

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 329

By: Hall

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Tax Commission;
8 amending 68 O.S. 2011, Section 205, as last amended
9 by Section 37, Chapter 210, O.S.L. 2016 (68 O.S.
10 Supp. 2020, Section 205), which relates to exceptions
11 for confidential and privileged records and files;
12 excepting certain information provided to the
13 Incentive Evaluation Commission and the Oklahoma
14 Department of Commerce for certain purpose; requiring
15 certain information to be considered confidential;
16 providing exception to the requirements of the
17 Oklahoma Open Records Act; and providing an effective
18 date.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 205, as last
21 amended by Section 37, Chapter 210, O.S.L. 2016 (68 O.S. Supp. 2020,
22 Section 205), is amended to read as follows:

23 Section 205. A. The records and files of the Oklahoma Tax
24 Commission concerning the administration of the Uniform Tax
25 Procedure Code or of any state tax law shall be considered
26 confidential and privileged, except as otherwise provided for by
27 law, and neither the Tax Commission nor any employee engaged in the
28 administration of the Tax Commission or charged with the custody of

1 any such records or files nor any person who may have secured
2 information from the Tax Commission shall disclose any information
3 obtained from the records or files or from any examination or
4 inspection of the premises or property of any person.

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

19 C. The provisions of this section shall not prevent the Tax
20 Commission from disclosing the following information and no
21 liability whatsoever, civil or criminal, shall attach to any member
22 of the Tax Commission or any employee thereof for any error or
23 omission in the disclosure of such information:
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1 1. The delivery to a taxpayer or a duly authorized
2 representative of the taxpayer of a copy of any report or any other
3 paper filed by the taxpayer pursuant to the provisions of the
4 Uniform Tax Procedure Code or of any state tax law;

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

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

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

14 5. The disclosing of information or evidence to the Oklahoma
15 State Bureau of Investigation, Attorney General, Oklahoma State
16 Bureau of Narcotics and Dangerous Drugs Control, any district
17 attorney⁷ or agent of any federal law enforcement agency when the
18 information or evidence is to be used by such officials to
19 investigate or prosecute violations of the criminal provisions of
20 the Uniform Tax Procedure Code or of any state tax law or of any
21 federal crime committed against this state. Any information
22 disclosed to the Oklahoma State Bureau of Investigation, Attorney
23 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs
24 Control, any district attorney⁷ or agent of any federal law

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

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

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

1 the amount of gross household income pursuant to Section 8C of
2 Article X of the Oklahoma Constitution or Section 2890 of this
3 title. The provisions of this paragraph shall also include the
4 furnishing of information to the State Treasurer for the purpose of
5 administration of the Uniform Unclaimed Property Act;

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

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

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

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

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

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

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

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

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

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

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

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

23 20. The disclosure to a plaintiff of a corporation's last-known
24 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;

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

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

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

1 qualified rural small business capital company and the
2 amount of investments made by a qualified venture
3 capital company, qualified small business capital
4 company, or qualified rural small business capital
5 company;

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

8 29. The disclosure of specific information as required by
9 Section 205.5 of this title;

10 30. The disclosure of specific information as required by
11 Section 205.6 of this title;

12 31. The disclosure of information to the State Treasurer
13 necessary to implement Section 2368.27 of this title; ~~or~~

14 32. The disclosure of specific information to the Oklahoma
15 Health Care Authority for purposes of determining eligibility for
16 current or potential recipients of assistance from the Oklahoma
17 Medicaid Program;

18 33. The disclosure of aggregate data and other specific
19 information not to include personally identifiable information to
20 the Incentive Evaluation Commission or its contractor under the
21 provisions of Section 7001 et seq. of Title 62 of the Oklahoma
22 Statutes for the purpose of evaluating economic incentives.
23 Information provided to the Incentive Evaluation Commission and its
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1 contractor shall be considered confidential and shall not be subject
2 to the Oklahoma Open Records Act; or

3 34. The disclosure of aggregate data and other specific
4 information to the Oklahoma Department of Commerce for the purpose
5 of evaluating economic trends, the efficacy of agency initiatives
6 and administering economic incentives. Information provided to the
7 Department of Commerce pursuant to this paragraph shall be
8 considered confidential and shall not be subject to the Oklahoma
9 Open Records Act.

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

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

20 E. The Tax Commission shall prepare or cause to be prepared a
21 report on all provisions of state tax law that reduce state revenue
22 through exclusions, deductions, credits, exemptions, deferrals or
23 other preferential tax treatments. The report shall be prepared not
24 later than October 1 of each even-numbered year and shall be

1 submitted to the Governor, the President Pro Tempore of the Senate
2 and the Speaker of the House of Representatives. The Tax Commission
3 may prepare and submit supplements to the report at other times of
4 the year if additional or updated information relevant to the report
5 becomes available. The report shall include, for the previous
6 fiscal year, the Tax Commission's best estimate of the amount of
7 state revenue that would have been collected but for the existence
8 of each such exclusion, deduction, credit, exemption, deferral or
9 other preferential tax treatment allowed by law. The Tax Commission
10 may request the assistance of other state agencies as may be needed
11 to prepare the report. The Tax Commission is authorized to require
12 any recipient of a tax incentive or tax expenditure to report to the
13 Tax Commission such information as requested so that the Tax
14 Commission may fulfill its obligations as required by this
15 subsection. The Tax Commission may require this information to be
16 submitted in an electronic format. The Tax Commission may disallow
17 any claim of a person for a tax incentive due to its failure to file
18 a report as required under the authority of this subsection.

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

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

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

16 SECTION 2. This act shall become effective November 1, 2021.

18 58-1-1082 QD 1/9/2021 2:28:04 PM