October 30, 2008

RE: LR-08-132-Mixed Beverage Tax on Mandatory Service Charges

Dear :

Receipt is acknowledged of your request for clarification of the Oklahoma mixed beverage tax treatment of mandatory service charges. Attached to your letter was a 'Sample Banquet Check' for which you requested confirmation that it contained the correct mixed beverage tax calculation. Below is a verbatim restatement of your question and our answer.

Question: Is the correct treatment for service charges any of the below options, please clearly explain the answer and reference tax statute or law for our reference:

1. No mandatory service charge revenue is subject to OK Mixed Beverage Tax.
2. Mandatory service charge revenue directly related to 'strong beer', wine, and liquor are subject to OK Mixed Beverage Tax.
3. All mandatory service charge revenue including soda and non-strong beer is subject to OK Mixed Beverage Tax.
4. Other

Our Answer: The short answer is "Other". Title 37 Oklahoma Statutes, Sections 576 and 579 provide that the mixed beverage gross receipt tax is levied on the **total gross receipts** of a holder of a mixed beverage, caterer, or special event license issued by the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission from the sale, preparation or **service** of mixed beverages. Service has been deemed to include, for example, bartender fees and gratuities which are charged specifically to mixed beverages. Definitions of the terms used within Section 576 are included therein. The tax is also levied on "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." Section 579 states the contents of the monthly reports which represent a restatement of items on which the gross receipts tax is levied in Section 576. See also OAC 710:20-5-3; 710:20-5-4 and 710:20-5-8 (Oklahoma Administrative Rules). Statutes and rules referenced herein may be found at: www.oktax.state.ok.us and www.lsb.state.ok.us.

This response applies only to the circumstances set out in your request of September 30, 2008. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to which it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable laws.

Sincerely,
OKLAHOMA TAX COMMISSION

Evelyn B. Phyffer
Tax Policy Analyst

Cc: Janine Marlar-McConville, Audit Supervisor
Compliance Division