

# **Report to the Oklahoma Restaurant Association**

## **Proposed Changes to the Oklahoma Mixed Beverage Tax**

**Prepared by Catapult Consulting  
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# EXECUTIVE SUMMARY

## 1) **Move the Collection of the Oklahoma Mixed Beverage Tax from Individual Restaurants and Bars to Liquor Distributors**

- Current system is extremely burdensome for the 1,900 restaurants and bars that are required to collect this tax.
  - Very difficult to determine how much tax should be charged (differing pour sizes, theft, breakage).
  - It is expensive to produce and maintain all of the necessary records.
  - Audits are expensive, time consuming and can result in significant assessments.
  - There is not a uniform way of showing the tax to customers. This leads to customer complaints and has resulted in extremely costly litigation.
- Much simpler to have the tax collected by the liquor distributors.
  - Only 7 distributors.
  - They are already collecting other alcohol taxes and maintain the records needed to collect this tax.
- Lost state revenues due to poor compliance.
  - Difficult to accurately determine how much tax is due.
  - Hard to audit so many individual establishments.
- Costly tax for the state to administer.
  - The Oklahoma Tax Commission spends significant resources to provide adequate audit coverage and for other compliance activities.
  - These resources could be directed to other tax types resulting in increased tax compliance.

## 2) **Extend the Application of the Mixed Beverage Tax to all Alcohol Sales (include sales when the customer is not consuming the alcohol where they purchase it).**

- The current system is inequitable.
  - Restaurants and bars are required to place a 13.5% tax on the liquor that they sell while other sellers don't.
  - This inequity will be much worse when the new liquor laws go into effect this coming October.
    - Restaurants and bars will now have to charge this tax on low-point (3.2%) beer while other sellers still won't.
    - There will be many more sellers of strong beer and wine (grocery stores and convenience stores) where the tax won't be charged.
- It is better to have a broad based tax.
  - Applying the tax to all liquor sales will result in more stable revenue collections.

## **Proposed Changes to the Oklahoma Mixed Beverage Tax**

During the 2016 Session Senate Joint Resolution 68 was enacted that referred to a vote of the people State Question 792. The Question would amend the Oklahoma Constitution to significantly change how alcoholic beverages are distributed, sold and taxed in Oklahoma. On November 8, 2016 the State Question was adopted with the support of over 65% of voters. The same Session SB 383 was enacted which provided the statutory changes to implement the new constitutional provisions. The constitutional and statutory changes will go into effect October 1, 2018.

### **Current Taxation of Alcoholic Beverages (in effect until October 1,2018)**

There are 3 types of taxes that are levied on alcoholic beverages in Oklahoma. Excise taxes are levied on the volume of the product, gross receipts taxes are levied on the value of the product based on the price that the retailer charges the consumer (this tax is only for alcohol that is consumed by the customer at the location where they purchased it, referred to as on-premise consumption), and sales taxes which are applied to the retail price (charged on both on-premise and off-premise consumption).

### **Alcohol Excise Taxes and License Fees**

#### Description

The Alcoholic Beverage Tax (which applies to spirits, wine, sparkling wine and strong beer) and the Beverage Tax (which applies to 3.2% beer) are levied on volume and are paid by the liquor distributor. Taxes on sales made during each month are due on the 20<sup>th</sup> day of the following month. Establishments involved in the sale and distribution of alcoholic beverages are also required to pay license fees.

#### Current Rates

Alcoholic Beverage Tax	
Spirits	\$5.56/gallon
Wine	\$0.72/gallon
Sparkling Wine	\$2.08/gallon
Strong Beer	\$0.40/gallon
Beverage Tax	
Low Point Beer	\$0.36/gallon
Beverage Licenses	
Brew Pub	\$650
Manufacturer	\$500
Wholesaler	\$250
Retailer	
On-premise draught	\$500
On-premise cans and bottles	\$350

Off-premise cans and bottles \$230

Current Apportionment

Alcoholic Beverage Tax  
 General Revenue Fund- 64.66% with up to \$350,000 to the Viticulture  
 Fund  
 Local Governments- 32.33%  
 Oklahoma Tax Commission- 3%  
 Beverage Tax  
 General Revenue Fund- 100%  
 Beverage Licenses  
 General Revenue- 100% except \$200 per retail license which goes to  
 Substance Abuse Fund

FY'17 Revenue (July 1, 2016 through June 30, 2017)

General Revenue Fund	\$49,645,717
Cities	\$13,381,847
Tax Commission	\$1,241,615
Viticulture Fund	\$350,000
Substance Abuse Fund	\$485,600
Total	\$65,104,779

**Mixed Beverage Gross Receipts Tax**

Description

Oklahoma levies a 13.5% Mixed Beverage Tax (MBT) on the gross receipts from sales of alcoholic beverages that are consumed on-premise (the location of the seller). The tax is applied to the total price of the drink including ice and nonalcoholic mixers and to any admission charges that allow the person entering to receive complimentary or discounted drinks. The establishment that sells the drink is responsible for collecting and remitting these taxes.

Apportionment

100% of the revenue from this tax is deposited into the General Revenue Fund.

FY'17 Revenue (July 1, 2016 through June 30, 2017)

General Revenue Fund	\$54,306,063
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## Sales Taxes

### Description

The state sales tax (4.5%) and all city or county sales taxes apply to the retail sale of all alcoholic beverages (just as they apply to all other beverage sales).

### Apportionment

General Revenue Fund	83.61%
Education Reform Fund	10.46%
Teacher Retirement System	5.00%
Other	0.93%

## Comparisons to Other States

### Alcohol Excise Taxes

Thirty-three states and the District of Columbia impose excise taxes on alcoholic beverages. The 17 states that do not levy these taxes directly control the sale of alcohol and generate revenue through various fees and net liquor profits.

Spirits- Oklahoma's excise tax of \$5.60/gallon is considerably higher than the median rate for the U.S. (\$3.75) and is higher than all of our surrounding states except New Mexico (\$6.06). See Table 1. There are 6 states with higher rates on spirits- Washington- \$14.27, Alaska- \$12.80, Illinois- \$8.55, Florida- \$6.50, New York- \$6.44, and New Mexico- \$6.06.

Wine- The Oklahoma excise tax on wine is right at the U.S. median rate of 72 cents/gallon. Three of our neighboring states have a higher rate (See Table 1). The highest rates are found in Alaska- \$2.50 and Florida- \$2.25.

Beer- Oklahoma's rate of \$0.40/gallon is twice as high as the U.S. median rate and is higher than all of our neighboring states with the exception of New Mexico (See Table 1). The highest rates are found in Tennessee- \$1.29 and Alaska- \$1.07.

**Table 1**

	<u><b>Spirits</b></u>	<u><b>Wine</b></u>	<u><b>Beer</b></u>
<b>Oklahoma</b>	<b>\$5.56</b>	<b>\$0.72</b>	<b>\$0.40</b>
Arkansas	\$2.50	\$0.75	\$0.23
Colorado	\$2.28	\$0.28	\$0.08
Kansas	\$2.50	\$0.30	\$0.18
Missouri	\$2.00	\$0.42	\$0.06
Nebraska	\$3.75	\$0.95	\$0.31

New Mexico	\$6.06	\$1.70	\$0.41
Texas	\$2.40	\$0.204	\$0.20
U.S. Median	\$3.75	\$0.72	\$0.20

**Mixed Beverage Gross Receipts Tax**

Spirits- Oklahoma applies the 13.5% gross receipts tax only to on-premise consumption. Below is a listing of comparable taxes in neighboring states.

Arkansas	3% off-premise and 14% on-premise
Colorado	None
Kansas	8% off-premise and 10% on-premise
Missouri	None
Nebraska	None
New Mexico	None
Texas	6.7% on-premise

Wine- Oklahoma applies the 13.5% gross receipts tax only to on-premise consumption. Below is a listing of comparable taxes in neighboring states.

Arkansas	3% off-premise and 10% on-premise
Colorado	None
Kansas	8% off-premise and 11% on-premise
Missouri	None
Nebraska	None
New Mexico	None
Texas	6.70% on-premise

Beer- Oklahoma applies the 13.5% gross receipts tax only to on-premise consumption and only to strong beer. Below is a listing of comparable taxes in neighboring states.

Arkansas	3% off-premise and 10% on-premise
Colorado	None
Kansas	8% off-premise and 10% on-premise
Missouri	None
Nebraska	None
New Mexico	None
Texas	14.95% on-premise

**Sales Taxes**

Every state that has a sales tax either applies it to alcoholic beverages or imposes a separate sales tax that is higher than their general rate.

## **Revenue Issues**

The Oklahoma Tax Commission is responsible for the revenue estimates from the various taxes placed on alcohol sales. They recently submitted an estimate for the alcohol excise tax, the mixed beverage tax and the overall sales tax. The State Board of Equalization adopted these estimates on December 20, 2017 as part of the overall estimate of revenues available for appropriation. These figures will then be revised in February based on the most recent actual collection data.

For the upcoming year (FY'19) the estimate will take into account the provisions of State Question 792. This Question eliminated the designation for low-point beer and places all beer sales into a single category. Because of this change the MBT (13.5%) will apply, beginning October 1, 2018, to all beer that is purchased for on-premise consumption (the mixed beverage tax currently applies only to strong beer sold for on-premise consumption). This change will increase revenues beginning October 1, 2018. Actual state collections will increase when the October tax is remitted by November 20<sup>th</sup>. This means that during FY'19 the state will have 8 months of collections that include the additional revenue from the change in the application of the MBT.

The current estimate of the additional revenue for FY'19 that will be generated because of this change is \$32.8 million (in FY'19 the change will be in effect for 9 months and you will have 8 months of additional revenue). The total revenue estimated from the Mixed Beverage Tax for FY'19 is \$95 million. This is an increase of \$32 million from the current year.

The revenue estimate adopted in December will be used for the Governor's Executive Budget. The revised estimate that is adopted in February will set the amount of funds that are available for the Legislature to appropriate. The additional revenues that will come in because of the low point beer change will be included in those estimates. Any changes made to the liquor tax laws that impact revenue will cause a revision in the funds available for appropriation.

## **Proposal**

### **1. Move the Collection of the Mixed Beverage Tax from Individual Restaurants and Bars to Liquor Distributors**

Restaurants and bars experience significant costs and financial exposure associated with collecting and remitting the MBT. It can be difficult to accurately determine exactly how much tax is due and to maintain all of the records necessary to support those determinations. Issues such as variances in pour sizes, theft, spillage and the breakage of bottles significantly complicate tax calculations. Restaurants and bars are subject to depletion audits where they can be assessed for taxes that they didn't

collect from their customers and can be charged penalties and interest. These problems are especially difficult for small establishments and can lead to the bar or restaurant being closed.

While there are only seven liquor distributors in the state there are approximately 1,900 restaurants and bars that currently have a MBT license. It would be significantly more efficient to have this small number of distributors collect this tax.

The administration of this tax at the retail level is also very difficult and costly for the Tax Commission. The Commission must accept returns and payments from each of these license holders and must expend audit resources to ensure tax compliance. These resources could be directed to other compliance activities.

The current system can also be very confusing for customers as there is not a uniform method for showing the amount of tax due on the bill. This has led to costly litigation.

**2. Extend the application of the Mixed Beverage Tax to all Alcohol Sales (include sales when the customer is not consuming the alcohol where they purchase it).**

The current structure of the Mixed Beverage Tax places those establishments selling alcohol for on-premise consumption (restaurants and bars) at a 13.5% competitive disadvantage relative to those businesses selling alcohol for off-premise consumption (liquor stores). This competitive disadvantage is greatly exacerbated by the adoption of the State Question and the accompanying statutory changes.

Under current law the tax advantage is for strong beer, spirits and wine. Since these products can only be sold for off-premise consumption by liquor stores, they are the only retailers that have this advantage. Under the new law grocery stores and convenience will be able to sell strong beer and wine. These sales will now have a significant price advantage compared to sales by restaurants and bars.

In addition, sales of 3.2% beer that are currently not subject to the MBT will now be charged the tax when sold by restaurants and bars but will still not be charged the tax when sold by liquor stores, grocery stores or convenience stores.

The adoption of State Question 792 allowing retail establishments to refrigerate and sell strong beer and wine will lead to a blurring of what constitutes on-premise consumption. Extending the tax to all sales will prevent retailers from taking advantage of the law change to gain a price advantage by not collecting the MBT.

**Revenue Implications**

Moving the point of taxation from retailers to distributors will lower the value to which the tax rate is applied. The wholesale value of these sales will be significantly

less than the retail value. This will obviously result in less tax revenue if the same rate is used.

Applying the MBT to all sales (not just for on-premise consumption) will significantly increase revenues if the same tax rate is applied. Approximately 75% of all liquor sales are consumed off-premise.

Making both of these changes for the upcoming fiscal year and lowering the tax rate to 6.5% will generate approximately the same amount of revenue as is expected to come in under current law. Appendix 1 includes revenue projections for other rate options.

## History of Alcoholic Beverage Taxes

Source: Oklahoma Tax Commission

### Alcoholic Beverage Tax

#### Distilled Spirits

- 1959 Oklahoma's prohibition ordinance was repealed, and taxes were levied on the sale of intoxicating beverages. The tax was \$2.40 per gallon of spirits.
- 1971 Rate increased to \$4 per gallon, effective Aug. 1, 1971.
- 1984 Rate increased from \$4 to \$5 per gallon, effective 4/21/84 (HB 1325).
- 1987 Rate changed to \$1.47 per liter, effective 6/1/87. (This equates to \$5.56 per gallon. 1 gal = 3.785 liters.) (HB 1061)

#### Light Wines

- 1959 Oklahoma's prohibition ordinance was repealed, and taxes were levied on the sale of intoxicating beverages, effective 4/7/59. The tax was 36¢ per gallon of light wine.
- 1971 Rate increased to 50¢ per gallon, effective Aug. 1, 1971.
- 1984 Rate increased from 50 to 63 cents per gallon, effective 4/21/84 (HB 1325).
- 1987 Rate changed to 19 cents per liter, effective 6/1/87. (This equates to 72 cents per gallon. 1 gallon = 3.785 liters) (HB 1061)

#### Wine More Than 14% Alcohol

- 1959 Oklahoma's prohibition ordinance was repealed, and taxes were levied on the sale of intoxicating beverages. The tax on wine with more than 14% alcohol was 50¢ per gallon.
- 1971 Rate increased to \$1 per gallon, effective Aug. 1, 1971.
- 1984 Rate increased from \$1 to \$1.25 per gallon, effective 4/21/84 (HB 1325).
- 1987 Rate changed to 37 cents per liter, effective 6/1/87. (This equates to \$1.40 per gallon. 1 gal = 3.785 liters) (HB 1061)
- 2008 Rate changed to 19 cents per liter regardless of alcohol content, effective 7/1/2009. This does not apply to sparkling wines. (This equates to 72 cents per gallon. 1 gal = 3.785 liters) (SB 2061)

#### Sparkling Wines

- 1959 Oklahoma's prohibition ordinance was repealed, and taxes were levied on the sale of intoxicating beverages. The tax on sparkling wine was 75¢ per gallon.
- 1971 Rate increased to \$1.50 per gallon, effective Aug. 1, 1971.
- 1984 Rate increased from \$1.50 to \$1.88 per gallon, effective 4/21/84 (HB 1325).

- 1987 Rate changed to 55 cents per liter, effective 6/1/87. (This equates to \$2.08 per gallon. 1 gal = 3.785 liters.) (HB 1061)

#### Strong Beer

- 1959 Oklahoma's prohibition ordinance was repealed, and taxes were levied on the sale of intoxicating beverages. The tax on strong beer was \$10 per 31-gallon barrel.
- 1984 Rate increased from \$10 to \$12.50 per 31-gallon barrel, effective 4/21/84 (HB 1325).

#### Beverage Tax

##### Beer 3.2% or Less

- 1933 Legislature permitted the sale of nonintoxicating alcoholic beverages (beer with less than 3.2% alcoholic content) and levied a tax of \$2.50 per 31-gallon barrel. (July 12, 1933)
- 1939 Tax was \$2 per barrel.
- 1941 Tax was increased to \$7 per barrel.
- 1947 Rate of taxation remains the same but the tax of \$7 per barrel was divided into two rates--a normal rate of \$4 per barrel and an emergency rate of \$3 per barrel. The emergency rate expires 6/30/49. (Subsequently extended to June 30, 1953.)
- 1951 The rate was increased from \$7 to \$10 per 31-gallon barrel. \$3 per barrel of the levy was temporary and was set to expire 6/30/53.
- 1953 Tax set at \$10 per barrel.
- 1987 Rate changed from \$10 to \$11.25 per 31-gallon barrel, effective 6/1/87 (HB 1061).

##### Mixed Beverage Gross Receipts Tax

- 1985 Levied a tax of 10% of total gross receipts from the sale of mixed beverages. This is in addition to the excise taxes above.
- 1987 Rate increased from 10% to 12% on gross receipts, effective 6/1/87 (HB 1061).
- 2001 Rate increased from 12% to 13.5%, effective 11/1/2001. (SB 501)

## Appendix 1

### Revenue Estimate for Mixed Beverage Tax Applied to All Sales and Collected by Distributor (millions)

**FY'19 MBT Revenue under Current Law**

Current 13.5% MBT Levy	\$ 62.2
New Revenue from 3.2% Beer (8 months)	\$ 32.8
<b>Total</b>	<b>\$ 95.0</b>

**Projected Total Gross Receipts FY'19**

\$ 1,480.3

MBT Rate	June 1, 2018 Effective Date		October 1, 2018 Effective Date			
	FY'19 Estimate	Change from Current Law	July-Oct. Current Law	Nov.-June New Law	FY'19 Estimate	Change from Current Law
5.0%	\$ 74.0	\$ (21.0)	\$ 20.7	\$ 49.3	\$ 70.1	\$ (24.9)
5.5%	\$ 81.4	\$ (13.6)	\$ 20.7	\$ 54.3	\$ 75.0	\$ (20.0)
6.0%	\$ 88.8	\$ (6.2)	\$ 20.7	\$ 59.2	\$ 79.9	\$ (15.1)
6.5%	\$ 96.2	\$ 1.2	\$ 20.7	\$ 64.1	\$ 84.9	\$ (10.1)
7.0%	\$ 103.6	\$ 8.6	\$ 20.7	\$ 69.1	\$ 89.8	\$ (5.2)
7.5%	\$ 111.0	\$ 16.0	\$ 20.7	\$ 74.0	\$ 94.7	\$ (0.3)
8.0%	\$ 118.4	\$ 23.4	\$ 20.7	\$ 78.9	\$ 99.7	\$ 4.7
8.5%	\$ 125.8	\$ 30.8	\$ 20.7	\$ 83.9	\$ 104.6	\$ 9.6
9.0%	\$ 133.2	\$ 38.2	\$ 20.7	\$ 88.8	\$ 109.6	\$ 14.6
9.5%	\$ 140.6	\$ 45.6	\$ 20.7	\$ 93.8	\$ 114.5	\$ 19.5
10.0%	\$ 148.0	\$ 53.0	\$ 20.7	\$ 98.7	\$ 119.4	\$ 24.4
10.5%	\$ 155.4	\$ 60.4	\$ 20.7	\$ 103.6	\$ 124.4	\$ 29.4
11.0%	\$ 162.8	\$ 67.8	\$ 20.7	\$ 108.6	\$ 129.3	\$ 34.3
11.5%	\$ 170.2	\$ 75.2	\$ 20.7	\$ 113.5	\$ 134.2	\$ 39.2
12.0%	\$ 177.6	\$ 82.6	\$ 20.7	\$ 118.4	\$ 139.2	\$ 44.2
12.5%	\$ 185.0	\$ 90.0	\$ 20.7	\$ 123.4	\$ 144.1	\$ 49.1
13.0%	\$ 192.4	\$ 97.4	\$ 20.7	\$ 128.3	\$ 149.0	\$ 54.0
13.5%	\$ 199.8	\$ 104.8	\$ 20.7	\$ 133.2	\$ 154.0	\$ 59.0
14.0%	\$ 207.2	\$ 112.2	\$ 20.7	\$ 138.2	\$ 158.9	\$ 63.9
14.5%	\$ 214.6	\$ 119.6	\$ 20.7	\$ 143.1	\$ 163.8	\$ 68.8
15.0%	\$ 222.0	\$ 127.0	\$ 20.7	\$ 148.0	\$ 168.8	\$ 73.8
15.5%	\$ 229.4	\$ 134.4	\$ 20.7	\$ 153.0	\$ 173.7	\$ 78.7
16.0%	\$ 236.8	\$ 141.8	\$ 20.7	\$ 157.9	\$ 178.6	\$ 83.6
16.5%	\$ 244.2	\$ 149.2	\$ 20.7	\$ 162.8	\$ 183.6	\$ 88.6
17.0%	\$ 251.7	\$ 156.7	\$ 20.7	\$ 167.8	\$ 188.5	\$ 93.5
17.5%	\$ 259.1	\$ 164.1	\$ 20.7	\$ 172.7	\$ 193.4	\$ 98.4