

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 3328

6 By: Miller

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2001, Section 205, as last amended by Section 2,  
10 Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007, Section  
11 205), which relates to the Uniform Tax Procedure  
12 Code; modifying certain disclosure exception;  
13 deleting court order and jurisdiction requirement;  
14 authorizing issuance of administrative subpoena for  
15 certain purpose; deleting time extensions and service  
16 requirements; extending certain time period; granting  
17 courts the authority to issue orders under certain  
18 circumstances; authorizing courts to unseal records  
19 upon motion; and providing an effective date.

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

21 SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last  
22 amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007,  
23 Section 205), is amended to read as follows:

24 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

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

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

20 C. The provisions of this section shall not prevent the Tax  
21 Commission from disclosing the following information and no  
22 liability whatsoever, civil or criminal, shall attach to any member  
23 of the Tax Commission or any employee thereof for any error or  
24 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  
24 Control, any district attorney, or agent of any federal law

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

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

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

1 the amount of gross household income pursuant to Section 8C of  
2 Article X of the Oklahoma Constitution or Section 2890 of this  
3 title. The provisions of this paragraph shall also include the  
4 furnishing of information to the State Treasurer for the purpose of  
5 administration of the Uniform Unclaimed Property Act;

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

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

18 10. The furnishing of information requested by any member of  
19 the general public and stated in the findings of the Tax Commission  
20 as to the adjustment and equalization of the valuation of real and  
21 personal property of the counties of the state, which are submitted  
22 to and certified by the State Board of Equalization pursuant to the  
23 provisions of Section 2865 of this title and Section 21 of Article X  
24 of the Oklahoma Constitution;

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

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

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

22           14. The furnishing of information upon written request by any  
23 member of the general public as to the outstanding and unpaid amount  
24 due and owing by any taxpayer of this state for any delinquent tax,

1 together with penalty and interest, for which a tax warrant or a  
2 certificate of indebtedness has been filed pursuant to law;

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

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

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

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

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

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

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

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

18        23. The furnishing of information regarding incentive payments  
19 made pursuant to the provisions of Sections 3601 through 3609 of  
20 this title or incentive payments made pursuant to the provisions of  
21 Sections 3501 through 3508 of this title;

22        24. The furnishing to a prospective purchaser of any business,  
23 or his or her authorized representative, of information relating to  
24 any liabilities, delinquencies, assessments or warrants of the

1 prospective seller of the business which have not been filed of  
2 record, established, or become final and which relate solely to the  
3 seller's business. Any disclosure under this paragraph shall only  
4 be allowed upon the presentment by the prospective buyer, or the  
5 buyer's authorized representative, of the purchase contract and a  
6 written authorization between the parties;

7 25. The furnishing of information as to the amount of state  
8 revenue affected by the issuance or granting of any tax permit,  
9 license, exemption, deduction, credit or other tax preference by the  
10 Tax Commission as provided for by law. Such information shall be  
11 limited to the type of permit, license, exemption, deduction, credit  
12 or other tax preference issued or granted, the date and duration of  
13 such permit, license, exemption, deduction, credit or other tax  
14 preference and the amount of such revenue. The provisions of this  
15 paragraph shall not authorize the disclosure of the name of the  
16 person issued such permit, license, exemption, deduction, credit or  
17 other tax preference, or the name of the business entity authorized  
18 to engage in business pursuant to the permit, license, exemption,  
19 deduction, credit or other tax preference;

20 26. The examination of records and files of a person or entity  
21 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs  
22 Control pursuant to ~~a court order by a magistrate in whose~~  
23 ~~territorial jurisdiction the person or entity resides, or where the~~  
24 ~~Tax Commission records and files are physically located~~ an

1 administrative subpoena issued pursuant to the provisions of Section  
2 2-103.1 of Title 63 of the Oklahoma Statutes. Such an ~~order~~  
3 administrative subpoena may only be issued ~~upon a sworn application~~  
4 ~~by an agent of the Oklahoma State Bureau of Narcotics and Dangerous~~  
5 ~~Drugs Control, certifying~~ for the purpose that the person or entity  
6 whose records and files are to be examined is the target of an  
7 ongoing investigation of a felony violation of the Uniform  
8 Controlled Dangerous Substances Act and that information resulting  
9 from such an examination would likely be relevant to that  
10 investigation. Any records or information obtained pursuant to such  
11 ~~an order~~ administrative subpoena may only be used by the Oklahoma  
12 State Bureau of Narcotics and Dangerous Drugs Control in the  
13 investigation and prosecution of a felony violation of the Uniform  
14 Controlled Dangerous Substances Act. Any such ~~order~~ administrative  
15 subpoena issued pursuant to this paragraph, along with the  
16 underlying application, shall be sealed and not disclosed to the  
17 person or entity whose records were examined, for a period of ~~ninety~~  
18 ~~(90)~~ one hundred eighty (180) days. ~~The issuing magistrate may~~  
19 ~~grant extensions of such period upon a showing of good cause in~~  
20 ~~furtherance of the investigation. Upon the expiration of ninety~~  
21 ~~(90) days and any extensions granted by the magistrate, a copy of~~  
22 ~~the application and order shall be served upon the person or entity~~  
23 ~~whose records were examined, along with a copy of the records or~~  
24 ~~information actually provided by the Tax Commission~~ In the event the

1 aforementioned time period for notification is inadequate, a court  
2 of competent jurisdiction or magistrate within the jurisdiction  
3 where the records are kept, shall have authority to order the Tax  
4 Commission, on which a subpoena for customer records has been  
5 served, not to notify the customer of the existence of the subpoena  
6 or information that has been furnished to the Oklahoma State Bureau  
7 of Narcotics and Dangerous Drugs Control. The court may order that  
8 the customer not be notified only if it finds:

- 9       a. that the requested records are relevant to an ongoing  
10       felony criminal investigation being conducted by the  
11       Oklahoma State Bureau of Narcotics and Dangerous Drugs  
12       Control, and  
13       b. that disclosure of the existence or issuance of or  
14       compliance with the subpoena may frustrate or impede  
15       the investigation.

16 Upon a motion filed by the Director of the Oklahoma State Bureau of  
17 Narcotics and Dangerous Drugs Control, the Attorney General or a  
18 district attorney, the court may unseal the records pursuant to a  
19 criminal prosecution or other court hearing;

20       27. The disclosure of information, as prescribed by this  
21 paragraph, which is related to the proposed or actual usage of tax  
22 credits pursuant to Section 2357.7 of this title, the Small Business  
23 Capital Formation Incentive Act or the Rural Venture Capital  
24 Formation Incentive Act. Unless the context clearly requires

1 otherwise, the terms used in this paragraph shall have the same  
2 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this  
3 title. The disclosure of information authorized by this paragraph  
4 shall include:

5 a. the legal name of any qualified venture capital  
6 company, qualified small business capital company, or  
7 qualified rural small business capital company,

8 b. the identity or legal name of any person or entity  
9 that is a shareholder or partner of a qualified  
10 venture capital company, qualified small business  
11 capital company, or qualified rural small business  
12 capital company,

13 c. the identity or legal name of any Oklahoma business  
14 venture, Oklahoma small business venture, or Oklahoma  
15 rural small business venture in which a qualified  
16 investment has been made by a capital company, or

17 d. the amount of funds invested in a qualified venture  
18 capital company, the amount of qualified investments  
19 in a qualified small business capital company or  
20 qualified rural small business capital company and the  
21 amount of investments made by a qualified venture  
22 capital company, qualified small business capital  
23 company, or qualified rural small business capital  
24 company; or

1        28. The disclosure of specific information as required by  
2 Section ~~± 46~~ of ~~this act~~ Title 62 of the Oklahoma Statutes.

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

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

13        E. The Tax Commission shall prepare or cause to be prepared a  
14 report on all provisions of state tax law that reduce state revenue  
15 through exclusions, deductions, credits, exemptions, deferrals or  
16 other preferential tax treatments. The report shall be prepared not  
17 later than October 1 of each even-numbered year and shall be  
18 submitted to the Governor, the President Pro Tempore of the Senate  
19 and the Speaker of the House of Representatives. The Tax Commission  
20 may prepare and submit supplements to the report at other times of  
21 the year if additional or updated information relevant to the report  
22 becomes available. The report shall include, for the previous  
23 fiscal year, the Tax Commission's best estimate of the amount of  
24 state revenue that would have been collected but for the existence

1 of each such exclusion, deduction, credit, exemption, deferral or  
2 other preferential tax treatment allowed by law. The Tax Commission  
3 may request the assistance of other state agencies as may be needed  
4 to prepare the report. The Tax Commission is authorized to require  
5 any recipient of a tax incentive or tax expenditure to report to the  
6 Tax Commission such information as requested so that the Tax  
7 Commission may provide the information to the Incentive Review  
8 Committee or fulfill its obligations as required by this subsection.  
9 The Tax Commission may require this information to be submitted in  
10 an electronic format. The Tax Commission may disallow any claim of  
11 a person for a tax incentive due to its failure to file a report as  
12 required under the authority of this subsection. The Tax Commission  
13 may consult with the Incentive Review Committee to develop a  
14 reporting system to obtain the information requested in a manner  
15 that is the least burdensome on the taxpayer.

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

21 G. Unless otherwise provided for in this section, any violation  
22 of the provisions of this section shall constitute a misdemeanor and  
23 shall be punishable by the imposition of a fine not exceeding One  
24 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail

1 for a term not exceeding one (1) year, or by both such fine and  
2 imprisonment, and the offender shall be removed or dismissed from  
3 office.

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

12 SECTION 2. This act shall become effective November 1, 2008.

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