

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 78, requiring audit records related to payment of business profits tax to be confidential.

Hearing Date: January 25, 2017

Time Opened: 9:00 a.m.

Time Closed: 9:15 a.m.

Members of the Committee Present: Senators Sanborn, Daniels and Feltes

Members of the Committee Absent : Senators Giuda and D'Allesandro

Bill Analysis: This bill requires that business profits tax taxpayer records obtained by the commissioner of revenue administration or the commissioner's agents for an audit of the taxpayer shall be confidential and not disclosed.

Sponsors:

Sen. Bradley

Sen. Innis

Rep. Abrami

Who supports the bill: Sen. Bradley

Who opposes the bill: No one

Who is neutral on the bill: Carollynn Ward (DRA)

Summary of testimony presented:

Sen. Bradley – was approached by former Governor Benson about this because he knew of a business that did not pursue a disagreement with the DRA because of the fear that their financial records would become public in a court case. That is the genesis for the bill. Sen. Bradley spoke with Commissioner Beardmore and his thought is: instead of sealing all records of any case that goes to court, give the taxpayer the right to petition the court to seal the records. The dept. would support that. That way there is not a disincentive to challenge a ruling by DRA in court.

Sen. Sanborn stated that he thought everything was confidential already with regard to tax policy.

Sen. Bradley responded that it is at the DRA but not if it goes to court.

Sen. Feltes asked what standard the court would employ to determine whether or not it could be confidential.

Sen. Bradley said that was a good question and that the Commissioner volunteered to work with him and the committee if it is decided to go forward with that language.

Carollynn Ward – DRA – the goal of the legislation is to ensure that later in the appeals process, the taxpayer has the opportunity to request that their tax records not be made public. Currently, RSA 21-j-14 makes almost everything with regard to a taxpayer confidential. The exception is when it goes to

court, which is not until the second round of review and this would take place in superior court or the board of tax and land appeals. The bar is pretty high for a litigant to have their records sealed. Some sort of new standard would have to be articulated to achieve the intent of this bill. They will help draft something that accomplishes that.

Sen. Sanborn asked why not just extend RSA 21-j.

Ms. Ward said that for an individual taxpayer, they would prefer confidentiality; however for the rest of the taxpaying world, looking for guidance on issues, they do look to case law. Sealing records could make it more difficult to search case law for guidance.

Sen. Sanborn followed up by asking if there is a way to protect enough taxpayer info but still provide enough info for tax attorneys looking to case law for guidance.

Ms. Ward responded that first we have to identify what should be confidential and set a standard sufficient to capture what records should be sealed.

Sen. Feltes said that almost nothing is sealed in court, including personal info in any kind of court case. He asked how many court cases a year DRA does in superior court.

Ms. Ward estimated less than 25.

Sen. Feltes asked if she thought the public aspect of the judicial process provides incentive for folks to work it out rather than continue to litigate. He went on to ask, at what stage in the process do cases where there is a dispute get resolved. He voiced concern that we not encourage litigation

Ms. Ward said the vast majority resolve internally. Nearly 300-400 initial appeals come to the DRA hearings bureau. They issue 100 decisions a year maximum. The vast majority settle prior to the decision.

Sen. Sanborn stated that what we don't know is how many of those settle out of fear. People should be able to run a dispute to the end without fear of private info becoming public.

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Date Hearing Report completed: January 25, 2017