

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 3328

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3328 - By: MILLER of the House and LAMB of the Senate.

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

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

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

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

1 obtained from the records or files or from any examination or inspection of the premises
2 or property of any person.

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

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

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

21 2. The exchange of information that is not protected by the federal Privacy
22 Protection Act, 42 U.S.C., Section 2000aa et seq., pursuant to reciprocal agreements

1 entered into by the Tax Commission and other state agencies or agencies of the federal
2 government;

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

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

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

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

4 7. The furnishing, at the discretion of the Tax Commission, of any information
5 disclosed by its records or files to any official person or body of this state, any other state,
6 the United States, or foreign country who is concerned with the administration or
7 assessment of any similar tax in this state, any other state or the United States. The
8 provisions of this paragraph shall include the furnishing of information by the Tax
9 Commission to a county assessor to determine the amount of gross household income
10 pursuant to the provisions of Section 8C of Article X of the Oklahoma Constitution or
11 Section 2890 of this title. The Tax Commission shall promulgate rules to give guidance
12 to the county assessors regarding the type of information which may be used by the
13 county assessors in determining the amount of gross household income pursuant to
14 Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The
15 provisions of this paragraph shall also include the furnishing of information to the State
16 Treasurer for the purpose of administration of the Uniform Unclaimed Property Act;

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

19 9. The furnishing of information requested by any member of the general public
20 and stated in the sworn lists or schedules of taxable property of public service
21 corporations organized, existing, or doing business in this state which are submitted to
22 and certified by the State Board of Equalization pursuant to the provisions of Section

1 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such
2 information would be a public record if filed pursuant to Sections 2838 and 2839 of this
3 title on behalf of a corporation other than a public service corporation;

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

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

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

20 13. The posting of notice of revocation of any tax permit or license upon the
21 premises of the place of business of any business entity which has had any tax permit or
22 license revoked by the Tax Commission as provided for by law. Such notice shall be

1 limited to the name of the person issued the permit or license, the name of the business
2 entity authorized to engage in business pursuant to the permit or license, the address of
3 the business entity, and the grounds for revocation;

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

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

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

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

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

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

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

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

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

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

20 24. The furnishing to a prospective purchaser of any business, or his or her
21 authorized representative, of information relating to any liabilities, delinquencies,
22 assessments or warrants of the prospective seller of the business which have not been

1 filed of record, established, or become final and which relate solely to the seller's
2 business. Any disclosure under this paragraph shall only be allowed upon the
3 presentment by the prospective buyer, or the buyer's authorized representative, of the
4 purchase contract and a written authorization between the parties;

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

15 26. The examination of records and files of a person or entity by the Oklahoma
16 State Bureau of Narcotics and Dangerous Drugs Control pursuant to ~~a court order by a~~
17 ~~magistrate in whose territorial jurisdiction the person or entity resides, or where the Tax~~
18 ~~Commission records and files are physically located~~ an administrative subpoena issued
19 pursuant to the provisions of Section 2-103.1 of Title 63 of the Oklahoma Statutes. Such
20 an order administrative subpoena may only be issued ~~upon a sworn application by an~~
21 ~~agent of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,~~
22 ~~certifying~~ for the purpose that the person or entity whose records and files are to be

1 examined is the target of an ongoing investigation of a felony violation of the Uniform
2 Controlled Dangerous Substances Act and that information resulting from such an
3 examination would likely be relevant to that investigation. Any records or information
4 obtained pursuant to such ~~an order~~ administrative subpoena may only be used by the
5 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in the investigation
6 and prosecution of a felony violation of the Uniform Controlled Dangerous Substances
7 Act. Any such ~~order~~ administrative subpoena issued pursuant to this paragraph, along
8 with the underlying application, shall be sealed and not disclosed to the person or entity
9 whose records were examined, for a period of ~~ninety (90)~~ one hundred eighty (180) days.
10 ~~The issuing magistrate may grant extensions of such period upon a showing of good~~
11 ~~cause in furtherance of the investigation. Upon the expiration of ninety (90) days and~~
12 ~~any extensions granted by the magistrate, a copy of the application and order shall be~~
13 ~~served upon the person or entity whose records were examined, along with a copy of the~~
14 ~~records or information actually provided by the Tax Commission~~ In the event the
15 aforementioned time period for notification is inadequate, a court of competent
16 jurisdiction or magistrate within the jurisdiction where the records are kept, shall have
17 authority to order the Tax Commission, on which a subpoena for customer records has
18 been served, not to notify the customer of the existence of the subpoena or information
19 that has been furnished to the Oklahoma State Bureau of Narcotics and Dangerous
20 Drugs Control. The court may order that the customer not be notified only if it finds:

- 1 a. that the requested records are relevant to an ongoing felony criminal
2 investigation being conducted by the Oklahoma State Bureau of
3 Narcotics and Dangerous Drugs Control, and
4 b. that disclosure of the existence or issuance of or compliance with the
5 subpoena may frustrate or impede the investigation.

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

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

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

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

11 28. The disclosure of specific information as required by Section ~~4~~ 46 of ~~this act~~
12 Title 62 of the Oklahoma Statutes.

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

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

21 E. The Tax Commission shall prepare or cause to be prepared a report on all
22 provisions of state tax law that reduce state revenue through exclusions, deductions,

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

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
16 dated 02-28-08 - DO PASS, As Amended and Coauthored.