

House Revenue Committee

February 11, 2013

Questions during HB 2232 Public Hearing

Prepared by Deanna Mack, Agency Legislative Coordinator, February 14, 2013

Representative Barnhart:

Why were corporate tax returns, or even tobacco or other entity type returns, ever “secret” in the first place?

The history on why tax returns are protected goes back years. While we do not find anything that specifically answers your question as to why they were protected in the first place, we did find some information provided by the Office of Tax Policy, Department of the Treasury from October of 2000 that gives a good history of why tax returns are private. It appears that prior to the 1970s return information was shared regularly under guidance of the Secretary. In the aftermath of the Watergate scandal and due to public concern about the widespread use of tax information by government agencies for purposes unrelated to tax administration, Congress enacted IRC section 6103 which has largely remained unchanged since 1976. We’ve attached a link to the federal document that highlights the reasons why Congress shifted from releasing the information in most cases to protecting the information in most cases. See *Part Two—History and Overview of Relevant Laws* beginning on page 15 for the most relevant information.

www.treasury.gov/resource-center/tax-policy/Documents/confide.pdf

In Oregon the disclosure statute, while initially enacted in 1957 was heavily modified in the early seventies, concurrent with the publicity at the federal level. The Administrative Rule for our disclosure statute (OAR 150-314.835) sheds some light on the thought process about protecting returns at the time it was adopted. The rule discusses how essential privacy is to encouraging voluntary reporting and payment of taxes and to assure taxpayers that they will not suffer any adverse consequences of being frank and honest on their return. This is consistent with the above discussion of how the IRS protects returns and return information as well under IRC Section 6103.

While this information is anecdotal and from the point of view of the taxpayer, we believe that corporate or other entity returns are confidential because if those returns were made public it could pose certain financial risks to the company if disclosed. Entity returns typically contain the following types of information:

- Trade secrets or other proprietary information,
- Information about privately held companies,
- Shareholder data and individual ownership information,
- Names of individuals and addresses,
- Tax identification numbers such as Social Security numbers of members/shareholders/partners or the entity’s FEIN,
- Financial data such as stock ownership, real property ownership, etc.

Additionally, we believe that returns that taxpayers who previously filed returns containing information/income from an illegal activity or the underground economy would likely not file those

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returns or report that income any longer. Finally, some of the information contained on returns could pose a safety issue if sensitive or personal information is disclosed.

If the legislature chooses to make corporate/entity returns available to the public, the returns would need to be heavily redacted to conform to federal laws such as HIPAA (medical info), FERPA (higher education), OR Consumer Identity Theft Protection Act, Privacy Act of 1974, and IRC 6103.

If corporate/entity returns were made available to the public, the department would likely need additional resource to redact information. Shareholder information that would need to be redacted from corporate returns is voluminous. Additionally, the department may need to make public documents collected during an audit since those documents are part of the return. It may make it more difficult to obtain underlying documents that establish the veracity of a return if the information can be made public. Lastly, by permitting corporate/entity returns to be shared with the public, it increases the risk of IRS information being disclosed. If IRS information is inadvertently disclosed, the agency could be at risk of losing access to the federal information which could hamper our ability to enforce tax compliance.