

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 437 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/6/07

A Bill

SENATE BILL 849

5 By: Senator Trusty
6 By: Representative Lovell
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For An Act To Be Entitled

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10 AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 26-18-
11 303 TO ALLOW THE ARKANSAS DEPARTMENT OF ECONOMIC
12 DEVELOPMENT TO OBTAIN FROM THE DEPARTMENT OF
13 FINANCE AND ADMINISTRATION INFORMATION RELATED TO
14 ECONOMIC DEVELOPMENT INCENTIVES; AND FOR OTHER
15 PURPOSES.
16

Subtitle

17
18 TO ALLOW THE DEPARTMENT OF ECONOMIC
19 DEVELOPMENT TO OBTAIN FROM THE
20 DEPARTMENT OF FINANCE AND ADMINISTRATION
21 INFORMATION ON ECONOMIC DEVELOPMENT
22 INCENTIVES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Annotated § 26-18-303 is amended to read as
28 follows:

29 26-18-303. Records confidential and privileged - Exceptions.

30 (a)(1) The Director of the Department of Finance and Administration is
31 the official custodian of all records and files required by any state tax law
32 to be filed with the director and is required to take all steps necessary to
33 maintain their confidentiality.

34 (2)(A)(i) Except as otherwise provided by this chapter, the
35 records and files of the director concerning the administration of any state



1 tax law are confidential and privileged.

2 (ii) These records and files and any information
3 obtained from these records or files or from any examination or inspection of
4 the premises or property of any taxpayer shall not be divulged or disclosed
5 by the director or any other person who may have obtained these records and
6 files.

7 (B) It is the specific intent of this chapter that all tax
8 returns, audit reports, and information pertaining to any tax returns,
9 whether filed by individuals, corporations, partnerships, or fiduciaries,
10 shall not be subject to the provisions of the Freedom of Information Act of
11 1967, § 25-19-101 et seq.

12 (b) The provisions against disclosures shall not apply to the
13 following:

14 (1) Publication of statistics by the director classified to
15 prevent the identification of a particular taxpayer;

16 (2) Use of the information in records filed under any state tax
17 law by the director when conducting any audit or investigation of any
18 taxpayer in regard to any state tax;

19 (3)(A) Disclosure of information to the Attorney General of this
20 state, any prosecuting attorney, or any other individual who is empowered by
21 law to prosecute criminal and civil violations of any state tax law when the
22 director initiates the investigation.

23 (B) If the prosecution is initiated by the Attorney
24 General or a prosecuting attorney, the director shall not disclose any
25 information unless required by subpoena issued by a circuit court.

26 (C) Information may be introduced as evidence by the
27 Attorney General, a prosecuting attorney, or other individual so empowered
28 when the individual is prosecuting any civil or criminal violation of state
29 tax law;

30 (4) Disclosure compelled by any Arkansas circuit court or the
31 Supreme Court or by any federal court of information involved in any case or
32 controversy before that court;

33 (5) Disclosure by the taxpayer or the taxpayer's authorized
34 agent or by the director, at the taxpayer's request, of any information which
35 the director has concerning that taxpayer;

36 (6) Disclosure by the director, at the director's discretion, of

1 information from the records of any state tax law to comparable officials of
2 any other state or the United States who are charged with the administration
3 of a similar tax;

4 (7) Disclosure of motor vehicle titling and registration
5 information, all licenses and permits issued to owners and operators of coin-
6 operated amusement machines pursuant to §§ 26-57-402, 26-57-408 - 26-57-421,
7 and 26-77-303, and tax records, files, and other information relating to
8 sales of aviation fuel at airports and other aviation fuel outlets;

9 (8) Disclosure of information other than income tax information
10 at an administrative hearing held regarding the issuance, cancellation,
11 revocation, or suspension of licenses or permits issued by the director or
12 any other state agency or department;

13 (9)(A) Disclosure to the Arkansas Student Loan Authority, the
14 Department of Higher Education, the Student Loan Guarantee Foundation of
15 Arkansas, or any Arkansas public institution of higher education of the last
16 known address or whereabouts or the last known employer of any person from
17 whom these agencies are charged with collecting a student loan or other
18 student indebtedness.

19 (B) In providing such information, the director shall not
20 allow the Arkansas Student Loan Authority, the Student Loan Guarantee
21 Foundation of Arkansas, the Department of Higher Education, or any Arkansas
22 public institution of higher education to examine the tax return;

23 (10)(A) In order to ensure proper payment to vendors by all
24 agencies of state government or by county governments or city governments,
25 information about the receipt or nonreceipt of sales tax permits by vendors
26 must be made available by the director upon request by these agencies of
27 state government or by county governments or city governments.

28 (B) Therefore, notwithstanding any provision of this
29 chapter or any other law to the contrary, in instances when state agencies,
30 boards, commissions, and other branches of state government or county
31 governments or city governments identify to the director the identity of
32 vendors receiving payments and ask the director whether these vendors have
33 been issued sales tax permits, the director shall answer these inquiries;

34 (11) Disclosure of the name of any taxpayer and the amount of
35 any tax credit, tax rebate, tax discount, or commission for the collection of
36 a tax received by such taxpayer from the following tax incentive provisions:

- 1 (A) Discount for prompt payment, § 26-52-503;
- 2 (B) Economic Investment Tax Credit Act, § 26-52-701 et
- 3 seq.;
- 4 (C) Steel Mill Tax Incentives, §§ 26-52-901 - 26-52-903
- 5 ~~and 15-4-1101 et seq.~~;
- 6 (D) Motor fuel shrinkage allowance, § 26-55-230(a)(1)(F);
- 7 (E) Commission for sale of stamps for cigarettes and the
- 8 collection of cigarette taxes, § 26-57-236(g), as amended by Acts 1997, No.
- 9 434;
- 10 (F) Motion Picture Incentive Act of 1983, § 26-4-201 et
- 11 seq.;
- 12 (G) Credit on severance tax of oil producer, § 26-58-204;
- 13 (H) Credit on severance tax of gas producer, § 26-58-205;
- 14 (I) Refund of motor fuel tax by municipal buses, § 26-55-
- 15 401 et seq.;
- 16 (J) Refund of distillate special fuel tax to interstate
- 17 users, §§ 26-56-214 and 26-56-215;
- 18 (K) Credit against severance tax for the discovery of a
- 19 commercial oil pool, § 15-72-706;
- 20 (L) Native wines - Subsidies, § 3-5-1001 et seq.;
- 21 (M) Native wines - Incentive grants, § 3-5-901 et seq.;
- 22 (N) Native wines export incentives, § 3-5-607; ~~and~~
- 23 (O) Consolidated Incentive Act of 2003, § 15-4-2701 et
- 24 seq.; and
- 25 ~~(O)~~(P)(i) Any other tax incentive program enacted after
- 26 January 1, 1991, that provides a tax credit, tax rebate, tax discount, or
- 27 commission for the collection of a tax, with the exception of any benefits
- 28 under the income tax laws of this state.
- 29 (ii) However, information that is subject to
- 30 disclosure under the provisions of this subdivision (b)(11) shall not be
- 31 disclosed if such information would give an advantage to competitors or
- 32 bidders or if such information is exempt from disclosure under any other
- 33 provision of law that exempts specified information from disclosure under any
- 34 such law;
- 35 (12) Disclosure of the lists required by:
- 36 (A) Section 3-2-205(e)(4), reporting to the Alcoholic

1 Beverage Control Division of the Department of Finance and Administration and
2 the Alcoholic Beverage Control Board those taxpayers who hold a permit to
3 sell alcoholic beverages and who are delinquent in state taxes; and

4 (B) Section 26-57-257(q)(2), reporting to the Arkansas
5 Tobacco Control Board those taxpayers who hold a permit to sell tobacco
6 products and cigarettes and who are delinquent in state taxes;

7 (13) Disclosure to the Tax Division of the Arkansas Public
8 Service Commission of information contained in motor fuel tax records
9 necessary to assess motor carrier companies for ad valorem taxation;

10 (14) Disclosure of the following information from corporate
11 franchise tax reports:

12 (A) The name and address of the corporation;

13 (B) The name of the corporation's president, vice
14 president, secretary, treasurer, and controller;

15 (C) The total authorized capital stock with par value;

16 (D) The total issued and outstanding capital stock with
17 par value; and

18 (E) The state of incorporation;

19 (15) Disclosure compelled by a subpoena issued by a state or
20 federal prosecutor or grand jury or other state or federal entity with
21 subpoena power;

22 (16)(A) Disclosure to county tax assessors of information that
23 may affect personal property tax assessments, including information obtained
24 during the course of audits or investigations concerning motor vehicles,
25 boats, trailers, airplanes, or other items of personal property that may be
26 subject to assessment in that county.

27 (B) This information may be released only following
28 completion of an audit or investigation by the director and following a
29 determination by the director that there is a strong possibility the taxpayer
30 has failed to properly assess the taxpayer's personal property in the county.

31 (C) In providing this information, the director shall not
32 allow the county tax assessors to examine any tax returns or audit records;

33 (17) Disclosure to a capital development company organized under
34 the Arkansas Capital Development Company Act, § 15-4-1001 et seq., of the
35 name and tax identification number of and amount of any tax credit received
36 by a taxpayer as a result of the purchase of an equity interest in a capital

1 development company; ~~and~~

2 (18)(A) For the purpose of timely and accurate collection of
3 local sales and use tax, disclosure of the name and address of a taxpayer
4 that has failed three (3) times within any consecutive twenty-four-month
5 period to either report or remit state or local gross receipts or
6 compensating use tax and has been served with a business closure order
7 pursuant to § 26-18-1001 et seq.

8 (B) Disclosure shall be made by posting weekly on the
9 website maintained by the Department of Finance and Administration the
10 business name, business address, and city and county in which the business is
11 located as it appears on the sales tax permit of each taxpayer identified in
12 subdivision (b)(18)(A) of this section.

13 (C) The information posted on the website for a taxpayer
14 shall remain on the website until that taxpayer is no longer subject to the
15 business closure provisions of § 26-18-1001 et seq.; and

16 (19)(A) Disclosure to the Arkansas Department of Economic
17 Development of any information requested regarding a tax incentive program
18 that provides a tax credit, tax rebate, tax discount, or other economic
19 incentive that is jointly administered by the Arkansas Department of Economic
20 Development and the Department of Finance and Administration.

21 (B) Any information received by the Arkansas Department of
22 Economic Development pursuant to this section shall remain confidential and
23 is not subject to disclosure except in accordance with this section.

24 (c) The provisions of this section shall be strictly interpreted and
25 shall not permit any other disclosure of tax information concerning a
26 taxpayer, whether the taxpayer is an individual, a corporation, a
27 partnership, or a fiduciary, that is contained in the records and files of
28 the director relating to income tax or any other state tax administered under
29 this chapter.

30 (d)(1) Any person who knowingly discloses information in violation of
31 a provision of this section shall be guilty of a Class A misdemeanor.

32 (2) An employee of the state who is convicted of violating a
33 provision of this section shall be discharged from employment in addition to
34 any fine or imprisonment.

35 (e) Any person who knowingly obtains or attempts to obtain any of the
36 confidential and privileged records and files of the director who is not so

1 permitted by law is guilty of a Class A misdemeanor.

2 (f) The director shall report all violations of this section to the
3 appropriate prosecuting attorney in this state.

4 (g)(1) The director shall promulgate such regulations as are necessary
5 to establish a reasonable procedure for making requests for and release of
6 information under subdivision (b)(11) of this section, for allowing a
7 taxpayer reasonable notice in advance of the release of the requested
8 information, for a period of time up to seven (7) days from the date a
9 request for information is made to provide notice and make necessary
10 determinations, and to provide the methods by which the director shall
11 determine if the information requested is subject to disclosure under
12 Arkansas law.

13 (2) The provisions of this section shall solely govern the
14 release of information under subdivision (b)(11) and the release of
15 information shall not be subject to the Freedom of Information Act of 1967, §
16 25-19-101 et seq.

17 (h)(1) Upon the request of a county government or a city government,
18 the Director of the Department of Finance and Administration shall provide a
19 list of vendors within the requesting county or city who hold permits issued
20 pursuant to the Arkansas Gross Receipts Act of 1941, § 26-52-201 et seq.

21 (2) Requests made pursuant to this subsection must be made in
22 writing by an official of the county government or city government prior to
23 August 1 of the calendar year for which the list is requested.

24 (3) Lists provided pursuant to the provisions of this subsection
25 will be made available following October 1 of the year requested and will be
26 compiled from the list of all valid sales tax permit holders within the
27 requesting county or city as of September 1 of the year requested.

28 (4)(A) A reasonable fee based upon the number of permit holders
29 within the requesting city or county may be charged for the permit search
30 made and reported to the requesting county or city government.

31 (B) Fees collected under the provisions of this subsection
32 shall be deposited in the State Central Services Fund to be treated as a
33 refund of expenditures to reimburse the Department of Finance and
34 Administration for the costs of providing the requested information.

35 (i)(1) The director may disclose information from a return filed by a
36 person, partnership, corporation, trust, or estate to any of the parties who

1 signed the return:

2 (A) Who is the administrator, executor, or trustee of the
3 estate filing the return;

4 (B) Who was a member of the partnership filing the return
5 during any part of the period covered by the return;

6 (C) Who is a trustee or beneficiary of the trust filing
7 the return;

8 (D) Who is an officer or bona fide shareholder of record
9 owning one percent (1%) or more of the outstanding stock of the corporation
10 filing the return;

11 (E) Who was a shareholder during any part of the period
12 covered by the return filed by a subchapter S corporation;

13 (F) Who was a member of the partnership during any part of
14 the period covered by the partnership return; or

15 (G) Who is the attorney in fact duly authorized in writing
16 by any of the persons described in subdivisions (i)(1)(A)-(F) of this
17 section.

18 (2) The director may also disclose all information concerning
19 the collection activity related to a tax return to any party who signed the
20 return.

21 (3) The director shall promulgate such regulations as are
22 necessary to establish a reasonable procedure for making requests for and for
23 the release of information under this section.

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/s/ Trusty

APPROVED: 3/22/2007