

To: Karen Horn, Director of Public Policy and Advocacy, Vermont League of Cities and Towns
From: Helena Gardner, Legislative Counsel
Re: Act 23 Questionnaire: tax-related exemptions - municipalities

Consolidated PRA exemption for tax returns and related records

1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 both address the confidentiality of tax returns and related records. 1 V.S.A. § 317(c)(6) applies broadly to the Vermont Department of Taxes as well as records “submitted by a person to any public agency....” This subdivision lists as exempt “a tax return and related documents, correspondence and certain types of substantiating forms” but does not further define these terms.

By contrast, 32 V.S.A. § 3102 applies to tax “return or return information” and specifically defines the terms “return” and “return information.” Unlike 1 V.S.A. § 317(c)(6), this section extends only to such records and information in the possession of officers, employees, and agents of the Department of Taxes, and in the possession of persons to whom Vermont law authorizes or requires the Commissioner to divulge return or return information. Also unlike 1 V.S.A. § 317(c)(6), this section specifies the many circumstances when the Department may or must share tax return and return information.

In *Finberg v. Murnane*,¹ the Vermont Supreme Court held that the names and addresses of taxpayers subject to Burlington’s business gross receipts tax were not exempt from public inspection and copying under 1 V.S.A. § 317(c)(6).² This information was held by the City of Burlington, and not the Department of Taxes, so 1 V.S.A. § 317(c)(6) was the applicable exemption, not 32 V.S.A. § 3102. Although under 32 V.S.A. § 3102’s definition of “return information,” the names and addresses of taxpayers are clearly exempt, the Court declined to read this definition into 1 V.S.A. § 317(c)(6). The Court reiterated that Public Records Act exemptions are narrowly construed, and noted that 1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 “are applicable to different taxing authorities and different taxing schemes.”

Although 1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 may apply to different taxing authorities, clarifying the interplay of these two sections would be useful, since 1 V.S.A. § 317(c)(6) does extend to tax returns in the custody of the Department of Taxes. As a result, the Public Records Study Committee is considering recommending that 1 V.S.A. § 317(c)(6) be amended as follows:³

(c) The following public records are exempt from public inspection and copying and shall not be released:

* * *

(6)(A) tax return and return information in the custody of the Vermont Department of Taxes or an agent thereof, or divulged to a public agency by the

¹ 159 Vt. 431 (1992).

² At the time of the *Finberg* decision, the text of 1 V.S.A. § 317(c)(6) was at 1 V.S.A. § 317(b)(6). I will refer to the exemption as 1 V.S.A. § 317(c)(6).

³ I am also sending this language to Mollie Bachmann of the Department of Taxes for review.

Department of Taxes in accordance with law, to the extent provided under 32 V.S.A. §§ 3102 and 5939; or

(B) a other tax return and related documents, correspondence, and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by ~~the Vermont Department of Taxes or submitted by a person to~~ any public agency in connection with agency business;

Questions:

- Do you object to any or all of the above draft language, and if so, why?
- If you object only to the language of the draft consolidated exemption but not to the general concept, could you offer suggestions to improve the language?