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IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

JIM ELLIOTT,)	
)	
Petitioner,)	Cause No. <u>CAV-2004-777</u>
)	
vs.)	
)	PETITION TO OBTAIN PUBLIC
)	RECORDS
THE MONTANA DEPARTMENT)	
OF REVENUE,)	
)	
Respondent.)	

COMES NOW Petitioner, through counsel, and for his petition in the captioned matter, states as follows:

1. Petitioner is a member of the Montana Senate and is a citizen and resident of the State of Montana.
2. Respondent Montana Department of Revenue is a governmental agency of the State of Montana authorized under § 2-5-1301, MCA, and headquartered in Helena, Montana.

3. This petition is brought to enforce the public right to know, pursuant to Article II, Section 9, of the Montana Constitution.

4. As part of performing its public functions and duties, the Department of Revenue has generated, acquired, and maintained documents, including tax returns, containing information regarding the amount of taxes paid by large "C" corporations (named after Title 26, Chapter 1, Subchapter C of the U.S. Code) doing business in the State of Montana.

5. In January and February 2004, Senator Elliott requested information regarding taxes paid by "C" corporations in the State of Montana. As a member of the Senate and Vice-chairman of the Legislative Audit Committee, he submitted his request to the Legislative Auditor's Office, which in turn requested the information from the Department of Revenue.

6. The Department of Revenue provided the requested tax information to the Legislative Auditor, which in turn provided that information to Senator Elliott in the form of several spreadsheets. The information provided included tax information for 2,063 corporations that paid \$150 or less in income tax for the 2002 tax year ("TY 2002"). For those "C" corporations, information was provided showing Montana tax paid, Montana property, total property, Montana payroll, total payroll, Montana sales, total sales, adjusted taxable income (line 4), and Montana taxable income before Net Operating Loss (line 7). In addition, for the 491 "C" corporations with the highest volumes of sales in

Montana, the information provided included Montana sales, total sales, Montana property, total property, Montana payroll, total payroll, apportionment factor, federal taxable income, adjusted taxable income (line 4), Montana taxable income before Net Operating Loss (line 7), Montana taxable income, Montana corporate tax liability, and date the tax return was received.

7. On information and belief, the information originally provided by the Department of Revenue to the Legislative Auditor included the names of the corporations in question. However, when the Legislative Auditor provided the information to Senator Elliott, it withheld the names and instead identified the corporations by number.

8. Some of this information was subsequently publicized in a newspaper column by Senator Elliott as well as in news stories.

9. At the time of his initial request, Senator Elliott, through the Legislative Auditor had also requested similar data for the two prior tax years. Because the process of getting the information is time consuming, Senator Elliott and the Legislative Auditor's Office agreed that provision of the tax information for TY 2000 and TY 2001 be postponed until Senator Elliott had reviewed the information for TY 2002 to see if it met his needs. After review of TY 2002 information, he re-iterated his request to the Legislative Auditor's Office for the TY 2000 and TY 2001 information. However, the Department of Revenue stated that it would not release the information unless the Legislative Auditor agreed to keep the information confidential. Because no such

agreement was forthcoming, the Department of Revenue refused to release the requested tax data to the Legislative Auditor.

10. In May 2004, Senator Elliott wrote directly to the Department of Revenue requesting that the requested information from corporate tax returns be released both to the Legislative Auditor and to himself directly. The Department of Revenue denied this request.

11. For purposes of this lawsuit, Senator Elliott asks the Court to require disclosure of the following information from all tax returns filed with the Department of Revenue by publicly traded "C" corporations having \$1,000,000 or more in Montana sales, as reported on Schedule K or the return: name of the corporation, Montana sales, total sales, Montana property, total property, Montana payroll, total payroll, apportionment factor, adjusted taxable income (line 4), Montana taxable income before Net Operating Loss (line 7), Montana taxable income, Montana corporate tax liability, and date the tax return was received. This information is requested for all tax years for which the information is available to the Department of Revenue.

12. The foregoing information appears on the corporate tax returns in the custody of the Department of Revenue and may be stored in other forms as well. It is immaterial to Senator Elliott whether the requested information is provided in the form of copies of the actual tax returns (with non-requested information redacted) or in some other form.

13. Corporate tax returns and other tax records in the custody of the Department of Revenue are public documents under Article II, § 9 of the Montana Constitution.

14. There is no right of privacy that protects the information contained on corporate tax returns, nor is there any other constitutionally protected interest in maintaining the secrecy of corporate tax returns.

15. To the extent that § 15-31-511, MCA, purports to prohibit public disclosure of the information requested by Senator Elliott, that statute violates Article II, § 9 of the Montana Constitution, as does any administrative rule, regulation, or policy that purports to prohibit the disclosure of the corporate tax data requested by Senator Elliott.

16. The Department of Revenue's refusal to release the requested information violates Article II, § 9, and the Court should therefore order that the information be made available for public inspection.

WHEREFORE, Petitioner respectfully prays this Court to enter judgment in his favor and award relief including:

- (1) That Respondent be ordered to make public the requested information described above or to show cause within a time certain why it should not be ordered to do so;
- (2) That Petitioner be awarded his costs and attorney fees for bringing this petition; and
- (3) Such other and further relief as this Court may deem just and proper.

DATED this 18th day of October, 2004.

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By 
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