

BILL SUMMARY
1st Session of the 58th Legislature

Bill No.:	HB 2004
Version:	FA3
Request Number:	7888
Author:	Rep. Fetgatter
Date:	3/10/2021
Impact:	Tax Commission

Section 29
Revenue Neutral

Apportioned to the Tax Commission:
\$937,000

Section 30

Unknown Decrease in Income Tax Collections

Research Analysis

The third floor amendment to HB 2004 directs the State Department of Health to enter into a contract with the Oklahoma Tax Commission where the Commission shall assess, collect and enforce the 7 percent tax on retail medical marijuana sales. The Commission shall charge the Department a fee of 1.5 percent for such collection services, and the proceeds of the fee shall be deposited in the Tax Commission Reimbursement Fund in the State Treasury.

The amendment also allows medical marijuana business licensees to deduct from their Oklahoma taxable income any ordinary and necessary business expenses that would otherwise be disallowed by [Section 280E of the Internal Revenue Code](#).

Prepared By: Emily McPherson

Fiscal Analysis

Analysis provided by the Tax Commission:

Section 29

HB 1908 proposes creating new law requiring the OTC and the OSDH to contract with one another where the OTC shall have the authority to assess, collect and enforce the 7% excise tax on medical marijuana sales. In exchange the OTC shall charge the OSDH a 1.5% fee on the gross collection proceeds.

The first 7 months of FY21 reflect a monthly average collection of approximately \$5,207,000. Thus, assuming similar collections in FY22, the gross collections for the 7% excise tax on medical marijuana will be roughly \$62,484,000. Of this gross amount the OTC will receive approximately \$937,000¹ under the proposed measure.

This measure is revenue net neutral. The proposed measure increases the OTCs administrative revenue by \$937,000 and all anticipated administrative costs associated with this measure are covered by this fee. Thus, the proposed measure also has an administrative revenue net neutral impact.

Section 30

HB 1909 proposes to amend 68 O.S. §2358 to allow a business licensed pursuant to the Oklahoma Medical Marijuana and Patient Protection Act¹ to deduct ordinary and necessary business expenses for purposes of the Oklahoma income tax return. Under current federal law, marijuana (cannabis) is classified as a Schedule I controlled substance, and no deduction or credit is allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted².

Due to the November 1, 2021, effective date of this proposal, business licensed pursuant to the Oklahoma Medical Marijuana and Patient Protection Act may deduct ordinary and necessary business expenses for tax year 2021 on their 2021 Oklahoma income tax return. An unknown decrease in revenue is expected for FY 22 when the 2021 income tax returns are filed.

¹ 63 O.S. §427.14

² Section 280E of the Internal Revenue Code

Prepared By: Mark Tygret

From the Oklahoma Medical Marijuana Authority:

FA3 (same as HB1908): This amendment would redirect some of the funds that are currently collected by: This amendment would redirect some of the funds that are currently collected by OTC and distributed to OMMA, education, and rehabilitation programming to OTC.

As defined in statute, the 7% excise tax collected on medical marijuana sales at dispensaries first go to fund the OMMA budget; anything collected in excess is directed 75% to the general fund, earmarked for common education, and 25% for drug and alcohol rehabilitation programming.

In the 2020 fiscal year, the 7% excise tax collections totaled \$42.4 million, which exceeded the OMMA budget. If this bill were in effect during SFY2020, OTC would have received \$636,136 from these collections, which otherwise would have been directed to education (\$477,201) and rehabilitation programming (\$159,033).

Prepared By: Stacy Johnson

Other Considerations

None.

