

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1

By: Brogdon, Ivester, Gumm,
Ford, Paddack, Nichols,
3 Anderson, Brown, Mazzei,
Crain, Wilcoxson, Lamb,
4 Aldridge, Branan, Coffee,
Sykes, Schulz,
5 Barrington, Bingman,
Reynolds, Johnson (Mike)
6 and Jolley of the Senate

7 and

8 Wesselhoft of the House

9
10
11
12 (public finance - creating the Taxpayer Transparency
13 Act - codification -
14 effective date)

15
16 AUTHORS: Add the following House Coauthors: Billy, Jackson,
Liebmann, Martin (Scott), Martin (Steve), Thompson,
17 Wright, Cannaday, Dank, Enns, Faught, Inman, Kern,
McDaniel (Randy), Murphey, Peterson (Pam), Proctor,
18 Pruett, Reynolds, Sears, Sherrer, Shumate, Sullivan,
Terrill, Tibbs and Worthen

19 AMENDMENT NO. 1. Strike the stricken title and entire bill and
20 insert

21 "An Act relating to public finance; creating the
22 Taxpayer Transparency Act; defining terms; requiring
the Office of State Finance to develop and operate a
23 specified website; enumerating information which
shall be made available on such web site;
24 establishing time period covered for information on
such web site; requiring specified agencies to

1 provide certain information; providing for
2 nondisclosure of certain information; amending 68
3 O.S. Supp. 2001, Section 205, as last amended by
4 Section 1, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
5 2006, Section 205), which relates to confidentiality
6 of certain information; modifying confidentiality
7 requirement; and providing an effective date.

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

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 46 of Title 62, unless there is
11 created a duplication in numbering, reads as follows:

12 A. This act shall be known and may be cited as the "Taxpayer
13 Transparency Act."

14 B. As used in the Taxpayer Transparency Act:

15 1. "Searchable web site" means a web site that allows the
16 public to search and aggregate information identified in subsection
17 C of this section; and

18 2. "Expenditure of state funds" means the expenditure of all
19 appropriated or nonappropriated funds by a state entity from the
20 State Treasury in forms including, but not limited to:

- 21 a. grants,
- 22 b. contracts,
- 23 c. subcontracts,
- 24 d. tax credits pursuant to the Oklahoma Income Tax Act,
excluding the child care credit and credit for taxes
paid to another state provided pursuant to the

1 provisions of Section 2357 of Title 68 of the Oklahoma
2 Statutes, and those credits provided pursuant to
3 Sections 2357.29 and 2357.43 of Title 68 of the
4 Oklahoma Statutes,

5 e. payments made under the Oklahoma Quality Jobs Program
6 Act, Saving Quality Jobs Act, Oklahoma Quality Jobs
7 Incentive Leverage Act, Small Employer Quality Jobs
8 Incentive Act, Oklahoma Specialized Quality Investment
9 Act and Oklahoma Quality Investment Act,

10 f. expenditures from the Constitutional Reserve Fund, and

11 g. expenditures pursuant to any compact between the
12 Governor and a federally recognized Indian tribe or
13 nation in this state.

14 "Expenditure of state funds" shall not mean the transfer of
15 funds between two state agencies or payments of state or federal
16 assistance to an individual.

17 C. No later than January 1, 2008, the Office of State Finance
18 shall develop and operate a single, searchable web site accessible
19 by the public at no cost to access, that includes:

20 1. For each expenditure, information including, but not limited
21 to:

22 a. the name and principal location or residence of the
23 entity and/or recipients of the funds,

24 b. the amount of state funds expended,

- 1 c. the type of transaction,
- 2 d. the funding or expending agency,
- 3 e. the budget program source,
- 4 f. a descriptive purpose of the funding action or
- 5 expenditure, and
- 6 g. any other relevant information specified by the Office
- 7 of State Finance; and

8 2. The complete contents of the Tax Expenditure Report
9 published by the Oklahoma Tax Commission pursuant to subsection E
10 of Section 205 of Title 68 of the Oklahoma Statutes.

11 D. The single web site provided for in subsection C of this
12 section shall include data for the fiscal year 2007 and each fiscal
13 year thereafter. Such data shall be available on the single web
14 site no later than thirty (30) days after the last day of the
15 preceding fiscal year.

16 E. The Oklahoma Tax Commission, the Office of the State
17 Treasurer and any other state agency shall provide to the Office of
18 State Finance such information as is necessary to accomplish the
19 purposes of this act.

20 F. Nothing in this act shall require the disclosure of
21 information which is considered confidential by state or federal
22 law.

1 SECTION 2. AMENDATORY 68 O.S. 2001, Section 205, as last
2 amended by Section 1, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,
3 Section 205), is amended to read as follows:

4 Section 205. A. The records and files of the Oklahoma Tax
5 Commission concerning the administration of the Uniform Tax
6 Procedure Code or of any state tax law shall be considered
7 confidential and privileged, except as otherwise provided for by
8 law, and neither the Tax Commission nor any employee engaged in the
9 administration of the Tax Commission or charged with the custody of
10 any such records or files nor any person who may have secured
11 information from the Tax Commission shall disclose any information
12 obtained from the records or files or from any examination or
13 inspection of the premises or property of any person.

14 B. Except as provided in paragraph 26 of subsection C of this
15 section, neither the Tax Commission nor any employee engaged in the
16 administration of the Tax Commission or charged with the custody of
17 any such records or files shall be required by any court of this
18 state to produce any of the records or files for the inspection of
19 any person or for use in any action or proceeding, except when the
20 records or files or the facts shown thereby are directly involved in
21 an action or proceeding pursuant to the provisions of the Uniform
22 Tax Procedure Code or of the state tax law, or when the
23 determination of the action or proceeding will affect the validity
24 or the amount of the claim of the state pursuant to any state tax

1 law, or when the information contained in the records or files
2 constitutes evidence of violation of the provisions of the Uniform
3 Tax Procedure Code or of any state tax law.

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

9 1. The delivery to a taxpayer or a duly authorized
10 representative of the taxpayer of a copy of any report or any other
11 paper filed by the taxpayer pursuant to the provisions of the
12 Uniform Tax Procedure Code or of any state tax law;

13 2. The exchange of information that is not protected by the
14 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,
15 pursuant to reciprocal agreements entered into by the Tax Commission
16 and other state agencies or agencies of the federal government;

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

19 4. The examination of records and files by the State Auditor
20 and Inspector or the duly authorized agents of the State Auditor and
21 Inspector;

22 5. The disclosing of information or evidence to the Oklahoma
23 State Bureau of Investigation, Attorney General, Oklahoma State
24 Bureau of Narcotics and Dangerous Drugs Control, any district

1 attorney, or agent of any federal law enforcement agency when the
2 information or evidence is to be used by such officials to
3 investigate or prosecute violations of the criminal provisions of
4 the Uniform Tax Procedure Code or of any state tax law or of any
5 federal crime committed against this state. Any information
6 disclosed to the Oklahoma State Bureau of Investigation, Attorney
7 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs
8 Control, any district attorney, or agent of any federal law
9 enforcement agency shall be kept confidential by such person and not
10 be disclosed except when presented to a court in a prosecution for
11 violation of the tax laws of this state or except as specifically
12 authorized by law, and a violation by the Oklahoma State Bureau of
13 Investigation, Attorney General, Oklahoma State Bureau of Narcotics
14 and Dangerous Drugs Control, district attorney, or agent of any
15 federal law enforcement agency by otherwise releasing the
16 information shall be a felony;

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

21 7. The furnishing, at the discretion of the Tax Commission, of
22 any information disclosed by its records or files to any official
23 person or body of this state, any other state, the United States, or
24 foreign country who is concerned with the administration or

1 assessment of any similar tax in this state, any other state or the
2 United States. The provisions of this paragraph shall include the
3 furnishing of information by the Tax Commission to a county assessor
4 to determine the amount of gross household income pursuant to the
5 provisions of Section 8C of Article X of the Oklahoma Constitution
6 or Section 2890 of this title. The Tax Commission shall promulgate
7 rules to give guidance to the county assessors regarding the type of
8 information which may be used by the county assessors in determining
9 the amount of gross household income pursuant to Section 8C of
10 Article X of the Oklahoma Constitution or Section 2890 of this
11 title. The provisions of this paragraph shall also include the
12 furnishing of information to the State Treasurer for the purpose of
13 administration of the Uniform Unclaimed Property Act;

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

17 9. The furnishing of information requested by any member of the
18 general public and stated in the sworn lists or schedules of taxable
19 property of public service corporations organized, existing, or
20 doing business in this state which are submitted to and certified by
21 the State Board of Equalization pursuant to the provisions of
22 Section 2858 of this title and Section 21 of Article X of the
23 Oklahoma Constitution, provided such information would be a public
24

1 record if filed pursuant to Sections 2838 and 2839 of this title on
2 behalf of a corporation other than a public service corporation;

3 10. The furnishing of information requested by any member of
4 the general public and stated in the findings of the Tax Commission
5 as to the adjustment and equalization of the valuation of real and
6 personal property of the counties of the state, which are submitted
7 to and certified by the State Board of Equalization pursuant to the
8 provisions of Section 2865 of this title and Section 21 of Article X
9 of the Oklahoma Constitution;

10 11. The furnishing of information to an Oklahoma wholesaler of
11 low-point beer, licensed under the provisions of Section 163.1 et
12 seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers
13 authorized by law to purchase low-point beer in this state or the
14 furnishing of information to a licensed Oklahoma wholesaler of
15 shipments by licensed manufacturers into this state;

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

23 13. The posting of notice of revocation of any tax permit or
24 license upon the premises of the place of business of any business

1 entity which has had any tax permit or license revoked by the Tax
2 Commission as provided for by law. Such notice shall be limited to
3 the name of the person issued the permit or license, the name of the
4 business entity authorized to engage in business pursuant to the
5 permit or license, the address of the business entity, and the
6 grounds for revocation;

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

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

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

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

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

3 19. The disclosure to an employer, as defined in Sections
4 2385.1 and 2385.3 of this title, of information required in order to
5 collect the tax imposed by Section 2385.2 of this title;

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

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

21 22. The disclosure of information necessary to implement an
22 agreement authorized by Section 2702 of this title when such
23 information is directly involved in the resolution of issues arising
24 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;

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
24 paragraph shall not authorize the disclosure of the name of the

1 person issued such permit, license, exemption, deduction, credit or
2 other tax preference, or the name of the business entity authorized
3 to engage in business pursuant to the permit, license, exemption,
4 deduction, credit or other tax preference;

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

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

6 27. The disclosure of information, as prescribed by this
7 paragraph, which is related to the proposed or actual usage of tax
8 credits pursuant to Section 2357.7 of this title, the Small Business
9 Capital Formation Incentive Act or the Rural Venture Capital
10 Formation Incentive Act. Unless the context clearly requires
11 otherwise, the terms used in this paragraph shall have the same
12 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this
13 title. The disclosure of information authorized by this paragraph
14 shall include:

- 15 a. the legal name of any qualified venture capital
16 company, qualified small business capital company, or
17 qualified rural small business capital company,
- 18 b. the identity or legal name of any person or entity
19 that is a shareholder or partner of a qualified
20 venture capital company, qualified small business
21 capital company, or qualified rural small business
22 capital company,
- 23 c. the identity or legal name of any Oklahoma business
24 venture, Oklahoma small business venture, or Oklahoma

1 rural small business venture in which a qualified
2 investment has been made by a capital company, or
3 d. the amount of funds invested in a qualified venture
4 capital company, the amount of qualified investments
5 in a qualified small business capital company or
6 qualified rural small business capital company and the
7 amount of investments made by a qualified venture
8 capital company, qualified small business capital
9 company, or qualified rural small business capital
10 company; or

11 28. The disclosure of specific information as required by
12 subsections C and E of Section 1 of this act.

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

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

23 E. The Tax Commission shall prepare or cause to be prepared a
24 report on all provisions of state tax law that reduce state revenue

1 through exclusions, deductions, credits, exemptions, deferrals or
2 other preferential tax treatments. The report shall be prepared not
3 later than October 1 of each even-numbered year and shall be
4 submitted to the Governor, the President Pro Tempore of the Senate
5 and the Speaker of the House of Representatives. The Tax Commission
6 may prepare and submit supplements to the report at other times of
7 the year if additional or updated information relevant to the report
8 becomes available. The report shall include, for the previous
9 fiscal year, the Tax Commission's best estimate of the amount of
10 state revenue that would have been collected but for the existence
11 of each such exclusion, deduction, credit, exemption, deferral or
12 other preferential tax treatment allowed by law. The Tax Commission
13 may request the assistance of other state agencies as may be needed
14 to prepare the report. The Tax Commission is authorized to require
15 any recipient of a tax incentive or tax expenditure to report to the
16 Tax Commission such information as requested so that the Tax
17 Commission may provide the information to the Incentive Review
18 Committee or fulfill its obligations as required by this subsection.
19 The Tax Commission may require this information to be submitted in
20 an electronic format. The Tax Commission may disallow any claim of
21 a person for a tax incentive due to its failure to file a report as
22 required under the authority of this subsection. The Tax Commission
23 may consult with the Incentive Review Committee to develop a

24

1 reporting system to obtain the information requested in a manner
2 that is the least burdensome on the taxpayer.

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

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

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

23 SECTION 3. This act shall become effective November 1, 2007."
24

1 Passed the House of Representatives the 10th day of April, 2007.

2
3
4 Presiding Officer of the House of
Representatives
5

6 Passed the Senate the ____ day of _____, 2007.

7
8
9 Presiding Officer of the Senate
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24