programs; (3) Future exceptions to the secrecy statute should only be considered after confidentiality can be ensured, cost has been examined, and the public need for such information has been established; (4) Va. Code § 2.1-342(22) should be amended to replace "documents specified in" with "official records contemplated by;" and (5) The Freedom of Information Act should be examined further to ensure that it does not contravene the protection afforded to confidential tax information under Va. Code § 58.1-3. The implementation of these recommendations would ensure the people of the Commonwealth that their right to confidentiality would be protected.

## INTRODUCTION

Senate Joint Resolution 128 of the 1990 Session of the General Assembly requested the Department of Taxation (TAX) to study the secrecy of tax information provisions of § 58.1-3 of the Code of Virginia and their interaction with the Virginia Freedom of Information Act in safeguarding the confidentiality of taxpayer information.

The resolution set forth the following assertions in support of the request:

- ◆ The policy of the Commonwealth is to protect the disclosure of citizens' tax records under the secrecy of information provisions;
- ◆ These provisions prohibit the Tax Commissioner, local tax officials and employees from disclosing any tax information acquired during the performance of official duties except in specific cases;
- ◆ The statutory language relating to the secrecy provisions is often ambiguous and appears to be a battleground for litigation;
- ◆ Confusion has resulted among tax officials and the general public because of inconsistent interpretations and administration of the secrecy of tax information provisions in relation to the Freedom of Information Act; and
- ◆ The secrecy provisions and related provisions of the Freedom of Information Act need to be examined to ensure consistency and equity among state and local tax officials in administering the Commonwealth's policy of protecting the confidentiality of tax records, while ensuring that citizens have access to records in the custody of public officials.

Within Virginia, the Virginia Freedom of Information Act (Va. Code § 2.1-340 et. seq., hereinafter FOIA) is intended to ensure citizen access to public records. Conversely, the tax secrecy provisions (Va. Code § 58.1-3) are intended to ensure that the private and confidential information about individuals and businesses to which TAX has access is subjected to the highest standards of protection.

The potential conflict between the public's right to public information and individual's rights to protection of private information is one of the issues which is examined in this study.

The study will also focus on the evolution of the tax secrecy statutes, the impact of recent legislative changes, and potential changes to the tax secrecy statutes.

## **APPROACH**

In addition to in-depth research of Title 58.1 of the Code of Virginia, research focused on Acts of the General Assembly to determine when and why the provisions of Va. Code § 58.1-3, Secrecy of Information, were amended. Changes to the secrecy provisions were then analyzed to determine the significance of them in terms of tax enforcement and administration. The Virginia Freedom of Information Act (Va. Code § 2.1-340, et. seq.) was also researched and analyzed to determine its interaction with the Secrecy of Information statute. Authorized disclosures from the secrecy statute were reviewed and compared to Attorney General Opinions to determine if significant problem areas existed. Virginia's secrecy statutes were compared to Internal Revenue Code § 6103, the federal equivalent of Virginia's secrecy statute, to determine the impact of the exchange of information with the federal government. Questionnaires were developed and mailed to all states and the District of Columbia, seeking information as to how other jurisdictions handled such things as disclosure of tax information, exchange agreements, Freedom of Information, and penalties for disclosure. (See Appendix B for the results of the survey.) The results of the survey, together with the research of the Virginia Code, the Virginia Freedom of Information Act, Internal Revenue Code and Opinions of the Attorney General, led to the recommendations of this study.

# CHANGES IN SECRECY STATUTES

The Secrecy of Information statute originally enacted under the 1926 Acts of Assembly stated:

*It shall be unlawful for any member or ex-member of the commission, or for any assessor or commissioner of the revenue, or for any employee or agent of the commission, to divulge any information acquired by him in respect to the transactions, property, income or business of any person, firm or corporation while in the performance of his duties under this act. Any violation of the provisions of this section shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both; provided, however, that the governor may at any time, by written order, direct that any information herein referred to shall be made public or be laid before any court; and, provided, further, that this inhibition does not extend to any matters required by law to be entered on any public assessment roll or book.*

In 1928, the Department of Taxation was created and a Tax Commissioner was appointed by the Governor, replacing the previous 3-member Tax Commission. The 1928 Acts of Assembly amended the Secrecy of Information statute to include employees or agents of TAX. The statute was also broadened to prohibit the application of the statute to "any act performed or words spoken or published in the line of duty under the law."

The statute remained in the same form until 1972, but has since been amended ten times to provide exceptions to the general rule of confidentiality. A chronological examination of the exceptions is outlined in the table below.

## TABLE 1

YEAR	CHANGES
1972	◆ Specific listing of persons covered by the statute added
	◆ Exceptions added for inquiries and investigations concerning real estate assessments requested by legislative committees
	◆ Exceptions added for sales price, construction, physical characteristics, and other information required for real estate building permit
	◆ Authorized TAX to publish reports or lists of delinquent taxpayers
	◆ Authorized Tax Commissioner to provide tax information to local finance officers on written request
	◆ Authorized Tax Commissioner to enter into exchange of tax information agreement with U.S. and other states
1974	◆ Authorized Tax Commissioner to provide information to <u>town</u> finance officer
1978	◆ Expanded application of secrecy provisions to <u>former</u> tax officials
	◆ Expanded secrecy protection to federal tax returns and information attached to Virginia returns
	◆ Prohibited disclosure of federal tax return and return information by the Governor
1980	◆ Clarified that local tax officials may disclose whether person or business is licensed to do business in locality
1983	◆ Expanded secrecy provisions to include personal property
1984 (Recod. of Title 58)	◆ Exception added for information furnished to Department of Social Services on income reported by persons seeking public assistance benefits
	◆ Expanded penalty provisions to include persons to whom tax information is disclosed

- ◆ Authority of Governor to order the disclosure of confidential tax information deleted
- 1985 ◆ Exception added to allow disclosure to State Education Assistance Authority of names and addresses of persons defaulting on Authority granted loans
- 1988 ◆ Exception added to allow disclosure of names and addresses to state agencies and court officials for collection of delinquent debts
- ◆ Exception added to allow disclosure of information to Virginia Employment Commission for collection of unemployment taxes and overpaid benefits
- 1989 ◆ Exception added to allow disclosure of information to Alcoholic Beverage Control Board for use in mutual enforcement programs
- ◆ Exception added to allow disclosure of information to Lottery Department for use in mutual enforcement programs
- 1990 ◆ Exception added to allow local revenue officers to disclose some-confidential sales and use tax information to the locality's chief executive officer

## **ANALYSIS OF CHANGES IN SECRECY STATUTES**

After remaining static for nearly 50 years, the tax secrecy provisions have been amended in 10 of the last 18 years. Many of these changes were technical in nature, such as clarifying the exact nature of employees covered by the statute. The majority of the remaining changes can be characterized as attempting to address 3 specific areas:

Enhanced Tax Enforcement  
 Information for Administration of State Fiscal Affairs  
 Enhanced Local Tax Enforcement

## **Enhanced Tax Enforcement**

Many of the exceptions from the provisions protecting the privacy of taxpayer information have been added to facilitate tax enforcement activities. The statute has been changed to allow the exchange of tax information with the Internal Revenue Service which has generated a significant amount of revenue for the state (see a more comprehensive discussion of this program in the section entitled "Exchange of Information") and to ensure the safeguarding of federal information.

The statute has also been expanded to allow TAX to exchange information with the Department of Alcoholic Beverage Control and the Lottery Department. The exchange of information with the Lottery Department ensures that dealers applying for lottery licenses are fiscally responsible and have satisfied their state tax liability. The ability to exchange this information resulted in the collection of over \$278,000 through June 30, 1990 in tax revenue from dealers seeking lottery licenses.

The change allowing information to be exchanged with the Department of Alcoholic Beverage Control was the direct result of a yearlong study examining the feasibility of linking state licensing with tax payment. This program enables TAX and ABC to exchange information on sales reported by dealers which has not only generated revenue for TAX, but has also provided another mechanism to ensure compliance with the ABC laws.

## **Information for Administration of State Fiscal Affairs**

The second group of changes have been targeted to provide information to other state agencies to ensure compliance with a variety of state laws. Tax return information is generally accepted as the most reliable source of data for current names and addresses. This information can be extremely valuable in collecting outstanding debts owed the Commonwealth. To this end, the statute was amended to allow the disclosure of name and address data to the State Education Assistance Authority to facilitate collection on defaulted student loans.

Likewise, information contained on income tax returns relative to individuals' income can be directly linked to providing a variety of state aid. To accomplish this purpose, the statute allows disclosure of information to the Department of Social Services relative to the income of persons seeking public assistance, and to the Virginia Employment Commission not only to assist in the collection of unemployment taxes, but also to identify overpaid benefits.

The most significant amendment to the secrecy statutes was made in conjunction with the implementation of the Set Off Debt Collection Act. This program was developed to create supplemental mechanisms for the collection of delinquent debts owed to state agencies and local governments. All or a portion of any individual's income tax refund may be used to satisfy the delinquent state and local debt. The administration of this program, which has resulted in the collection of over \$52,477,000 through November 2, 1990 in state and local debts since its inception, requires that some information be exchanged between TAX and claimant agencies.

### **Enhanced Local Tax Enforcement**

The final group of changes relate to disclosure of information to improve local tax enforcement. Because of the unique role of local tax officials in assisting in the administration of state income taxes, some information disclosure is necessary.

The statutory changes have related primarily to the disclosure of non-income tax data to local governments to improve compliance with local taxes, primarily business license taxes, and to ensure the proper distribution of local revenues. TAX routinely furnishes sales and use tax data to local commissioners of the revenue and comparable officials. This information is used to verify that dealers are registered in the proper jurisdiction to ensure that the locality is properly credited for the local option sales tax. In 1990, this exception was widened to allow the disclosure of name and address information only to local chief executive officers to accommodate the variety of fiscal operating styles and structures of local governments.

### **SUMMARY**

By allowing the limited disclosure of confidential taxpayer information, the recent changes to the secrecy statute have greatly enhanced state and local tax enforcement and administration.

# OPERATION OF TAX SECRECY STATUTES

## GENERALLY

The tax disclosure provisions in Va. Code § 58.1-3 apply not only to the administration of state taxes and state tax officials, but also to local tax officials and the taxes which they administer. While the focus of this study is on the effect of disclosure statutes on state tax administration, the resulting effects on local tax administration should not be ignored.

The tax secrecy statute provides very few circumstances in which confidential taxpayer information may be disclosed. Because the statute is intended to safeguard individual privacy, it is construed in a manner which maximizes that intent. The effect of this construction is that if there is not an explicit exception to the disclosure protection within the law, information will not be disclosed.

## PROTECTED INFORMATION

Va. Code § 58.1-3 explicitly prohibits the disclosure of:

any information... with respect to the transaction, property, including personal property, income or business of any person, firm or corporation (emphasis added).

This is a very broad, very protective definition, encompassing nearly all information which TAX might hold with respect to any taxpayer, including, but not limited to:

- ◆ Taxpayer name, address and identification number
- ◆ Whether a taxpayer is registered for a particular tax
- ◆ Any information contained on a taxpayer's return
- ◆ Whether any delinquent tax is owed by a taxpayer
- ◆ Taxpayer's marital status, occupation and phone number
- ◆ Whether a taxpayer filed a return

While the statute is constructed so as not to interfere with the publication of aggregate data and statistics, it is quite broad with respect to the variety of information which is protected.

## **AUTHORIZED DISCLOSURE**

In addition to the broad definition of protected information, the secrecy statute also seriously restricts those persons to whom the information may be disclosed.

A wide range of confidential tax information can be disclosed to local revenue officials (narrowly defined as Commissioners of the Revenue, Treasurers, Directors of Finance and Supervisors of Assessments) for use in state and local tax administration provided the information is requested in writing and the need for the information is identified.

Similarly, confidential information will be provided to the courts on proper judicial order, generally a subpoena. However, any information provided to the courts is furnished in a sealed envelope which may not be opened except by order of the judge.

Va. Code § 58.1-3 does not prohibit the publication of lists of delinquent taxpayers. However, Va. Code § 58.1-3921 requires the preparation of such lists for local tax purposes. In an effort to further safeguard tax information, TAX does not compile such a list since delinquent lists are available at the local level.

Beyond these general exceptions, information may be disclosed only to the taxpayer or to a person or agency listed as an exception.

This precludes the disclosure of confidential information to members of a taxpayer's family, members of the General Assembly who may intercede on a taxpayer's behalf and other persons representing the taxpayer before TAX without the specific written permission of the taxpayer or a power of attorney form.

### **Exceptions for Specific Disclosures**

The exceptions to the general provisions of the secrecy statute have been added in great part subsequent to 1972. These are detailed above in the section "Analysis of Changes in Secrecy Statutes."

Briefly, the exceptions are listed below:

Related Primarily to Local Taxes

- 1- Furnishing sales price, construction date and physical characteristics of real property
- 2- Information contained on public assessment lists, e.g., real property value
- 3- Information on real estate assessments requested for legislative studies
- 4- Information on whether a business or individual is licensed within a locality
- 5- Local Chief Executive Officer - name and address information only with respect to sales tax dealers within a locality

Related Primarily to State Programs

Broad Information

- 1- Commissioner of Department of Social Services - information on income reported on state returns by persons seeking public assistance
- 2- Commissioner of Virginia Employment Commission - tax information, per written agreement, necessary for collection of unemployment taxes and overpaid benefits
- 3- Alcoholic Beverage Control Board - tax information, per written agreement, necessary for collection of taxes and administration of ABC laws
- 4- Director of State Lottery Department - tax information necessary to identify lottery retailers with delinquent taxes

Name/Address Information

- 1- Executive Director of State Education Assistance Authority - names and home addresses of persons defaulting on loans guaranteed by Authority
- 2- Address information to state agencies and institutions for use in collecting accounts receivable
- 3- Address information to clerks of circuit and district courts for use in collecting court fines, penalties and costs

General and Miscellaneous

- 1- Information pursuant to agreement with U.S. government allowing inspection of returns and audit data
- 2- Information pursuant to agreement with other states allowing inspection of returns and audit data
- 3- Any tax information requested in writing by local revenue officers

## ATTORNEY GENERAL OPINIONS

For purposes of this study, only those opinions issued over the last 10 years were reviewed. The Office of the Attorney General has issued 22 opinions from 1980 through the present which have cited Va. Code § 58.1-3 or its predecessor, Va. Code § 58-46. There were no significant trends as to the type of opinions being sought; however, most opinions pertained to the limitations of the exceptions being enacted.

## LOCAL DISCLOSURE

Although the statute allows for the disclosure of state tax information to local governments, there is no reciprocal authority for local disclosure to TAX. While the origin of this is rooted in the local assistance provided in the administration of state taxes, much of the state information is actually used exclusively in administering local taxes.

# EXCHANGE OF INFORMATION

Va. Code § 58.1-3 authorizes TAX to exchange tax information with the Internal Revenue Service, state and local government agencies, and other states. The exchange of information enables TAX to collect debts of the state that would otherwise be uncollectible. Without exchange of information, state revenues would be significantly less.

Internal Revenue Code § 6103(d), the federal equivalent of the Virginia secrecy statute, authorizes the Commissioner of the Internal Revenue Service to exchange tax information with state tax officials. Due to Virginia's conformity with federal income tax law, virtually all of TAX's individual income tax audit activity and a major portion of its corporate audit activity is based on information furnished by the I.R.S. under this program. During FY 89-90, \$51,510,660 in assessments were generated as the result of compliance programs based on information received from the I.R.S.

Exchange agreements with other Virginia state agencies, mostly inspired by the Set Off Debt Collection Act, have enabled Virginia revenue producing agencies to improve their collection procedures and increase state revenues. In the case of the Virginia Employment Commission and the State Education Assistance Authority, the exchange of information enables verification of those financially in need, thus reducing unnecessary state expenditures.

The exchange of information between TAX and local tax officials is generally unique among the states. This is in part attributable to Virginia's unique joint state-local administration of the individual income tax. In order to continue the joint administration of individual income tax returns, exchange of confidential tax information is a necessity.

Absent a subpoena or court order, TAX is virtually prohibited from disclosing confidential tax information to state and local law enforcement agencies. While law enforcement agencies have the authority to disclose confidential information to TAX, absent a provision that will allow TAX to disclosure information to law enforcement agencies, the cooperative working relationship among the agencies may eventually be eroded.

TAX also has the authority to enter into reciprocity agreements with tax officials of other states for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by TAX. TAX currently has agreements with 28 states and the District of Columbia (see Appendix B for a listing of those states). These agreements are extremely broad in nature and allow for the exchange of any information of a reasonable nature.

TAX also is a party to an agreement which involves the exchange of sales and use tax information between the member states of the Southeastern Association of Tax Administrators (SEATA). This agreement allows the voluntary exchange of sales and use tax information between member states and provides that any addendum to the agreement may be entered into by two or more member states. The purpose of the agreement is to encourage compliance among the member states in the sales and use tax area.

## PENALTIES

In regard to the penalty provisions, the Virginia statute provides that any person violating the provisions of the Secrecy of Information statute shall be guilty of a Class 2 misdemeanor. Currently, this is punishable by a fine of up to \$1,000 and/or imprisonment of not more than six months. In reviewing the penalty provisions of those states responding to our survey, we found the following:

<u>PENALTY</u>	<u>NUMBER OF STATES</u>
Fine of not more than \$500	3
Fine of not more than \$1,000	20
Fine of not more than \$3,000	1

Fine of not more than \$5,000	3
Fine of not more than \$10,000	1
Imprisonment of up to 6 months	2
Imprisonment of up to 1 year	14
Imprisonment of up to 2 years	2
Imprisonment of up to 3 years	1
Imprisonment of up to 5 years	4
Suspension or dismissal	7

From the information available, a fine of up to \$1000 and/or imprisonment of up to 1 year are the norm for violation of the state secrecy statutes. Therefore, the monetary penalty under Virginia's secrecy statutes is in-line with the rest of the states and the imprisonment provisions are slightly more lenient.

## **INTERACTION OF TAX DISCLOSURE STATUTE WITH VIRGINIA FREEDOM OF INFORMATION ACT**

The Virginia Freedom of Information Act (FOIA, Va. Code § 2.1-340, et. seq.) was enacted in 1968. The purpose of FOIA is to ensure the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people of the Commonwealth is being conducted. While FOIA addresses a wide array of issues and contains a number of exclusions, for purposes of this study, only the provisions of FOIA dealing directly with the disclosure of tax information will be addressed.

FOIA and the Secrecy of Information statute work hand in hand to provide a form of checks and balances for the disclosure of tax information. While the secrecy statute precludes the disclosure of confidential tax information, FOIA provides that information of concern to the public must be made available to the public. If records are excluded from FOIA and covered under the Secrecy of Information statute, the interested party must receive a written explanation as to why the records are not available with specific reference to the applicable section of the Code of Virginia.

Like the secrecy statute, many exceptions to the FOIA have been enacted throughout the years (see Va. Code § 2.1-342). Subsections (B)(3) and (B)(22) of § 2.1-342 specifically address the disclosure of tax information. Subsection (B)(3) provides that state income, business and estate tax returns, and personal property tax returns, shall not be subject to disclosure, except such returns shall not be denied to the person who is the subject thereof. Subsection (B)(22) is all inclusive and excludes from the FOIA all documents specified in Va. Code § 58.1-3, Secrecy of Information.

The dual exceptions for confidential tax information contained in FOIA appear to dovetail with the tax secrecy provisions under Va. Code § 58.1-3. Any tax information covered under the tax disclosure laws, including the vast majority of information held by TAX, is exempt from FOIA requirements.

Inasmuch as FOIA has been the subject of considerable litigation recently, there is no guarantee that arguments will not be made to attempt to secure tax information under FOIA, but there is no apparent conflict between the two statutes.

Instead, FOIA expresses the strong legislative intent that public records should be accessible to the public while the tax disclosure statutes express the equally strong sentiment that individual and business tax information is private and should remain confidential and strongly protected.

The only recent Virginia tax related FOIA litigation was the case of Associated Tax Service, Inc. v. Fitzpatrick 236 Va. 181 (1988) in which the Virginia Supreme Court held that the real estate tax amount could be disclosed without violation of the tax secrecy statutes. In its holding, the court noted that the tax disclosure statute specifically excepted “matters required by law to be entered on any public assessment roll or book” which clearly included the tax amounts requested. Given the facts of this case, it does not appear to signal any change in attitude towards the public purpose accomplished by safeguarding confidential tax information.

# **COMPARISON WITH OTHER SECRECY STATUTES**

## **INTERNAL REVENUE SERVICE**

### **GENERALLY**

Generally, the secrecy provisions relative to federal taxes (Internal Revenue Code § 6103) are comparable to those applicable to Virginia taxes.

Employees and recipients of information are prohibited from disclosure on essentially the same manner as Virginia. Also similar to the Virginia statute are the legislative exceptions deemed necessary to facilitate the overall administration of the federal government and to provide assistance in the administration of some state programs, including revenue collection.

### **AUTHORIZED DISCLOSURES**

The IRS may disclose information to the Social Security Administration and Railroad Retirement Board for the administration of payroll taxes, to the Department of Labor and Pension Benefit Guaranty Corporation for administration, to a variety of agencies charged with making federal loans, to local, state and federal agencies charged with administering child support and food stamp programs, to the office of Personnel Management to administer federal retirement programs, to the Blood Donor Locator Service and to a variety of other federal agencies. In most instances, the disclosure is limited to only that information which is essential to the purpose for which disclosure is authorized.

### **PENALTIES**

The major significant difference between the federal and state tax secrecy statutes is the level of penalties applicable to violation. While Virginia law provides a misdemeanor penalty, Internal Revenue Code § 7213 makes disclosure of federal tax information a felony punishable by not more than 5 years in prison and a \$5,000 fine.

## OTHER STATES

The Virginia tax disclosure statutes were also examined in comparison with those of other states and the District of Columbia.<sup>(1)</sup> All other taxing jurisdictions have specific laws regarding disclosure of confidential tax information. In addition, all states also have Freedom of Information legislation, and in all instances, confidential tax information is excluded from FOIA provisions, i.e., afforded greater protection from public disclosure.

In comparing Virginia's law to that of other states, three factors need to be considered:

- 1- Virginia's unique system of local involvement in state tax administration
- 2- The existence of the Virginia Set-Off Debt Collection program which is not duplicated in most states, and
- 3- The programmatic similarities of other states, e.g., do other states have state controlled ABC stores or state lotteries.

Each of these three factors contributes to the general conclusion that Virginia's secrecy statutes are less restrictive in total. Consequently, the following discussion focuses primarily on those issues which are common among states.

### PROGRAMMATIC DISCLOSURE

Focusing only on disclosures for administration of common state and local programs, Virginia's disclosure law contains exceptions which are not common to other states. For example, only 26% of the other jurisdictions allow disclosure for student loan and unemployment tax collection purposes and only 21% allow disclosure for purposes of determining eligibility for public assistance.

While only 10% of the jurisdictions had statutory authorization for exchange of information for compliance with ABC laws, 11 of the 15 responding states with state-controlled liquor stores do allow such an exchange.

(1) The analysis was conducted via a survey of all taxing jurisdictions. (See Appendix C for a tabulated copy of the questionnaire.) A response rate of 68% was adequate for a representative comparison.

## **DISCLOSURE TO PUBLIC OFFICIALS**

States are nearly evenly divided with respect to their ability to disclose confidential taxpayer information to nontax state officials, such as legislative committees. Virginia does not allow such disclosure, but 41% of the jurisdictions do.

## **DISCLOSURE TO INTERNAL REVENUE SERVICE**

95% of all jurisdictions allow the exchange of confidential information with the Internal Revenue Service.

## **SUMMARY**

Virginia's current tax secrecy provisions are generally equivalent to those of most other states. While Virginia allows significantly more disclosure of confidential information to localities, this is directly connected with local assistance in the administration of state taxes.

Virginia's law does appear to be slightly broader in terms of disclosure for administration of non-tax state programs, but is consistent with federal provisions in this regard.

## **RECOMMENDATIONS**

The limited exceptions authorizing the disclosure of the information protected by the secrecy provisions of Va. Code § 58.1-3, have been enacted with the goal of enhancing state and local tax enforcement and administration. Any future changes to the secrecy of information statutes should be made only after careful consideration of their impact. Each additional exception that allows the disclosure of this information provides additional chances for an unauthorized disclosure to occur.

While the authorized disclosures certainly benefit both the state and localities, these benefits are not without costs. The costs to TAX for providing this information and the costs to the recipient of the information, associated with maintaining the confidentiality of the information, are other important considerations.

The secrecy of information provisions of Va. Code § 58.1-3 provide strong safeguards to protect confidential taxpayer information. The confidentiality of this information must be preserved to ensure continued voluntary compliance with our tax laws.

Specifically, the following recommendations should be considered:

**RECOMMENDATION 1:**

Va. Code § 58.1-3 should be amended to allow local revenue officials to disclose information to TAX on written request.

This change would make the exchange of information process consistent with that which exists with the Internal Revenue Service and other states. Further, it would create an equal exchange process between the state and its localities.

**RECOMMENDATION 2:**

Further broadening of the secrecy statute by the enactment of additional exceptions should be considered in the context of the absolute necessity of the information for the administration of public programs.

The disclosure of tax information should not be authorized simply as a facilitative process. Confidential tax information should not be disclosed in those instances where other access to the same information is available from the individual or another source. For example, copies of tax returns, which can be obtained from the taxpayer, should not be excepted from the secrecy protection in other than extraordinary circumstances. Under current law, the programmatic need for this information can be accomplished either through the judicial process or through the clear articulation of the penalties for submitting false or fraudulent documents.

**RECOMMENDATION 3:**

Future exceptions to the secrecy statute should be carefully examined using the following criteria:

- 1- The degree to which ensuring the confidentiality of the information in the hands of the recipient can be guaranteed
- 2- The cost of providing the information vs. the benefits of its receipt
- 3- The public purpose for which the information is intended.

#### **RECOMMENDATION 4:**

Section 2.1-342(22) of the Virginia Freedom of Information Act specifically exempts "documents as specified in § 58.1-3." In light of the fact that § 58.1-3 does not refer to "documents," it is recommended that § 2.1-342(22) be amended to replace "documents specified in" with "official records contemplated by."

#### **RECOMMENDATION 5:**

The Freedom of Information Act should be examined further to ensure that it does not contravene the protection afforded to confidential tax information under Va. Code § 58.1-3.

1990 SESSION

LD4272137

1                   **SENATE JOINT RESOLUTION NO. 128**  
2                   **AMENDMENT IN THE NATURE OF A SUBSTITUTE**

3                   (Proposed by the Senate Committee on Rules  
4                   on February 9, 1990)

5                   (Patron Prior to Substitute—Senator Walker)

6 *Requesting the Department of Taxation to study the laws relating to the secrecy of tax*  
7 *information.*

8       WHEREAS, the policy of the Commonwealth is to protect the disclosure of citizens' tax  
9 records under the secrecy of information provisions of the Virginia Tax Code; and

10       WHEREAS, these provisions prohibit the Tax Commissioner and local tax officials and  
11 employees from disclosing any tax information acquired during the performance of official  
12 duties except in specific cases; and

13       WHEREAS, the statutory language relating to the scope of the secrecy provisions, the  
14 exemptions and the meaning of certain provisions is often ambiguous, and the current  
15 statute appears to be a battleground for litigation unless certain provisions are clarified;  
16 and

17       WHEREAS, confusion has resulted among tax officials and the general public because of  
18 inconsistent interpretations and administration of the secrecy of tax information provisions  
19 in relation to the Freedom of Information Act; and

20       WHEREAS, the provisions of § 58.1-3 and related provisions under the Freedom of  
21 Information Act should be examined to ensure consistency and equity among state and  
22 local tax officials in administering the Commonwealth's policy of protecting the  
23 confidentiality of tax records, in conjunction with the policy of ensuring that citizens have  
24 access to records in the custody of public officials; now, therefore, be it

25       RESOLVED by the Senate, the House of Delegates concurring, That the Department of  
26 Taxation is requested to study the provisions of § 58.1-3 of the Code of Virginia relating to  
27 the secrecy of tax information and the scope of its application.

28       Agencies of the Commonwealth shall provide assistance upon request as the Department  
29 may deem appropriate.

30       The Department shall complete its work in time to submit its findings and  
31 recommendations to the Governor and the 1991 Session of the General Assembly in  
32 accordance with the provisions of the Division of Legislative Automated Systems for  
33 processing legislative documents.

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# **APPENDIX B**

## **EXCHANGE OF INFORMATION AGREEMENTS**

The State of Virginia has Exchange of Information Agreements with the following states:

Alabama	Mississippi
Arizona	Nebraska
Arkansas	New Jersey
Delaware	New Mexico
District of Columbia	New York
Florida	North Carolina
Georgia	Oklahoma
Illinois	Pennsylvania
Indiana	South Carolina
Kentucky	Tennessee
Louisiana	Texas
Maryland	Utah
Massachusetts	West Virginia
Michigan	Wisconsin
Minnesota	

APPENDIX C

COMPARISON WITH OTHER TAX SECRECY LAWS

Other States

Surveys were sent to all 49 states and the District of Columbia requesting information concerning the Secrecy of Information and the Freedom of Information statutes within such states. Responses were received from 34 states. Below is a tabulation of the survey results. A copy of the actual survey can be found in Appendix C.

TABLE 1

SURVEY RESULTS

1. Does your state law specifically safeguard confidential taxpayer information from disclosure by state and local tax officials outside the line of duty?

YES    100%                      NO    \_\_\_\_\_

2. Does your law routinely allow for disclosure of confidential taxpayer information to state or local government agencies for use in performance of their duties?

YES    29%                      NO    71%

If not, are exemptions provided for information requested in the course of:

	<u>YES</u>	<u>NO</u>
Law enforcement activities	<u>42%</u>	<u>58%</u>
Licensing of professionals regulated by the state	<u>15%</u>	<u>85%</u>
Student loan collection	<u>26%</u>	<u>74%</u>
Verification of income for public assistance benefits	<u>21%</u>	<u>79%</u>
Collection of court cost or fines	<u>10%</u>	<u>90%</u>
Collection of unemployment taxes	<u>26%</u>	<u>74%</u>
Verification of sales for purposes of alcoholic beverage licensing or control	<u>10%</u>	<u>90%</u>
Set-off of lottery winnings for delinquent taxes	<u>21%</u>	<u>79%</u>
Set-off of vendor payments for delinquent taxes	<u>26%</u>	<u>74%</u>

3. Does your law routinely allow confidential tax information to be disclosed by state tax officials to local tax officials for use in the performance of their duties?

YES 44% NO 56%

4. Does your law routinely allow confidential tax information to be disclosed by local tax officials to state tax officials for use in the performance of their duties?

YES 32% NO 50% N/A 18%

5. Does your law allow confidential tax information to be furnished to nontax state government officials, i.e., Governor, legislative tax committees, etc.?

YES 41% NO 59%

6. Does your law allow confidential tax information to be furnished to nontax local government official, i.e., county or city managers, council or board members?

YES 5% NO 95%

7. Does your law allow state tax officials to provide confidential tax information to the Internal Revenue Service?

YES 95% NO 5%

8. Does your law allow local tax officials to provide confidential tax information to the Internal Revenue Service?

YES 23% NO 50% N/A 27%

9. Is the release of confidential tax information limited in any way, i.e., must request be in writing, must requestor state specific reason for request, etc.?

YES 73% NO 20% N/A 7%

10. Does your state law permit the publication of lists of delinquent taxpayers?

YES 20% NO 80%

If yes, are list of delinquent taxpayers actually published?

YES 71% NO 29%

11. Has a Freedom of Information Act been enacted in your state?

YES 58% NO 42%

12. If a Freedom of Information Act has been enacted in your state, is confidential taxpayer information generally exempt from disclosure?

YES 100% NO \_\_\_\_\_

13. Under a Freedom of Information Act, may the terms of an administrative adjustment to a taxpayer's account be disclosed?

YES \_\_\_\_\_ NO 100%