

1 ENGROSSED HOUSE  
2 BILL NO. 1765

By: Blackwell, Luttrell,  
Pittman, Shelton and  
McAffrey of the House

3  
4 and

Justice of the Senate

5  
6  
7  
8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2001, Section 205, as last amended by Section 1,  
Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006, Section  
10 205), which relates to records and files of the  
Oklahoma Tax Commission; modifying information that  
11 may be disclosed by the Oklahoma Tax Commission;  
providing exemption to certain federally regulated  
12 investment companies; providing exemption from  
certain requirements of the Small Business Venture  
13 Capital Formation Incentive Act; providing exemption  
from certain requirements of the Rural Venture  
14 Capital Formation Incentive Act; defining terms;  
specifying scope of exemption; imposing requirements  
15 to establish eligibility for exemption; requiring  
reporting of information to the Oklahoma Tax  
16 Commission; requiring transmission of report to  
certain public officials and governmental entities;  
17 providing for codification; and declaring an  
emergency.

18  
19  
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 1, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,  
23 Section 205), is amended to read as follows:  
24

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

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

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

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

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

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

16 4. The examination of records and files by the State Auditor  
17 and Inspector or the duly authorized agents of the State Auditor and  
18 Inspector;

19 5. The disclosing of information or evidence to the Oklahoma  
20 State Bureau of Investigation, Attorney General, Oklahoma State  
21 Bureau of Narcotics and Dangerous Drugs Control, any district  
22 attorney, or agent of any federal law enforcement agency when the  
23 information or evidence is to be used by such officials to  
24 investigate or prosecute violations of the criminal provisions of

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

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

18 7. The furnishing, at the discretion of the Tax Commission, of  
19 any information disclosed by its records or files to any official  
20 person or body of this state, any other state, the United States, or  
21 foreign country who is concerned with the administration or  
22 assessment of any similar tax in this state, any other state or the  
23 United States. The provisions of this paragraph shall include the  
24 furnishing of information by the Tax Commission to a county assessor

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

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

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

23 10. The furnishing of information requested by any member of  
24 the general public and stated in the findings of the Tax Commission

1 as to the adjustment and equalization of the valuation of real and  
2 personal property of the counties of the state, which are submitted  
3 to and certified by the State Board of Equalization pursuant to the  
4 provisions of Section 2865 of this title and Section 21 of Article X  
5 of the Oklahoma Constitution;

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

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

19 13. The posting of notice of revocation of any tax permit or  
20 license upon the premises of the place of business of any business  
21 entity which has had any tax permit or license revoked by the Tax  
22 Commission as provided for by law. Such notice shall be limited to  
23 the name of the person issued the permit or license, the name of the  
24 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;

23

24

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

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

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

14        25. The furnishing of information as to the amount of state  
15 revenue affected by the issuance or granting of any tax permit,  
16 license, exemption, deduction, credit or other tax preference by the  
17 Tax Commission as provided for by law. Such information shall be  
18 limited to the type of permit, license, exemption, deduction, credit  
19 or other tax preference issued or granted, the date and duration of  
20 such permit, license, exemption, deduction, credit or other tax  
21 preference and the amount of such revenue. The provisions of this  
22 paragraph shall not authorize the disclosure of the name of the  
23 person issued such permit, license, exemption, deduction, credit or  
24 other tax preference, or the name of the business entity authorized

1 to engage in business pursuant to the permit, license, exemption,  
2 deduction, credit or other tax preference;

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

1 the application and order shall be served upon the person or entity  
2 whose records were examined, along with a copy of the records or  
3 information actually provided by the Tax Commission; ~~or~~

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

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

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

9           28. The identity of any natural person or the identity of any  
10 legal entity that is entitled to claim or to transfer any form of  
11 income tax credit, insurance premium tax credit, bank privilege tax  
12 credit or any other credit that may be used to reduce any tax  
13 liability imposed pursuant to state law and that is payable to the  
14 State of Oklahoma, including the amount of the credit, the tax type  
15 against which the credit may be claimed and the taxable period  
16 during which or for which the credit may be claimed.

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

23           It is specifically provided that no liability whatsoever, civil  
24 or criminal, shall attach to any member of the Tax Commission or any

1 employee thereof for any error or omission of any name or address in  
2 the preparation and publication of the list.

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

1 a person for a tax incentive due to its failure to file a report as  
2 required under the authority of this subsection. The Tax Commission  
3 may consult with the Incentive Review Committee to develop a  
4 reporting system to obtain the information requested in a manner  
5 that is the least burdensome on the taxpayer.

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

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

18 H. Offenses described in Section 2376 of this title shall be  
19 reported to the appropriate district attorney of this state by the  
20 Tax Commission as soon as the offenses are discovered by the Tax  
21 Commission or its agents or employees. The Tax Commission shall  
22 make available to the appropriate district attorney or to the  
23 authorized agent of the district attorney its records and files  
24

1 pertinent to prosecutions, and such records and files shall be fully  
2 admissible as evidence for the purpose of such prosecutions.

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2357.65A of Title 68, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. As used in this section:

7 1. "Federally regulated investment company" means a qualified  
8 small business capital company as defined by Section 2357.61 of  
9 Title 68 of the Oklahoma Statutes and that is licensed by the United  
10 States Small Business Administration or the United States Department  
11 of Agriculture and which qualifies as one of the following types of  
12 entities:

- 13 a. a Small Business Investment Company, or
- 14 b. a Specialized Small Business Investment Company, or
- 15 c. a Rural Business Investment Company, or
- 16 d. a Community Development Entity as defined by Section  
17 45D of the Internal Revenue Code of 1986, as amended;  
18 and

19 2. "Qualified small business capital company" means an entity  
20 meeting the requirements of Section 2357.61 of Title 68 of the  
21 Oklahoma Statutes.

22 B. Federally regulated investment companies shall be exempt  
23 from the reporting requirements of subsections C and G of Section  
24 2357.64 of Title 68 of the Oklahoma Statutes.

1 C. As a condition of the exemption authorized by this section,  
2 the federally regulated investment company shall provide to the  
3 Oklahoma Tax Commission not later than March 15 each year:

4 1. A copy of the federal license issued by the applicable  
5 federal regulatory entity;

6 2. A copy of all reports and compliance documents required by  
7 the federal regulators; and

8 3. A copy of the annual financial audit of the federally  
9 regulated investment company.

10 D. A federally regulated investment company shall also prepare  
11 an annual summary report that discloses:

12 1. All investments made in for-profit business entities during  
13 the preceding calendar year;

14 2. The primary business address of each for-profit business  
15 entity in which any investment was made;

16 3. A statement of the business activity of each of the for-  
17 profit business entities described in paragraphs 1 and 2 of this  
18 subsection;

19 4. The type of investment instrument used to make the  
20 investment; and

21 5. A status report of all investments made by the federally  
22 regulated investment company.

23 E. The federally regulated investment company shall transmit a  
24 copy of the annual summary prescribed by subsection D of this

1 section to the committees or subcommittees of the Oklahoma House of  
2 Representatives and the Oklahoma State Senate having primary  
3 jurisdiction over the Small Business Capital Formation Incentive  
4 Act, the State Treasurer, the State Auditor and Inspector, the  
5 Director of the Office of State Finance and the Oklahoma Tax  
6 Commission.

7 F. The report required by subsection D of this section shall be  
8 prepared and submitted until all of the monies available to the  
9 federally regulated investment fund have been fully invested, all of  
10 the investments have been completed and the proceeds from the  
11 investment have been disbursed to the equity investors.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 2357.76A of Title 68, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. As used in this section:

16 1. "Federally regulated investment company" means a qualified  
17 rural small business capital company as defined by Section 2357.72  
18 of Title 68 of the Oklahoma Statutes and that is licensed by the  
19 United States Small Business Administration or the United States  
20 Department of Agriculture and which qualifies as one of the  
21 following types of entities:

- 22 a. a Small Business Investment Company, or
- 23 b. a Specialized Small Business Investment Company, or
- 24 c. a Rural Business Investment Company, or

1           d.    a Community Development Entity as defined by Section  
2                   45D of the Internal Revenue Code of 1986, as amended;  
3                   and

4           2.    "Qualified rural small business capital company" means an  
5   entity meeting the requirements of Section 2357.72 of Title 68 of  
6   the Oklahoma Statutes.

7           B.    Federally regulated investment companies shall be exempt  
8   from the requirements of subsections C and G of Section 2357.75 of  
9   Title 68 of the Oklahoma Statutes.

10          C.    As a condition of the exemption authorized by this section,  
11   the federally regulated investment company shall provide to the  
12   Oklahoma Tax Commission not later than March 15 each year:

13          1.    A copy of the federal license issued by the applicable  
14   federal regulatory entity;

15          2.    A copy of all reports and compliance documents required by  
16   the federal regulators; and

17          3.    A copy of the annual financial audit of the federally  
18   regulated investment company.

19          D.    A federally regulated investment company shall also prepare  
20   an annual summary report that discloses:

21          1.    All investments made in for-profit business entities during  
22   the preceding calendar year;

23          2.    The primary business address of each for-profit business  
24   entity in which any investment was made;

1           3. A statement of the business activity of each of the for-  
2 profit business entities described in paragraphs 1 and 2 of this  
3 subsection;

4           4. The type of investment instrument used to make the  
5 investment; and

6           5. A status report of all investments made by the federally  
7 regulated investment company.

8           E. The federally regulated investment company shall transmit a  
9 copy of the annual summary prescribed by subsection D of this  
10 section to the committees or subcommittees of the Oklahoma House of  
11 Representatives and the Oklahoma State Senate having primary  
12 jurisdiction over the Rural Venture Capital Formation Incentive Act,  
13 the State Treasurer, the State Auditor and Inspector, the Director  
14 of the Office of State Finance and the Oklahoma Tax Commission.

15           F. The report required by subsection D of this section shall be  
16 prepared and submitted until all of the monies available to the  
17 federally regulated investment fund have been fully invested, all of  
18 the investments have been completed and the proceeds from the  
19 investment have been disbursed to the equity investors.

20           SECTION 4. It being immediately necessary for the preservation  
21 of the public peace, health and safety, an emergency is hereby  
22 declared to exist, by reason whereof this act shall take effect and  
23 be in full force from and after its passage and approval.

