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**CHAPTER 20. ALCOHOL, MIXED BEVERAGES,  
AND LOW-POINT BEER**

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## CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

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## CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

### 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:

**"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, except beer, who makes sales of such alcoholic beverages, except beer, 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, except beer, in transit"** means alcoholic beverages, except beer, 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 distributor or any other person required to collect, report and remit the tax levied on alcoholic beverages.

**"Taxable sales"** means all sales of alcoholic beverages, except beer, by any licensed distributor to a licensed wholesaler, whether such sales are consummated within or without this State. All such sales shall be presumed to be sales of such products for distribution, use or possession within the State of Oklahoma, and the burden of proof shall be upon the licensed wholesaler to prove otherwise.

**"Taxpayer"** means the licensed wholesaler, retail dealer, retail dealer/manufacturer, or any other person liable to pay the excise tax levied on alcoholic beverages, the excise tax levied on low-point beer, or the mixed beverage gross receipts tax levied on sale of alcoholic beverages by the individual drink. [See: 37 O.S. §§506, 163.4, 576]

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

**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 or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage control Act; or,
- (2) A licensed Oklahoma winemaker, if the licensee's premises is also a restaurant. In this instance, the licensee may purchase wine produced at Oklahoma wineries directly from the winemaker. [See: 37 O.S. § 537(E)(1)]

(b) No mixed beverage, beer and wine, caterer, 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: 37 O.S.Supp.2001, § 582(A)]

[Source: Added at 19 Ok Reg 1507, eff 5-25-02]

## **SUBCHAPTER 2. LOW-POINT BEER**

### **PART 1. GENERAL PROVISIONS**

**710:20-2-1. Purpose**

The provisions of this Subchapter 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 low-point beer.

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

**710:20-2-2. Definitions**

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

**"Commission"** means the Oklahoma Tax Commission.

**"Wholesaler"** or **"wholesale beverage dealer"** means and includes any person who sells any low-point beer to a licensed retail dealer, or to another wholesaler.

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

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

Pursuant to the authority and power granted the Oklahoma Tax Commission, the excise tax levied upon the sale of all 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, 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.

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

**710:20-2-4. Payment of taxes; persons liable**

The excise tax levied on low-point beer shall in most instances be paid by the wholesaler. Exceptions to the general rule are as follows:

- (1) **Manufacturers.** A manufacturer must pay the tax when selling to a retail dealer or to a consumer. The manufacturer must hold a wholesale beverage dealer's license, or in the case of sales to consumers, a retail dealer license.
- (2) **Retailer.** A retailer who purchases from a wholesaler doing business outside this state who does not hold an Oklahoma wholesale beverage dealer's license, is liable for tax levied. In addition a retailer must pay the tax if he has in his possession or exhibits for sale low-point beer upon which the tax has not been paid.
- (3) **Manufacturer/retailer.** A manufacturer/retailer must pay the tax levied on all low-point beer manufactured, except that which is manufactured in this state for export.

[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]

**710:20-2-5. Reporting requirements**

- (a) **Manufacturers.** Each and every manufacturer doing business within this state must report to the Commission no later than the tenth of each month, all sales of low-point beer made during the preceding month, including sales from any retail places of business, as described by 37 O.S. §163.7. The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.
- (b) **Wholesalers.** Each and every wholesaler doing business within this state must report to the Commission no later than the tenth of each month, all sales of low-point beer made during the preceding month, regardless to whom the sale was made. At the same time, each and every wholesaler must report to the Commission each and every purchase or consignment of low-point beer received. The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.
- (c) **Retailers.** Each and every retailer doing business within this state must report and pay the tax to the Commission no later than the tenth of each month, on all purchases of low-point beer made during the preceding month, on which the tax was not paid, in the same manner as a wholesaler. A retail dealer who manufactures low-point beer for consumption on the licensed premises must report and pay the tax in the same manner as a wholesaler. The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.
- (d) **Common carriers.** Monthly reports by common carriers transporting low-point beer to points within the state, are required to be furnished to the Commission. The reports will show the point of origin, the consignor, consignee, the date, and the amount of each shipment or consignment of low-point beer. The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.
- (e) **Magnetic media.** Supporting data conforming to the Oklahoma Tax Commission's *Low-point Beer Magnetic Media Guide* is required to be submitted with each monthly report by all manufacturers, wholesalers and common carriers. In the event that a manufacturer, wholesaler or common carrier does not have computerized records, substitute supporting data approved by the Commission may be submitted in lieu of the magnetic media supporting data.

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

**710:20-2-6. Annual state permits and license taxes**

(a) **Manufacturers.** Annual permits are required and license taxes are payable to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to licenses which are required to be procured from the judge of the district court. The permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of low-point beer. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state manufacturers.** Before commencing the manufacture of low-point beer, in-state manufacturers of low-point beer must obtain a permit from the Oklahoma Tax Commission. A license tax of Four Hundred Fifty Dollars (\$450.00) must be paid as a condition to the issuance of the initial permit, which covers a three-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid every three years. Additionally, an in-state manufacturer may sell not more than five thousand (5,000) barrels annually of its own products directly to consumers by procuring a retail license.

(2) **All other manufacturers.** Before selling or offering for sale low-point beer within this state, each and every other manufacturer of low-point beer, must qualify with the Secretary of State of the State of Oklahoma for a permit to do business within Oklahoma. After so qualifying, each and every other manufacturer must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Five Hundred Dollars (\$500.00) must be paid as a condition to the issuance of the initial permit, which covers a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually.

(b) **Wholesalers.** Annual permits are required and license taxes must be paid to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to any licenses required to be procured from the judge of the district court. Permits are not transferable from one person to another person, but may be transferred from one location to another location. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state wholesalers.** Wholesalers located and doing business in this state must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Two Hundred Fifty Dollars (\$250.00) must be paid as a condition to the issuance of the initial permit, which covers a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually. An annual permit must be secured and an annual license tax must also be paid by wholesalers for each city or incorporated town from which deliveries of low-point beer are made to retail dealers. Provided, if the wholesaler is also the holder of a current in-state manufacturer's permit, the cost of the wholesaler's permit shall be reduced by seventy-five percent.

(2) **Out-of-state wholesalers.** Wholesalers located and doing business outside of Oklahoma, who desire to pay the excise tax on sales to retail dealers, must obtain the annual permit and pay the license tax annually as is required of in-state wholesalers.

(c) **Retail dealers.** Retailers must obtain a permit from the Oklahoma Tax Commission before offering low-point beer for sale to the public. A license tax shall be paid to the Commission before issuance of the permit, and no permit will be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission. With the exception of permits issued for special events, as described in (c)(4) of this Section, permits are not transferable from one person to another person, but may be transferred from one location to another location, with approval of the Commission, and the judge of the district court. Permits are required

for each place of business at which low-point beer is served (each room, bar, or other serving unit). An applicant for a retailer permit must supply evidence that a county permit has been obtained, including the date effective and the expiration date of the county permit. Cancellation of the retailer's county permit shall be cause for the Commission to cancel the permit issued to the retail dealer. Payment of the license tax must be by cash, cashier's check, bank draft, or money order, made payable to the Oklahoma Tax Commission. The permits and the license tax required for specific types of retailers are as follows:

- (1) **Sale by draught or in original packages, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of Four Hundred Dollars (\$400.00), and compliance with all other requirements. If the dealer has previously been issued a permit to sell in original packages only for consumption off premises, and such permit has not expired, the Commission may credit the retailer with the unused portion of the former permit.
- (2) **Sale in original packages only, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of Two Hundred Fifty Dollars (\$250.00), and compliance with all other requirements.
- (3) **Sale of low-point beer, either purchased or manufactured by a retailer.** A three-year permit is issued upon payment of the license tax of Five Hundred Fifty Dollars (\$550.00), and compliance with all other requirements. A retail dealer who is licensed under this paragraph may sell the low-point beer which the dealer manufactures at any of the dealer's places of business, or from any place owned and operated by an entity which has common owners with the dealer. "**Common owners**" means owners, who together with the dealer, own more than fifty percent (50%) of the interest in the place or entity.
- (4) **Sale at a special event.** A per-day license may be issued upon payment of the Five Dollar (\$5.00) license tax and compliance with all other requirements. Retail dealers holding special event licenses are not required to obtain a separate permit for each bar or service unit, provided the bars or service units are within the same enclosed area, or if located outdoors, are within the general vicinity. However, if the event is a state or county fair which meets for more than five (5) days in any year, a special license must be issued at a charge of Twenty-five Dollars (\$25.00).
- (5) **Sale by original packages only, for consumption off premises; exception.** A three-year permit is issued upon payment of the license tax of One Hundred Thirty Dollars (\$130.00) and compliance with all other requirements. Except for the situation described in paragraph (6) of this subsection, it is unlawful for the retailer to allow any low-point beer container to be opened or broken or consumed in or on the licensed premises.
- (6) **Samples produced and provided by an in-state manufacturer.** An in-state manufacturer, selling its own products for off-premises consumption, may serve visitors on the premises free samples of low-point beer produced on the premises, provided that the samples shall not exceed twelve (12) fluid ounces per customer, per visit.
- (7) **A dealer who ceases to offer low-point beer.** A dealer who ceases to offer low-point beer is entitled to receive a refund of license tax, in a prorated amount to be determined by the Commission, with respect to the amount of time remaining until expiration of the current permit.
- (8) **Fee increases.** Retail dealers who have obtained permits prior to July 1, 2003, shall not be subject to the increased fees until the existing permit is renewed.

[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]

#### **710:20-2-7. Repackaging generally prohibited; exceptions**

- (a) The holder of a license or permit to sell low-point beer may resell low-point beer **only** in the packaging in which the holder received the low-point beer, or may resell the contents of the packages as individual containers.
- (b) Except for purposes of resale as individual containers, a licensee or permittee is prohibited from:
- (1) Mutilating, tearing apart, or cutting apart original packaging in which low-point beer was received; or
  - (2) Repackaging low-point beer in a manner misleading to the consumer or that results in required labeling being omitted or obscured.
- (c) Violation of the provisions of this Section may result in the imposition of administrative fines, as set out in 710:20-2-9.

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

**710:20-2-8. Penalties for operation without a permit**

- (a) A penalty of fifty cents (\$0.50) per day is levied for each day a person operates as a retail establishment without having applied for a permit, however, the first fifteen (15) days are exempt from the penalty. The penalty will accrue until a permit is applied for by the retail dealer, but shall not exceed the amount of the license fee due. The license tax due will be computed from the date on which the retailer began operating. The penalty will be applicable to both original applicants and to renewal applicants.
- (b) Any person who is operating as a retail establishment and who has applied for a new or renewal permit, but whose application is denied, shall pay a penalty of One Dollar (\$1.00) per day for each day of unauthorized operation. If the applicant has paid the amount of license fee in advance, the Commission shall apply such license fee advance to the penalty due, and collect any remaining penalty due as if the amount were delinquent tax. If after applying the advance license fee to the amount of penalty due, there is an excess of advance license fee remaining, the excess shall be refunded to the applicant.

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

**710:20-2-9. Administrative fines**

- (a) The Tax Commission shall impose the following penalties for a violation of 37 O.S. § 163.28A through 163.28C, which prohibit the repackaging of low-point beer.
- (1) After notice and hearing, the Commission shall immediately revoke the license or permit of the licensee or permittee committing the violation; and
  - (2) Commission shall impose an administrative fine of up to One Thousand Dollars (\$1,000.00) for each violation.
- (b) Any licensee or permittee whose license or permit is revoked pursuant to this Section shall be ineligible to reapply for a license for at least three (3) months from the date of the revocation. Any stock of low-point beer in the possession of the licensee or permittee shall be repurchased by the wholesaler.

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

**710:20-2-10. Bonds**

- (a) **Wholesalers.** Every wholesaler, after applying for a license, and before its issuance, must file a surety, collateral, or cash bond, with the Commission, made payable to the State of Oklahoma, in an amount not less than One Thousand Dollars (\$1,000.00) and not more than Ten Thousand Dollars (\$10,000.00), the amount to be determined by The Oklahoma Tax Commission. If, after

examination of the books and records and inventory on hand of a wholesaler, the Commission determines that an additional bond is necessary to protect the Commission in the collection of the tax levied, an additional bond, not to exceed Fifteen Thousand Dollars (\$15,000.00), may be required of the wholesaler. If the additional bond has not been posted with the Commission within ten (10) days of written notification has been made to the wholesaler, addressed to the wholesaler's principal place of business, the Commission may cancel the license of the wholesaler and may declare all taxes levied to be immediately due and payable upon all beverages not sold and in the hands of such wholesaler.

(b) **Retailers.** If a retail dealer is liable for tax on low-point beer, because of purchases from without the state or otherwise, the Commission may demand that the retail dealer post a surety bond in an amount not less than One Thousand Dollars (\$1,000.00).

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

#### **710:20-2-11. Records of licensees**

Each and every licensee liable for payment of the tax on low-point beer must keep and maintain accurate business records, reflecting business operations during the previous three (3) years, including copies of sales and purchase invoices or other memoranda showing all sales and purchases. All records are subject to examination and inspection by any agent of the Commission.

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

#### **710:20-2-12. Withdrawal of stale stock of low-point beer from retailer's inventory**

(a) A wholesaler or distributor may withdraw beer from the stock of a retailer, with the retailer's permission, only if, at the time of a regular delivery, the low-point beer is:

- (1) Undamaged and in its original packaging;
- (2) Withdrawn before, or immediately after the date for recommended use stamped on the product by the manufacturer; and,
- (3) Replaced with low-point beer of identical brands, quantities, and packaging as the product withdrawn.

(b) The provisions of this Section do not apply to low-point beer that has suffered damage at the retailer's location. A wholesaler or distributor shall not give a refund or replace low-point beer that was damaged while in the possession of the retailer.

[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]

#### **710:20-2-13. Refusal to issue or revocation of license**

(a) **Notice.** The Commission may refuse to issue a license or may revoke a license of any wholesaler or retail dealer after issuing a written notice, giving the licensee or applicant ten (10) days to show cause before the Commission why the license should be issued or should not be revoked.

(b) **Hearing.** If after a hearing before the Commission, an order of revocation is issued, the revocation shall become final. The Commission may refuse to issue or may revoke an existing license for:

- (1) The nonpayment of delinquent tax, license fee or permit fees or penalties;

- (2) Possession or display for sale by any retail dealer of low-point beer upon which the tax has not been paid;
  - (3) Failure on the part of any wholesaler or retail dealer to comply with all laws or Commission rules relating to the enforcement duties imposed upon the Commission; or
  - (4) Failure to comply with any of the tax laws of this state or the rules pertaining thereto.
- (c) **Commission action based upon county action.** The Commission may refuse to issue or may revoke an existing license based upon the refusal to issue or the cancellation of a county permit of a retail dealer by the judge of the district court. No notice or hearing shall be required in the case of a revocation or refusal to issue a license if the county permit has been revoked or the renewal of a county permit has been refused by the judge of the district court.

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

#### **710:20-2-14. Payments by electronic funds transfer**

The sale of low-point beer by a wholesaler to a retailer where the payment is effected via the electronic transfer of funds ("Electronic Funds Transfer" or EFT) will **not** be deemed an extension of credit, prohibited by 37 O.S. § 231.

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

#### **710:20-2-15. Invoices**

- (a) **General provisions.** Wholesalers must use and account for consecutively numbered invoices, and must retain a copy of all invoices for a period of at least three (3) years.
- (b) **Duty of wholesaler.** Each wholesaler of low-point beer who sells low-point beer for transportation wholly within this state by common carrier for delivery to a licensed retailer, shall deliver to the purchaser an invoice which accurately describes the cargo, the quantity sold, date of sale or delivery, the amount of tax and by whom paid, and for both the purchaser and seller, their names, location and Tax Commission numbers. Failure to comply with this rule is a misdemeanor.
- (c) **Duty of carrier or deliverer.** Each person who purchases or receives low-point beer and transports or causes the low-point beer to be transported wholly within this state by common carrier, or by truck or other vehicle, must have a copy of the invoice which accurately describes the cargo, the quantity sold, date of sale or delivery, the amount of tax and by whom paid, or such invoice must be in the possession of the carrier or deliverer. Each such person must retain the invoice at the location for which the low-point beer permit was issued and such invoice must be retained by the retail dealer for a period of at least three (3) years. Failure to comply with this rule is a misdemeanor.
- (d) **Duty of persons receiving delivery.** Each person who receives low-point beer shall, at the time of delivery or acceptance of the low-point beer, demand and receive a copy of the invoice which accurately describes the cargo, the quantity sold, date of sale or delivery, the amount of tax and by whom paid, and for both the purchaser and seller, their names, location and Tax Commission numbers. Failure to comply with this rule is a misdemeanor.
- (e) **Marking of conveyances used in transport.** Except for common carriers in this state, carriers in interstate commerce, and purchasers at retail, all conveyances used in the transportation, within this state, of low-point beer on or over the roads of this state, must have painted on both front and rear ends of each vehicle, in a conspicuous position, where it may easily be seen and read, in letters at least four (4) inches high, the initials "O.T.C. Bev.",

followed by the wholesaler's or retail dealer's license number. If a trailer is attached, the initials and number must be on the rear of the last unit. Manufacturers or wholesalers delivering beverages from without the state to points within the state, common carriers engaged in shipping beverages in, into, or through the state, in interstate commerce, and purchasers at retail on which the tax has been paid, are not required to mark their vehicles which transport low-point beer. Failure to comply with this rule is a misdemeanor.

(f) **Marking of private carrier conveyances.** If any wholesaler or retail dealer or agent of a wholesaler or retail dealer, transports or causes to be transported by an agent, low-point beer, such private carrier must have painted on both front and rear ends of each vehicle, in a conspicuous position, where it may easily be seen and read, in letters at least four (4) inches high, the initials "O.T.C. Bev.", followed by the wholesaler's or retail dealer's license number.

In addition, the provisions relating to invoices in these rules shall apply. Manufacturers or wholesalers delivering beverages from without the state to points within the state, common carriers engaged in shipping beverages in, into or through the state, in interstate commerce, and purchasers at retail on which the tax has been paid, are not required to mark their vehicles which transport low-point beer. Failure to comply with this rule is a misdemeanor.

[Source: Added at 15 Ok Reg 2800, eff 6-25-98]

**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**

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

- (1) *"Beer keg" means any brewery-sealed, single container that contains not less than four (4) gallons of low-point beer. [37 O.S.Supp.2003, § 163.2]*
- (2) *"Licensed retailer" means a retail dealer licensed to sell low-point beer in original containers for consumption off the premises. [37 O.S.Supp.2003, § 163.2]*
- (3) *"Identification seal" means any device approved by the Tax Commission which is designed to be affixed to beer kegs and which displays an identification number and any other information as may be prescribed by the Tax Commission. [37 O.S.Supp.2003, § 163.2]*

(b) **Identification seals required on kegs sold.** Every licensed retailer of low-point beer shall affix an identification seal to an outside surface of each beer keg as defined by 37 O.S. Section

163.29. The identification seal shall be affixed to the surface of the beer keg in a manner so as not to conceal any information pertaining to the brand name, brewery code, or container size.

(c) **Contents of identification seal.** The identification seal shall consist of a durable material and be in a form approved by the Audit Division of the Oklahoma Tax Commission. The identification seal shall be attached at the time of sale and shall include the following information:

- (1) The licensed retailer's name, address, beer license number, and telephone number;
- (2) The beer keg number assigned by the licensed retailer; and,
- (3) A warning that intentional removal or defacement of the seal is a misdemeanor.

(d) **Recordkeeping requirements.** Records required of each beer keg sale shall include:

- (1) The purchaser's name and address;
- (2) The driver's license number or identification card number issued by the Department of Public Safety, a military identification card number, or the number from a valid United States or foreign passport;
- (3) The date and time of the purchase;
- (4) The purchaser's signature; and,
- (5) The beer keg identification seal number.

(e) **Retention of records.** The licensed retailer shall retain on file the records set out in (d)(1) through (d)(4) of this Section pertaining to the sale of each beer keg for a period of not less than one (1) year after the sale of a keg, and shall keep a record of the beer keg identification seal number set out in (d)(5) of this Section for one (1) year from the return of the keg.

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

### **PART 3. LOW-POINT BEER DISTRIBUTION**

#### **710:20-2-50. Purpose**

In 1993, the Oklahoma Legislature adopted the "Low-Point Beer Distribution Act" (37 O.S. §§163.18A - 163.18H). The Oklahoma Legislature directed the Oklahoma Tax Commission to promulgate rules for the administration and enforcement of the specific provisions of the Act. Sections 710:20-2-51 through 710:20-2-60 have been promulgated to meet that legislative directive.

[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]

#### **710:20-2-51. Definitions**

In addition to the definitions set out in 37 O.S. §§163.2 - 163.25, the following words and terms shall have the following meanings:

**"Agreement"** means the written document signed by the owner or authorized agent of the manufacturer and the owner or authorized agent of the wholesaler setting out the conditions whereby the manufacturer grants the wholesaler the right to sell the low-point beer of the manufacturer within the sales territory.

**"Commission" and "Tax Commission"** means the Oklahoma Tax Commission

**"Designated brands"** means each low-point beer packaged and sold under a separate name or label design offered for sale in Oklahoma.

**"Licensed address"** means the street address of the place of business of a licensee from which low-point beer is distributed or sold.

**"Licensee"** means either a wholesaler or manufacturer which has received a license or permit to sell low-point beer within this state.

**"Marked conveyance"** means any vehicle used to transport low-point beer which has the appropriate Commission license number displayed on it in accordance with the requirements of 37 O.S. §163.18.

**"Sales territory"** means the geographical area within which a licensed wholesaler is authorized pursuant to an agreement to sell the designated brands of a licensed manufacturer. A sales territory shall not be restricted to following county or city limit lines.

**"Without discrimination"** means furnishing products or services to all licensed retailers within the designated sales territory of a wholesaler.

[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]

#### **710:20-2-52. Procedures for filing agreements**

(a) On or before July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler as required by 37 O.S. §163.18B shall be filed with the Audit Division of the Commission.

(b) After July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler shall be filed with the Audit Division within fifteen (15) calendar days of the date it was signed.

(c) The copy filed shall be a photo copy of the original signed agreement so as to clearly show the names of all signatories to the agreement.

(d) If the agreement does not contain a map indicating the sales territory, then a map indicating the sales territory shall be filed with the copy of the agreement.

(1) The map shall be not less than eight and one half (8 1/2) inches by eleven (11) inches in size.

(2) The map shall indicate approval by the licensed manufacturer and the licensed wholesaler.

(e) Any changes or amendments to an agreement which do not necessitate a signing of a completely new agreement shall be reduced to writing and shall be signed in the same manner as if there were a completely new agreement.

(f) A copy of any changes or amendments to an agreement shall be filed with the Audit Division within fifteen (15) calendar days of the date the changes or amendments were signed.

[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]

#### **710:20-2-53. Registration of designated brands**

(a) On or before July 1, 1994, a manufacturer shall register each designated brand with the Audit Division of the Commission in such form as the Oklahoma Tax Commission shall prescribe.

(b) After July 1, 1994, a manufacturer shall register each designated brand at the same time that an agreement is filed. In the event a change or amendment is made to an agreement:

(1) An affidavit to the effect that there has been no change in the registered designated brands or information concerning the registered designated brands shall be filed with the changes or amendments; or

(2) If the changes or amendments affect the registered designated brands, then a new registration for each designated brand shall be necessary.

- (c) With each brand registered, the following information shall be furnished:
- (1) The full and correct brand name.
  - (2) The name and corporate address of the owner of the designated brand.

[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]

#### **710:20-2-54. Transport vehicles and transportation**

(a) **Vehicle requirements.** Each wholesaler which owns vehicles used for transporting low-point beer shall retain documentation of proof of ownership. The use of leased vehicles to transport low-point beverages shall be subject to the requirements described in this subsection.

- (1) Each wholesaler which has a current lease for one or more vehicles used for transporting low-point beer to retailers shall retain a copy of each vehicle lease.
- (2) All currently effective vehicle leases and documents establishing vehicle ownership shall be available for inspection upon request by the Oklahoma Tax Commission.

(b) **Restrictions on transportation.** Transportation of all low-point beer sold in this state by a licensed wholesaler may only be made by a licensed wholesaler in a marked conveyance owned or leased by the wholesaler. Low-point beer sold in this state by a licensed wholesaler may only be transported to the licensed address of a licensed retailer, or between licensed addresses of licensed retailers, by a wholesaler.

[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]

#### **710:20-2-55. Delivery outside sales territory**

(a) When a wholesaler is temporarily unable to provide the designated brands of the manufacturer within the sales territory, the manufacturer may authorize another wholesaler to supply the designated brands within that sales territory.

(b) A wholesaler shall be deemed to be temporarily unable to provide the designated brands when the manufacturer finds that illness, natural catastrophes such as tornadoes, fires, floods, or other conditions will prevent the wholesaler from providing the designated brands for a determinate period of time.

(c) In the event the manufacturer determines that a wholesaler is temporarily unable to provide the designated brands within a sales territory, the manufacturer shall provide written notification within ten (10) calendar days from the date of the determination to:

- (1) The temporarily unavailable wholesaler,
- (2) The wholesaler which will be providing the designated brands within the sales territory, and
- (3) The Audit Division of the Commission.

[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]

#### **710:20-2-56. Termination of agreement**

(a) A manufacturer terminating an agreement with a wholesaler shall file a copy of the written notification of termination with the Audit Division of the Commission no more than five (5) calendar days from the date of termination.

(b) If a manufacturer enters into an agreement with another wholesaler to provide any designated brands of the manufacturer in the sales territory of the terminated wholesaler, the new agreement

shall be filed with the Audit Division not more than five (5) calendar days from the date the new agreement is signed.

[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]

**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**

(a) A hearing, in accordance with the Administrative Procedures Act, shall be set

- (1) Prior to the issuance of a cease and desist order; or
- (2) Prior to imposition of administrative fine.

(b) Records and official documents concerning the docketing of a hearing, the hearing proceedings, and any resulting action of the Commission pursuant to the provisions of the Low-Point Beer Distribution Act, are **not** considered confidential records and files of the Commission pursuant to the provisions of 68 O.S. §205. All hearings conducted hereunder shall be open to the public.

(c) Any hearing conducted hereunder may be instituted by the Commission based upon information known to the Commission, or upon a written complaint filed with the Commission by any person. Such written complaint shall be signed by the person making the same, and shall set forth the specific acts complained of which are alleged to constitute a violation of the Low-Point Beer Distribution Act.

(d) At least twenty (20) days prior to the scheduled hearing, the Commission shall mail, postage prepaid, to the latest address appearing in the official records of the Commission, a notice stating the time, date, and location of the hearing. If the hearing has been initiated upon written complaint, a copy of the complaint shall accompany the notice.

(e) The Commission shall appoint an Administrative Law Judge to conduct hearings, to examine witnesses, to rule upon motions, to rule upon the admissibility of evidence, to continue or recess any hearing, to control the record, and to propose decisions to the Commission.

(f) In all cases where there is a request for the Commission to issue a subpoena to compel the attendance of a witness after a Notice of Hearing has been issued, the party seeking the issuance of the subpoena shall submit a prepared subpoena including the name and correct address of any such witness named.

- (1) All witness fees shall be paid by the party initiating the issuance of the subpoena at the time of the service of such subpoena.
- (2) Service of the subpoena shall be the responsibility of the party initiating the issuance of the subpoena.
- (3) A request for a subpoena shall be submitted not less than five (5) days prior to the date of the

hearing at which the attendance of the witness would be required.

(g) Hearings shall be conducted pursuant to the following procedures:

- (1) A brief statement of facts outlining the reason for the issuance of a cease and desist order or the imposition of a fine against a licensee or other person will be given by the Commission.
- (2) The person objecting to the Commission action or the representative of that person shall be given an opportunity to state the position in opposition to the Commission action.
- (3) The evidence supporting the requested action shall be presented first.
- (4) The evidence supporting opposition to the requested action shall then be presented.
- (5) The parties presenting testimony shall comply with Oklahoma Rules of Evidence.
- (6) Any pleadings or other documents which either party may wish to have filed may be presented. All pleadings, briefs, and other documents submitted to the Commission shall be submitted on eight and one half (8 1/2) by eleven (11) inch paper.
- (7) Closing arguments may then be permitted.
- (8) When the record in an administrative proceeding is closed and submitted for a proposed decision, the Administrative Law Judge shall issue Findings of Fact, Conclusions of Law, and Recommendations for Action to the Commission for its consideration and assistance in rendering an order.

(A) The Commission shall send to the parties affected by the recommended action copies of the Findings of Fact, Conclusions of Law, and Recommendations for Action by mail.

(B) The Findings of Fact, Conclusions of Law, and Recommendations for Action shall include a statement of facts, the issues and contentions, conclusions based on the findings of fact and applicable law, and recommendation to the Commission for issuance of an order.

(C) Upon request of the parties, the Administrative Law Judge may permit the parties to submit proposed Findings of Fact, Conclusions of Law, and Recommendations for Action which may be adopted by the Administrative Law Judge.

(h) The following options are available to parties to an administrative proceeding after issuance of an unfavorable decision:

(1) Within fifteen (15) days following mailing of the Findings of Fact, Conclusions of Law, and Recommendations for Action of the Administrative Law Judge, any party to the proceedings may file a Motion for Rehearing or Reconsideration with the Administrative Law Judge.

(A) The Motion for Rehearing or Reconsideration shall specify each ground upon which the party alleges there has been error.

(B) Any reply by the opposing party to the Motion for Rehearing or Reconsideration shall be filed not more than fifteen (15) days after the mailing of the Motion for Rehearing or Reconsideration.

(2) If the Motion for Rehearing or Reconsideration is granted and the proposed decision is vacated pending a subsequent decision or rehearing the person filing the motion shall be precluded upon rehearing, from raising as error any issue not set forth in the Motion. Notice of the date, time, and place of a rehearing shall be mailed to the parties.

(3) If the Motion for Rehearing or Reconsideration is overruled in whole or in part, the original proposed decision stands as of the date the motion is overruled.

(4) If a Motion for Rehearing or Reconsideration is denied, the aggrieved party may file an application for oral argument before the Tax Commission en banc. The application shall be filed not more than fifteen (15) calendar days following mailing of the denial.

(5) If a Motion for Hearing En Banc is granted, the case will be heard by the Commissioners sitting together as a decision making body.

- (A) Any party may apply for a hearing en banc before the Commission en banc whether or not the party moved for rehearing or reconsideration.
- (B) Any party requesting a direct appeal to the Commission en banc, shall file the motion not more than fifteen (15) calendar days of the mailing of the Findings of Fact, Conclusions of Law, and Recommendations for Action.
- (C) If a Motion for Rehearing or Reconsideration was not filed, the Motion for Hearing En Banc shall specify each ground upon which the aggrieved party alleges errors.
- (D) If the motion is granted, the moving party will be precluded from raising as error any issue not set forth in the Motion for Hearing En Banc.
- (E) If an application for oral argument is granted, the Commissioners shall set a date, time, and place for the hearing. Notice will be given to each side by certified mail not less than ten (10) calendar days prior to the hearing.
- (F) Briefs shall be submitted to the Commission not less than five (5) calendar days prior to such hearing.
- (G) Time limits for oral arguments will be set by the Commission at the time of the hearing.
- (i) All that is necessary to exhaust all administrative remedies is pursuit until the Commission issues a final decision. It is not necessary to move for reconsideration or rehearing or to apply for a hearing en banc to exhaust administrative remedies.
- (j) Neither a Motion for Reconsideration or Rehearing nor a Motion for Hearing En Banc will be granted after an order has been issued.
- (k) Filing a Motion for Reconsideration or Rehearing or a Motion for Hearing En Banc will not serve to stay the time to appeal to the Supreme Court.
- (l) The Commission shall issue an order in each case.
- (1) The Commissioners may, in their discretion, vacate, modify, or affirm, in part or whole, the proposed decision of the Administrative Law Judge.
- (2) Only the order of the Commission is appealable to the Supreme Court.

[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]

### **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, except beer, 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: 37 O.S. §553]

[Source: Amended at 19 Ok Reg 1507, eff 5-25-02]

#### **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, except low-point beer, in this State shall be paid by the licensed wholesaler to the licensed distributor at the time of consummation of the taxable sale to the licensed wholesaler.

(b) **Remittance by distributor.** The excise tax in (a) of this Section shall be remitted to the Oklahoma Tax Commission on a monthly basis by the licensed distributor upon all taxable sales of such products to licensed wholesalers made during the preceding month, whether the consideration for each such sale was money or otherwise and whether such sales were consummated within or without the State of Oklahoma.

(c) **Liability for tax on stored beverages.** Any licensed distributor who causes any alcoholic beverages, except beer, 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.

(d) **Liability of nonresident seller, first seller, importer.** Any holder of a nonresident seller 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]

#### **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, except beer, 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, on verified monthly alcoholic beverage tax report forms as 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: 37 O.S. §§ 502 et seq.]

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

#### **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 tenth (10th) day of the calendar month immediately following the calendar month in which the alcoholic beverages, except beer, 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 or holiday recognized by the executive department of this State, then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following such Saturday, Sunday or holiday.

(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.

**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 3%) per month until payment or remittance, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. §217(a)]

**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(c)]

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

The Taxpayer Assistance 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, except beer, in the State of Oklahoma, upon receipt of the following:

- (1) Completed, executed and verified permit application form to the Taxpayer Assistance Division from the applicant;
- (2) Completed and executed Alcoholic Beverage Tax Bond from the applicant in an amount approved by the Commission. [See: 37 O.S. §543.1]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98]

**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, 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, 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: 37 O.S. §576]

(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 506(3) of Title 37 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, but does not include low-point beer, as that term is defined in 37 O.S. § 163.2.

(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, or special event license. [See: 37 O.S. § 506(22)]

[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]

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

(a) The Director of the Taxpayer Assistance 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 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.
- (b) The Director shall report to the Commission, at least on a quarterly basis, all actions taken pursuant to the delegation in (a) of this Section. [See: 37 O.S. §§577-578, 582]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98]

**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. Each such monthly report shall include the minimum information required by 37 O.S. § 579 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, of the Oklahoma Tax Commission, the report shall be delinquent.

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98]

**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 shall 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.** On and after June 29, 1987, 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 added thereto to from 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.** If 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 which shall be

added to the total retail price to form an advertised price of \$3.41. Sales tax shall be calculated on the total retail price of \$3.00. [See: 37 O.S. §576]

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

**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 32 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 or a holiday recognized by the executive department of this State, then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday or holiday.
- (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: 37 O.S. § 579]

[Source: Amended at 15 Ok Reg 2800, eff 6-25-98; Amended at 23 Ok Reg 2813, eff 6-25-06]

#### **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 and beer with alcoholic content in excess of 3.2% by weight;
  - (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: 37 O.S. §576; 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: 37 O.S. §§552 and 561]
- (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: 37 O.S. §576]
- (d) **Records required from wholesalers.** The licensed wholesaler and Class B 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 and Class B wholesaler shall be required to maintain the records required by 37 O.S. §576, segregated by license number. [See: 37 O.S. §561]
- (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: 37 O.S. §§577 and 580]

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

**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 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: 37 O.S. §576]

(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 to One Hundred Sixteen percent (84-116%) of the amount of tax payable.

(B) For wine, within Ninety percent to One Hundred Ten percent (90-110%) of the amount of tax payable.

(C) For beer sold at draft and not in original packages, within Eighty-six percent to One Hundred Fourteen percent (86-114%) of the amount of tax payable.

(D) For beer in original packages, within Ninety-five percent to One Hundred Five percent (95-105%) of the amount of tax payable. [See: 37 O.S.Supp.2001, § 579]

(4) In addition, a deduction 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.
- (5) 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 strong 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]

#### **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]