TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. Alcohol and Mixed Beverages

RULEMAKING ACTION: Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:
Subchapter 5. Mixed Beverages
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 [AMENDED]

SUMMARY: Amendments to Section 710:20-5-8 memorialize in rule an audit methodology.

AUTHORITY: 37A O.S. § 5-135, 68 O.S. § 203; Oklahoma Tax Commission

COMMENT PERIOD: Persons wishing to present their views in writing may do so by 4:30 p.m., January 5, 2027, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Corey Jager, or by email to OTCadminrules@tax.ok.gov.

PUBLIC HEARING: A public hearing is scheduled for 9 a.m., on Tuesday, January 5, 2027, at the Oklahoma Tax Commission, in Conference Room 5, located on the 28th Floor, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma.

To gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES: Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES: Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at tax.ok.gov.

RULE IMPACT STATEMENT: Pursuant to 75 O.S. § 303(D), a Rule Impact Statement is available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at tax.ok.gov.

CONTACT PERSON: Corey Jager, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194; Telephone number: (405) 521-4155; Email: corey.jager@tax.ok.gov

CHAPTER 20. ALCOHOL AND MIXED BEVERAGES

SUBCHAPTER 5. MIXED BEVERAGES

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%)~~ 84% to ~~one hundred sixteen percent (116%)~~ 116% of the amount of tax payable.

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

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

(D) For beer in original packages, within ~~ninety-five percent (95%)~~ 95% to ~~one hundred five percent (105%)~~ 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%)~~ 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%)~~ 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%)~~ 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.

(8) In all other instances, where records are unavailable or insufficient, the audit may be conducted based solely on the taxpayer's purchases utilizing a gross profit ratio of 350% (3 ½ times cost) to calculate gross receipts tax.

TITLE 710. OKLAHOMA TAX COMMISSION

CHAPTER 20. Alcohol and Mixed Beverages
RULE IMPACT STATEMENT

Pursuant to 75 O.S. § 303(D), the Oklahoma Tax Commission provides the following Rule Impact Statement regarding the proposed amendments to Chapter 20 of Title 710 of the Oklahoma Administrative Code.

A. STATEMENT OF NEED AND LEGAL BASIS – 75 O.S. § 303(D)(3)(a)

Pursuant to 68 O.S. § 203, the Oklahoma Tax Commission has general authority to promulgate and enforce rules necessary for the administration and collection of state taxes. Additional statutory authority for the proposed amendment is provided under 37A O.S. § 5-135. The amendment is necessary to establish the applicable audit methodology in administrative rule, providing taxpayers and agency personnel with clear guidance and promoting consistency, transparency, and uniformity in the administration of mixed beverage tax audits.

B. CLASSIFICATION OF RULE AND COST DETERMINATION – 75 O.S. § 303(D)(3)(a)

Classification: Nonmajor.

Estimated Annual Implementation and Compliance Costs: $0

Estimated Initial Five-Year Implementation and Compliance Costs: $0

Five-Year Cost to Businesses/Business Sectors: $0

Five-Year Cost to State Government: $0

Five-Year Cost to Local Government Units: $0

Five-Year Cost to Individuals: $0

Total Estimated Five-Year Cost: $0

FTE Impact: No additional FTE.

Cost Impact Information Received: None.

Classification Justification: The proposed amendment memorializes an existing audit methodology in administrative rule and does not establish new taxes, fees, or independent compliance obligations. The amendment provides greater clarity and transparency regarding the audit process without imposing additional costs on affected taxpayers or requiring additional state or local government resources, appropriations, or full-time equivalent positions. Accordingly, the implementation and compliance costs attributable to the proposed amendment are estimated at $0 annually and $0 over the initial five-year period.

The estimated implementation and compliance costs **will not exceed $1,000,000** over the initial five-year period.

C. DESCRIPTION AND FEDERAL MANDATE – 75 O.S. § 303(D)(3)(c)

Purpose and Description of Proposed Rule:

Amendments to Section 710:20-5-8 memorialize in rule an audit methodology.

Federal Mandate:

The proposed amendment is not mandated by federal law and is not required for participation in or implementation of a federally subsidized or assisted program.

Federal Requirement Comparison:

The proposed new rules and amendments implement state statutory requirements and do not implement or exceed a federal requirement.

D. CLASSES AFFECTED – 75 O.S. § 303(D)(3)(d)

Affected Classes:

Affected Class	Approx. Number	Impact	Nature of Impact	Annual Cost	Five-Year Cost
Mixed beverage tax permit holders and other applicable taxpayers subject to the audit methodology	Unknown	Positive/Neutral	Provides clarity and consistency regarding the audit methodology	$0	$0

E. CLASSES BENEFITED – 75 O.S. § 303(D)(3)(e)

The classes benefiting from the proposed amendment include businesses and other taxpayers subject to Oklahoma Tax Commission audits, as well as agency personnel responsible for conducting audits. The amendment provides greater clarity, consistency, and transparency regarding the audit methodology and promotes uniform application of audit procedures.

F. COMPREHENSIVE ECONOMIC IMPACT – 75 O.S. § 303(D)(3)(f)

Agency Impact

Implementation Cost: $0

Ongoing Annual Cost: $0

Five-Year Cost: $0

FTE Impact: 0

The proposed new rules and amendments will be implemented using existing agency resources and do not require additional staffing, programming, training, forms, or other resources.

Economic Impact by Affected Sector/Class:

Affected Sector/Class	Annual Cost	Five-Year Cost	Anticipated Benefit
Businesses	$0	$0	Greater clarity and consistency in the audit process
Business sectors	$0	$0	Greater clarity and consistency in the audit process
Public utility ratepayers	$0	$0	N/A
Individuals	$0	$0	Greater clarity regarding the audit methodology
State government	$0	$0	Consistent application of audit procedures

Affected Sector/Class	Annual Cost	Five-Year Cost	Anticipated Benefit
Local government units	$0	$0	N/A
Other	$0	$0	Greater transparency in the audit process

State Economy as a Whole:

No significant economic impact on the state economy is anticipated from the proposed amendment.

Fees and Revenue.

Fee Changes: None.

Revenue Impact: $0 attributable to the proposed amendment.

Economic Impact and Summary.

Economic Impact: $0

Economic Impact Summary: The proposed amendment is not expected to impose additional implementation or compliance costs on businesses, individuals, or governmental entities. The amendment establishes an existing audit methodology in administrative rule and will be implemented using existing agency resources. No significant economic impact is anticipated.

G. METHODOLOGY AND ASSUMPTIONS – 75 O.S. § 303(D)(3)(g)

The analysis evaluated the proposed amendment to identify any requirements that could result in additional implementation or compliance costs for affected taxpayers or governmental entities. The assessment considered the nature and scope of the amendment, which establishes an existing audit methodology in administrative rule. It is assumed that the amendment will be administered using existing Oklahoma Tax Commission staff, systems, and resources and will not require additional personnel, equipment, technology, or contracted services. Because the amendment does not establish new fees or independent compliance obligations, no quantitative cost or revenue modeling was necessary. Based on these assumptions, implementation and compliance costs attributable to the proposed amendment are estimated at $0 annually and $0 over the initial five-year period.

H. ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS – 75 O.S. § 303(D)(3)(h)

Five-Year Projected Impact: $0

Administrative/FTE Impact: 0

Political Subdivisions Affected: 0

The proposed amendment is not expected to have an economic impact on political subdivisions or require their cooperation in implementing or enforcing the rule.

I. SMALL BUSINESS IMPACT – 75 O.S. § 303(D)(3)(i)

After consideration pursuant to the Oklahoma Small Business Regulatory Flexibility Act, the proposed amendment is not expected to have an adverse economic effect on small

businesses. The amendment memorializes an existing audit methodology and does not impose additional compliance costs or requirements.

Estimated Annual Compliance Cost to Small Businesses: $0

Estimated Five-Year Compliance Cost to Small Businesses: $0

J. MEASURES TO MINIMIZE COSTS AND IMPACT – 75 O.S. § 303(D)(3)(j)

The proposed amendment will be implemented using existing agency staff and procedures and does not impose additional costs or requirements on affected taxpayers.

K. EFFECT ON PUBLIC HEALTH, SAFETY, AND ENVIRONMENT – 75 O.S. § 303(D)(3)(k)

Anticipated Impact: None

The proposed rules have no anticipated effect on public health, safety, or the environment.

L. DETRIMENTAL EFFECT IF RULE IS NOT IMPLEMENTED – 75 O.S. § 303(D)(3)(l)

Anticipated Detrimental Effect: If the proposed amendment is not implemented, the applicable audit methodology will not be formally established in administrative rule. This may result in less clarity and transparency for taxpayers and agency personnel regarding the methodology used in the audit process. Adoption of the amendment will provide a formal regulatory reference and promote consistency in the administration of mixed beverage tax audits.

M. DATE PREPARED / DATE MODIFIED – 75 O.S. § 303(D)(3)(m)

Date Prepared: November 12, 2026

Date Modified: N/A

N. ANALYSIS OF ALTERNATIVES – 75 O.S. § 303(D)(3)(n)

The Oklahoma Tax Commission considered the alternative of maintaining the existing rule without amendment. However, this approach would leave the existing audit methodology uncodified in administrative rule and would not provide a formal regulatory reference for taxpayers and agency personnel. Another alternative would be to continue communicating the methodology through informal guidance or existing administrative practices. This approach could result in less transparency and consistency in communicating the methodology to affected taxpayers. The Commission determined that amending Section 710:20-5-8 to memorialize the existing audit methodology in rule is the most appropriate alternative because it provides a clear and consistent regulatory reference without creating additional compliance obligations or costs. Accordingly, the Commission determined that the proposed amendment is preferable to maintaining the status quo or relying solely on informal guidance.

O. RESOURCES USED TO DEVELOP THE RULE – 75 O.S. § 303(D)(3)(o)

Estimated State Employee Time: ~10 hours

Estimated Other Resources: $0

The proposed new rules and amendments were developed using existing agency staff and resources. No outside consultants or additional expenditures were required.

P. EXISTING OR PROPOSED FEDERAL REGULATIONS – 75 O.S. § 303(D)(3)(p)

No applicable federal regulations have been identified that address the activities regulated by the proposed new rules and amendments.