

SB 1956

THE STATE SENATE
Monday, February 25, 2008

Senate Bill No. 1956
As Amended

SENATE BILL NO. 1956 - By: MAZZEI and WILSON of the Senate and
TERRILL and JONES of the House.

[revenue and taxation - modifying applicability of
provision - modifying time period during which sourcing rule
applies - effective date]

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

B. Except as provided in paragraph 26 of subsection C of this
section, 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 shall be required by any court of this
3 state to produce any of the records or files for the inspection of
4 any person or for use in any action or proceeding, except when the
5 records or files or the facts shown thereby are directly involved in
6 an action or proceeding pursuant to the provisions of the Uniform
7 Tax Procedure Code or of the state tax law, or when the
8 determination of the action or proceeding will affect the validity
9 or the amount of the claim of the state pursuant to any state tax
10 law, or when the information contained in the records or files
11 constitutes evidence of violation of the provisions of the Uniform
12 Tax Procedure Code or of any state tax law.

13 C. The provisions of this section shall not prevent the Tax
14 Commission from disclosing the following information and no
15 liability whatsoever, civil or criminal, shall attach to any member
16 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
19 representative of the taxpayer of a copy of any report or any other
20 paper filed by the taxpayer pursuant to the provisions of the
21 Uniform Tax Procedure Code or of any state tax law;

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

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

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

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

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

1 and Dangerous Drugs Control, district attorney, or agent of any
2 federal law enforcement agency by otherwise releasing the
3 information shall be a felony;

4 6. The use by any division of the Tax Commission of any
5 information or evidence in the possession of or contained in any
6 report or return filed with any other division of the Tax
7 Commission;

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

1 furnishing of information to the State Treasurer for the purpose of
2 administration of the Uniform Unclaimed Property Act;

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

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

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

22 11. The furnishing of information to an Oklahoma wholesaler of
23 low-point beer, licensed under the provisions of Section 163.1 et

1 seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers
2 authorized by law to purchase low-point beer in this state or the
3 furnishing of information to a licensed Oklahoma wholesaler of
4 shipments by licensed manufacturers into this state;

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

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

20 14. The furnishing of information upon written request by any
21 member of the general public as to the outstanding and unpaid amount
22 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

1 Tax Commission in order for such plaintiff to comply with the
2 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

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

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

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

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

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

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

1 whose records were examined, along with a copy of the records or
2 information actually provided by the Tax Commission;

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

- 12 a. the legal name of any qualified venture capital
13 company, qualified small business capital company, or
14 qualified rural small business capital company,
15 b. the identity or legal name of any person or entity
16 that is a shareholder or partner of a qualified
17 venture capital company, qualified small business
18 capital company, or qualified rural small business
19 capital company,
20 c. the identity or legal name of any Oklahoma business
21 venture, Oklahoma small business venture, or Oklahoma
22 rural small business venture in which a qualified
23 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 disclosure of specific information as required by
10 Section 1 of this act.

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

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

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

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

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

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

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

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

1 SECTION 2. AMENDATORY Section 20, Chapter 413, O.S.L.
2 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68
3 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

4 Section 1354.27 A. The retail sale, excluding lease or rental,
5 of a product shall be sourced as follows:

6 1. When the product is received by the purchaser at a business
7 location of the seller, the sale is sourced to that business
8 location;

9 2. When the product is not received by the purchaser at a
10 business location of the seller, the sale is sourced to the location
11 where receipt by the purchaser, or the purchaser's donee, designated
12 as such by the purchaser, occurs, including the location indicated
13 by instructions for delivery to the purchaser or donee, known to the
14 seller. Provided, this subsection shall not apply to florists until
15 ~~January 1, 2009~~ January 1, 2010. Prior to that date, all sales by
16 florists shall be sourced to its business location;

17 3. When the provisions of paragraphs 1 and 2 of this subsection
18 do not apply, the sale is sourced to the location indicated by an
19 address for the purchaser that is available from the business
20 records of the seller that are maintained in the ordinary course of
21 the seller's business when use of this address does not constitute
22 bad faith;

1 4. When the provisions of paragraphs 1, 2 and 3 of this
2 subsection do not apply, the sale is sourced to the location
3 indicated by an address for the purchaser obtained during the
4 consummation of the sale, including the address of a purchaser's
5 payment instrument, if no other address is available, when use of
6 this address does not constitute bad faith; and

7 5. When none of the previous rules of paragraphs 1, 2, 3 and 4
8 of this subsection apply, including the circumstance in which the
9 seller is without sufficient information to apply the previous
10 rules, then the location will be determined by the address from
11 which tangible personal property was shipped, from which the digital
12 good or the computer software delivered electronically was first
13 available for transmission by the seller, or from which the service
14 was provided, disregarding for these purposes any location that
15 merely provided the digital transfer of the product sold. In the
16 case of a sale of mobile telecommunications service that is a
17 prepaid telecommunications service, the location will be that which
18 is associated with the mobile telephone number.

19 B. The lease or rental of tangible personal property, other
20 than property identified in subsection C or D of this section, shall
21 be sourced as follows:

22 1. For a lease or rental that requires recurring periodic
23 payments, the first periodic payment is sourced the same as a retail

1 sale in accordance with the provisions of subsection A of this
2 section. Periodic payments made subsequent to the first payment are
3 sourced to the primary property location for each period covered by
4 the payment. The primary property location shall be as indicated by
5 an address for the property provided by the lessee that is available
6 to the lessor from its records maintained in the ordinary course of
7 business, when use of this address does not constitute bad faith.
8 The property location shall not be altered by intermittent use at
9 different locations, such as use of business property that
10 accompanies employees on business trips and service calls; and

11 2. For a lease or rental that does not require recurring
12 periodic payments, the payment is sourced the same as a retail sale
13 in accordance with the provisions of subsection A of this section.

14 This subsection does not affect the imposition or computation of
15 sales or use tax on leases or rentals based on a lump sum or
16 accelerated basis, or on the acquisition of property for lease.

17 C. The lease or rental of motor vehicles, trailers,
18 semitrailers, or aircraft that do not qualify as transportation
19 equipment, as defined in subsection D of this section, shall be
20 sourced as follows:

21 1. For a lease or rental that requires recurring periodic
22 payments, each periodic payment is sourced to the primary property
23 location. The primary property location shall be as indicated by an

1 address for the property provided by the lessee that is available to
2 the lessor from its records maintained in the ordinary course of
3 business, when use of this address does not constitute bad faith.
4 This location shall not be altered by intermittent use at different
5 locations; and

6 2. For a lease or rental that does not require recurring
7 periodic payments, the payment is sourced the same as a retail sale
8 in accordance with the provisions of subsection A of this section.

9 This subsection does not affect the imposition or computation of
10 sales or use tax on leases or rentals based on a lump sum or
11 accelerated basis, or on the acquisition of property for lease.

12 D. The retail sale, including lease or rental, of
13 transportation equipment shall be sourced the same as a retail sale
14 in accordance with the provisions of subsection A of this section,
15 notwithstanding the exclusion of lease or rental in subsection A of
16 this section. "Transportation equipment" means any of the following:

17 1. Locomotives and railcars that are utilized for the carriage
18 of persons or property in interstate commerce;

19 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating
20 (GVWR) of ten thousand one (10,001) pounds or greater, trailers,
21 semitrailers, or passenger buses that are:

22 a. registered through the International Registration
23 Plan, and

