

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2010-009

ORDINANCE TO AMEND CHAPTER 3.44 AND CREATE CHAPTER 3.45 OF KITTITAS COUNTY CODE TO CONFORM WITH RECENT CHANGES IN STATE LAW, TO ENTER INTO AN AGREEMENT WITH WASHINGTON STATE DEPARTMENT OF REVENUE FOR ADMINISTRATION OF ENHANCED 911 EXCISE TAXES, AND TO AUTHORIZE THE SIGNING OF SECRECY CLAUSE AFFIDAVITS REQUIRED BY DEPARTMENT OF REVENUE.

WHEREAS, Chapter 82.14B RCW establishes funding for an enhanced 911 system by creating a E911 excise tax at both State and County levels; and

WHEREAS, The amount of County excise tax to be collected and the administrative procedures for collection are found in Chapter 3.44 Kittitas County Code (KCC); and

WHEREAS, Washington State Legislature recently changed Chapter 82.14B RCW in Substitute Senate Bill 6846, increasing the E911 County excise tax from \$.50 per access line to \$.70, with an effective date of January 1, 2011; and

WHEREAS, The Substitute Senate Bill 6846 also included 'interconnected voice over internet protocol service lines' to be taxed locally at \$.70 per access line; and

WHEREAS, The Substitute Senate Bill 6846 including interconnected voice over internet protocol service lines comes at a crucial time as use of that service has increased significantly; and

WHEREAS, The Substitute Senate Bill 6846 removed the administration of the county tax collection from the Counties to the Washington State Department of Revenue (hereinafter "Department") who will collect an administrative fee out of the tax revenues before redistributing the monies to the Counties; and

WHEREAS, By October 15th, 2010, the County must adopt an ordinance reflecting the changes made by State legislature, sign an agreement with the Department for administration of the collected 911 excise taxes, and authorize the signing of the secrecy clause affidavits required by the Department for individuals who will be receiving the monthly information on the local portion of the E911 excise tax and its distribution; and

WHEREAS, The County has to raise the local E911 excise tax to \$.70 for each access line or it will lose State funding; and

WHEREAS, The County has to establish procedures for administration of the County excise tax collection as per RCW 82.14B.060; and

WHEREAS, A public hearing came on regularly before the County Commissioners on October 5, 2010, and the public was provided notice and opportunity to comment on the proposed ordinance; and

WHEREAS, The County believes that adopting this ordinance, entering into the agreement with the Department, and authorizing the signing of the Department Secrecy Clause Affidavits would be in the best interest for the County.

NOW, THEREFORE, BE IT RESOLVED that KCC 3.44.050 and KCC 3.44.160 shall be amended as described below and Chapter 3.44 KCC shall be in effect until it is repealed on December 31, 2010.

NOW, THEREFORE, BE IT FURTHER RESOLVED that Chapter 3.45 KCC shall be created as described below.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the County will enter into the agreement with the Washington State Department of Revenue and authorize the Chair's signature. A copy of the agreement is attached and by this reference, incorporated into this Ordinance.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the duties of the administration of the County E911 excise tax contained in Chapter 3.45 KCC will be shared amongst KITTCOM, the Auditor's Office, and the Treasurer's Office. As stated in the agreement that is attached, the Department will provide the required sixty (60) day notice on behalf of the County to service providers prior to the due date of first payment. KITTCOM or the Auditor's Office may also provide a 60-day notice to known providers in the County before the due date of the first payment. The Treasurer's Office will be receiving the funds from the State for the County's E911 Enhanced System and the Auditor's Office will work with KITTCOM to ensure the funds are used as Chapter 82.14B RCW allows.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Department-required Secrecy Clause Affidavits are authorized for any County or KITTCOM employees who will be receiving the monthly information on the local portion of the E911 excise tax and its distribution. A copy of the Department Secrecy Clause Affidavit is attached to this Ordinance.

NOW, THEREFORE, BE IT FURTHER RESOLVED, Chapter 3.44 KCC be repealed on December 31, 2010. Any E911 excise taxes due for 2010 for County and State shall still be paid as provided by Chapter 82.14B RCW and Chapter 3.44 KCC.

NOW, THEREFORE, LET IT BE FURTHER RESOLVED that KCC 3.44.050 and KCC 3.44.160 are amended as follows:

3.44.050 Effective date of tax - Notice to local exchange companies.

The effective date of the tax imposed in this chapter shall be June 1, 1992, and shall continue until December 31, 2010, and notice of the tax shall be provided by Kittitas County to all local exchange

companies serving in the county at least 60 days in advance of the date on which the first payment is due. (Ord. 99-04, 1999; Ord. 92-8 § 5, 1992).

3.44.160 Effective date.

The tax imposed by KCC 3.44.100 shall be effective on the first day of January, 2003, and continue until December 31, 2010. (Ord. 2002-14, 2002).

NOW, THEREFORE, LET IT BE FURTHER RESOLVED that Chapter 3.45 of Kittitas County Code is created as follows:

Chapter 3.45
ENHANCED E911 EXCISE TAX

Sections

3.45.010 Effective Date of Tax

3.45.015 Telephone Switched Access Line Excise Tax.

3.45.020 Radio Access Lines Excise Tax.

3.45.025 Interconnected Voice Over Internet Protocol Service Lines Excise Tax.

3.45.030 Use of Proceeds.

3.45.035 Tax Collection.

3.45.040 Remittance and Deposit of Taxes.

3.45.045 Notice to Local Exchange Companies, Radio Communications Service Companies, and Interconnected Voice Over Internet Protocol Service Companies.

3.45.050 Severability.

3.45.010 Effective Date of Tax.

The effective date of the tax imposed in this chapter shall be January 1, 2011.

3.45.015 Telephone Switched Access Line Excise Tax.

1. An excise tax in the amount of \$0.70 per month for each telephone switched access line, as defined in RCW 82.14B.020, is imposed on each switched access line in Kittitas County.
2. Taxes imposed under this section shall be collected from the user by the local exchange company, as defined in RCW 82.14B.020, providing the switched access line. The local exchange company shall state the amount of tax separately on the billing statement which is sent to the user.

3.45.020 Radio Access Lines Excise Tax.

1. An excise tax in the amount of \$0.70 per month for each radio access line, as defined in RCW 82.14B.020, is imposed on each radio access line whose place of primary use is Kittitas County.
2. Taxes imposed under this section shall be collected by each radio communications service company, as defined in RCW 82.14B.020, providing radio access lines to end users whose place of primary use is Kittitas County, as well as by each company that resells radio access lines to end users whose place of primary use is Kittitas County. The radio communications service company shall state the amount of tax separately on the billing statement which is sent to the user.

3.45.025 Interconnected Voice Over Internet Protocol Service Lines Excise Tax.

1. An excise tax in the amount of \$0.70 per month for each interconnected voice over internet protocol service line, as defined in [RCW 82.14B.020](#), is imposed on each interconnected voice over internet protocol service line whose place of primary use is Kittitas County.
2. The amount of tax shall be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network.
3. Taxes imposed under this section shall be collected by each interconnected voice over internet protocol service company providing interconnected voice over internet protocol service to end users whose place of primary use is Kittitas County. The interconnected voice over internet protocol service company shall state the amount of tax separately on the billing statement which is sent to the user.
4. To the extent that a local exchange carrier and an interconnected voice over internet protocol service company contractually jointly provide a single service line, only one service company is responsible for remitting the enhanced 911 excise taxes, and nothing in this Chapter precludes service companies who jointly provide service from agreeing by contract which of them shall remit the taxes collected.

3.45.030 Use of Proceeds.

The proceeds of this tax shall be used for an "enhanced 911 telephone system" as defined in [RCW 82.14B.020](#).

3.45.035 Tax Collection.

Kittitas County must contract with the Washington State Department of Revenue for the administration and collection of the excise tax as proscribed in Section 4, Chapter 19, Laws of 2010 1st Special Session.

3.45.040 Remittance and Deposit of Taxes.

Each local exchange company, radio communications service company, and interconnected voice over internet protocol service company shall remit all taxes to the Washington State Department of Revenue ("Department") on a tax return provided by the Department. The taxes are due as provided in [RCW 82.14B.061](#).

3.45.045 Notice to Local Exchange Companies, Radio Communications Service Companies, and Interconnected Voice Over Internet Protocol Service Companies.

Notice of the tax shall be provided by Kittitas County to all the local exchange companies, radio communications service companies, and interconnected voice over internet protocol service companies serving in the County at least 60 days in advance of the date on which the first payment is due.

3.45.050 Severability.

If any provision or section of this Chapter shall be held invalid, all other parts, provisions and sections of this Chapter shall continue in full force and effect.

ADOPTED this 5th day of October 2010.



**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**

Mark McClain
Mark McClain, Chairman

Julie A. Kjorsvik
Julie A. Kjorsvik

Paul Jewell
Paul Jewell, Vice-Chairman

APPROVED AS TO FORM:

Stephanie Happold
Stephanie Happold, Civil DPA
WSBA #38112

Alan Crankovich
Alan Crankovich, Commissioner

AGREEMENT FOR STATE ADMINISTRATION OF COUNTY ENHANCED 911 EXCISE TAXES

THIS AGREEMENT ("Agreement") is entered into by and between Kittitas County ("County") and the State of Washington Department of Revenue ("Department") for the administration of county enhanced 911 excise taxes. This Agreement is effective January 1, 2011.

WHEREAS, the Legislature of the State of Washington has, by Laws of 2010, First Special Session, ch. 19, § 3, authorized the County to impose enhanced 911 excise taxes on switched access lines, radio access lines, and interconnected voice over internet protocol service lines; and

WHEREAS, Laws of 2010, First Special Session, ch. 19, § 4 requires counties imposing county enhanced 911 excise taxes to contract with the Department for the administration and collection of the taxes; and

WHEREAS, the County has by ordinance, a copy of which is attached hereto (the "Ordinance"), elected to impose:

1. an enhanced 911 excise tax on switched access lines of Seventy cents (70) per month per line;
2. an enhanced 911 excise tax on radio access lines of Seventy cents (70) per month per line; and
3. an enhanced 911 excise tax on interconnected voice over internet protocol service lines of Seventy cents (70) per month per line;

NOW, THEREFORE, to provide for the administration and collection of the county enhanced 911 excise taxes imposed by the Ordinance, the parties agree as follows:

1. The Department shall exclusively perform all functions incident to the administration and collection of the county enhanced 911 excise taxes imposed by the ordinance referenced above, other than criminal prosecutions. The parties intend any notification that DOR sends to taxpayers in the course of its administration of the taxes to also serve as notice from the counties.
2. The Department shall retain from the county enhanced 911 excise taxes so collected the amount of one percent (1%) thereof to cover administration and collection expenses incurred by the Department. Said percentage amount shall be subject to review during January of each year, PROVIDED, HOWEVER, that no change in the percentage retained shall be effective without an amendment to this Agreement.
3. In accordance with Laws of 2010, First Special Session, ch. 19, § 4, the remainder of the county enhanced 911 excise taxes so collected shall be deposited by the Department in the county enhanced 911 excise tax account in the custody of the State Treasurer. The moneys that accrue

in the county enhanced 911 excise tax account shall be distributed as provided by law.

4. Insofar as they are applicable to the administration, collection, and enforcement of enhanced 911 excise taxes, the Department shall apply the general administrative provisions contained in chapter 82.32 RCW as it exists or may hereafter be amended to the performance of its duties under this Agreement. The Department shall perform its duties under this Agreement so that as far as possible the county enhanced 911 excise taxes are administered and collected uniformly with the state enhanced 911 excise taxes. Rules to be adopted by the Department to facilitate the administration and distribution of the state and county enhanced 911 excise taxes shall be in accordance with chapter 34.05 RCW, the State Administrative Procedure Act.
5. The allocation of county enhanced 911 excise tax collections will be made by the Department to the State Treasurer within thirty (30) days after the due date of the taxable period for which county enhanced 911 excise taxes are imposed. Distribution of taxes to the County shall be made in accordance with Laws of 2010, First Special Session, ch. 19, § 5.
6. The County must notify the Department in writing of a change in the county enhanced 911 excise taxes no less than seventy-five (75) days before the effective date of the change.
7. Chapter 82.32 RCW provides a mechanism for taxpayers to seek refunds or credits for overpaid taxes. All refunds, credits, and interest for enhanced 911 excise taxes imposed by the County shall be charged to the County.
8. Any taxpayer payments of penalties or interest pursuant to Laws of 2010, First Special Session, ch. 19 will be deposited and distributed according to paragraphs 3 and 5 of this Agreement.
9. The Department shall require redistribution upon ten (10) days notice to the affected county when it determines that any county enhanced 911 excise tax has been distributed to a county other than the county entitled to the tax. Such redistribution shall not be made with respect to amounts originally distributed earlier than six (6) monthly periods before the monthly period in which the Department determines that improper distribution occurred. If a dispute arises between or among counties as to which county is entitled to particular funds collected under any county's enhanced 911 excise tax, the Department shall determine which county is entitled to the disputed funds. A dispute between a county and the Department regarding the Department's determination shall be resolved according to paragraph 12 of this Agreement.
10. The Department shall provide taxpayer information, documentation, and reports to the County in accordance with the disclosure limitations of RCW 82.32.330. Upon request by the County, the Department shall provide: the names of all taxpayers collecting the County's enhanced 911 excise taxes; the number of switched access lines, radio access lines, and interconnected voice over internet protocol service lines on which each taxpayer collected the County's enhanced 911 excise taxes by collection period; and the amount of the County's enhanced 911 excise tax, by

type of line, collected and remitted by each taxpayer by collection period. The Department shall not be obligated to provide this information more frequently than monthly. Insofar as practicable, the Department shall provide this information electronically. Authorized representatives of the County requesting and receiving confidential information must sign a Department Secrecy Clause Affidavit, acknowledging that they understand and will comply with RCW 82.32.330. Among other things, RCW 82.32.330 provides that unauthorized disclosure of confidential tax information is a misdemeanor. The County shall have the right from time to time to examine the records of the Department as they concern the County or the taxpayers of the County subject to the county enhanced 911 excise taxes, subject to the limitations of RCW 82.32.330.

11. The parties agree to establish and maintain open lines of communication and to work cooperatively in order to improve administration of the county enhanced 911 excise taxes. Either party may initiate a meeting, to be held at a mutually convenient time and place, to share information and to discuss matters related to administration and collection of county enhanced 911 excise taxes.
12. In the event that a dispute arises under this Agreement, either party may elect mediation in which the Department and County shall each individually appoint one member to a Dispute Board and those members shall select a third member.

In the event a dispute arises between or among counties as described in paragraph 9, a county that disagrees with the Department's resolution of the issue may elect mediation. In that case, each county claiming entitlement to the disputed funds and the Department shall individually appoint one member to a Dispute Board. If the number of members is odd, then no additional members need be appointed. If the number of members is even, then the members of the Dispute Board shall together select one additional member.

The Dispute Board shall evaluate the dispute and make a written determination after considering the relevant facts and legal authorities. The Dispute Board's determination shall be given significant weight by all parties who will meet after the determination is issued to resolve the dispute. If a resolution is not reached, the determination of the Dispute Board shall be admissible in any future legal proceeding between the parties concerning the dispute. Each party shall be responsible for a proportionate share of the costs of the members of the Dispute Board. This remedy is not intended to be exclusive of other remedies existing in law, by statute, or otherwise.

13. This Agreement shall be governed by the laws of the State of Washington.
14. To the extent permitted by law, the County agrees to defend and hold harmless the Department or the State of Washington from claims that challenge the authority of the County to impose the county enhanced 911 excise taxes identified in the aforementioned Ordinance. The County

understands that in the event of a legal challenge to the Ordinance or otherwise, the Department shall not be obligated to represent the County or otherwise to defend the County's position in any proceeding relating to such challenge.

15. The parties to this Agreement will notify each other in a timely manner when they find it necessary to request an amendment to this Agreement. No changes in or additions to this Agreement shall be made except as agreed to by both parties, reduced to writing, and executed with the same formalities as are required for the execution of this Agreement.
16. The following persons shall administer this Agreement on behalf of the parties. Any notice required by this Agreement shall be achieved by providing written notice to the persons listed below:

Tiffany Johnson
Department of Revenue
P.O. Box 47476
Suite 301
Olympia, WA 98504-7476
360-902-7122
TiffanyJ@dor.wa.gov

*Darlene Maignaning, KITCom Director/
Kittitas County E911 Coordinator*

*ADDRESS 700 Elmview Rd, Ellensburg WA 98926
PHONE 509-925-8530
EMAIL maignaning@kittcom.org*

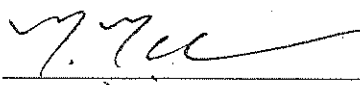
17. This Agreement represents the entire agreement between the parties and no other statements or representations shall be deemed a part thereof. The recitals to this Agreement are incorporated by reference and are part of the Agreement. This Agreement may be executed in two original counterparts, and each counterpart shall constitute but one and the same instrument. Duplicate copies of the Agreement shall have the same force and effect as the original copies.
18. The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the remainder of the contract.
19. This Agreement takes effect at 12:01 AM, January 1, 2011, and shall thereafter be automatically renewed on December 31 of each year unless one of the parties gives written notice of termination on or before November 1 of each such year.

IN WITNESS WHEREOF, the State of Washington Department of Revenue and Kittitas County have executed this Agreement as of the day and year written below.

Date

Deputy Director
Department of Revenue

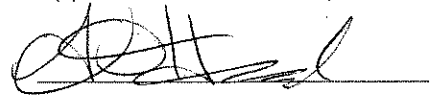
Approved as to form: On file at WA DOR
Assistant Attorney General
State of Washington



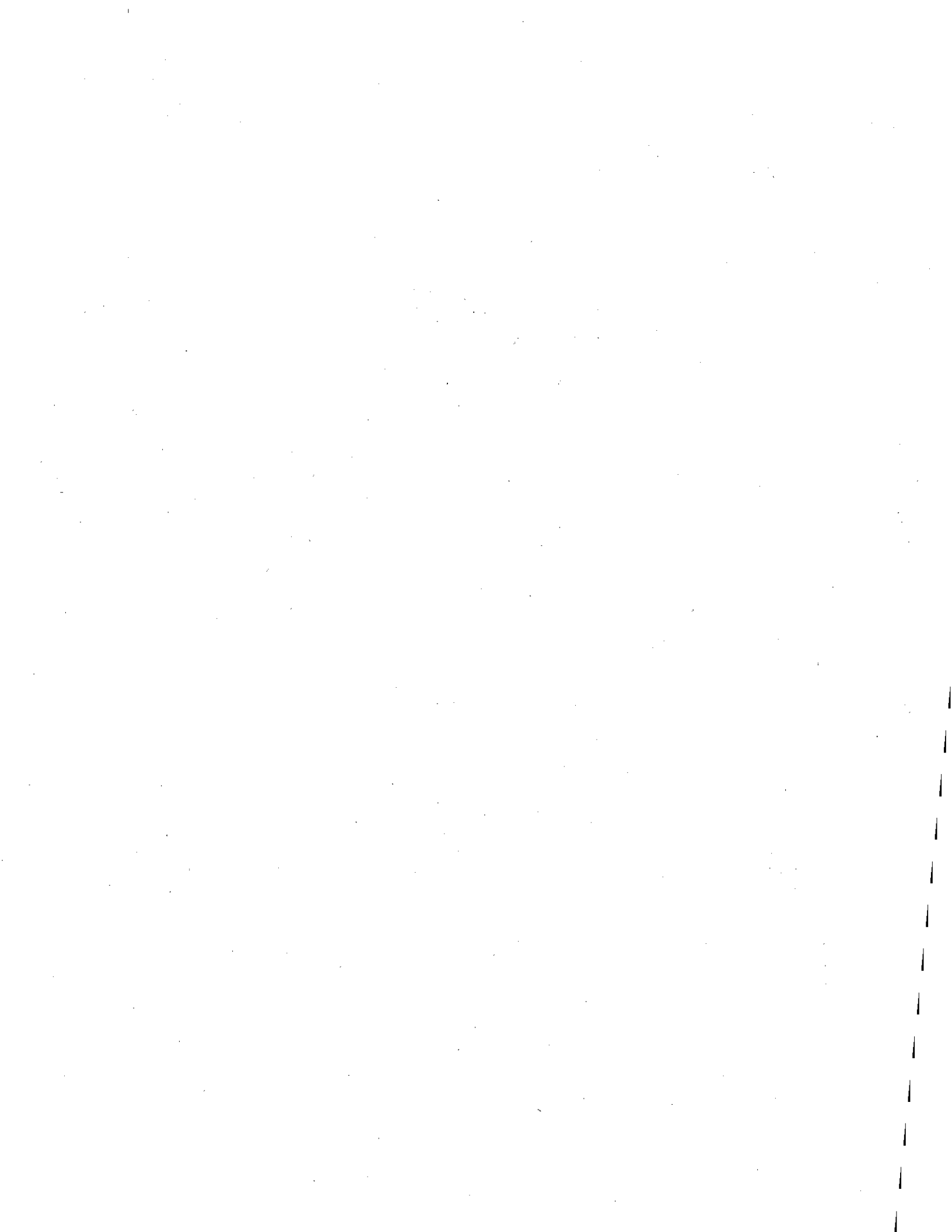
Title Chair
Kittitas County

Date

Approved as to form only:



Deputy Prosecuting Attorney
WSBA # 38112



Department of Revenue
Secrecy Clause Affidavit

State of Washington
County of KITTITAS

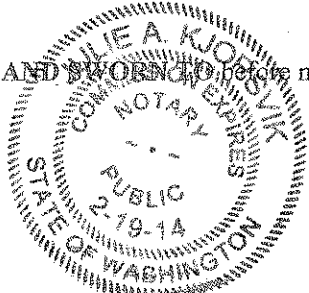
I, Judy Pless, swear or affirm that I have read the following statute and understand its requirements. I further understand that returns and tax information are privileged and confidential, and therefore shall not be disclosed to any person not entitled to knowledge of such returns or tax information.

I understand that my use or disclosure of confidential tax information may be further restricted by an information-sharing agreement or, if I am a Department of Revenue employee, by the agency's written policies or procedures.

Dated: 10/6/10

Judy Pless
(Signature)

SUBSCRIBED AND SWORN TO before me this 6th day of October, 2010



Julie A. Kjos
(Signature of Notary Public)

My appointment expires 02-19-14

SECRECY CLAUSE

RCW 82.32.330 Disclosure of return or tax information.

1. For purposes of this section:
- (a) "Disclose" means to make known to any person in any manner whatever a return or tax information;
 - (b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;
 - (c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that

- do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;
 - (d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;
 - (e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and
 - (f) "Department" means the department of revenue or its officer, agent, employee, or representative.
2. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.
3. This section does not prohibit the department of revenue from:
- (a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding: (i) in respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding; (ii) in which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the

proceeding; or (iii) brought by the department under RCW 18.27.040 or 19.28.071;

- (b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, that tax information not so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;
- (c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;
- (d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
- (e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;
- (f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;
- (g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding

for which the return or tax information originally was sought;

- (h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;
- (i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies; for official purposes;
- (j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;
- (k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;
- (l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;
- (m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;
- (n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;
- (o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information

pertaining to the specific business of the taxpayer to which the person has succeeded;

- (p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;
 - (q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.
 - (r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115;
 - (s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;
 - (t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of: (i) Conducting on behalf of member states sales and use tax audits of taxpayers; or (ii) Auditing certified service providers or certified automated systems providers; or
 - (u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.
4. (a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed.
- The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/ payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.
- (b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed.
- The department may not disclose any tax return or tax information under this subsection (4) until the

time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

- (c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that: (i) the data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or (iii) the data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.
 - (d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.
 - (e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.
5. Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.
6. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

State of Washington
County of Kittitas

I, Darlene Mainwaring, swear or affirm that I have read the following statute and understand its requirements. I further understand that returns and tax information are privileged and confidential, and therefore shall not be disclosed to any person not entitled to knowledge of such returns or tax information.

I understand that my use or disclosure of confidential tax information may be further restricted by an information-sharing agreement or, if I am a Department of Revenue employee, by the agency's written policies or procedures.

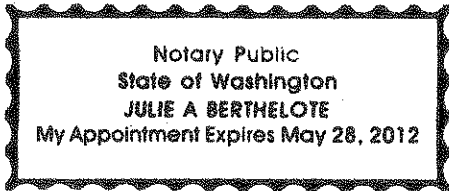
Dated: 15 Sept 10

Darlene Mainwaring
(Signature)

SUBSCRIBED AND SWORN TO before me this 15th day of September, 2010

Julie A. Berthelote
(Signature of Notary Public)

My appointment expires 5/28/2012



SECRECY CLAUSE

RCW 82.32.330 Disclosure of return or tax information.

- I. For purposes of this section:
 - (a) "Disclose" means to make known to any person in any manner whatever a return or tax information;
 - (b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;
 - (c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that

- do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;
- (d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;
- (e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and
- (f) "Department" means the department of revenue or its officer, agent, employee, or representative.
- 2. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.
- 3. This section does not prohibit the department of revenue from:
 - (a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding: (i) in respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding; (ii) in which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the

proceeding; or (iii) brought by the department under RCW 18.27.040 or 19.28.071;

- (b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, that tax information not so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;
- (c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;
- (d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
- (e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;
- (f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;
- (g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding

for which the return or tax information originally was sought;

- (h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;
- (i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;
- (j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;
- (k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;
- (l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;
- (m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;
- (n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;
- (o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information

pertaining to the specific business of the taxpayer to which the person has succeeded;

- (p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;
 - (q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.
 - (r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115;
 - (s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;
 - (t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of: (i) Conducting on behalf of member states sales and use tax audits of taxpayers; or (ii) Auditing certified service providers or certified automated systems providers; or
 - (u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.
4. (a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed.
- The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/ payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.
- (b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed.
- The department may not disclose any tax return or tax information under this subsection (4) until the

time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

- (c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that: (i) the data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or (iii) the data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.
 - (d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.
 - (e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.
5. Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.
6. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.