BILL SUMMARY
1st Session of the 58th Legislature

Bill No.:	**HB 2780**
Version:	**INT**
Request Number:	**6748**
Author:	**Rep. Pfeiffer**
Date:	**2/15/2021**
Impact:	**Tax Commission:**

FY-22:
Mixed Beverage Receipts Revenue Increase
$277,000
Increased Collections from Garnishments:
$1.7 Million
Unknown Decrease in Coin-Operated Decals
With A Net Increase in Sales Tax Renewals

FY-23:
Increased Collections from Garnishments:
$6.7 Million

Administrative Cost of Garnishments: Minimal

Research Analysis

Pending

Prepared By: House Research Staff

Fiscal Analysis

Analysis provided by the Tax Commission:

Section 1 amends 68 O.S. § 227, which relates to a taxpayer's claim for refund, and **Section 6** amends § 1361.2, which relates to the state sales tax exemption for certain disabled veterans. To claim a refund of sales taxes erroneously paid, an eligible taxpayer must submit to the OTC a signed notification of the vendor's denial of the sales tax exemption for 100% disabled veterans.

Sections 1 & 6 Revenue Impact: No change in state revenue is expected.

Section 2 proposes to amend 68 O.S. §253 which relates to personal liability for sales tax, withheld income tax or motor fuel tax. An individual is personally liable for sales tax, withheld income tax or motor fuel tax if the individual is responsible for withholding or collecting and remitting such tax, or if the individual has direct control, supervision or responsibility for filing returns and making payments for such tax. This Section adds personal liability for mixed beverage gross receipts tax.[1]

Currently, mixed beverage establishments organized as sole proprietors may be assessed personally for outstanding mixed beverage gross receipts tax. Individual officers of corporations or members of limited liability companies owing mixed beverage gross receipts tax cannot. Under this Section, as is presently the case with sole proprietors, corporate officers, members of limited liability companies and other persons responsible for the collection of the tax or having direct control, supervision or responsibility for filing returns and making the tax payments would be held individually liable for any outstanding tax amounts. OTC records for FY 20 indicate a significantly lower collection rate for assessments to Corporations and Limited Liability Companies than assessments to sole proprietors who are personally liable for mixed beverage gross receipts tax, as shown in Table 1:

Table 1 - Assessments for Delinquent Mixed Beverage Excise Tax

Taxpayer Type	Count	Amount Owed	Amount Paid	Amount Outstanding	Collection Rate
Businesses	135	2,139,889.11	368,142.76	1,771,746.35	**17.20%**
Individuals	38	773,162.92	233,120.69	540,042.23	**30.15%**
Totals	173	2,913,052.03	601,263.45	2,311,788.58	

Source: Oklahoma Tax Commission records

Section 2 Revenue Impact: This Section is expected to encourage voluntary compliance with existing law and provide an additional mechanism in which to collect taxes due the State of Oklahoma. Assuming similar delinquency estimates for FY 22, an estimated $277,000 increase of mixed beverage gross receipts tax will occur for FY 22.

Section 3 proposes to allow the OTC to enter into a contract with any state agency and charge a reasonable fee to assist in the collection of any state tax, penalties, interest or fee in which that agency has the authority to collect and enforce. Under this proposal, the OTC may enter into a contract with the Oklahoma Employment Security Commission (OESC) whereby the OTC is authorized to collect and enforce any delinquent unemployment tax, penalties, interest or fees that the OESC is entitled to collect. All funds retained by the OTC for collections services are deposited in the Tax Commission Reimbursement Fund of the State Treasury.

Section 3 Revenue Impact: No change in state revenue is expected.

Section 4 proposes to amend 68 O.S. §254 to allow the OTC to garnish the accrued earnings[2] of a delinquent taxpayer by sending notice to a taxpayer's employer. The OTC may direct the employer to withhold part of the amount due, not to exceed 25% of earnings per pay period, until the total amount as shown by the notice, plus interest and penalty, has been withheld and remitted to the OTC. The employer's response and calculation of amounts withheld shall be on a form prescribed by the OTC.

Within 7 days after the end of each pay period, or if delinquent taxpayer does not have regular pay periods, within 30 days from the date of the notice, the employer must withhold amounts due or provide an explanation to the OTC why amounts due will not be withheld and remitted to the OTC. In any case in which the employee ceases to be employed by the employer before the full amount set forth in the notice of delinquency, plus delinquent penalty and interest, has been withheld by the employer, the employer must immediately notify the OTC in writing the date the employee resigned or was terminated. Should any employer, after notice, willfully fail to withhold in accordance with the notice, such employer may be liable for the total amount set forth in the notice. An employer may not terminate a delinquent taxpayer employee based upon the notice of administrative wage garnishment.

The OTC may send notice to a financial institution to levy upon the property of a delinquent taxpayer held by a financial institution[3]. Upon receipt of the notice, the financial institution must immediately encumber and remit to the OTC the funds held by the financial institution in which the taxpayer has an interest, not in excess of the amount provided in the notice. The financial institution must provide notice to the taxpayer of the bank levy and the amount of encumbered funds. The financial institution's response to the levy request must be provided on forms prescribed by the OTC.

An administrative wage garnishment or bank levy may be issued after 90 days in which the tax has become delinquent, notice has been sent to the taxpayer of the delinquency and possible remedies to resolve the delinquency have been provided to the taxpayer and a tax warrant has been issued and filed pursuant to 68 O.S. §231. A taxpayer has 10 days after the issuance of the notice to the employer or upon notice from the financial institution to provide any additional information to the OTC for the garnishment of wages or bank levy to be withdrawn or released by the OTC. The OTC may withdraw or adjust the garnishment for wages or bank levy upon sufficient proof that the delinquent tax, interest and penalty referred to in the notice has been paid, or that the taxpayer can show the funds or wages subject to garnishment or levy are exempt pursuant to state or federal law.

Section 4 Revenue Impact: The initial revenue effect of this Section is an estimated increase of approximately $1.7 million in tax collections for FY 22[4]. The full impact is expected to occur for FY 23 with an estimated increase in tax collections of approximately $6.8 million.

Section 5 proposes to amend 68 O.S. §255 to allow funds collected by a debt collection agency to be remitted to the OTC within 15 days from the date of collection from a taxpayer. Currently, funds must be remitted to the OTC within 5 days from the date of collection, and this proposal is intended to minimize the processing of insufficient fund checks by allowing more time for taxpayers' payments to clear financial institutions.

Section 5 Revenue Impact: No change in state revenue is expected.

Section 7 proposes to redefine "coin-operated device" under 68 O.S. § 1501 to exclude any device dispensing tangible personal property or providing amusement where payment is made solely through the use of a credit or debit card or other electronic or digital payment process. Transactions from such devices would instead be subject to state sales tax.

Certain vending devices now utilize payment technology that incorporates credit/debit card and electronic/digital payment processing applications such as Google Pay and Square that replace the need for traditional physical currency. In addition, vending devices are now dispensing tangible products that were previously only available in stores or purchased online. Some examples are: DVD rentals, athletic shoes and electronic devices including cell phones, etc. Currently, an annual decal fee of $75 must be paid for the described machines. Payment of the $75 annual fee is in lieu of sales tax. An equivalent $75 in state sales tax equates to approximately $1,666 in taxable sales. Removing the imposition of the decal fee on these machines would require the owner/operator thereof to obtain a sales tax permit and collect and remit the state and local sales tax due on the amounts charged for sales made through the device. The state sales tax collected on a particular purchase made through the device would equal that collected by the local retail establishment for a similar transaction. While some operators of this type of device have elected to collect and remit state and local sales tax, the amendatory provisions ensure that operators of similar machines, presently and in the future, will be required to collect and remit sales tax.

Section 7 Revenue Impact: OTC records do not specifically identify the number of these machines subject to the $75 decal that are presently in operation in the state. It is estimated that the change in treatment would result in a loss in coin-operated decal fee revenues with a net increase in state sales tax collections. The extent to which these revenues will be impacted by the enactment of this Section is unknown.

Sections 8 through 12 propose to amend 68 O.S. §§2947.1 through 2947.3 and 3204 to convert the County Government Education Enhancement Revolving Fund to an agency special account (ASA) in the State Treasury for the OTC to collect and distribute documentary tax stamp revenues. Monies remaining in the County Government Education-Technical Revolving Fund are transferred to the ASA. These amendments allow the OTC to directly apportion documentary tax stamp revenues to the Oklahoma Cooperative Extension Service and the Oklahoma State University Center for Local Government Technology (Center), effective for fiscal years ending on or after June 30, 2021.

Any county that elects not to participate in the Center's computer-assisted mass appraisal software system may apply to the Center for a 10% refund of the county's annual documentary stamp tax revenue that was apportioned to the Center. The OTC shall deposit any unapportioned revenues (if available) in the ASA. The Center or Cooperative Training Program may request permission to expend these funds from the Commission on County Government Personnel Education and Training. Upon written notification of expenditure approval from the Commission on County Government Personnel Education and Training, the OTC shall distribute from the ASA the approved amount, if available, to the Center or the Cooperative Training Program, as applicable.

Sections 8 through 12 Revenue Impact: No change in state revenue is expected.

Section 13 proposes to amend 68 O.S. §3624 to clarify that the amount of claims prequalified and approved by the Office of the Oklahoma Film and Music Commission (Film Office) must not exceed $8 million per fiscal year. When projects cannot complete production, submit covered receipts and be approved by the Film Office for payment in the fiscal year of prequalification, these productions may seek payment in a subsequent fiscal year. As a result, the OTC may make payments in excess of $8 million in a fiscal year; however, the Film Office can prequalify and approve claims of no more than $8 million per fiscal year.

Section 13 Revenue Impact: No change in state revenue is expected.

[1] 37A O.S. § 5-105 levies a tax at the rate of thirteen and one-half percent (13.5%) on the total gross receipts of a holder of an on-premises beer and wine, mixed beverage, caterer, public event or special event license issued by the ABLE Commission, from:
1. The sale, preparation or service of mixed beverages;
2. The total retail value of complimentary or discounted mixed beverages;
3. Ice or nonalcoholic beverages that are sold, prepared or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation or service occurs; and
4. Any charges for the privilege of admission to a mixed beverage establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages.

[2] "Earnings" means any form of payment to an individual including, but not limited to salary, wages, commission or other compensation, but does not include reimbursements for travel expenses for state employees.
[3] "Financial institution" means any office or branch of a bank, savings bank, savings association, building and loan association, savings and loan association or credit union located in Oklahoma.

[4] Administrative wage garnishments are expected to be implemented during the fourth quarter of FY 22, resulting in a partial impact on tax collections.

Prepared By: Mark Tygret

Other Considerations

None.