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Bridging the Budget Gap:

Revenue Options for a Balanced Approach

BY DAVID BLATT, DIRECTOR, OKLAHOMA POLICY INSTITUTE

SPECIAL POINTS OF INTEREST

- Without additional revenues, next year's budget will require cuts of up to 12 percent across all state agencies on top of the cuts already enacted.
- Cuts of this magnitude would seriously damage core public services.
- Policymakers should choose a balanced approach to bridging the budget gap, one that includes new revenues in addition to budget cuts, efficiencies, and using reserves.
- Sensible revenue options include: eliminating the deduction for state income taxes; revising the vendor discount; enhancing collections of taxes on remote sales; and controlling runaway tax credits.

INTRODUCTION

Oklahoma is facing a severe and prolonged fiscal crisis. As a result of the national recession, state revenue collections for this year and next are projected to fall almost 25 percent below their pre-downturn levels, and it may well take until 2013 until revenues have recovered to the same levels as in 2008.

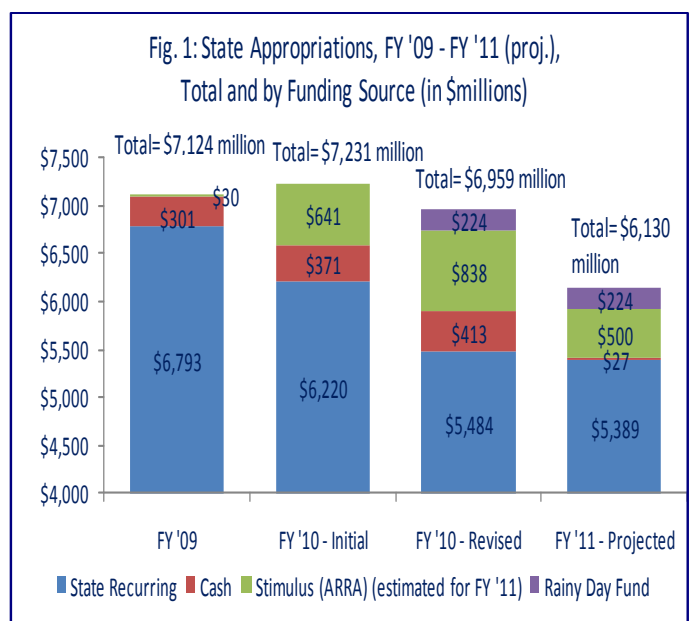
Budget cuts are already having a painful impact on the public services on which Oklahomans rely. To cite only a few examples, treatment facilities for children with mental health problems in Norman and for adults with drug addictions in Tahlequah have been closed. Some 17 centers that provide early intervention services to preschool children with developmental delays are slated for elimination. Funding for meals program for seniors has been slashed by \$7.2 million. Staffing levels at correctional facilities are at their absolute minimum. Across state government, operating hours are be-

ing reduced, state employees are taking furlough days, and rates paid to private contractors and health care providers are being squeezed to address funding shortfalls.²

As bad as things have already gotten, all agree that the outlook for next year is considerably worse. This year's budget has been propped up by the injection of some \$1.4 billion in non-recurring revenue from the federal Recovery Act, the state's Rainy Day Fund, and cash reserves. While some

agencies have already absorbed budget cuts of 10 percent and above, education, health care, social services, and public safety have thus far been spared the full impact of declining revenues. Overall, this year's final appropriations of \$6.965 billion are only \$159 million, or 2.2 percent, below last year.

With state tax collections projected to increase only modestly and less money available from the Recov-



ery Act and cash reserves, the shortfall for the coming budget year that begins July 1st looks to be some \$800 - \$850 million (see Fig. 1, page 1). This gap is equivalent to **an additional 11 to 12 percent funding cut to every agency of state government** on top of the cuts that have already been enacted.

Cuts in spending of this magnitude cannot be easily absorbed. They would inflict serious damage to our ability to provide education and public safety, meet the growing needs for social services that accompany economic hard times, and maintain needed investments in roads and other infrastructure essential to the state's economic future. Budget cuts and layoffs would also threaten the state's economic recovery by increasing unemployment and eroding purchasing power.

However, this outcome is not inevitable. Policymakers have the choice of adopting a balanced approach to bridging the budget gap, one that includes new revenue sources in addition to budget cuts, efficiencies, and using reserves. In his FY '11 Executive Budget, Governor Henry proposed a wide range of revenue enhancements that together had an estimated fiscal impact of over \$700 million (A Full list of the Governor's revenue enhancements is on p. 7). Even with these proposals, his budget recommended additional cuts of 0.5 percent to 3.0 percent for every state agency in FY'11. This would still create serious budget challenges for many agencies, but would avoid the full-fledged catastrophe that cutting core services an additional 10-12 percent is likely to entail.

In this brief, we explore four ideas for generating additional revenues. These are not intended as an exhaustive list of the options that may be available, but represent some of the most promising and sensible choices that we believe deserve consideration by the Legislature.

1. Closing the Circle on the State Income Tax Deduction

Each year, just over one in four Oklahomans who file a federal tax return – 26.9 percent in 2007 – itemize their deductions, with the rest claiming the standard deduction.² Taxpayers who itemize their federal deductions automatically itemize on their state income tax return as well. Among the allowable deductions for

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taxpayers who claim itemized deductions on their federal taxes is a deduction for state income tax.

Most states that allow taxpayers to carry over federal itemized deductions require taxpayers to add back the deduction for state income taxes when completing their state return. Oklahoma is one of just six states – the others are Arizona, Hawaii, Louisiana, Rhode Island and Vermont – that still allow the deduc-

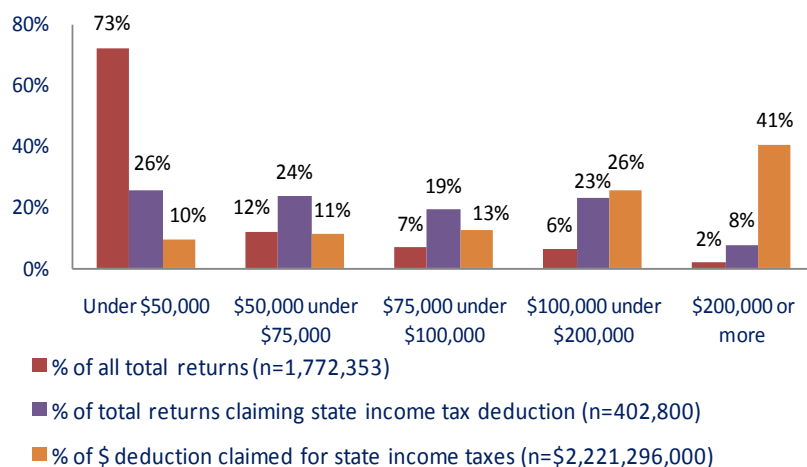
tion of state income tax on state tax returns.³ New Mexico recently enacted legislation to end the deduction, while Vermont has capped the deduction at \$5,000.

A fiscal impact report prepared by the New Mexico Taxation and Revenue Department for their state's bill doing away with this deduction identified the core problem:

Allowing the deduction merely reduces the effective rate of state income tax for taxpayers who itemize. This policy provides ease of compliance for taxpayers, but one consequence is a reduction in the effective income tax rate for households that itemize deductions relative to households that do not itemize.⁴

In practice, allowing the deduction of state income taxes reduces taxes primarily for the wealthy. A full 67 percent of the deductions for state income taxes claimed by Oklahomans in 2007 were claimed by the small minority of taxpayers (8 percent) with income over \$100,000. By contrast, while 73 percent of Oklahoma taxpayers had income under \$50,000, only 12 percent of this population itemized their deductions and they accounted for just 10 percent of the amount deducted for state

Fig. 2: Oklahoma Income Tax Data by Adjusted Gross Income, 2007 (Source: IRS SOI Bulletin)



income taxes (Fig. 2).

Eliminating the deduction for state income taxes would bring in \$118 million in additional revenue to the state, according to an analysis conducted for OK Policy by the Institute for Taxation and Economic Policy. Three out of four Oklahoma households – those who claim the standard deduction – would be unaffected by this tax change. Just 4 percent of the additional state revenue from this change to the tax code would come from the 60 percent of taxpayers with income below \$49,100, while 58 percent of the additional revenues would be borne by the richest 5 percent of taxpayers, those with incomes above \$163,000 in 2011. (However, for those paying more, the impact of higher state income taxes would be partially offset by lower federal taxes, since those state taxes would remain federally deductible. ITEP estimates that repealing the deduc-

tion for state income taxes paid would lower federal tax liability by \$27 million, so that the net impact on taxpayers would be \$91 million).⁵

The circular process that allows state income taxes to be claimed as a deduction against state income taxes makes little sense and benefits only the minority of mostly wealthier Oklahomans who itemize their deductions. Doing away with this loophole would mark a small but important step towards a more equitable tax system, while significantly easing the challenges facing the state budget.

2. Revisiting the Vendor Sales Tax Discount

One straightforward revenue-generating idea involves limiting the discount that the state pays retailers for collecting the state sales tax. Currently Oklahoma is among 26 states that provide vendors some form of compensation,

or discount, for collecting and remitting sales tax. As the policy organization Good Jobs First has noted:

When stores were small and records were mostly kept by hand, a plausible case could be made that retailers deserved some financial assistance from states to offset the costs associated with sales tax collection and remittance. But even then, policymakers in many states never accepted the argument.⁶

Of the 45 states with a sales tax, 19 do not provide a vendor discount, while 26, including Oklahoma, do. Oklahoma provides retailers 2.25 percent of sales tax collections if they file electronically, or 1.25 percent otherwise, up to a monthly maximum discount of \$3,300 per sales tax permit-holder. Among the 13 states that cap the total discount, Oklahoma's cap is the second highest (see Table 2, next page). Arkansas, by comparison, allows a discount rate of 2.0 percent, with a cap of \$833 per month. The Oklahoma Tax Commission calculates the cost of the vendor discount at \$25.9 million for CY 2008, more than three-quarters of which went to the 4 percent of Oklahoma businesses that collected over \$100,000 in sales tax.

Even though businesses receive no payment for assisting in the collection of other taxes, such as income tax withholding, a good case can

Table 1: Retailer Compensation Ceilings (monthly amounts)

| | | | | | |
|----------|----|-------|------------------|----|---------|
| Alabama | \$ | 400 | Michigan*** | \$ | 200,000 |
| Arizona | \$ | 833 | Mississippi* | \$ | 50 |
| Arkansas | \$ | 1,000 | Nebraska* | \$ | 75 |
| Florida* | \$ | 30 | New York | \$ | 67 |
| Kentuck | \$ | 1,500 | North Dakota* | \$ | 85 |
| Maryland | \$ | 500 | Oklahoma | \$ | 3,300 |
| | | | South Carolina** | \$ | 258 |

Note: 13 states that provide a vendor discount do not have a ceiling

* Ceiling allowed for each retail outlet

** If filing elctronically; otherwise limit is \$250

*** If taxes submitted by 12th of month; \$15,000 ceiling if filing by 20th of month

Source: Adapted from Good Jobs First, Skimming the Sales Tax, November 2008, at:

<http://www.goodjobsfirst.org/pdf/skimming.pdf>

be made for not doing away with the vendor discount entirely, especially since the Streamlined Sales and Use Tax Agreement, of which Oklahoma is a part, requires states to provide “reasonable compensation” to all retailers.⁷ At the same time, the improved ease and lower cost of sales tax collection as a result of technological advances argues for lowering the amount of the vendor discount.

One proposal, advanced by UCO Economics Professor Mickey Hepner, would be to maintain the current vendor discount rate but substantially lower the annual cap.⁸ Governor Henry in his budget proposes lowering the vendor discount rate to 1 percent for all vendors, while lowering the monthly cap only slightly, to \$2,250. The Governor’s budget estimates savings of \$10 million from this change.⁹ An alternate approach, used in several states, is to provide a higher discount rate up to a certain threshold and a lower rate above that up to the total cap.

Such an approach would provide greater benefits to small businesses, while larger retail changes, as Hepner argues, “would barely register the change.”¹⁰

3. Leveling the Playing Field on Sales Tax Collections

The sales tax is the single largest revenue source for state and local governments in Oklahoma, providing more than one out of every four dollars that helps pay public services on which families, businesses and communities rely. When purchases of taxable goods are made in-state, sales tax is collected directly by the retailer. When purchases are made of the same taxable goods out-of-state – whether via the Internet, catalogs or other sellers – taxes, in this case known as a use tax, are still legally owed by the purchaser. However, as a result of a pair of Supreme Court cases, the most recent of which was Quill Corp vs. North Dakota (1992), retailers who lack a physical presence, or nexus, in a state can not be required to

collect and remit use tax owed to the state.¹¹ That has meant that an online retailer like Target.com, which has brick-and-mortar stores in Oklahoma, collects sales tax on online purchases from Oklahomans, while other online retailers, like Amazon.com, do not.

The challenge states face in collecting taxes legally owed to them has several unfortunate consequences. The most significant, perhaps, is that the differential tax treatment puts local Main Street retailers at an unfair competitive disadvantage compared to their online competitors selling the exact same goods. In Oklahoma, the permanent sales tax holiday on remote sales makes a \$50 pair of shoes ordered at Overstock.com \$3 to \$4.50 cheaper than the same shoes bought at Dillard’s. Since lower income people are less likely to own computers and make purchase online, differential treatment also worsens the inequities of the sales tax.

For state and local governments, the inability to collect taxes that are due has led to considerable and increasing lost tax revenue. A 2009 study by economists at the University of Tennessee estimates that state and local governments lost \$7.5 billion in sales tax to E-commerce in 2009 and that this amount would rise to at least \$13.4 billion in 2012. For Oklahoma, lost state and local revenue was estimated at \$92.7 million in 2009, rising to \$156.3 million in 2012.¹²

The most comprehensive and effective solution to the problems created by the Quill case would be for Congress to pass legislation authorizing states to require use tax collection by non-physically-present remote sellers. Bills to that effect are introduced annually in Congress (for many years, Oklahoma Congressman Ernest Istook was the lead author), but despite strong support from state and local governments and most segments of the business community, federal efforts have stalled.

Left to their own devices, states have made various attempts to level the playing field for businesses and consumers by collecting taxes that are legally owed on remote purchases. Oklahoma, for example, encourages self-remittance of use taxes by including a line and lookup table on the state income tax form to remind taxpayers of their obligations. However, as long as the primary onus for remitting the tax remains on the consumer, no one doubts that evasion will remain widespread.

Several states, therefore, have taken more aggressive action in recent years to enforce collection.¹³ The Supreme Court has made clear that the “physical presence” requirement can be satisfied by the in-state presence of third parties working *on behalf of* the remote seller. States such as New York, Rhode Island and North Carolina have recently passed laws asserting that relationships such as an affiliate program – in

which a company like Amazon pays independent web sites commission for providing hyperlinks that result in sales – are sufficient to establish nexus. Last month, Colorado passed legislation requiring large Internet retailers to inform customers of their sales tax obligation and to report to the state each year the total dollar value of items purchased by each purchaser.

Some online retailers have fiercely resisted these enhanced collection efforts, with Amazon having gone so far as to discontinue its affiliate

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programs in several states in retaliation. Thus far, however, courts have upheld the states’ efforts to require or strongly encourage them to collect sales tax. As Michael Mazzerov of the Center on Budget and Policy Priorities has argued, if states hang tough against threats from Amazon and the like, they are likely to prevail:

Internet retailers that suspend their affiliate programs likely will make fewer sales in those states, and some of the sales they lose will shift back to in-state stores (thereby boosting the local economy) or shift to

other Internet retailers that have always collected the state’s sales tax or begin doing so under the new law.¹⁴

Governor Henry in his FY ‘11 Executive Budget proposed enhanced compliance efforts to collect taxes owed on remote sales, which would likely require amending Oklahoma statutes to specify an expanded definition of nexus.¹⁵ Although the budget book doesn’t spell out exactly what mechanisms would be pursued to enforce collections, the revenue estimate provided in the Governor’s budget from this initiative – \$95 million – seem quite optimistic given the figures cited above of lost state and local revenue due to E-commerce and New York State’s projections of \$33 million in additional revenue in FY ‘10 from its nexus law. However, even if the revenue potential is more modest, leveling the playing field for Oklahoma businesses and generating additional revenues to help pay our teachers and protect our neighborhoods makes this an initiative well worth pursuing.

A distinct but related issue involves the taxation of digital downloads of such things as computer software, DVDs, MP3s and books. According to data collected by the Center on Budget and Policy Priorities, Oklahoma is among 21 states that does not collect sales tax on downloaded music, video games and books, and among 12 that does not tax downloaded computer programs. Here the is-

sue primarily concerns the sales tax base and not the location of the seller – iTunes, for example, willingly charges tax on music downloads in all states where they’re taxable, but not in Oklahoma. There is no clear justification for exempting digital downloads from tax when the same product – a computer program, book, CD or video – purchased from a store is taxed. Again, this put local merchants at a disadvantage and increases the tax burden on those who are less likely to have computers and high-speed Internet access. Oklahoma should consider changing its law to tax all online goods and services if the comparable “real world” purchase is taxed.

4. Controlling Runaway Tax Credits

Oklahoma’s appropriated budget in 2008 was just under \$7 billion. That same year, the state granted tax preferences in the form of credits, deductions, exemptions, rebates, and the like, that had an estimated fiscal impact of at least \$5.6 billion in taxes that were not paid that would otherwise have been owed.¹⁶ As the recession has battered state revenue collections and precipitated successive rounds of budget cuts, this extensive system of tax preferences, or tax expenditures as they are frequently called, has been left largely untouched.

Earlier this year, OK Policy released a full-length issue brief that called for greater transparency and accountability in the area of tax expenditures.¹⁷ Among our recommenda-

tions were several aimed at limiting the state’s fiscal exposure to tax expenditures, including putting annual caps on the amount that can be claimed against various tax credits, and tying some tax credits to a trigger mechanism that would limit or suspend them in times of budget shortfalls.

Tax preferences become especially problematic when their costs skyrocket from one year to the next. Tax credit programs that were initially anticipated to cost a few million dollars can grow to tens of millions of dollars annually, outside the scrutiny of the legislature, media, or public, and often with little, if any, tangible economic benefit to show for it. This can occur through administrative or legal rulings or creative strategies devised by attorneys and accountants that allow credits to be claimed in excess of the amounts invested or without placing capital at risk.

Several investment tax credits have seen their costs explode in recent

years, as can be seen in Table 2. According to the revised version of the Oklahoma Tax Commission’s bi-annual Tax Expenditure Report, the cost of the Investment/New Jobs tax credit soared from \$40 million in FY ‘06 to \$119 million in FY ‘08. From the state’s OpenBooks website, one learns that a single firm, Weyerhaeuser Co. and subsidiaries, claimed \$54.4 million in credits that year¹⁸—an amount equal to appropriations for the Departments of Commerce and Tourism combined. Another credit, the Rural Small Business Capital Formation Tax Credit, saw its reported fiscal impact balloon from \$3 million in FY ‘06 to \$45 million in FY ‘08. It should be noted that tax credits claimed against the insurance premium tax and gross production tax are not listed on the OpenBooks website, while others are not reported at all. As a result, getting consistent and reliable information about the

Table 2: Fiscal Impact of Selected Income Tax Credits

Source: Oklahoma Tax Commission, Tax Expenditure Report 2007-08 (Online Version) and 2005-06

| Description | Amount FY '06 | Amount FY '08 |
|---|---------------|----------------|
| Income tax credit for investment or increased employment | \$ 40,244,733 | \$ 118,738,138 |
| Investment in rural venture capital companies and rural small business ventures | \$ 2,794,369 | \$ 45,068,020 |
| Venture capital | \$ 1,664,000 | \$ 26,615,717 |
| Net operating loss | - | \$ 19,876,000 |
| Investment in qualified small business capital companies | \$ 1,004,632 | \$ 13,324,778 |
| Deduction as allowance for depletion based on cost of oil and gas deposit | n/a | \$ 11,637,000 |

NOTE: Does not include amount of credit claimed against the Insurance Premium Tax

cost of tax credits, individually and overall, is not possible.

As the cost of several investment tax credits has soared, there have been extensive and well-documented charges of questionable practices and wrong-doing leveled at these programs. The Prowling Owl web-site, operated by Nick Baker has been particularly persistent in digging up information which suggests potential fraud and abuse that could be costing the state hundreds of millions in tax credits in return for minimal real investments.¹⁹ In his FY '11 Executive Budget, Governor Henry calls for the outright repeal of the Rural Small Business Capital Credit and the Small Business Capital Credit, which are described as providing credits to companies "that invest in ventures that may or may not be economically viable."²⁰ The Governor also proposed a one-year moratorium on selected tax credits.

Doing away with or even suspending all tax credits is neither politically feasible or necessarily good policy. But the budget crisis may provide a rare opportunity to implement much-needed reform in this area. Eliminating, or suspending, pending the outcome of a thorough investigation, these runaway venture capital tax credits, and taking steps to limit the fiscal impact of other credits and exemptions through caps or triggers, at least over the course of the budget crisis, would be a sensible step for the Legislature to take.

...Cont. on p. 8

| Revenue Enhancement Measures in FY '11 Executive Budget | |
|---|----------------|
| Tax credits | |
| One year moratorium on select tax credits | \$ 45,092,800 |
| Repeal Rural Small Business Capital Credit | \$ 37,406,000 |
| Repeal Small Business Capital Credit | \$ 11,060,000 |
| Reform Electric Car Credit | \$ 9,000,000 |
| sub-total | \$ 102,558,800 |
| Fees and Permits | |
| Equalize payments for services | \$ 18,701,866 |
| Vending machine decals | \$ 9,000,000 |
| Oversized weight permits | \$ 20,000,000 |
| Certified copies of driving records | \$ 10,600,000 |
| sub-total | \$ 58,301,866 |
| Tax Collections | |
| Decouple from federal debt provision | \$ 11,620,000 |
| Adopt revised sales tax vendor discount | \$ 9,950,000 |
| Maximize franchise tax remitters | \$ 7,800,000 |
| Repeal motor fuel purchaser discount | \$ 6,100,000 |
| Smokeless tobacco tax equalization | \$ 4,227,000 |
| Collect sales tax on electronically delivered items | \$ 3,460,000 |
| Sales and use tax remittances | \$ 2,998,100 |
| Beer wholesale remittance adjustment | \$ 1,150,000 |
| Liquor and wine wholesale remittance adjustment | \$ 840,000 |
| Multi state model statute | \$ 836,000 |
| Little cigar tax equalization | \$ 386,000 |
| Automated enforcement of vehicle insurance | \$ 95,000,000 |
| Collect sales tax on Internet sales | \$ 95,000,000 |
| sub-total | \$ 239,367,100 |
| Revenue shifts | |
| Apportion tobacco tax equalization revenue to GR | \$ 4,927,000 |
| Adjustment to certification packet | \$ 2,700,000 |
| Cash transfers of agency revolving funds | \$ 85,411,802 |
| sub-total | \$ 93,038,802 |
| Bonding | |
| Roads and bridges | \$ 195,000,000 |
| IT equipment and software purchases | \$ 38,000,000 |
| sub-total | \$ 233,000,000 |
| Total | \$ 726,266,568 |

Conclusion

There is no doubt that approving any of the revenue ideas proposed in this brief would require tough choices on the part of elected officials. Each would leave some constituencies who currently enjoy preferential tax treatment paying a little more. However, in the absence of additional revenue, the unquestionable alternative is for more teachers to be laid off, for more people with mental health issues to be left untreated, for more seniors to go unfed, for more children with disabilities to go uncared for, and for less investment in the human and physical infrastructure that will ensure our future prosperity. Given this stark choice, we remain hopeful that the eventual budget agreement will strike a balance that includes additional revenues.

ENDNOTES

¹ See Oklahoma Policy Institute, "Hurting All Over: A look at some recent budget cut," blog post, March 15, 2010; at: <http://okpolicy.org/blog/budget/hurting-all-over-a-survey-of-some-recent-state-and-local-budget-cuts/>.

² IRS Statistics of Income Bulletin, Historical Table 2, Tax Year 2007; at: <http://www.irs.gov/taxstats/article/0,,id=171535,00.html>.

³ Sarah Beth Gehl, "Sensible Tax Change to State Income Tax Would Raise \$450 Million," Georgia Budget Policy Institute, March 2010; at: <http://www.gbpi.org/documents/20100311.pdf>.

⁴ New Mexico Legislative Finance Committee, "Fiscal Impact Report: House Bill 270," Updated February 7, 2010; at: <http://legis.state.nm.us/Sessions/10%20Regular/firs/HB0270.pdf>.

⁵ Unpublished analysis by Institute for Taxation and Economic Policy. Spreadsheet available upon request.

⁶ Philip Mattera and Leigh McIlvaine, "Skimming the Sales Tax: How Wal-Mart and Other Big Retailers (Legally) Keep a Cut of the Taxes We Pay on Everyday Purchases," Good Jobs First, November 2008, at: <http://www.goodjobsfirst.org/pdf/skimming.pdf>.

⁷ Ibid.

⁸ Oklahoma House of Representatives Media Division, "Lawmakers Examine the Vendor Discount," Press Release, December 1, 2009; at: <http://www.okhouse.gov/OkhouseMedia/PrintStory.aspx?NewsID=3340>.

⁹ Governor Brad Henry, FY '11 Executive Budget, Feb. 1, 2010; at: <http://www.ok.gov/OSF/documents/bud11.pdf>.

¹⁰ See note 8.

¹¹ *Quill Corp. v. North Dakota* (91-0194), 504 U.S. 298 (1992); at: <http://supct.law.cornell.edu/supct/html/91-0194.ZO.html>.

¹² Donald Bruce, William E. Fox and LeAnn Luna, "State and Local Government Sales Tax Losses from Electronic Commerce," University of Tennessee April 2009; at: <http://www.streamlinedsalestax.org/uploads/downloads/EC%20Executive%20Committee%20Meeting%20Docs/SSTP%20e-commerce%202009%20REV041309.pdf>.

¹³ This section is based largely on Michael Mazerov, "New York's Amazon Law: An Effective Tool for Collecting Taxes Owed on Internet Sales," Center on Budget and Policy Priorities, July 2009; at: <http://www.cbpp.org/cms/index.cfm?fa=view&id=2876>.

¹⁴ Ibid.

¹⁵ See Note 9, p. A-6.

¹⁶ Oklahoma Tax Commission (OTC), *Tax Expenditure Report, 2007-2008*. Online at: <http://www.tax.ok.gov/reports/TER2007-2008.pdf>.

¹⁶ David Blatt, "Let There Be Light: Making Oklahoma's Tax Expenditures More Transparent and Accountable," Oklahoma Policy Institute, Feb. 2010; at: <http://okpolicy.org/shining-light-tax-breaks>.

¹⁸ <https://www.ok.gov/okaa/tax/app/search.php>

¹⁹ www.prowlingowl.com.

²⁰ See Note 9, p.A-3.

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OKLAHOMA POLICY INSTITUTE

P.O. Box 14347

TULSA, OK 74159-1347

918-794-3944

DAVID BLATT, DIRECTOR

DBLATT@OKPOLICY.ORG