

**EHB 1321**

**THE STATE SENATE**  
**Monday, April 11, 2005**

**ENGROSSED**

**House Bill No. 1321**

ENGROSSED HOUSE BILL NO. 1321 - By: NANCE of the House and NICHOLS of the Senate.

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 205, as amended by Section 2, Chapter 303, O.S.L. 2004 (68 O.S. Supp. 2004, Section 205), which relates to Uniform Tax Procedure Code; providing for exception from application of certain prohibitions on the release of information; adding entity to list of organizations eligible to request certain information; authorizing examination of certain tax records or files by certain entity pursuant to court order; establishing requirements for issuance of court order; providing restrictions upon use of records and information obtained; requiring application and order sealed for certain amount of time; allowing extension of time under certain circumstances; requiring service of certain documents; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as amended by Section 2, Chapter 303, O.S.L. 2004 (68 O.S. Supp. 2004, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code 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

1 any such records or files nor any person who may have secured  
2 information from the Tax Commission shall disclose any information  
3 obtained from the records or files or from any examination or  
4 inspection of the premises or property of any person.

5 B. ~~Neither~~ Except as provided in paragraph 26 of subsection C  
6 of this section, neither the Tax Commission nor any employee engaged  
7 in the administration of the Tax Commission or charged with the  
8 custody of any such records or files shall be required by any court  
9 of this state to produce any of the records or files for the  
10 inspection of any person or for use in any action or proceeding,  
11 except when the records or files or the facts shown thereby are  
12 directly involved in an action or proceeding pursuant to the  
13 provisions of the Uniform Tax Procedure Code or of the state tax  
14 law, or when the determination of the action or proceeding will  
15 affect the validity or the amount of the claim of the state pursuant  
16 to any state tax law, or when the information contained in the  
17 records or files constitutes evidence of violation of the provisions  
18 of the Uniform Tax Procedure Code or of any state tax law.

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

- 1           1. The delivery to a taxpayer or a duly authorized  
2 representative of the taxpayer of a copy of any report or any other  
3 paper filed by the taxpayer pursuant to the provisions of the  
4 Uniform Tax Procedure Code or of any state tax law;
- 5           2. The exchange of information that is not protected by the  
6 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,  
7 pursuant to reciprocal agreements entered into by the Tax Commission  
8 and other state agencies or agencies of the federal government;
- 9           3. The publication of statistics so classified as to prevent  
10 the identification of a particular report and the items thereof;
- 11           4. The examination of records and files by the State Auditor  
12 and Inspector or the duly authorized agents of the State Auditor and  
13 Inspector;
- 14           5. The disclosing of information or evidence to the Oklahoma  
15 State Bureau of Investigation, Attorney General, Oklahoma State  
16 Bureau of Narcotics and Dangerous Drugs Control, any district  
17 attorney, or agent of any federal law enforcement agency when the  
18 information or evidence is to be used by such officials to  
19 investigate or prosecute violations of the criminal provisions of  
20 the Uniform Tax Procedure Code or of any state tax law or of any  
21 federal crime committed against this state. Any information  
22 disclosed to the Oklahoma State Bureau of Investigation, Attorney  
23 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs

1 Control, any district attorney, or agent of any federal law  
2 enforcement agency shall be kept confidential by such person and not  
3 be disclosed except when presented to a court in a prosecution for  
4 violation of the tax laws of this state or except as specifically  
5 authorized by law, and a violation by the Oklahoma State Bureau of  
6 Investigation, Attorney General, Oklahoma State Bureau of Narcotics  
7 and Dangerous Drugs Control, district attorney, or agent of any  
8 federal law enforcement agency by otherwise releasing the  
9 information shall be a felony;

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

14 7. The furnishing, at the discretion of the Tax Commission, of  
15 any information disclosed by its records or files to any official  
16 person or body of this state, any other state, the United States, or  
17 foreign country who is concerned with the administration or  
18 assessment of any similar tax in this state, any other state or the  
19 United States. The provisions of this paragraph shall include the  
20 furnishing of information by the Tax Commission to a county assessor  
21 to determine the amount of gross household income pursuant to the  
22 provisions of Section 8C of Article X of the Oklahoma Constitution  
23 or Section 2890 of this title. The Tax Commission shall promulgate

1 rules to give guidance to the county assessors regarding the type of  
2 information which may be used by the county assessors in determining  
3 the amount of gross household income pursuant to Section 8C of  
4 Article X of the Oklahoma Constitution or Section 2890 of this  
5 title. The provisions of this paragraph shall also include the  
6 furnishing of information to the State Treasurer for the purpose of  
7 administration of the Uniform Unclaimed Property Act;

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

11 9. The furnishing of information requested by any member of the  
12 general public and stated in the sworn lists or schedules of taxable  
13 property of public service corporations organized, existing, or  
14 doing business in this state which are submitted to and certified by  
15 the State Board of Equalization pursuant to the provisions of  
16 Section 2858 of this title and Section 21 of Article X of the  
17 Oklahoma Constitution, provided such information would be a public  
18 record if filed pursuant to Sections 2838 and 2839 of this title on  
19 behalf of a corporation other than a public service corporation;

20 10. The furnishing of information requested by any member of  
21 the general public and stated in the findings of the Tax Commission  
22 as to the adjustment and equalization of the valuation of real and  
23 personal property of the counties of the state, which are submitted

1 to and certified by the State Board of Equalization pursuant to the  
2 provisions of Section 2865 of this title and Section 21 of Article X  
3 of the Oklahoma Constitution;

4 11. The furnishing of information to an Oklahoma wholesaler of  
5 low-point beer, licensed under the provisions of Section 163.1 et  
6 seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers  
7 authorized by law to purchase low-point beer in this state or the  
8 furnishing of information to a licensed Oklahoma wholesaler of  
9 shipments by licensed manufacturers into this state;

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

17 13. The posting of notice of revocation of any tax permit or  
18 license upon the premises of the place of business of any business  
19 entity which has had any tax permit or license revoked by the Tax  
20 Commission as provided for by law. Such notice shall be limited to  
21 the name of the person issued the permit or license, the name of the  
22 business entity authorized to engage in business pursuant to the

1 permit or license, the address of the business entity, and the  
2 grounds for revocation;

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

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

13 16. The disclosure of information necessary to complete the  
14 performance of any contract authorized by Sections 255 and 262 of  
15 this title to any person with whom the Tax Commission has  
16 contracted;

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

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

1        19. The disclosure to an employer, as defined in Sections  
2 2385.1 and 2385.3 of this title, of information required in order to  
3 collect the tax imposed by Section 2385.2 of this title;

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

8        21. The disclosure of information directly involved in the  
9 resolution of the protest by a taxpayer to an assessment of tax or  
10 additional tax or the resolution of a claim for refund filed by a  
11 taxpayer, including the disclosure of the pendency of an  
12 administrative proceeding involving such protest or claim, to a  
13 person called by the Tax Commission as an expert witness or as a  
14 witness whose area of knowledge or expertise specifically addresses  
15 the issue addressed in the protest or claim for refund. Such  
16 disclosure to a witness shall be limited to information pertaining  
17 to the specific knowledge of that witness as to the transaction or  
18 relationship between taxpayer and witness;

19        22. The disclosure of information necessary to implement an  
20 agreement authorized by Section 2702 of this title when such  
21 information is directly involved in the resolution of issues arising  
22 out of the enforcement of a municipal sales tax ordinance. Such

1 disclosure shall be to the governing body or to the municipal  
2 attorney, if so designated by the governing body;

3 23. The furnishing of information regarding incentive payments  
4 made pursuant to the provisions of Sections 3601 through 3609 of  
5 this title or incentive payments made pursuant to the provisions of  
6 Sections 3501 through 3508 of this title;

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

16 25. The furnishing of information as to the amount of state  
17 revenue affected by the issuance or granting of any tax permit,  
18 license, exemption, deduction, credit or other tax preference by the  
19 Tax Commission as provided for by law. Such information shall be  
20 limited to the type of permit, license, exemption, deduction, credit  
21 or other tax preference issued or granted, the date and duration of  
22 such permit, license, exemption, deduction, credit or other tax  
23 preference and the amount of such revenue. The provisions of this

1 paragraph shall not authorize the disclosure of the name of the  
2 person issued such permit, license, exemption, deduction, credit or  
3 other tax preference, or the name of the business entity authorized  
4 to engage in business pursuant to the permit, license, exemption,  
5 deduction, credit or other tax preference; or

6 26. The examination of records and files of a person or entity  
7 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs  
8 Control pursuant to a court order by a magistrate in whose  
9 territorial jurisdiction the person or entity resides, or where the  
10 Tax Commission records and files are physically located. Such an  
11 order may only be issued upon a sworn application by an Agent of the  
12 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,  
13 certifying that information resulting from such an examination would  
14 likely be relevant to an ongoing investigation of a felony violation  
15 of the Uniform Controlled Dangerous Substances Act. Any records or  
16 information obtained pursuant to such an order may only be used by  
17 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control  
18 in the investigation and prosecution of a felony violation of the  
19 Uniform Controlled Dangerous Substances Act. Any such order issued  
20 pursuant to this paragraph, along with the underlying application,  
21 shall be sealed and not disclosed to the person or entity whose  
22 records were examined, for a period of ninety (90) days. The  
23 issuing magistrate may grant extensions of such period upon a

1 showing of good cause in furtherance of the investigation. Upon the  
2 expiration of ninety (90) days and any extensions granted by the  
3 magistrate, a copy of the application and order shall be served upon  
4 the person or entity whose records were examined, along with a copy  
5 of the records or information actually provided by the Tax  
6 Commission.

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

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

17 E. The Tax Commission shall prepare or cause to be prepared a  
18 report on all provisions of state tax law that reduce state revenue  
19 through exclusions, deductions, credits, exemptions, deferrals or  
20 other preferential tax treatments. The report shall be prepared not  
21 later than October 1 of each even-numbered year and shall be  
22 submitted to the Governor, the President Pro Tempore of the Senate  
23 and the Speaker of the House of Representatives. The Tax Commission

1 may prepare and submit supplements to the report at other times of  
2 the year if additional or updated information relevant to the report  
3 becomes available. The report shall include, for the previous  
4 fiscal year, the Tax Commission's best estimate of the amount of  
5 state revenue that would have been collected but for the existence  
6 of each such exclusion, deduction, credit, exemption, deferral or  
7 other preferential tax treatment allowed by law. The Tax Commission  
8 may request the assistance of other state agencies as may be needed  
9 to prepare the report. The Tax Commission is authorized to require  
10 any recipient of a tax incentive or tax expenditure to report to the  
11 Tax Commission such information as requested so that the Tax  
12 Commission may provide the information to the Incentive Review  
13 Committee or fulfill its obligations as required by this subsection.  
14 The Tax Commission may require this information to be submitted in  
15 an electronic format. The Tax Commission may disallow any claim of  
16 a person for a tax incentive due to its failure to file a report as  
17 required under the authority of this subsection. The Tax Commission  
18 may consult with the Incentive Review Committee to develop a  
19 reporting system to obtain the information requested in a manner  
20 that is the least burdensome on the taxpayer.

21 F. It is further provided that the provisions of this section  
22 shall be strictly interpreted and shall not be construed as  
23 permitting the disclosure of any other information contained in the

1 records and files of the Tax Commission relating to income tax or to  
2 any other taxes.

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

10 H. Offenses described in Section 2376 of this title shall be  
11 reported to the appropriate district attorney of this state by the  
12 Tax Commission as soon as the offenses are discovered by the Tax  
13 Commission or its agents or employees. The Tax Commission shall  
14 make available to the appropriate district attorney or to the  
15 authorized agent of the district attorney its records and files  
16 pertinent to prosecutions, and such records and files shall be fully  
17 admissible as evidence for the purpose of such prosecutions.

18 SECTION 2. This act shall become effective November 1, 2005.

19 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-05 - DO PASS.