

CHAPTER 20. ALCOHOL AND MIXED BEVERAGES

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CHAPTER 20. ALCOHOL AND MIXED BEVERAGES

SUBCHAPTER 1. GENERAL PROVISIONS

710:20-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to alcohol and mixed beverages.

710:20-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" and **"Tax Commission"** mean the Oklahoma Tax Commission.

"Distributor" means and includes a manufacturer, distiller, winemaker, rectifier, bottler, importer, broker and nonresident seller of distilled spirits, cordials, specialties and all other alcoholic beverages who makes sales of such alcoholic beverages in this State or who causes such products to be shipped into this State F.O.B. manufacturer's warehouse or point from which such license holder will make shipment, whether or not such sales are consummated within or without this State.

"Licensed distributor" and **"Licensed wholesaler"** mean any distributor or wholesaler who holds a valid license issued by the Alcoholic Beverage Laws Enforcement (ABLE) Commission and a valid permit issued by the Oklahoma Tax Commission.

"Month" means calendar month, the period from the first day of the month to the last day, according to the established order of the division of time into years, months, weeks and days commonly recognized in the United States.

"Person" means and includes any individual, person, partnership, firm, association, corporation or other legal entity.

"Storage of alcoholic beverages in transit" means alcoholic beverages caused to be shipped into this state and stored in an alcoholic beverage warehouse, licensed and bonded by the Alcoholic Beverage Laws Enforcement (ABLE) Commission, as alcoholic beverages in transit.

"Tax remitter" means the licensed wholesaler or any other person required to collect, report and remit the tax levied on alcoholic beverages.

"Taxpayer" means the licensed wholesaler, retail dealer, retail dealer/manufacturer, or any other person liable to pay the excise tax levied on alcoholic beverages or the mixed beverage gross receipts tax levied on sale of alcoholic beverages by the individual drink. [See: 37A O.S. §§ 1-103, 5-101 and 5-105]

[Source: Amended at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 35 Ok Reg 2044, eff 10-1-18; Amended at 36 Ok Reg 1203, eff 8-11-19]

710:20-1-3. Purchase requirements for mixed beverage permit holders

(a) No mixed beverage or beer and wine licensee shall purchase or receive any alcoholic beverage other than from:

(1) A person holding a wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage Control Act; or,

(2) A licensed Oklahoma winemaker, if the licensee's premises are also a restaurant. In this instance, the licensee may purchase wine produced at Oklahoma wineries directly from the winemaker. [See: 37A O.S. § 2-138]

(b) No mixed beverage, beer and wine, caterer, public event, or special event licensee, nor any officer, agent, or employee of such licensee, may possess or allow on the licensed premises, any container of any alcoholic beverage which is not listed on an invoice from the wholesaler or from a licensed Oklahoma winemaker from whom the alcoholic beverage was purchased. [See: 37A O.S. § 5-137]

[Source: Added at 19 Ok Reg 1507, eff 5-25-02; Amended at 35 Ok Reg 2044, eff 10-1-18]

SUBCHAPTER 2. LOW-POINT BEER [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

710:20-2-1. Purpose [REVOKED]

[Source: Added at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-2. Definitions [REVOKED]

[Source: Reserved at 10 Ok Reg 3831, eff 7-12-93; Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-3. Procedures for payment of excise tax levied on low-point beer [REVOKED]

[Source: Added at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-4. Payment of taxes; persons liable [REVOKED]

[Source: Added at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 21 Ok Reg 1125, eff 5-13-04; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-5. Reporting requirements [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Amended at 29 Ok Reg 519, eff 5-11-12; Amended at 30 Ok Reg 1471, eff 7-1-13; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-6. Annual state permits and license taxes [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Amended at 17 Ok Reg 2664, eff 6-25-00; Amended at 21 Ok Reg 1125, eff 5-13-04, Amended at 22 Ok Reg 1527, eff 6-11-05; Amended at 29 Ok Reg 519, eff 5-11-12; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-7. Repackaging generally prohibited; exceptions [REVOKED]

[Source: Reserved at 15 Ok Reg 2800, eff 6-25-98; Added at 18 Ok Reg 2808, eff 6-25-01; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-8. Penalties for operation without a permit [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-9. Administrative fines [REVOKED]

[Source: Reserved at 15 Ok Reg 2800, eff 6-25-98; Added at 18 Ok Reg 2808, eff 6-25-01; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-10. Bonds [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-11. Records of licensees [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-12. Withdrawal of stale stock of low-point beer from retailer's inventory [REVOKED]

[Source: Reserved at 15 Ok Reg 2800, eff 6-25-98; Added at 18 Ok Reg 2808, eff 6-25-01; Amended at 19 Ok Reg 1507, eff 5-25-02; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-13. Refusal to issue or revocation of license [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-14. Payments by electronic funds transfer [REVOKED]

[Source: Reserved at 15 Ok Reg 2800, eff 6-25-98; Added at 18 Ok Reg 2808, eff 6-25-01; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-15. Invoices [REVOKED]

[Source: Added at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-16. [RESERVED]

[Source: Reserved at 21 Ok Reg 1125, eff 5-13]

710:20-2-17. [RESERVED]

[Source: Reserved at 21 Ok Reg 1125, eff 5-13]

710:20-2-18. [RESERVED]

[Source: Reserved at 21 Ok Reg 1125, eff 5-13]

710:20-2-19. [RESERVED]

[Source: Reserved at 21 Ok Reg 1125, eff 5-13]

710:20-2-20. Keg identification seal requirements and recordkeeping for licensed retailers [REVOKED]

[Source: Added at 21 Ok Reg 1125, eff 5-13; Revoked at 35 Ok Reg 2044, eff 10-1-18]

PART 3. LOW-POINT BEER DISTRIBUTION [REVOKED]**710:20-2-50. Purpose [REVOKED]**

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-51. Definitions [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 19 Ok Reg 1507, eff 5-25-02; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-52. Procedures for filing agreements [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-53. Registration of designated brands [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-54. Transport vehicles and transportation [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-55. Delivery outside sales territory [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-56. Termination of agreement [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

710:20-2-57. [RESERVED]

[Source: Reserved at 12 Ok Reg 2617, eff 6-26-95]

710:20-2-58. [RESERVED]

[Source: Reserved at 12 Ok Reg 2617, eff 6-26-95]

710:20-2-59. [RESERVED]

[Source: Reserved at 12 Ok Reg 2617, eff 6-26-95]

710:20-2-60. Administrative hearings [REVOKED]

[Source: Added at 11 Ok Reg 4681, eff 8-15-94 (emergency); Added at 12 Ok Reg 2617, eff 6-26-95; Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 35 Ok Reg 2044, eff 10-1-18]

SUBCHAPTER 3. ALCOHOLIC BEVERAGES**710:20-3-1. Procedures for payment of excise tax levied on alcoholic beverages**

Pursuant to the authority and power granted the Oklahoma Tax Commission the excise tax levied upon the sale, distribution, use or possession in this State of alcoholic beverages shall be paid through monthly tax reporting procedures as established by Rules of this Commission, and shall be implemented and administered in accordance with the Rules of this Commission establishing procedures for payment of the excise tax by a monthly reporting system. [See: 37A O.S. § 5-101]

[Source: Amended at 19 Ok Reg 1507, eff 5-25-02; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-3-2. Payment or remittance of the excise tax on alcoholic beverages

(a) **Liability of wholesaler.** The excise tax levied upon the sale, distribution, use or possession of alcoholic beverages in this State shall be paid on a monthly basis by the licensed wholesaler first possessing, selling, using, distributing, or in any manner dealing with alcoholic beverages in this State.

(b) **Liability for tax on stored beverages.** Any licensed distributor who causes any alcoholic beverages to be shipped into this State and stored as alcoholic beverages in transit shall be liable for any tax assessed pursuant to audit of any storage facility wherein all such stored merchandise is not accounted for in the total of the shipments to licensed wholesalers in this State and the shipments out of this State.

(c) **Liability of nonresident seller, first seller, importer.** Any holder of a nonresident seller or manufacturer license in possession of any alcoholic beverages shipped or delivered into this State shall be liable for the excise tax levied upon the sale, distribution, use, or possession of alcoholic beverages, in accordance with OAC 710:20-3-3 and 710:20-3-4.

[Source: Amended at 20 Ok Reg 2586, eff 7-11-03; Amended at 35 Ok Reg 2044, eff 10-1-18; Amended at 36 Ok Reg 1203, eff 8-11-19]

710:20-3-3. Monthly tax reports required

(a) **General requirements.** Every licensed distributor and wholesaler and every bonded warehouseman who is licensed by the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission to ship or cause to be shipped into this state or to sell, distribute, use,

possess or in any manner deal with alcoholic beverages in this state, shall report monthly to the Oklahoma Tax Commission, all sales, distributions, receipts and shipments of all such alcoholic beverages in this state during the preceding month. All required reports must be filed electronically in the format prescribed by the Oklahoma Tax Commission. Each such monthly report shall include the minimum information required by the Oklahoma Alcoholic Beverage Control Act and any additional information and attachments that may be required by the prescribed tax report form.

(b) **Incomplete or insufficient reports.** Any monthly alcoholic beverage tax report form that does not include all information requested on the prescribed form or that is not duly executed and verified shall not constitute the mandatory report.

(c) **Failure to file.** In the event a complete monthly report is not filed on or before the due dates in accordance with 710:20-3-4, of the Oklahoma Tax Commission rules, the report shall be delinquent. [See: 37A O.S. §§ 5-101 et seq.]

[Source: Amended at 20 Ok Reg 2586, eff 7-11-03; Amended at 29 Ok Reg 519, eff 5-11-12; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-3-4. Due dates for timely filing of monthly tax reports and payment of alcoholic beverage excise tax

(a) **Date due.** On or before the twentieth (20th) day of the calendar month immediately following the calendar month in which the alcoholic beverages subject to tax were sold, distributed, used, possessed or in any manner dealt with in this State, the monthly alcoholic beverage tax report and payment or remittance of the tax due shall be submitted to the Oklahoma Tax Commission.

(b) **Date due not a working day.** If the due date is a Saturday, Sunday, holiday recognized by the executive department of this State, or a date when the Federal Reserve Banks are closed then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following such Saturday, Sunday, holiday or Federal Reserve Bank closure date.

(c) **Date mailed given effect.** Any report or payment mailed and postmarked by the United States Postal Service on or prior to said due date shall be considered to have been filed or paid on the due date.

(d) **Delinquency.** All such excise tax or monthly reports due and not paid or submitted to the Commission on or before such due date shall be delinquent.

[Source: Amended at 30 Ok Reg 1471, eff 7-1-13; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-3-5. Interest on delinquent tax

If any amount of the excise tax levied on alcoholic beverages is not paid or remitted before the tax becomes delinquent, as set out in 710:20-3-4, interest, at the rate of one and one-fourth percent (1 1/4%) per month until payment or remittance, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. §217]

710:20-3-6. Penalty on delinquent tax

If any amount of the excise tax levied on alcoholic beverages is not paid or remitted within thirty (30) calendar days after the same became delinquent, as set out in 710:20-3-

4, a penalty, at the rate of ten percent (10%) of the total amount of such delinquent excise tax, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. §217]

710:20-3-7. Issuance of distributor or wholesaler permit

The Business Tax Services Division of the Oklahoma Tax Commission is authorized to issue nontransferable permits, upon the permit form or forms approved by the Commission, to distributors and wholesalers who are licensed by the Oklahoma Alcohol Beverage Laws Enforcement (ABLE) Commission to ship or cause to be shipped into this state or to sell, distribute, use or possess alcoholic beverages in the State of Oklahoma, upon receipt of the following:

- (1) Completed, executed and verified permit application form to the Business Tax Services Division from the applicant;
- (2) Completed and executed Alcoholic Beverage Tax Bond from the applicant in an amount approved by the Commission. [See: 37A O.S. § 5-112]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-3-8. Cancellation of permits

All alcoholic beverage distributor and wholesaler permits issued shall be subject to cancellation by the Oklahoma Tax Commission after a hearing.

- (1) The permit holder shall be served notice of the date, time and place of the hearing, so that (s)he may appear and show cause why the permit should not be cancelled. Notice shall be in writing and mailed return receipt requested mail, at least ten (10) days prior to said hearing. Mailing this notice to the address last used by the permit holder for reporting purposes will satisfy notice and service requirements.
- (2) If a holder of a permit becomes delinquent for a period of three (3) months or more in reporting or in paying any alcoholic beverage tax, any duly authorized agent of the Oklahoma Tax Commission may remove the permit from the premises of the tax reporter, taxpayer or tax remitter, without prior notice or hearing.
- (3) Upon subsequent application, any permit cancelled or removed from the premises of the holder may be renewed, at the discretion of the Commission, by filing the required reports, paying the delinquent tax, or otherwise removing the cause of the cancellation.

710:20-3-9. Procedures for payment of identification stamp fees [REVOKED]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 19 Ok Reg 1507, eff 5-25-02]

710:20-3-10. Manner for affixing identification stamps upon containers of alcoholic beverages and cases of beer [REVOKED]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Revoked at 19 Ok Reg 1507, eff 5-25-02]

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-1. Procedures for payment of gross receipts tax on mixed beverage,

caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, public event, and special event license holders; definitions

(a) **General provisions.** Pursuant to the authority and power granted to the Oklahoma Tax Commission, the excise tax imposed upon the total gross receipts of a holder of a mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, public event, or special event license issued by the ABLE Commission, shall be paid through monthly tax reporting procedures as established by rules of this Commission, and shall be implemented, administered and enforced in accordance with said rules. [See: 37A O.S. §5-105]

(b) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Alcoholic beverage"** means alcohol, spirits, beer, and wine, as those terms are defined in Section 1-103 of Title 37A of the Oklahoma Statutes 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.

(2) **"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. [See: 37A O.S. § 1-103(34)]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 19 Ok Reg 1507, eff 5-25-02; Amended at 20 Ok Reg 2586, eff 7-11-03; Amended at 32 Ok Reg 1342, eff 8-27-2015; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-5-2. Designation of agent of the Oklahoma Tax Commission

The Director of the Business Tax Services Division is hereby designated as the agent, servant and employee of the Oklahoma Tax Commission for the following purposes:

- (1) Issuance of mixed beverage tax permits;
- (2) Cancellation of mixed beverage tax permits upon delinquency in reporting or paying the gross receipts tax or sales tax;
- (3) Temporary suspension of mixed beverage tax permits upon revocation or suspension of the mixed beverage, caterer, hotel beverage, public event, or special events licenses issued by the ABLE Commission;
- (4) Establishing amounts of required bonds; and,
- (5) Seizure of containers or cases of alcoholic beverages declared to be contraband.

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 32 Ok Reg 1342, eff 8-27-15; Amended at 34 Ok Reg 2058, eff 9-11-17]

710:20-5-3. Monthly tax reports for gross receipts tax

(a) **General requirements.** Every mixed beverage tax permit holder or any person transacting business subject to the gross receipts tax upon the sale, preparation or service of mixed beverages, shall report monthly, for each place or location of business, to the Oklahoma Tax Commission, all gross receipts for the month for the sale, preparation or service of mixed beverages and for the privilege of admission to the place or location of

business, which entitle a person to complimentary or discounted mixed beverages, on verified tax report forms as prescribed by the Oklahoma Tax Commission. Each such monthly report shall include the minimum information required by 37A O.S. § 5-135 and any additional information and attachments as may be required by the prescribed tax report form.

(b) **Incomplete or insufficient reports.** Any monthly gross receipts tax report that does not include all information requested on the prescribed form or that is not executed and verified shall not constitute the mandatory report.

(c) **Failure to file.** In the event a complete monthly report is not filed on or before the due dates in accordance with 710:20-5-6, the report shall be delinquent.

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-5-4. Calculation of gross receipts tax for mixed beverage transactions

(a) **Advertised price; admission charge.** The advertised price of a mixed beverage may be the sum of the total retail sale price and the gross receipts tax levied thereon. Admission charges to a mixed beverage establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages are subject to the gross receipts tax.

(b) **Records.** Mixed beverage permittees shall maintain records of the total retail prices of all drinks and the gross receipts tax shall be calculated on the individual total retail price of each drink and may be added thereto to form the advertised price.

(c) **Calculation of tax.**

(1) A mixed beverage tax permit holder shall report the following:

(A) The total amount received for mixed beverages sold, prepared or served at the total retail price;

(B) The total retail value, computed at the total retail price, of all mixed beverages sold, prepared or served either upon a discounted or complimentary basis;

(C) The total amount received for ice or nonalcoholic beverages sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation, or service of mixed beverages occurs; and

(D) The total gross amount received as admission charges which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages.

(2) The sum of the four amounts in (1) of this subsection, multiplied by the 13.5% tax rate, shall constitute the amount of the gross receipts tax.

(d) **Example.** Assuming the total retail sales price for a mixed drink is \$3.00, each drink sold, and each drink served as a "complimentary drink" incurs a Forty-one Cent gross receipts tax. Sales tax shall be calculated on the total retail price of \$3.00. [See: 37A O.S. § 5-105]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 19 Ok Reg 1507, eff 5-25-02; Amended at 31 Ok Reg 2425, eff 9-12-14; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-5-5. Liability of mixed beverage tax permit holder for gross receipts tax upon admission charges

(a) On and after June 29, 1987, the Gross Receipts Tax shall apply to any charges for admission to a Mixed Beverage establishment which entitle a person to complimentary or discounted Mixed Beverages. Such admission charges shall be subject to the Gross Receipts Tax whether:

- (1) Expressly stated or advertised by the Mixed Beverage Permit holder that such charges are an entitlement to complimentary or discounted drinks;
- (2) Lower prices than can reasonably be expected without an admission charge are established for a limited or indefinite period, and the permit holder is enabled to maintain lower prices due to an admission charge;
- (3) A permit holder maintains that lower prices, made possible by an admission charge, are actually normal prices;
- (4) An admission charge enables the permit holder to set lower prices at any date before or after the admission charge was established; or
- (5) A permit holder represents that an admission charge is for some other purpose than to offset mixed beverage prices if the admission charge in fact enables him to maintain lower prices or allow complimentary drinks to the individual paying such admission charge or to another individual or class of individuals.
- (6) It shall be deemed by the Tax Commission that for the purposes of this rule that a gross profit ratio of less than 350% (3 1/2 times cost) shall be considered a lower price than can reasonably be expected without an admission charge. Exceptions to this requirement are "Specials" which are reduced in price for a minimum of seven calendar days as provided for by statute.

(b) Admission charges which are responsible for complimentary and discounted mixed beverages, as well as some other purpose not commonly considered incidental to the operation of a Mixed Beverage establishment, shall be subject to the Gross Receipts Tax upon that portion covering mixed beverages.

(c) Admission charges to fund-raising events conducted by organizations exempt from federal income tax pursuant to 26 U.S.C. § 501(c)(3) which are responsible for complimentary or discounted mixed beverages as well as food, donation, or entertainment, shall be subject to the Gross Receipts Tax only upon that portion attributable to mixed beverages.

(1) If the amount charged for mixed beverage is not itemized to the consumer, it shall be assumed that the amount received by the organization for mixed beverages is Three Hundred Fifty percent 350% (or 3 1/2 times) the wholesale price of the mixed beverages dispensed at the event, as evidenced by the wholesaler's invoices.

(2) If the amount charged for mixed beverages is itemized to the consumer on the ticket, order form, or other information provided the consumer, Gross Receipts Tax is due upon the stated amount charged the consumers for mixed beverages.

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 19 Ok Reg 1507, eff 5-25-02]

710:20-5-6. Due dates for timely filing of monthly tax reports and paying gross receipts tax

(a) **Date due.** On or before the twentieth (20) day of the calendar month immediately following the calendar month in which the mixed beverages were sold, prepared or served,

the monthly gross receipts tax report and payment of the tax due shall be submitted to the Oklahoma Tax Commission.

(b) **Date due not a working day.** If the due date is a Saturday, Sunday, a holiday recognized by the executive department of this State, or a date when the Federal Reserve Banks are closed then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday, holiday or Federal Reserve bank closure date.

(c) **Date mailed given effect.** Any report or payment mailed and postmarked by the United States Postal Service on or prior to the due date shall be considered to have been filed or paid on the due date.

(d) **Delinquency.** All such gross receipts tax or monthly reports due and not paid or submitted to the Commission on or before the due date shall be delinquent. [See: 37A O.S. § 5-135]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 23 Ok Reg 2813, eff 6-25-06; Amended at 29 Ok Reg 519, eff 5-11-12; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-5-7. Records requirements

(a) **Required records.** Every mixed beverage tax permit holder shall keep and maintain, for a period of at least three (3) years, records and information on all alcoholic beverages purchased or received, and sold or otherwise disposed of, as follows:

- (1) copies of all invoices of purchases or receipts of alcoholic beverages;
- (2) all cash register records and receipts;
- (3) copies of all lists of prices charged for the sale, preparation or service of alcoholic beverages by brand name or category or type of mixed alcoholic beverage;
- (4) dates of changes, either increase or decrease, in any price for any sale, preparation or service of any mixed beverage;
- (5) dates of additions and deletions of items from the price list of mixed beverages; and
- (6) records of daily admissions and admission charges. [See: 37A O.S. §§ 5-105 and 5-120; 710:20-5-5]

(b) **Complimentary or discounted sales.** The records shall distinctly identify any complimentary or discounted sale, preparation or service of mixed beverages separate and apart from sales of mixed beverages at the normal, listed price, as well as any other sales, such as food items. [See: 37A O.S. §§ 5-120 and 5-126]

(c) **Records required for complimentary or discounted sales.** Because the gross receipts tax is to be calculated upon the retail value of mixed beverages sold at total retail value, or total retail value of complimentary or discounted drinks, and charges for admission to the establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages, daily sales and admission records are required. [See: 37A O.S. § 5-105]

(d) **Records required from wholesalers.** The licensed wholesaler shall keep and maintain, for a period of at least three (3) years, copies of all invoices, manifests, bills of lading or similar types of documents as records and information on all alcoholic beverages imported, purchased, received, manufactured, produced, sold, delivered or otherwise

transferred to a mixed beverage tax permit holder. Each licensed wholesaler shall be required to maintain the records required by 37A O.S. § 5-105, segregated by license number. [See: 37A O.S. § 5-126]

(e) **Failure to keep required records; hearing to suspend/revoke license; penalties.** Failure to keep and maintain the records described in this Section shall make the mixed beverage permit holder subject to a hearing before the Commission to show cause why his permit should not be suspended or revoked and why he should not be required to pay over to the State the one percent (1%) of the tax previously retained as remuneration for establishing and maintaining the records required by this Section for the period for which no records were kept. Upon each finding that a mixed beverage permit holder has failed to comply with the recordkeeping requirements of this Section, the Tax Commission may revoke or suspend the permit and require the repayment of the taxes previously retained for keeping and maintaining records for the period during which no records were found to have been kept. A mixed beverage tax permit shall be renewed upon finding that the permit holder is in compliance with the recordkeeping requirements of this Section. [See: 37A O.S. § 5-107 and 5-136]

[Source: Amended at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 35 Ok Reg 2044, eff 10-1-18]

710:20-5-8. Liability and audit of mixed beverage tax permit holder for gross receipts tax upon sale, preparation or service of all alcoholic beverages purchased or received

(a) **Liability in general.** Every mixed beverage tax permit holder or any other person transacting business subject to the gross receipts tax shall be liable for the tax upon the gross receipts from such beverages (on the basis of the number of drinks available for sale, preparation, or service from the total alcoholic beverages received). Each permit holder or other person shall be liable for the gross receipts tax upon any and all disposition by his or her agents or employees or any other persons on the premises of the mixed beverage tax permit holders or other person, except upon seizure or other disposition of the alcoholic beverage by employees of the ABLE Commission, Tax Commission, or other law enforcement agencies in the execution of their official duties. [See: 37A O.S. § 5-105]

(b) **Audit procedures.**

(1) Upon audit of the books and records of a mixed beverage establishment for gross receipts tax, it shall be assumed that spirits have been dispensed at the average rate of one and one-half fluid ounce, except for drinks with recipes calling for more than one type of spirit or for double portions of spirits, or upon reasonable evidence of a different rate of use.

(2) Wines will be presumed to have been dispensed at the average rate of six ounces (6 oz.) per serving. The Tax Commission may use an average rate greater or less than those set out in this rule upon reasonable evidence of a different rate of use.

(3) An audit may be conducted to determine if the correct amount of tax payable has been collected. The taxpayer will be deemed in compliance if the audit reveals that the amount of tax collected is:

(A) For spirits, within eighty-four percent (84%) to one hundred sixteen percent

(116%) of the amount of tax payable.

(B) For wine, within ninety percent (90%) to one hundred ten percent (110%) of the amount of tax payable.

(C) For beer sold at draft and not in original packages, within eighty-six percent (86%) to one hundred fourteen percent (114%) of the amount of tax payable.

(D) For beer in original packages, within ninety-five percent (95%) to one hundred five percent (105%) of the amount of tax payable. [See: 37A O.S. § 5-135]

(4) Under circumstances where a taxpayer is deemed to be in compliance as described in (b)(3) of this Section, the taxpayer is still responsible for paying one hundred percent (100%) of the total gross receipts tax levied in 37A O.S. § 5-105(A) which was collected and/or reported but not remitted to the Tax Commission.

(5) In addition, a deduction not to exceed ten percent (10%) except as provided in this paragraph may be allowed from the gross receipts tax liability determined by an audit or other investigation of the books and records of a mixed beverage tax permit holder, for alcoholic beverages that are:

(A) consumed in food as verified by the audit;

(B) destroyed due to breakage for which the permit holder has retained the container; or that portion thereof that has the unbroken seal; or for partial bottles destroyed by breakage for which the permit holder has completed a breakage affidavit listing the date of the occurrence, the brand and type of liquor, the size bottle, the approximate amount left in the bottle by 1/10ths, and the cause of the breakage. The affidavit shall be signed by the permit holder and two witnesses;

(C) stolen or destroyed by a disaster such as a fire or flood, provided that reasonable evidence is provided to support a claim. Reasonable evidence might include a copy of a police or sheriff's crime report; or an insurance claim detailing the inventory destroyed by brand, size, and type of liquor;

(D) not consumed, and exist or existed, at the close of a taxable period in question, provided that the amount and nature of the unconsumed inventory has been verified by agents of the Tax Commission, ABLE Commission, or verified by invoice to a mixed beverage permittee or wholesaler approved to purchase the inventory by the ABLE Commission. Partially filled bottles which are not included in a transferred inventory should be verified by a Tax Commission or ABLE Commission agent or agents.

(6) Deductions in excess of ten percent (10%) may be allowed for properly documented product losses or other occurrences outlined in subparagraphs (A) through (D) of paragraph (3).

(7) If an establishment was selling alcoholic beverages prior to the starting date of the audit period being used by the Commission in its audit, the establishment shall be required to furnish the Commission with a beginning inventory of all liquor, wine, and beer on hand if an ending inventory is offered for audit purposes. When the permittee is unable or unwilling to furnish such an inventory, then no beginning or ending inventories shall be considered for the audit period used and the audit will be conducted solely on the taxpayer's purchases made during the audit period.

[Source: Amended at 10 Ok Reg 3831, eff 7-12-93; Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at

19 Ok Reg 1507, eff 5-25-02; Amended at 35 Ok Reg 2044, eff 10-1-18; Amended at 40 Ok Reg 1257, eff 8-11-23; Amended at 41 Ok Reg 1629, eff 8-11-24]

710:20-5-9. Commission may require security from vendor

(a) **General provisions.** To assure payment of any mixed beverage tax due, the Commission shall require that sufficient security be deposited with the Commission. Security may be in the form of:

- (1) A corporate surety bond, furnished by a surety licensed to do business in Oklahoma;
- (2) A certificate of deposit issued by a bank or financial institution, issued to the "taxpayer **OR** the Oklahoma Tax Commission";
- (3) Cash; or,
- (4) Any other form agreed upon by the Commission and person liable for remitting the tax.

(b) **Amount of required bond.** The amount of the bond shall not be less than an amount equal to the average estimated quarterly gross receipts tax liability and not greater than an amount equal to three times the average estimated quarterly gross receipts tax liability.

(c) **Minimum bond.** The minimum bond required for a new permit holder shall not be less than One Thousand Five Hundred Dollars (\$1,500.00).

(d) **Forfeiture or cancellation of bond.** The forfeiture or cancellation of such bond or security shall result in the automatic revocation of the mixed beverage tax permit issued pursuant to provisions of the Oklahoma Alcoholic Beverage Control Act.

[Source: Added at 20 Ok Reg 2586, eff 7-11-03]