Background

In November 2014, Oregon voters approved Ballot Measure-91 which legalized marijuana. The legalization was primarily through allowing the production, sale and possession of recreational marijuana by persons over 21 years of age. Oregon recreational marijuana under Measure-91 would have been taxed at the rate of $35 per ounce of flowers and $10 for leaves. The tax would have been imposed on the producer and collected and regulated by the Oregon Liquor Control Commission (OLCC). The measure provided that net recreational marijuana tax revenue (after costs of administration and regulation are paid) would be distributed, 40% to the Common School Fund, 20% to the Mental Health Alcoholism and Drug Services, 15% to State Police, 20% to local (equally divided between cities and counties) law enforcement agencies, and 5% to the Oregon Health Authority. None of the revenue was designated to the General Fund nor can it be directly used in the education budget because the Common School Fund works more like an endowment than an expenditure resource.

Estimated tax revenue from Measure-91, was estimated and documented in Research Report # 3-14 dated September 2014[i]. That report delineated the methodology and data sources for the estimate of market demand, user acceptance of the legalized product, price structure and elasticity that begins to restrict and limit the gray markets. That report predicted an average of $23 million in gross revenue in an average year for the ensuing two biennia. Startup costs would be higher in the first year, but they were all incurred by the OLCC and paid for by loans from the liquor fund.

Ballot Measure-91 was a statutory measure, which allowed the Legislature to make changes, introduce fixes and improvements to the language of the Measure, and to restructure of the tax regime. Such changes varied from clarifying language, changes in other connecting and corresponding laws (such as criminal fines and penalties), to dealing with edibles and extracts as well as modifying the structure of the marijuana tax, imposition of fees, requiring licenses, and using some of the revenue to pay for administration and regulation programs. The 2015 legislative assembly dealt with the issues through a house and senate joint committee on the implementation of Measure-91.

2015 Legislative Session Actions

The 2015 Legislative Assembly through the joint marijuana policy committee passed implementing legislation that formalized the roles of state agencies and local governments in the regulation of recreational marijuana. Moreover, changes were also made to laws governing medical marijuana. In general, the Legislature made significant and comprehensive changes to most of the elements of the recreational program as specified in Measure-91. More importantly, the 2015 session provided more clarity and specificity to program operations and regulations. These changes amounted to more than one hundred pages of statutory language. The significant bills that passed the 2015 session dealing with the M-91 implementation issues were:

- **HB 3400**[ii]: Outlined the responsibilities and authorities for Oregon's recreational and medical marijuana programs.
    - The bill specified that the Oregon Health Authority (OHA) is responsible for regulating medical marijuana and OLCC for the regulation of recreational marijuana.
    - OLCC was made responsible for packaging, OHA for labeling, and OHA, with the Department of Agriculture, for testing of marijuana items.
    - The bill established peace officer authority to aid in the regulation function of OLCC.
    - Specifying the types of licenses to be issued, the amount and circumstances under which marijuana and related products could be grown, processed, delivered, sold and stored.
    - Specified canopy (indoor and outdoor) size as limits on production capacity.

- Fees for licensure enforcement and inspection provisions.
- Allowed local governments to adopt regulations pertaining to marijuana, including the allowance for local tax on retail marijuana sales, and for locals to opt-out from allowing marijuana business to operate within the local jurisdiction.
- The bill also changed the fines and penalties for several related violations, infractions and other acts.

- **HB 2041**[iii]
  - Changed the privilege tax established by Measure-91 to a 17% tax on the retail sale of the different categories of marijuana items beginning January 1, 2017.
  - Retailers are required to submit quarterly returns and monthly tax payments to the Department of Revenue (DOR), and are allowed to retain 2% of the tax collected to cover their costs, as well as a percentage for DOR (collection allowance).
  - Describes process of collection for delinquent taxes and defines penalties.
  - Changed the distribution method by which local governments' share is divided starting the second year of the biennium, and prohibits the cities and counties that prohibit marijuana facilities from getting any marijuana tax funds.
  - The first year will have distributions based on population, after that the new distribution method will be proportioned to the number of marijuana businesses (of different types) within the jurisdiction.
  - The bill also allowed medical marijuana dispensaries (upon passage of SB 460 "early start") to sell limited recreational marijuana products at a point of sale tax rate of 25%.

The revenue estimates in FY 2017 is $10.75 million, which is the result of 5 months of commercial sales (considering delayed receipts and end of month reporting). This translates to <u>$2.15 million in revenue per month</u> for the few months of the commercial sales left in FY 2017. The 2017-19 biennium is expected to <u>average $31.2 million</u> a year in gross revenue. Revenue amount is higher than Measure-91 estimates due to the change in the nature of the tax and the point of taxation, which results in a lower final price. Moving the tax to the end point of production chain results in lower markup and price escalation in the business process. The resulting lower final price allows an increase in market share for the legal product over the gray market.

SB 460 v(Early Start Program)

o Authorized medical marijuana dispensaries to sell limited recreational marijuana retail product October 1, 2015 through December 2016.

o The tax on these sales does not occur until January of the calendar year 2016 (CY 2016). At that time early-start sales are taxed at the rate of 25% of retail price.

o OHA was tasked with developing and implementing rules, and procuring compliance staff to enforce the law.

o DOR was still tasked to collect the tax occurring in the early start period, however, other responsibilities were not clear.

<u>2016 Legislative Session Actions</u>

The 2016 Legislative Assembly enacted further changes to marijuana legalization and taxation. Some of the most important ones were

- **HB 4014**
  - Removed a two-year residency requirement for recreational marijuana producer, processor, wholesaler, and retail licensees.
  - Change canopy size and requirements (supply determination).

- Medical marijuana businesses are allowed to transfer their inventory into the OLCC system if they become OLCC licensees (Inventory Transfer).
- Establish a youth marijuana-use prevention pilot program funded with a loan from the Liquor Fund.
- Criminal penalties and certain fines are also amended and changed by the bill.

While the revenue impact for the bill was indeterminate[viii], the fiscal impacts[ix] for this complicated new program residing in multiple agencies added to the detail and intricacy of the total costs of marijuana programs in the various agencies.

- **SB 1511**
  - Requires OLCC to register recreational licensees who produce, process, transfer, or sell marijuana products for medical purposes, subject to certain conditions.
  - It requires Oregon Health Authority (OHA) to adopt rules allowing for the provision, transfer, and sale of usable marijuana (Medical allowance and Transfer).
  - The measure prohibits taxation of retail sales made to a medical registry cardholder (Medical Exemption in commercial shops).
  - The bill also expands the base of the tax, subject to the early star tax rate of 25%, to some edibles and extracts during the year 2016.