

ENROLLED HOUSE  
BILL NO. 3422

By: Miller, Murphey, Scott,  
Tibbs, Ownbey, Jones,  
Derby, McDaniel (Randy) and  
Williams of the House

and

Jolley, Stanislawski,  
Ivester and Branam of the  
Senate

An Act relating to public finance; amending Section 1, Chapter 327, O.S.L. 2007 (62 O.S. Supp. 2009, Section 46), which relates to the Taxpayer Transparency Act; modifying provisions related to amount of expenditures; requiring "Open Books 2.0"; requiring search features; providing for export of data; requiring archived information; amending 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 426, O.S.L. 2009 (68 O.S. Supp. 2009, Section 205), which relates to records and files of the Oklahoma Tax Commission; providing for disclosure of certain information; requiring Oklahoma Tax Commission to prepare and maintain list of taxpayers claiming certain credits; imposing duty on Office of State Finance with respect to certain information; defining term; providing for disclosure of information related to allocated tax credits; prescribing procedures for identification of certain persons or entities; providing for tax year during which provisions first become effective; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 327, O.S.L. 2007 (62 O.S. Supp. 2009, Section 46), is amended to read as follows:

Section 46. A. This act shall be known and may be cited as the "Taxpayer Transparency Act-".

B. As used in the Taxpayer Transparency Act:

1. "Single website" means a website that allows the public to access information identified in subsection C of this section without any fee or charge to the public for such access;

2. "Expenditure of state funds" means the disbursement of all state funds regardless of amount of expenditure, whether appropriated or nonappropriated, excluding:

- a. the transfer of funds between two state agencies,
- b. payments of state or federal assistance to an individual,
- c. child support payments, and
- d. refunds issued by the Oklahoma Tax Commission resulting from the overpayment of tax;

3. "Incentive payments" means payments made under the Oklahoma Quality Jobs Program Act, Saving Quality Jobs Act, Oklahoma Quality Jobs Incentive Leverage Act, Small Employer Quality Jobs Incentive Act, Oklahoma Specialized Quality Investment Act and Oklahoma Quality Investment Act; and

4. "Tax credit" means a credit pursuant to the Oklahoma Income Tax Act against tax liability which is taken by a taxpayer, excluding credits authorized under paragraphs 1 and 2 of subsection B of Section 2357 and Sections 2357.29 and 2357.43 of Title 68 of the Oklahoma Statutes.

C. No later than January 1, 2008, the Office of State Finance shall develop and operate a single website accessible by the public. The website shall include aggregate information on state revenue, expenditures and incentive payments and information on state tax preferences as contained in the tax expenditure report published by the Oklahoma Tax Commission pursuant to subsection E of Section 205 of Title 68 of the Oklahoma Statutes. No later than January 1, 2009, the website shall include search capabilities.

D. Effective January 1, 2011, the Office of State Finance shall update the website with "Open Books 2.0," an expanded online database through which each individual expenditure shall be listed individually separate of aggregated amount. The information shall be searchable by term including name of recipient, entity making expenditure and date of expenditure. The website shall allow members of the public to export sets of data produced by search query in a standardized exportable form. No later than eighteen (18) months after "Open Books 2.0" is online, the Office of State Finance shall create an online archive for each fiscal year, beginning with Fiscal Year 2011, which shall be accessible and searchable to online users.

E. As soon as practicable after January 1, 2008, such website shall also include, but not be limited to:

1. For the expenditure of state funds or incentive payments:

- a. the name and principal location of the entity and/or recipients of the funds, excluding release of information relating to an individual's place of residence, release of information prohibited by subsection D of Section 24A.7 of Title 51 of the Oklahoma Statutes or by federal law relating to privacy rights,
- b. the amount of state funds expended,
- c. the type of transaction,
- d. the funding or expending agency, and
- e. a descriptive purpose of the funding action or expenditure; and

2. For each tax credit, information, including but not limited to:

- a. the name of each taxpayer to which a credit has been granted,
- b. the amount of such credit, and
- c. the specific provision under which a credit has been granted.

~~E.~~ F. The single website provided for in subsection C of this section shall include data on state revenue, expenditures and incentive payments for the fiscal year 2007 and each fiscal year thereafter and on state tax credits for tax year 2007 and each tax year thereafter. Such data shall be available on the single website no later than one hundred twenty (120) days after the last day of the preceding fiscal year.

~~F.~~ G. The Oklahoma Tax Commission, the Office of the State Treasurer, all institutions of The Oklahoma State System of Higher Education and any other state agency shall provide to the Office of State Finance such information as is necessary to accomplish the purposes of this act.

~~G.~~ H. So that the Tax Commission may fulfill its obligations as required by this section, all recipients of tax credits, as that term is defined herein, shall file their reports or returns claiming the tax credits in an electronic format, as may be required by the Tax Commission. The Tax Commission may disallow any claim of a person for a tax credit due to its failure to file a report or return as required under the authority of this paragraph.

~~H.~~ I. Nothing in this act shall require the disclosure of information which is required to be confidential by state or federal law.

~~I.~~ J. The disclosure of information required by this section shall create no liability whatsoever, civil or criminal, to the State of Oklahoma or any member of the Office of State Finance or any employee thereof for disclosure of the information or for any error or omission in the disclosure.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 426, O.S.L. 2009 (68 O.S. Supp. 2009, 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 administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of the Uniform Tax Procedure Code or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of the Uniform Tax Procedure Code or of any state tax law.

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

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

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

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

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

5. The disclosing of information or evidence to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency when the

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

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

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

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

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable

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

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

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, or an association or organization whose membership is comprised of such wholesalers, of the licensed retailers authorized by law to purchase low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of low-point beer of shipments by licensed manufacturers into this state;

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

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

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

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

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

16. The disclosure of information necessary to complete the performance of any contract authorized by this title to any person with whom the Tax Commission has contracted;

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

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

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

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

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

22. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising

out of the enforcement of a municipal sales tax ordinance. Such disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

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

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

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

26. The examination of records and files of a person or entity by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control pursuant to a court order by a magistrate in whose territorial jurisdiction the person or entity resides, or where the Tax Commission records and files are physically located. Such an order may only be issued upon a sworn application by an agent of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, certifying that the person or entity whose records and files are to be examined is the target of an ongoing investigation of a felony violation of the Uniform Controlled Dangerous Substances Act and that information resulting from such an examination would likely be relevant to that investigation. Any records or information obtained

pursuant to such an order may only be used by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in the investigation and prosecution of a felony violation of the Uniform Controlled Dangerous Substances Act. Any such order issued pursuant to this paragraph, along with the underlying application, shall be sealed and not disclosed to the person or entity whose records were examined, for a period of ninety (90) days. The issuing magistrate may grant extensions of such period upon a showing of good cause in furtherance of the investigation. Upon the expiration of ninety (90) days and any extensions granted by the magistrate, a copy of the application and order shall be served upon the person or entity whose records were examined, along with a copy of the records or information actually provided by the Tax Commission;

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

- a. the legal name of any qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- b. the identity or legal name of any person or entity that is a shareholder or partner of a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- c. the identity or legal name of any Oklahoma business venture, Oklahoma small business venture, or Oklahoma rural small business venture in which a qualified investment has been made by a capital company, or
- d. the amount of funds invested in a qualified venture capital company, the amount of qualified investments in a qualified small business capital company or qualified rural small business capital company and the amount of investments made by a qualified venture capital company, qualified small business capital

company, or qualified rural small business capital company;

28. The disclosure of specific information as required by Section 46 of Title 62 of the Oklahoma Statutes; ~~or~~

29. The disclosure of specific information as required by Section ~~3~~ 205.5 of this ~~act~~ title; or

30. The disclosure of specific information as required by Section 3 of this act.

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

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

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

an electronic format. The Tax Commission may disallow any claim of a person for a tax incentive due to its failure to file a report as required under the authority of this subsection. The Tax Commission may consult with the Incentive Review Committee to develop a reporting system to obtain the information requested in a manner that is the least burdensome on the taxpayer.

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

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 205.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission shall prepare and maintain a list of all taxpayers who have claimed any tax credit authorized by any provisions of state law and related to a tax administered by the Tax Commission. The Office of State Finance shall cause the list to be posted on the Internet through the Taxpayer Transparency Act website in a format which is searchable and can be exported in raw data form.

The Office of State Finance shall include the name of each taxpayer who claimed a credit, the amount of such credit and the specific statutory provision under which the credit was claimed.

The Internet list shall be updated not less than monthly. The list shall include the identity of all taxpayers or organizations having any part in the chain of custody or claim to the credit or credits at any time during the credit's existence from the initial time the credit is earned, through the time that the credit is claimed on a tax return.

B. For the purposes of this section "tax credit" means a credit against tax liability that is a credit administered by the Tax Commission, excluding credits authorized under paragraphs 1 and 2 of subsection B of Section 2357, Section 2357.4 and Sections 2357.29 and 2357.43 of Title 68 of the Oklahoma Statutes.

C. In addition to the disclosure required by subsection A of this section, for any tax credit that may be claimed by any person or any lawfully recognized business entity pursuant to the provisions of Sections 2357.62, 2357.63, 2357.73, and 2357.74 of Title 68 of the Oklahoma Statutes, the Oklahoma Tax Commission shall maintain a list of any person and any such entity that may be able to claim any such credit as a result of the allocation of tax credits based upon the pass-through federal income tax treatment applicable to the entity that makes a qualified investment, as such term is defined by paragraph 6 of Section 2357.61 of Title 68 of the Oklahoma Statutes and paragraph 7 of Section 2357.72 of Title 68 of the Oklahoma Statutes, in either a qualified small business capital company or a qualified rural small business capital company. For purposes of this subsection, the Tax Commission shall determine the identity of such persons and legal entities as of the December 31 date of the calendar year during which the qualified investment is made.

D. The provisions of this section shall become effective starting with the 2011 tax year.

SECTION 4. This act shall become effective July 1, 2010.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of May, 2010.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 25th day of May, 2010.

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Presiding Officer of the Senate