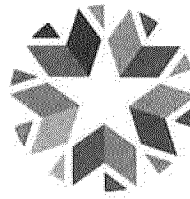


# MEMO



## OKLAHOMA Tax Commission

Tax Policy and Research Division

DATE: MARCH 2, 2022

TO: RICK MILLER, DIRECTOR *RAM*  
TAX POLICY & RESEARCH DIVISION

FROM: MARC MORRISON  
TAX POLICY ANALYST

SUBJECT: PROPOSED COMMITTEE SUBSTITUTE FOR HB 1636

This is in response to your request for a revenue impact for the Proposed Committee Substitute for HB 1636 which amends 37A O.S. § 5-135 by striking Subsection (G) to remove the Tax Commission's authority to audit mixed beverage licensees. Subsection (G) provides as follows:

In addition to any other authority granted by law, the Tax Commission is hereby authorized to audit any mixed beverage, beer and wine, caterer, public event or special event licensee to determine if the correct amount of tax payable under Section 108 of this act has been collected; provided, if such an audit reveals that the amount collected is within the following percentages of the amount of tax payable, the taxpayer shall be deemed to be in compliance:

1. For spirits, eighty-four percent (84%) to one hundred sixteen percent (116%);
2. For wine, ninety percent (90%) to one hundred ten percent (110%);
3. For beer sold at draft and not in original packages, eighty-six percent (86%) to one hundred fourteen percent (114%); and
4. For beer sold in original packages, ninety-five percent (95%) to one hundred five percent (105%).

Based on OTC data for the last 24 months, the Audit Division of the Oklahoma Tax Commission, issued 77 assessments for additional mixed beverage taxes, interest and penalty totaling \$1,087,453. In addition, sales tax audits generally accompany mixed beverage tax audits since mixed drinks are subject to both the 13.5%<sup>1</sup> gross receipts tax (aka mixed beverage tax) and state and local sales taxes<sup>2</sup>. For the same 24 month period OTC records indicate 79<sup>3</sup> assessments totaling \$1,157,984<sup>4</sup> in state and local tax, penalty and interest related to mixed beverage sales. Total payments attributable to the referenced assessments are currently being compiled.

In FY 21, the mixed beverage tax revenues totaled \$72,883,445. For the first seven months of FY 22, mixed beverage tax revenues totaled \$55,350,346. The amount of state sales tax attributable to these mixed beverage revenues equal \$24,294,482 and \$18,450,115 for FY 21 and the first seven months of FY 22, respectively. Repealing the authority of the OTC to audit mixed beverage licensees will not only result in similar revenue losses in the assessed amounts outlined above but it is anticipated that current tax compliance will be negatively impacted yielding an unknown decrease in both mixed beverage tax and sales tax revenues. Based upon FY 21 collections, for every decrease

<sup>1</sup> 37A O.S. § 5-105

<sup>2</sup> 68 O.S. § 1354(a)

<sup>3</sup> Some audits will show compliance in mixed beverage taxes, but not for sales taxes.

<sup>4</sup> Approximately \$636,891 is state sales tax.

of 1% in compliance leads to an estimated decrease of \$728,834 in mixed beverage taxes and an additional decrease of \$242,944 in state sales taxes.

Based upon the foregoing, it is estimated that this measure will result in a significant unknown decrease in mixed beverage tax and sales tax revenues for FY 23 and FY 24.

