



PENNSYLVANIA PERSONAL INCOME TAX GUIDE

CHAPTER 2: PERSONAL INCOME TAX INFORMATION SECURITY

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	GENERAL RULE FOR PENNSYLVANIA TAX INFORMATION.....	2
III.	“OFFICIAL PURPOSES” EXCEPTION	3
IV.	OTHER EXCEPTIONS TO GENERAL RULE	3
V.	FEDERAL INCOME TAX RETURNS AND RETURN INFORMATION SECURITY	6

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

CHAPTER 2: PERSONAL INCOME TAX INFORMATION SECURITY

I. INTRODUCTION

The self-assessment feature is an essential component of Pennsylvania's personal income tax. The Department of Revenue is acutely aware that, to foster this feature, the public must maintain the highest degree of confidence that any personal and financial information furnished to the Department is protected against unauthorized use, inspection or disclosure. Accordingly, there are significant statutory constraints on the Department's use of tax information.

II. GENERAL RULE FOR PENNSYLVANIA TAX INFORMATION

Generally, it is unlawful for any officer, employee or agent of the Commonwealth to –

- Divulge or to make known in any manner whatever to any person (including other officers, agents or employees of the Commonwealth), the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return made pursuant to or under color of Article III of the Tax Reform Code ("TRC"), or
- Permit any return made pursuant to or under color of Article III of the TRC or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person (including other officers, agents or employees).

It is also unlawful for any person (including an officer, agent or employe of the Commonwealth) to print or publish in any manner whatsoever, any return made pursuant to or under color of Article III of the TRC or any part thereof or source of income, profits, losses or expenditures appearing in any such return.¹

Moreover, it is unlawful to divulge or make known—

- Any information gained by any administrative department, board, or commission, as a result of any returns, investigations, hearings or verifications required or authorized under the statutes of the Commonwealth imposing taxes for State purposes, or providing for the collection of the same.²
- Any Federal tax information obtained from the Federal Government.³

¹ 72 P.S. §7353(f)

² 72 P.S. §731

³ IRC §6103

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

III. "OFFICIAL PURPOSES" EXCEPTION

Nothing prohibits the divulging or making known of information gained by any administrative department, board, or commission, as a result of any returns, investigations, hearings or verifications required or authorized under the statutes of the Commonwealth imposing taxes for State purposes, or providing for the collection of the same, for official tax administration or tax collection purposes of the Commonwealth.

"Official purposes," however is limited to official tax administration or tax collection purposes. Such information cannot lawfully be used for other purposes (including even a purpose within the statutory powers of a state agency or an investigation of criminal activity by the Attorney General, a district attorney, the Crime Commission or the General Assembly).⁴

IV. OTHER EXCEPTIONS TO GENERAL RULE

There currently are only thirteen other exceptions to the general rule set forth in Part III.

A. Liens Filed Of Record

Information regarding unpaid taxes shown in liens filed of record in a prothonotary's office because of unpaid tax is not confidential.⁵

B. Delivery To Taxpayer

The delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his tax is permitted.⁶

C. Delivery With Consent Of Taxpayer

The delivery of a certified copy of any return filed in connection with a taxpayer's tax to a third party is permitted when the Department has in its possession a statement signed by the taxpayer authorizing the Department to deliver the same thereto.⁷

D. Inspection By Legal Representatives Of The Commonwealth

The inspection by the Attorney General or other legal representatives of the Commonwealth of the return of any taxpayer who shall bring action to review the tax based thereon or against whom an action or proceeding has been instituted for the collection or recovery of any tax imposed by Article III of the TRC is permitted.⁸

⁴ 42 Pa. C.S.A. §8721 et seq.

⁵ Note: As the law is unclear respecting information regarding unpaid taxes shown in liens filed of record *in the Department*, it is the policy of the Department not to make them known except for tax collection purposes.

⁶ 72 P.S. §7353(g)

⁷ 1990 Op.Atty.Gen. No. 90-1.

⁸ 72 P.S. §7353(g)

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

E. Where The Department Of Revenue Is A Party In An Action Or Proceeding In Court Under The Provisions Of Article III Of The TRC

It is lawful for any officer or employe of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in any action or proceeding in any court on behalf of the Department of Revenue under the provisions of Article III of the TRC to which it is a party, or on behalf of any party to any action or proceeding under the provisions of article III of the TRC, when the returns or facts shown thereby are directly involved in such action or proceeding. In either of which events, the court may require the production of and may admit in evidence so much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more.⁹

F. Other Actions, Proceedings Or Matters

Except as provided in Part IV. (E), it is unlawful for any officer or employe of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in actions or proceedings without the consent of the taxpayer or unless pursuant to a court order.¹⁰

The Department may release personal income tax information pursuant to a court order only if the taxpayer whose information is sought is provided an opportunity to show cause why the information ought not be released. A subpoena for personal income tax information is legally insufficient.

G. Cooperation With Other Governmental Agencies

1. Officers and employees of the Department of Revenue may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any political subdivision of this Commonwealth or of any other state imposing tax based upon the incomes of individuals, or the authorized representative of such officer, to inspect the tax returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer, or supply him with information concerning any item of income contained in any return of any taxpayer.

Except as provided in the following paragraph, such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this Commonwealth charged with the administration of the personal income tax law thereof.¹¹

⁹ *Ibid.*

¹⁰ 1990 Op.Atty.Gen. No. 90-1

¹¹ 72 P.S. §7356

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

2. Where the department has entered into an agreement with the taxing authorities of any state that imposes a tax on or measured by income to provide that compensation paid in such state to residents of this Commonwealth shall be exempt from such tax, the department, in such agreements, may provide for an exchange of information.

H. Information Regarding Refunds Or Credits And The Names Of The Persons Or Corporations Entitled Thereto

Information regarding refunds or credits in excess of \$200 and the names of the persons entitled thereto, is not confidential. Accordingly, the contents of the refund docket of the Board of Appeals and Board of Finance and Revenue are not confidential information respecting such information. The contents of their review and refund dockets, however, are otherwise confidential.¹²

I. Statistical Publications

The publication of statistics so classified as to prevent the identification of particular returns and the items thereof is permitted.

J. PHEAA

The delivery to the Pennsylvania Higher Education Assistance Agency of a certified copy or extract of any State income tax return requested by the agency for use in determining the eligibility of applicants for State grants is permitted when the Executive Director of the agency certifies that the agency has in its possession a statement signed by the applicant and his parent, parents, guardian or guardians, as the case may be, authorizing the agency to obtain a certified copy or extract of any State income tax return from the Department of Revenue.¹³

K. School Districts Imposing A Personal Income Tax

The Department of Revenue is expressly authorized to permit the proper officer or an authorized agent of a school district imposing a personal income tax to inspect the tax returns of any taxpayer of the school district or may furnish to the officer or an authorized agent an abstract of the return of income of any current or former resident of the school district, or supply information concerning any item of income contained in any tax return. The officer or authorized agent of the school district imposing the personal income tax shall be furnished the requested information upon payment to the Department of Revenue of the actual cost of providing the requested information.

Note: this exception is applicable only if the taxpayer has designated the school district as having been his place of legal residence on the taxpayer's tax return, either for the returnable year or for a prior returnable year.

¹² 1988 Op.Atty.Gen. No. 88-3.

¹³ 72 P.S. §7353(g).

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

L. Total Personal Income Of School Districts

The Department is authorized and required to release to the Secretary of Education the total amount of personal income of each school district.¹⁴ This information is used by the Department of Education to determine the amount of State subsidies to individual school districts.

The Department is also authorized to supply to each school district a listing of the names and addresses of each person who has filed a State income tax return with the Department of Revenue for the tax year preceding the immediate prior year and designated thereon the code number indicating that the taxpayer was a resident of the school district at the close of the tax year for which the return was filed.¹⁵

M. Absent Parents

Information collected as a result of the use of tax records of an absent parent may be released to the Secretary of Public Welfare or his designees in writing as provided by Federal law relating to the disclosure of Federal tax information.¹⁶

V. FEDERAL INCOME TAX RETURNS AND RETURN INFORMATION SECURITY

The self-assessment feature is also an essential component of the Federal income tax. Accordingly, there are also significant constraints on the Department's use of Federal Tax Information ("FTI"). They are set forth in IRC §6103 and explained in Federal Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies and Entities*. Federal requirements are outlined below.

A. Definitions

1. "Return"

IRC §6103 uses the term "return" to denote all of the following:

- i. Any tax or information return;
- ii. Any declaration of estimated tax;
- iii. Any claim for refund; and
- iv. Any amendment or supplement to items i, ii, or iii, including supporting schedules, attachments, or lists which are supplemental thereto or part thereof.

¹⁴ 24 P.S. §25-2514.1

¹⁵ *Ibid.* That section also authorizes, but does not require, the school district to disclose that return information to the school district it claims should properly have received the information.

¹⁶ 23 Pa. C.S.A. §4373

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

2. "Return Information"

The term "return information" is broadly defined in IRC §6103 to mean--

- i. A taxpayer's identity;
- ii. The nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments;
- iii. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;
- iv. Any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
- v. Any part of any written determination or any background file document relating to such written determination (as such terms are defined in IRC §6110(b)) which is not open to public inspection under IRC §6110; or
- vi. Any closing agreement under IRC §7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

The term takes in not only the information that appears on a tax or information return, declaration of estimated tax or claim for refund (*i.e.*, "the information on a return") but also—

- Any information gained in verifying the accuracy of a tax or information return, declaration of estimated tax or refund claim or other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to the same, as well as
- Data received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury *wholly without respect to a "return"* for the purpose of determining the existence, or possible existence, of liability (or the amount thereof) of any person for any Federal income tax, penalty, interest, fine, forfeiture, or other imposition.¹⁷

¹⁷ The only information not covered by the definition is information that is gained at a hearing required or authorized under the IRC.

PENNSYLVANIA PERSONAL INCOME TAX GUIDE

B. General Rule For State Officers And Employees

FTI may be obtained by State tax agencies only to the extent the information is needed for, and is reasonably expected to be used for, State tax administration and/or the administration of State and local child support enforcement programs. Accordingly, although Pennsylvania law permits access to State tax information by PHEAA, the Department of Education, and school districts, they are not permitted access to FTI. State tax agencies also are not permitted to furnish FTI to political subdivisions, such as cities or counties, for any purpose, including tax administration (but see Part V.C).¹⁸

Even among officers and employees of the Department, access to FTI must be strictly on a need-to-know basis. Therefore, as a condition of receiving FTI, a State must show, to the satisfaction of the IRS, the ability to secure and protect the confidentiality of that information. Safeguards must be designed to prevent unauthorized access and use. A State must ensure its safeguards will be ready for immediate implementation upon receipt of FTI.

C. Disclosure To Contractors And Other Agents

IRC §6103(b)(5)(B)(iii) permits Federal return or return information to be disclosed to a contractor or other agent of a State only if such entity, to the satisfaction of the Secretary of the Treasury —

- i. Has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards to protect the confidentiality of such returns or return information,
- ii. Agrees to conduct an on-site review every 3 years (or a mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor or other agent to determine compliance with such requirements,
- iii. Submits the findings of the most recent review conducted under subclause (ii) to the Secretary of the Treasury, and
- iv. Certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subclause (IV) must include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement.

¹⁸ Pp. 17-18, Publication 1075.

PENNSYLVANIA PERSONAL INCOME TAX GUIDE