

SB 1

1 THE STATE SENATE
2 Monday, February 26, 2007

3 **Senate Bill No. 1**
4 **As Amended**

5 SENATE BILL NO. 1 - By: BROGDON, IVESTER and GUMM of the Senate and
6 WESSELHOFT of the House.

7 [public finance - creating the Taxpayer Transparency Act -
8 effective date]

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

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

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

15 B. As used in the Taxpayer Transparency Act:

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

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

- 22 a. grants,
23 b. contracts,
24 c. subcontracts,

- 1 d. tax refunds, rebates or credits, excluding those which
2 result from the overpayment of income tax pursuant to
3 Sections 2385.1 through 2385.31 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 website accessible by
19 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,

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

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

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

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

21 F. Nothing in this act shall require the disclosure of
22 information which is considered confidential by state or federal
23 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

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

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

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

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

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

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

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

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

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

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

21 9. The furnishing of information requested by any member of the
22 general public and stated in the sworn lists or schedules of taxable
23 property of public service corporations organized, existing, or

1 doing business in this state which are submitted to and certified by
2 the State Board of Equalization pursuant to the provisions of
3 Section 2858 of this title and Section 21 of Article X of the
4 Oklahoma Constitution, provided such information would be a public
5 record if filed pursuant to Sections 2838 and 2839 of this title on
6 behalf of a corporation other than a public service corporation;

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

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

20 12. The furnishing of information as to the issuance or
21 revocation of any tax permit, license or exemption by the Tax
22 Commission as provided for by law. Such information shall be
23 limited to the name of the person issued the permit, license or

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

4 13. The posting of notice of revocation of any tax permit or
5 license upon the premises of the place of business of any business
6 entity which has had any tax permit or license revoked by the Tax
7 Commission as provided for by law. Such notice shall be limited to
8 the name of the person issued the permit or license, the name of the
9 business entity authorized to engage in business pursuant to the
10 permit or license, the address of the business entity, and the
11 grounds for revocation;

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

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

22 16. The disclosure of information necessary to complete the
23 performance of any contract authorized by Sections 255 and 262 of

1 this title to any person with whom the Tax Commission has
2 contracted;

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

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

9 19. The disclosure to an employer, as defined in Sections
10 2385.1 and 2385.3 of this title, of information required in order to
11 collect the tax imposed by Section 2385.2 of this title;

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

16 21. The disclosure of information directly involved in the
17 resolution of the protest by a taxpayer to an assessment of tax or
18 additional tax or the resolution of a claim for refund filed by a
19 taxpayer, including the disclosure of the pendency of an
20 administrative proceeding involving such protest or claim, to a
21 person called by the Tax Commission as an expert witness or as a
22 witness whose area of knowledge or expertise specifically addresses
23 the issue addressed in the protest or claim for refund. Such

1 disclosure to a witness shall be limited to information pertaining
2 to the specific knowledge of that witness as to the transaction or
3 relationship between taxpayer and witness;

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

10 23. The furnishing of information regarding incentive payments
11 made pursuant to the provisions of Sections 3601 through 3609 of
12 this title or incentive payments made pursuant to the provisions of
13 Sections 3501 through 3508 of this title;

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

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

14 26. The examination of records and files of a person or entity
15 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs
16 Control pursuant to a court order by a magistrate in whose
17 territorial jurisdiction the person or entity resides, or where the
18 Tax Commission records and files are physically located. Such an
19 order may only be issued upon a sworn application by an agent of the
20 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
21 certifying that the person or entity whose records and files are to
22 be examined is the target of an ongoing investigation of a felony
23 violation of the Uniform Controlled Dangerous Substances Act and

1 that information resulting from such an examination would likely be
2 relevant to that investigation. Any records or information obtained
3 pursuant to such an order may only be used by the Oklahoma State
4 Bureau of Narcotics and Dangerous Drugs Control in the investigation
5 and prosecution of a felony violation of the Uniform Controlled
6 Dangerous Substances Act. Any such order issued pursuant to this
7 paragraph, along with the underlying application, shall be sealed
8 and not disclosed to the person or entity whose records were
9 examined, for a period of ninety (90) days. The issuing magistrate
10 may grant extensions of such period upon a showing of good cause in
11 furtherance of the investigation. Upon the expiration of ninety
12 (90) days and any extensions granted by the magistrate, a copy of
13 the application and order shall be served upon the person or entity
14 whose records were examined, along with a copy of the records or
15 information actually provided by the Tax Commission; ~~or~~

16 27. The disclosure of information, as prescribed by this
17 paragraph, which is related to the proposed or actual usage of tax
18 credits pursuant to Section 2357.7 of this title, the Small Business
19 Capital Formation Incentive Act or the Rural Venture Capital
20 Formation Incentive Act. Unless the context clearly requires
21 otherwise, the terms used in this paragraph shall have the same
22 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this

1 title. The disclosure of information authorized by this paragraph
2 shall include:

- 3 a. the legal name of any qualified venture capital
4 company, qualified small business capital company, or
5 qualified rural small business capital company,
6 b. the identity or legal name of any person or entity
7 that is a shareholder or partner of a qualified
8 venture capital company, qualified small business
9 capital company, or qualified rural small business
10 capital company,
11 c. the identity or legal name of any Oklahoma business
12 venture, Oklahoma small business venture, or Oklahoma
13 rural small business venture in which a qualified
14 investment has been made by a capital company, or
15 d. the amount of funds invested in a qualified venture
16 capital company, the amount of qualified investments
17 in a qualified small business capital company or
18 qualified rural small business capital company and the
19 amount of investments made by a qualified venture
20 capital company, qualified small business capital
21 company, or qualified rural small business capital
22 company; or

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

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

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

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

22 G. Unless otherwise provided for in this section, any violation
23 of the provisions of this section shall constitute a misdemeanor and

1 shall be punishable by the imposition of a fine not exceeding One
2 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail
3 for a term not exceeding one (1) year, or by both such fine and
4 imprisonment, and the offender shall be removed or dismissed from
5 office.

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

14 SECTION 3. This act shall become effective November 1, 2007.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
16 PASS, As Amended and Coauthored.