

House Bill 2110

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases tax on cigarettes and other tobacco products. Distributes tax revenues from increases.

Applies to distributions occurring on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of tobacco; creating new provisions; amending ORS 323.030, 323.031, 323.457 and
3 323.505; prescribing an effective date; and providing for revenue raising that requires approval
4 by a three-fifths majority.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 323.030 is amended to read:

7 323.030. (1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of [29]
8 **31.5** mills for the distribution of each cigarette in this state.

9 (2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or mu-
10 nicipal taxes on the sale or use of cigarettes.

11 (3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has oth-
12 erwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distrib-
13 ution to the taxes imposed by ORS 323.005 to 323.482.

14 **SECTION 2.** ORS 323.031 is amended to read:

15 323.031. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax,
16 every distributor shall pay a tax upon distributions of cigarettes at the rate of [30] **77.5** mills for the
17 distribution of each cigarette in this state.

18 (2) Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482 may not
19 be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

20 **SECTION 3.** ORS 323.457 is amended to read:

21 323.457. (1) Moneys received under ORS 323.031 shall be paid over to the State Treasurer to be
22 held in a suspense account established under ORS 293.445. After the payment of refunds:

23 (a) [29.37/30] **66.76/77.5** of the moneys shall be credited to the Oregon Health Plan Fund estab-
24 lished under ORS 414.109;

25 (b) [0.14/30] **0.16/77.5** of the moneys are continuously appropriated to the Oregon Department
26 of Administrative Services for distribution to the cities of this state;

27 (c) [0.14/30] **0.16/77.5** of the moneys are continuously appropriated to the Oregon Department
28 of Administrative Services for distribution to the counties of this state;

29 (d) [0.14/30] **0.16/77.5** of the moneys are continuously appropriated to the Department of Trans-
30 portation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 established under ORS 391.800; and

2 (e) [0.21/30] **10.26/77.5** of the moneys shall be credited to the Tobacco Use Reduction Account
 3 established under ORS 431.832.

4 (2)(a) Moneys distributed to cities and counties under this section shall be distributed to each
 5 city or county using the proportions used for distributions made under ORS 323.455.

6 (b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Trans-
 7 portation Fund at the same time moneys are distributed to cities, counties and the Elderly and
 8 Disabled Special Transportation Fund under ORS 323.455.

9 **SECTION 4. The amendments to ORS 323.030, 323.031 and 323.457 by sections 1 to 3 of this**
 10 **2011 Act apply to distributions occurring on or after January 1, 2012.**

11 **SECTION 5.** ORS 323.505 is amended to read:

12 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
 13 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
 14 upon distribution is required to achieve convenience and facility in the collection and administration
 15 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco
 16 products.

17 (2) The tax imposed under this section shall be imposed at the rate of:

18 (a) [Sixty-five] **One hundred twenty and one-quarter** percent of the wholesale sales price of
 19 cigars, but not to exceed 50 cents per cigar;

20 (b) [One dollar and seventy-eight] **Three dollars and twenty-nine** cents per ounce based on the
 21 net weight determined by the manufacturer, in the case of moist snuff, except that the minimum tax
 22 under this paragraph is [\$2.14] **\$3.96** per retail container; or

23 (c) [Sixty-five] **One hundred twenty and one-quarter** percent of the wholesale sales price of
 24 all tobacco products that are not cigars or moist snuff.

25 (3) For reporting periods beginning on or after July 1, 2019, the rates of tax applicable to moist
 26 snuff under subsection (2)(b) of this section shall be adjusted for each biennium according to the
 27 cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute the
 28 rates for each biennium by adding to the rates in subsection (2)(b) of this section the product ob-
 29 tained by multiplying the rates in subsection (2)(b) of this section by a factor that is equal to 0.25
 30 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer
 31 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the
 32 monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending
 33 August 31, 2017.

34 (4) If the tax imposed under this section does not equal an amount calculable to a whole cent,
 35 the tax shall be equal to the next higher whole cent. However, the amount remitted to the Depart-
 36 ment of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the total
 37 taxes due and payable by the taxpayer for the quarter.

38 (5) No tobacco product shall be subject to the tax if the base product or other intermediate form
 39 thereof has previously been taxed under this section.

40 **SECTION 6. The amendments to ORS 323.505 by section 5 of this 2011 Act apply to dis-**
 41 **tributions occurring on or after January 1, 2012.**

42 **SECTION 7.** (1) Notwithstanding ORS 323.030 (3), and in addition to and not in lieu of any
 43 other tax, for the privilege of holding or storing cigarettes for sale, use or consumption, a
 44 floor tax is imposed upon every dealer at the rate of 50 mills for each cigarette in the pos-
 45 session of or under the control of the dealer in this state at 12:01 a.m. on the later of Jan-

1 uary 1, 2012, or the first day of the calendar month following the effective date of this 2011
2 Act.

3 (2) The tax imposed by this section is due and payable on or before 20 days after the later
4 of January 1, 2012, or the first day of the calendar month following the effective date of this
5 2011 Act. Any amount of tax that is not paid within the time required shall bear interest at
6 the rate established under ORS 305.220 per month, or fraction of a month, from the date on
7 which the tax is due to be paid, until paid.

8 (3) On or before 20 days after the later of January 1, 2012, or the first day of the calendar
9 month following the effective date of this 2011 Act, every dealer must file a report with the
10 Department of Revenue in such form as the department may prescribe. The report must
11 state the number of cigarettes in the possession of or under the control of the dealer in this
12 state at 12:01 a.m. on the later of January 1, 2012, or the first day of the calendar month
13 following the effective date of this 2011 Act and the amount of tax due. Each report must
14 be accompanied by a remittance payable to the department for the amount of tax due.

15 **SECTION 8.** Notwithstanding ORS 323.030 (3), and in addition to and not in lieu of any
16 other tax, for the privilege of distributing cigarettes as a distributor and for holding or
17 storing cigarettes for sale, use or consumption, a floor tax and cigarette adjustment indicia
18 tax is imposed upon every distributor in the amount of \$1.25 for each Oregon cigarette tax
19 stamp bearing the designation "25" and in the amount of \$1 for each Oregon cigarette tax
20 stamp bearing the designation "20" that is affixed to any package of cigarettes in the pos-
21 session of or under the control of the distributor at 12:01 a.m. on the later of January 1, 2012,
22 or the first day of the calendar month following the effective date of this 2011 Act.

23 **SECTION 9.** (1) Every distributor must take an inventory as of 12:01 a.m. on the later
24 of January 1, 2012, or the first day of the calendar month following the effective date of this
25 2011 Act of all packages of cigarettes to which are affixed Oregon cigarette tax stamps and
26 of all unaffixed Oregon cigarette tax stamps in the possession of or under the control of the
27 distributor.

28 (2) Every distributor must file a report with the Department of Revenue on or before 20
29 days after the later of January 1, 2012, or the first day of the calendar month following the
30 effective date of this 2011 Act in such form as the department may prescribe, showing:

31 (a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that
32 were affixed to packages of cigarettes in the possession of or under the control of the dis-
33 tributor at 12:01 a.m. on the later of January 1, 2012, or the first day of the calendar month
34 following the effective date of this 2011 Act; and

35 (b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the
36 stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.
37 on the later of January 1, 2012, or the first day of the calendar month following the effective
38 date of this 2011 Act.

39 (3) The amount of tax required to be paid with respect to the affixed Oregon cigarette
40 tax stamps shall be computed pursuant to section 8 of this 2011 Act and remitted with the
41 distributor's report. Any amount of tax not paid within the time specified for the filing of
42 the report shall bear interest at the rate established under ORS 305.220 per month, or frac-
43 tion of a month, from the due date of the report until paid.

44 (4) Notwithstanding ORS 323.320, the department may establish a date after which the
45 value of stamps sold prior to the effective date of this 2011 Act will not be refunded or

1 credited to a distributor.

2 **SECTION 10.** All moneys received by the Department of Revenue from the taxes imposed
3 by sections 7 and 8 of this 2011 Act shall be paid over to the State Treasurer to be held in
4 a suspense account established under ORS 293.445. After the payment of refunds, the net
5 amount of revenues remaining shall be distributed as prescribed in ORS 323.457.

6 **SECTION 11.** The Department of Revenue may take administrative actions it considers
7 necessary to implement sections 7 to 9 of this 2011 Act and the amendments to ORS 323.030,
8 323.031 and 323.457 by sections 1 to 3 of this 2011 Act, including but not limited to:

9 (1) Limiting sales of Oregon cigarette tax stamps prior to the effective date of this 2011
10 Act;

11 (2) Selling stamps at the increased rate prior to the effective date of this 2011 Act; and

12 (3) Establishing a date after which stamps sold prior to the effective date of this 2011
13 Act will not be refunded or credited to a distributor.

14 **SECTION 12.** This 2011 Act takes effect on the 91st day after the date on which the 2011
15 session of the Seventy-sixth Legislative Assembly adjourns sine die.

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