JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-08-13-019 / NOT PRECEDENTIAL**
ID: **P0000210**
DATE: **08-13-02**
DISPOSITION: **SUSTAINED**
TAX TYPE: **MIXED BEVERAGE / SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-named taxpayer protests the assessment of additional mixed beverage gross receipts and sales taxes, proposed following an audit. After considering the files and records herein, the submissions of the parties, and the findings and recommendations of the administrative law judge, the Commission finds and orders as follows:

1. The Commission's Audit Division conducted an out-of-business mixed beverage depletion audit of taxpayer's mixed beverage establishment for the period May 1, 1997, through February 25, 2000. No information or business records were provided by the taxpayer in conducting the audit, so regulation drink pour sizes and average prices were used in the Division's calculations.

2. Additional mixed beverage and sales taxes were found to be due as a result of the audit, and were proposed to be assessed. Taxpayer protested, and provided evidence of a larger average pour size used during the audit period than the regulation figure used by the Division in making its calculations.

3. A recalculation of the audit figures, using the actual pour size utilized by taxpayer during the audit period, results in no additional mixed beverage or sales taxes due from the depletion audit. Taxpayer's protest, therefore, should be sustained.

IT IS THEREFORE ORDERED that the foregoing protest is sustained.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.