

ENROLLED HOUSE
BILL NO. 2664

By: Hamilton (James) and
Steidley of the House

and

Taylor and Haney of the
Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 205, as last amended by Section 1 of Enrolled House Bill No. 2463 of the 2nd Session of the 44th Oklahoma Legislature, which relates to confidential records and files of the Oklahoma Tax Commission; modifying disclosure authorization for certain contracts; amending 68 O.S. 1991, Sections 255 and 262, which relate to contracts which the Oklahoma Tax Commission is authorized to enter into; authorizing such contracts for collection of overdue taxes from any taxpayer; modifying percentage of fees for certain services; deleting certain language regarding collection of certain fees; authorizing such contracts for audits for any person or entity the Commission believes owes additional taxes; repealing 68 O.S. 1991, Section 255.1, which relates to contracts for administration and enforcement of tax laws; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 205, as last amended by Section 1 of Enrolled House Bill No. 2463 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of this article or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article

or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this article or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of said records and files by the State Auditor and Inspector or his duly authorized agents;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials to prosecute violations of the criminal provisions of this article or of any state tax law. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2454 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2433 and 2434 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2462 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of nonintoxicating beverages, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase nonintoxicating beverages in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit or license by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of ~~a taxpayer's name, identity, identifying number, or last-known address, if any, to any person or business entity for purposes of~~ information necessary to complete the performance of any contract authorized by Section 255.1 Sections 255 and 262 of this title to any person with whom the Oklahoma Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a

witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

24. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title; or

25. The furnishing to a prospective purchaser of any business, or his authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or his authorized representative, of the purchase contract and a written authorization between the parties.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

E. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

F. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both said fine and imprisonment, and the offender shall be removed or dismissed from office.

G. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 255, is amended to read as follows:

Section 255. A. In order to facilitate and expedite the collection of taxes more than six (6) months overdue from any ~~nonresident~~ taxpayer, the Oklahoma Tax Commission may enter into a contract with a debt collection agency doing business in the State

of Oklahoma or in any other state for the collection of such delinquent taxes, including penalties and interest thereon, from such nonresident taxpayer or with a ~~business entity~~ person doing business in the State of Oklahoma or in any other state for the purpose of identifying and locating the assets of such delinquent ~~nonresident~~ taxpayer. Such contracts authorized by this section shall be subject to the provisions of the Oklahoma Central Purchasing Act.

B. Prior to entering into such a contract with a debt collection agency, the Tax Commission shall require that the debt collection agency file a bond in the amount of One Hundred Thousand Dollars (\$100,000.00). Said bond shall be a bond from a surety company chartered or authorized to do business in this state, cash bond, certificates of deposits, certificates of savings or U.S. Treasury bonds, as the Tax Commission may deem necessary to guarantee compliance with the terms of the contract.

C. Each contract entered into by the Tax Commission with a debt collection agency, pursuant to the provisions of this section, shall specify that fees for services rendered, reimbursements or other remuneration shall be based on the total amount of delinquent taxes, including accrued penalties and interest, which is actually collected. No costs shall be reimbursed unless authorized in said contract. Each contract entered into between the Tax Commission and a debt collection agency shall provide for the payment of fees for such services, reimbursements or other remuneration not in excess of ~~fifty percent (50%)~~ twenty percent (20%) of the total amount of delinquent taxes, penalty and interest actually collected. ~~Such fees shall be collected from such delinquent nonresident taxpayer by a debt collection agency at the time of collection of such delinquent taxes and such fees shall be in addition to the amount of the delinquent tax liability of such nonresident taxpayer.~~

D. Each contract entered into by the Tax Commission with a ~~business entity~~ person for the purpose of identifying and locating assets of delinquent ~~nonresident~~ taxpayers shall specify the amount of money to be paid for the performance of such services. No costs shall be reimbursed unless authorized in said contract.

E. All such funds collected by a debt collection agency, including the fees for collection services as provided for in such contract, shall be remitted to the Tax Commission within five (5) days from the date of collection from a ~~nonresident~~ taxpayer. The Tax Commission shall pay from such remitted fees the amount of fees such debt collecting agency is entitled to for services performed pursuant to the provisions of such contract. All assets of such delinquent ~~nonresident~~ taxpayers which are identified and located ~~by such a business entity~~ shall be reported to the Tax Commission within five (5) days from the date of identification and location. Forms to be used for such remittances and reports shall be prescribed by the Tax Commission.

F. A debt collection agency entering into a contract with the Tax Commission or a ~~business entity~~ person entering into a contract with the Tax Commission for asset location purposes pursuant to this section shall agree that it is receiving income from sources within this state or doing business in this state for purposes of the Oklahoma tax laws.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 262, is amended to read as follows:

Section 262. The Oklahoma Tax Commission may contract with private auditors or audit firms to audit the books of ~~out-of-state~~ individuals, firms, or corporations which the Commission believes may owe the State of Oklahoma additional tax monies.

SECTION 4. REPEALER 68 O.S. 1991, Section 255.1, is hereby repealed.

SECTION 5. This act shall become effective September 1, 1994.
Passed the House of Representatives the 26th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 27th day of May, 1994.

President of the Senate