

OKLAHOMA TAX COMMISSION

FISCAL IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT SECOND REGULAR SESSION, FIFTY-FIFTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: June 2, 2016

BILL NUMBER: SB 383 STATUS AND DATE OF BILL: Enrolled 05/27/2016

AUTHORS: House Mulready & Roberts Senate Bice & Jolley

TAX TYPE (S): Alcohol Excise & Mixed Beverage Tax

SUBJECT: Tax Levy, Administrative & Other

PROPOSAL: New Law & Repealer

The measure creates the Oklahoma Alcoholic Beverage Control Act the purpose of which is to implement the provisions of Article 28A of the Oklahoma Constitution as referred to the people for their approval or rejection pursuant to SJR 68. [See attached for detail analysis]

EFFECTIVE DATE: Section 4 - October 1, 2017¹
Sections 1-3, 5-195 - October 1, 2018¹

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 17: None
FY 18: None
FY 19: \$1,915,000 estimated increase in beer excise taxes along with an estimated increase in mixed beverage gross receipts tax of \$32,832,000. [See attached for detailed analysis]
FY 20: \$2,553,000 estimated increase in beer excise taxes along with a \$43,776,000 increase in mixed beverage gross receipts tax for FY 2019. [See attached for detailed analysis]

ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 17: None

June 3, 2016
DATE

Rick Miller
DIVISION DIRECTOR

msm

6-3-16
DATE

Reece Womack
REECE WOMACK, ECONOMIST

6/3/16
DATE

Donna L. Carter
FOR THE COMMISSION

¹ Effective upon the passage of SJR 0068 of the 2nd session of the 55th Legislature of Oklahoma by the people of Oklahoma.

ATTACHMENT TO FISCAL IMPACT SB 383–[Enrolled]–Prepared June 2, 2016

The following sections of SB 383 reflect administrative responsibilities of the Oklahoma Tax Commission.

Section 3 defines applicable terms including:

- "Alcoholic beverage" means alcohol, spirits, beer and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings;
- "Beer" means any beverage of alcohol by volume and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;
- "Convenience store" means any person primarily engaged in retailing a limited range of general household items and groceries, with extended hours of operation, whether or not engaged in retail sales of automotive fuels in combination with such sales;
- "Drug store" means a person primarily engaged in retailing prescription and nonprescription drugs and medicines;
- "Grocery store" means a person primarily engaged in retailing a general line of food, such as canned or frozen foods, fresh fruits and vegetables, and fresh and prepared meats, fish and poultry;
- "Low-point beer" means any beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to, beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion by barley or other grain, malt or similar products;
- "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, public event, charitable event or special event license;
- "Package store" means any sole proprietor or partnership that qualifies to sell wine, beer and/or spirits for off-premise consumption and that is not a grocery store, convenience store or drug store, or other retail outlet that is not permitted to sell wine or beer for off-premise consumption;
- "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;
- "Sparkling wine" means champagne or any artificially carbonated wine;

- "Spirits" means any beverage other than wine or beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume, and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds, but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;
- "Strong beer" means beer which, prior to the effective date of this act, was distributed pursuant to the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of Title 37 of the Oklahoma Statutes;
- "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

Section 4

Provides for an interim license to allow qualified retail wine and retail beer licensees to purchase stock and store wine and or full-strength beer prior to October 1, 2018. The interim license will also allow wine and spirits wholesalers to sell and deliver wine and/or full-strength beer to all qualified retail wine and retail beer licensees. Prior to October 1, 2018, no retail wine or retail beer licensee may sell wine and/or beer other than low-point beer and no package store may sell refrigerated wine and/or beer.

Section 7

With the exception of city/county license relating to local occupancy taxes and sales tax permits issued by the Oklahoma Tax Commission, the ABLE Commission is granted the sole authority to issue any license provided for in the Oklahoma Alcoholic Beverage Control Act; providing that no other agency, instrumentality or political subdivision of this state shall be authorized to issue any license or permit allowing any licensee to engage in any activity covered by the Oklahoma Alcoholic Beverage Control Act.

Analysis

Based on low-point beer permit fee collections for FY 15, a reduction in low-point beer permit fees collected by the Tax Commission is estimated to occur in the amount of \$992,452. With an effective date of October 2018, a reduction in low-point beer permit fees collected by the Tax Commission is projected to occur in the amounts of \$744,339 for FY 19 and \$992,452 for FY 20.

Section 11

Prohibits employees of the Oklahoma Tax Commission who engage in the auditing, enforcement and collection of alcoholic beverage taxes from obtaining licenses from the ABLE Commission to be involved in the alcoholic beverage business.

Section 12

Prohibits the ABLE Commission from issuing a license to any person not in good standing with the Oklahoma Tax Commission with respect to the payment of all taxes due to the State of Oklahoma or political subdivision thereof.

Analysis

The estimated impact of Section 12 on state and local tax collections is unknown.

Section 13

Sets forth the license fees for the various alcoholic beverage licenses issued by the ABLE Commission.

Sections 14 - 44

Outlines the various licenses and the activities authorized by holders thereof including

Section 38

Allows alcoholic beverages purchased and stored pursuant to the provisions of a storage license for one licensed mixed beverage establishment to be transferred by a licensee to another licensed mixed beverage establishment which is wholly owned by the same licensee. Notice of such a transfer shall be given in writing to the Oklahoma Tax Commission and the ABLE Commission within three (3) business days of the transfer. The notice must clearly show the quantity, brand and size of every transferred bottle or case .

Section 41

Provides that all wines, beer and spirits auctioned pursuant to a charitable auction license shall be registered and all fees and taxes shall be paid in accordance with the Oklahoma Alcoholic Beverage Control Act. A charitable auction or charitable alcoholic beverage event license may be issued to a charitable organization exempt from taxation under Section 501(c)(3), (4), (5), (6), (7), (8), (9), (10) or (19) of the United States Internal Revenue Code.

Section 60

Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act by the ABLE Commission, after due notice and hearing, may be revoked or suspended if the ABLE Commission finds or has grounds to believe that the licensee has among other things made any false representation or statement to the ABLE Commission or the Oklahoma Tax Commission in order to prevent or induce action by the ABLE Commission or the Tax Commission, had any permit or license issued by the Tax Commission and required by the Oklahoma Alcoholic Beverage Control Act, suspended or revoked by the Tax Commission, or is not in compliance with the tax laws of this state as required in Article XXVIII of the Oklahoma Constitution.

Additionally, Section 60 authorizes the ABLE Commission or the Tax Commission to impose a monetary penalty in lieu of or in addition to suspension of a license. The amount of the fine for a major violation shall be computed by multiplying the proposed number of days of the suspension period by One Hundred Dollars (\$100.00). The amount of the fine for a minor violation shall be computed by multiplying the number of days of the proposed suspension period by Fifty Dollars (\$50.00). The failure of any licensee to pay a fine or serve a suspension imposed by the ABLE Commission or the Tax Commission shall result in the revocation of the license of the licensee.

If the ABLE Commission or the Tax Commission finds that the public health, safety or welfare require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceeding for revocation or other action, pursuant to the provisions of 75 O.S. § 314.

Section 69

Requires every winemaker or small farm winery electing to directly sell its wines to retailers and restaurants to report all sales to retail package stores and restaurants in this state to the ABLE Commission and to the Oklahoma Tax Commission at least monthly, or in accordance with such rules as the ABLE Commission shall promulgate and shall pay to the Tax Commission all excise and other taxes imposed by this state upon such wine in the same manner required of the holder of a nonresident seller license.

Section 71

Prohibits any person from manufacturing, rectifying, selling, possessing, storing, importing into or exporting from this state, transporting or delivering any alcoholic beverage except as specifically provided in the Oklahoma Alcoholic Beverage Control Act. The possession and transportation of alcoholic beverages for the personal use of the possessor and his or her family and guests is not prohibited so long as the Oklahoma excise tax has been paid thereon, except for beer. Additionally, the possession, transportation and sale of alcoholic beverages within military reservations in accordance with the laws and rules governing such military reservations is not prohibited, provided that the Oklahoma excise tax has been paid on such beverages.

Section 76

Provides for a Direct Wine Shippers Permit to be issued by the ABLE Commission to allow a winery licensed in this or any other state to directly ship up to six nine-liter cases of wine annually to an Oklahoma resident who is twenty-one (21) years of age or older for such resident's personal use and not for resale. No resident shall be permitted to purchase more than thirty nine-liter cases of wine per year.

Requires direct shippers to annually pay to the Oklahoma Tax Commission all applicable taxes due on sales authorized by this section to Oklahoma residents in the preceding calendar year. The amount of such taxes shall be calculated as if the sale were in Oklahoma at the location where delivery is made. Upon request, permit holders shall permit the Tax Commission to perform an audit of the permit holder's records in order to assure compliance.

Analysis

It is projected that Section 76 will result in an unknown minimal increase in alcohol excise taxes for FY 18 & FY 19.

Section 83

Small breweries that have obtained a brewpub license may sell beer directly to consumers and provide free samples of beer. These beer samples shall not be considered a sale but beer removed or withdrawn from the small brewer for "use or consumption" within the meaning of this title for excise tax determination and reporting requirements.

Analysis

There is no estimated revenue impact as a result of Section 83

Section 97

The sale, preparation or service of ice or nonalcoholic beverages that are sold, prepared or served for the purpose of being mixed with alcoholic beverages for consumption on the premises where such sale, preparation or service occurs shall be subject to the sales tax levied by the Oklahoma Sales Tax Code and to any municipal or county sales taxes.

Analysis

There is no revenue impact associated with the provisions of Section 97

Section 104, 105, 106, 107.

Section 104 subjects beer, regardless of alcohol content, to excise tax in the amount of \$12.50 per barrel.²

Excise taxes levied on wine, spirits and beer are to be filed and remitted electronically on the 20th of the following month. Such tax is to be considered to be a direct tax upon the ultimate retail consumer of alcoholic beverages in this state, and when such tax is paid by, or collected from, any other person, as herein provided for, such payment shall be considered as an advance payment for convenience and facility only, and such tax shall thereafter be added to the price of such alcoholic beverages and recovered from the ultimate retail consumer thereof.

Analysis

Assuming similar low-point beer sales to ones made in FY 15 would result in a loss of low-point beer excise tax of \$22,974,491 with a corresponding gain in beer excise tax of \$25,527,212, yielding a net increase in beer excise tax of \$2,552,721.

With an effective date of October 1, 2018, an estimated increase of \$1,914,541 and \$2,552,721 in beer excise tax for FY 19 and FY 20, respectively, are projected to occur.

Section 108, 109, 110, 138, &, 139

Levies mixed beverage gross receipt tax at the current rate of 13.5% on the sale, preparation, or service of mixed beverages, the total retail value of complimentary or discounted mixed beverages, ice or nonalcoholic beverages that are sold, prepared or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation or service occurs and any charges for admission to a mixed beverage establishment. Apportionment, bonding requirements, remuneration and reporting relating mixed beverage taxes remain unchanged.

Analysis

Subjecting low-point beer to mixed beverage gross receipts tax results in an estimated increase in related tax revenues in the amount of \$43,776,367. This estimate was calculated based on low-point beer excise taxes of \$22,974,491 for FY 15 along with application of an assumed 13.72 on-premises consumption percentage and an average price per bottle/unit of \$3.50.

With an effective date of October 1, 2018, assuming similar mixed beverage tax receipts for FY 19 & FY 20 results in an estimated increase of \$32,832,275 in mixed beverage tax receipts for FY 19 and an estimated increase of \$43,776,367 in mixed beverage tax receipts for FY 20.

² Section 169 of the measure repeals Section 163.3 of Title 37 which imposes an \$11.25 per barrel excise tax on low-point beer.

Section 111

Requires that brewers submit samples of crowns, tops and labels to the Tax Commission for approval. Current reference is 37 O.S. § 540.

Section 112

Authorizes the Tax Commission to allow credit for or make refund of any money paid for stamps issued by the Tax Commission in payment of state excise tax by the manufacturer. Current reference is 37 O.S. § 541.

Section 113

Provides for tax payment and reporting requirements of brewers and beer distributors to the Tax Commission. Current reference is 37 O.S. § 542.

Section 114

Reporting requirements of wine and spirits wholesalers and other importers of alcoholic beverages to the Tax Commission. Current reference is 37 O.S. § 543.

Section 115

Provides requirement for manufacturers, importers, brokers and others who sell alcoholic beverages to a wholesaler in Oklahoma to obtain a distributor permit from the Tax Commission. Also requires all persons possessing a wholesaler's license to obtain a wholesaler permit from the OTC. Current reference is 37 O.S. § 543.1.

Section 116

Authorizes the OTC to issue a distributor permit or wholesaler permit to any person who sells alcoholic beverages to a wine and spirits wholesaler or beer distributor or to any person having a wholesaler license. Additionally, requires holders of distributor permits or wholesaler permits to maintain an itemized and verified record for the preceding calendar month of all sales or purchases of alcoholic beverages and transmit the information to the Tax Commission. Current reference is 37 O.S. 543.2.

Section 117

Declares as contraband all bottles or containers of alcoholic beverages in the possession of any person upon which the taxes have not been paid. Current reference is 37 O.S. § 545.

Section 118

Authorizes the OTC to inspect/examine premises of all licensees to determine whether any licensee possesses alcoholic beverages upon which the taxes have not been paid. Current reference is 37 O.S. § 546.

Section 121

Penalties for possessing more than one liter of alcoholic beverage upon which the excise tax has not been paid. Current reference is 37 O.S. § 549.

Section 123

Requires that all licensees maintain books, records, inventories, invoice and other accounting documents for three years which must be available for inspection by ABLE and the Tax Commission. Current reference is 37 O.S. § 552.

Section 124, 125, & 126

Requires every licensed nonresident seller, manufacturer, railroad company, express company, common or contract carrier, and of every firm or corporation that brings, carries or transports wine, beer, or distilled spirits for delivery to any person in the state, except wine or spirit wholesalers or beer distributors, to report to the Oklahoma Tax Commission an itemized and verified report for the preceding calendar month showing each shipment or sale of alcoholic beverages into Oklahoma on or before the tenth day of each month when applicable. Such report shall state the date and quantity of the shipment, the name and ABLE Commission license number of the Oklahoma purchaser and the manifest bill of lading or invoice number of each shipment. Such report shall be accompanied by duplicate original copies of each manifest, invoice, bill of lading or other document showing the details, including the proof of all spirits, of all shipments during such month.

Section 127

Requires the posting of bonds with the Tax Commission by every manufacturer, importer, broker or other who sells alcoholic beverages to a wine and spirits wholesaler or beer distributor in Oklahoma. Current reference is 37 O.S. § 559.

Section 128

Requires every manufacturer, wine and spirits wholesaler, beer distributor or nonresident seller, selling alcoholic beverages in this state at the time of sale to issue to the purchaser of transport an invoice, bill of lading, manifest or other document with the contents outlined in statute. Current reference is 37 O.S. § 560.

Section 129

Record keeping requirements for every manufacturer, wine and spirits wholesaler, beer distributor, nonresident seller, retailer, mixed beverage, caterer, public event and special event licensee. Current reference is 37 O.S. § 561.

Section 131

Creates the "Alcoholic Beverage Governance Revolving Fund" which shall consist of any monies received from the surcharge collected by the Tax Commission pursuant to subsection F of Section 13 of this act and any other sources of funds provided by law.

Analysis

Subsection F of Section 13 specifically states that the surcharges provided therein are to be collected by ABLE not the Oklahoma Tax Commission.

Section 132

Creates the Oklahoma Viticulture and Enology Center Development Revolving Fund. Current reference is 37 O.S. § 563.1.

Section 137

Requires holders of mixed beverage, beer and wine, caterer, public event or special event licenses issued by the ABLE Commission to post a bond with the Tax Commission. Current reference is 37 O.S. § 578.

Section 138

Requires mixed beverage tax permit holders to report and remit mixed beverage tax. Current reference is 37 O.S. § 579.

Section 139

Allows mixed beverage tax permit holder to retain one percent of the tax due when timely reported and paid. Current reference is 37 O.S. § 580.

Section 140

Allows seizure by the Tax Commission of any alcoholic beverages on the premises of a license holder which are not listed on an invoice from the wholesaler. Current reference is 37 O.S. § 582.

Section 141

Outlines prohibited acts regarding alcoholic beverages. Current reference is 37 O.S. § 537.

Section 156

Any person who shall file a false or fraudulent return in connection with any tax imposed by the Oklahoma Alcoholic Beverage Control Act, or willfully evade, or attempt to evade, any tax herein levied shall be guilty of a felony and upon conviction, be fined not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or by both such fine and imprisonment.

Section 166

All law enforcement officers, upon the arrest of any holder of a license issued by the ABLE Commission for a violation of any state law or municipal ordinance in which the violation of any alcoholic beverage law had any part, shall immediately notify the ABLE Commission thereof. Such officers shall notify the ABLE Commission of any acts, practices or other conduct of any such licensee which may be subversive to the general welfare or contrary to the spirit of the Oklahoma Alcoholic Beverage Control Act and shall recommend appropriate action to be taken by the ABLE Commission or the Oklahoma Tax Commission.

Section 169

Repeals Sections 163.1, 163.2, 163.3, 163.4, 163.5, 163.6, 163.7, 163.8, 163.9, 163.10, 163.11, 163.11a, 163.12, 163.13, 163.14, 163.15, 163.16, 163.17, 163.18, 163.18A, 163.18B, 163.18C, 163.18D, 163.18E, 163.18F, 163.18G, 163.18H, 163.19, 163.20, 163.22, 163.23, 163.25, 163.26, 163.27, 163.28, 163.29, 213, 213.1, 213.2, 215, 216, 217, 219, 219.1, 220, 231, 232, 233, 241, 243, 244, 246, 247, 501, 502, 503, 504, 505, 506, 506.1, 507.1, 507.2, 508, 509, 510, 510A, 511, 511A, 512, 513a, 514, 515, 516, 517, 518, 518.1, 518.3, 520A, 521, 521.1, 521.2, 521.3, 522, 523, 523.1, 523.2, 524, 525, 526.1, 527, 527.1, 528, 528.1, 528.2, 529, 530, 530.1, 531, 532, 532.1, 532.2, 533, 534, 534.1, 535, 535.1, 535.2, 535.3, 536, 536.1, 537, 537.1, 537.2, 537.3, 538, 538.1, 538.2, 538.3, 539, 540, 541, 542, 543, 543.1, 543.2, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 554.1,

554.2, 555, 556, 557, 559, 560, 561, 562, 563, 563.1, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 576, 576.1, 577, 578, 579, 580, 582, 586, 588, 590, 591, 592, 593, 594, 594.1, 595, 596, 597, 598, & 599.

Sections 170-195

Recodifies the following sections of Title 37:

600.1 to 1-229.11 of Title 63
600.2 to 1-229.12 of Title 63
600.3 to 1-229.13 of Title 63
600.5 to 1-229.15 of Title 63
600.6 to 1-229.16 of Title 63
600.7 to 1-229.17 of Title 63
600.8 to 1-229.18 of Title 63
600.9 to 1-229.19 of Title 63
600.10 to 1-229.20 of Title 63
600.10A to 1-229.21 of Title 63
600.11 to 1-229.22 of Title 63
600.11A to 1-229.23 of Title 63
600.11B to 1-229.24 of Title 63
600.12 to 1-229.25 of Title 63
600.13 to 1-229.26 of Title 63
600.21 to 2315 of Title 62
600.22 to 2316 of Title 62
600.23 to 2317 of Title 62
601 to 1-229.27 of Title 63
602 to 1-229.28 of Title 63
603 to 1-229.29 of Title 63
604 to 1-229.30 of Title 63
605 to 1-229.31 of Title 63
606 to 1-229.32 of Title 63
608 to 1-229.33 of Title 63
609 to 1-229.34 of Title 63

Section 196

Provides that the provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 197

Provides that this act shall only become effective upon certification of election returns favoring passage of the Constitutional Amendment proposed in Senate Joint Resolution No. 68 of the 2nd Session of the 55th Oklahoma Legislature.