An Act

ENROLLED SENATE
BILL NO. 1035

By: Coleman of the Senate

and

Marti of the House

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 5-135, as amended by Section 1, Chapter 324, O.S.L. 2022 (37A O.S. Supp. 2022, Section 5-135), which relates to monthly tax reports; providing acceptable percentages of collected amounts provided in audits to be deemed in compliance; allowing for a deduction of gross receipts under certain conditions; providing for the promulgation of rules by Oklahoma Tax Commission; and providing an effective date.

SUBJECT: ABLE audit

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 37A O.S. 2021, Section 5-135, as amended by Section 1, Chapter 324, O.S.L. 2022 (37A O.S. Supp. 2022, Section 5-135), is amended to read as follows:

Section 5-135. A. Every mixed beverage tax permit holder, or any person transacting business subject to the gross receipts tax levied by Section 5-105 of this title, shall file with the Oklahoma Tax Commission a monthly report for each place or location of business, on or before the twentieth day of the month immediately following the month of receipt. The reports shall be made under oath, on forms prescribed by the Tax Commission, which shall include the following information:

1. Name of mixed beverage tax permit holder;

2. Mixed beverage tax permit number;

3. Sales tax permit number;

4. Mixed beverage, caterer, public event or special event license number;

5. Gross receipts for the month for the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages mixed with alcoholic beverages;

6. Gross receipts for the month from charges for the privilege of admission to a mixed beverage establishment which entitles a person to complimentary mixed beverages or discounted prices for mixed beverages;

7. Total retail value of complimentary or discounted alcoholic beverages served for the month; and

8. Such other information as may be required by the Tax Commission to enable it to collect taxes imposed as provided by law.

B. The gross receipts tax levied by Section 5-105 of this title shall be calculated by multiplying the tax rate, thirteen and one-half percent (13.5%), and the total gross receipts for each month from the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages mixed with alcoholic beverages, the total gross receipts of charges received for admission to mixed beverage establishments, as provided in paragraph 6 of subsection A of this section, and the total retail value of complimentary or discounted mixed beverages. Gross receipts from the sale of food prepared with alcoholic beverages shall not be included in the calculation of the monthly tax liability. The tax due for the preceding month shall accompany the report required in subsection A of this section. All taxes, penalties and interest imposed by the Oklahoma Alcoholic Beverage Control Act may be paid in the form of electronic funds transfer or by a personal or company check, cashier's check, certified check or postal money order payable to the Tax Commission.

C. If the gross receipts tax levied pursuant to the provisions of Section 5-105 of this title is not paid on or before the

twentieth day of each month, the tax shall be delinquent, and interest and penalty shall accrue on and from the twenty-first day of each month, pursuant to the provisions of the Uniform Tax Procedure Code.

D. Every licensed wholesaler of alcoholic beverages in this state shall file with the Tax Commission a monthly report, under oath, on forms prescribed by the Tax Commission, which shall include the name, location and mixed beverage tax permit number of each mixed beverage, caterer, public event or special event licensee to whom the licensed wholesaler sold alcoholic beverages during the report month.

E. If the report required by subsection A of this section is not filed with the Tax Commission on or before the twentieth day of the month, the Tax Commission may assess an additional penalty of Five Dollars ($5.00) for each day thereafter that the report is not filed pursuant to the provisions of this section. The Tax Commission may waive the penalty assessed pursuant to the provisions of the Uniform Tax Procedure Code; provided, however, the additional penalty, if assessed, shall not exceed an amount equal to twice the amount of tax due for the period for which such report was required to be filed, or the sum of Three Hundred Dollars ($300.00), whichever is greater.

F. Taxes paid as provided by law represented by accounts receivable which are found to be worthless or uncollectible may be credited upon subsequent reports and remittances of such tax, in accordance with rules promulgated by the Tax Commission. If such accounts are thereafter collected, the same shall be reported and the tax shall be paid upon the amount so collected.

G. In addition to any other authority granted by law, the Tax Commission is hereby authorized to audit any mixed beverage, beer and wine, caterer, public event or special event licensee to determine if the correct amount of tax payable under Section 5-105 of this title has been collected. <u>The taxpayer shall be deemed to be in compliance if such an audit reveals that the amount collected is within the following percentages of the amount of tax payable:</u>

<u>1. For spirits, eighty-four percent (84%) to one hundred sixteen percent (116%);</u>

2. For wine, ninety percent (90%) to one hundred ten percent (110%);

3. For beer sold at draft and not in original packages, eighty-six percent (86%) to one hundred fourteen percent (114%); and

4. For beer sold in original packages, ninety-five percent (95%) to one hundred five percent (105%).

H. A deduction not to exceed ten percent (10%) of the gross receipts tax liability levied pursuant to Section 5-105 of this title and determined by an audit of the purchases from wholesalers of a mixed beverage, beer and wine, caterer, public event, or special event licensee shall be allowed for properly documented losses attributable to breakage, spillage, theft, fire, or other occurrences. The Tax Commission may promulgate rules to provide for loss deductions in addition to the ten percent (10%) allowance and for the documentation required to properly verify loss claim amounts.

SECTION 2. This act shall become effective November 1, 2023.

Passed the Senate the 22nd day of March, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th

day of April, 20 23, at 4:12 o'clock p. M.

By: Jamie Curry

Approved by the Governor of the State of Oklahoma this 28th

day of April, 20 23, at 4:40 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 28th

day of April, 20 23, at 5:32 o'clock P. M.

By: Brian Bingman