March 3, 2021

Oregon House Revenue Committee
Honorable Rep. Nancy Nathanson, Chair
900 Court St. NE H-279
Salem, OR 97404

Re: House Bill 2015

Chair Nathanson, Vice Chair Pham, Vice Chair Reshke, and Committee Members,

My name is Tom Thompson, I am the COO of Hotbox Farms an OLCC recreational cannabis licensee. Hotbox Farms is headquartered in Ontario Oregon and known for our high-volume retail location within the City of Ontario. We operate multiple OLCC retail, processing, production (grows), and wholesale facilities throughout the State of Oregon.

I am writing today in opposition to House Bill 2015. An increase in taxation of cannabis products will negatively impact the success of the legal, OLCC regulated, cannabis market. Excessive retail prices, brought on by hikes in sales taxes, will drive the consumer to the unregulated black market. If products can be purchased for a lesser price from an unregulated and untaxed source there will be no incentive to purchase products from licensed regulated stores. Reduced legal sales circumvents the OLLC's oversight and reduces all revenues, including taxes.

The current effective consumer levied marijuana sales tax rate in the City of Ontario, which is the case for most opt-in cities, is 20%. This consists of a 17% tax collected by the State of Oregon and the maximum 3% tax collected by the City of Ontario. If HB2015 passed this bill will allow for cities to change their tax upward 7%; assumably the majority would allow for this increase. The consumer would then be forced to pay an additional 7% for an effective sales tax rate of 27%; this would severely affect the legal market. This same argument holds true for HB2014, which itself is biased and would not help most of the municipalities as it is crafted to benefit Ontario's specific demographics.

The real issue at hand is with the equitable distribution of the State collected 17% tax. It was recently reported that in fiscal year 2020-2021 Malheur County (Population 31,313) reported sales more than $91.7 million, a rate of approximately $3,000 in sales per resident. Currently in Malheur county the only municipality that has opted-in to cannabis operations is the City of Ontario with a population of 11,336. However, in Multnomah County (Population 735,334) sales were more than $313.4 million a rate of approximately $385 in sales per resident. Applying a 20% sales tax these two counties alone generated over $81 million in tax revenue to the State and municipalities. However, Ontario did not benefit equitably from the State. *Population counts from 2010 Census.*

The 3% levied at the local level is directly realized in municipalities budgets. The 17% levied at the State level is then earmarked for specific budgets, one of which is 20% reinvestment to municipalities. However, the distribution formula that State uses for municipality distributions is currently based upon a per-capita of the op-in municipality. So, although in Malheur County we collect more taxes per capita in Ontario, the City does not see that benefit as we are not a large metropolitan population. The formula unfairly rewards municipalities based upon population and not contribution.

To further the burden on businesses, cannabis sales are still Federally illegal. This extremely changes our ability to profit because we are denied common business deductions under 26 U.S. Code § 280E. This is a punitive tax law created to hamper illegal drug trafficking in the 1982. Although the State may have legalized cannabis sales, we are still penalized at the Federal level. Per IRS 201504011 guidance “All deductions and credits for amounts paid or incurred in the illegal trafficking in drugs listed in the Controlled Substances Act are disallowed.” As a retailer the increased tax burden created under 280E is vastly larger than that of any other retail business. We are allowed a cost of goods sold (COGS) deduction only. All other regular business expenses are disallowed from being deducted. This includes but is not limited to labor, rents, utilities, office expenses/supplies, and other taxes.

As a cannabis retailer we must run on very low margins to keep customers from purchasing from black market sources. We are then aggressively and excessively taxed on our income. The value of sales cannot be directly correlated to profit of the business. As this example shows the cannabis business is disallowed standard deductions increasing their Federal income tax burden.

EXAMPLE RETURN SUMMARY	**EVERYDAY RETAILER**	**CANNABIS RETAILER**
GROSS REVENUE	$ 1,000,000	$ 1,000,000
EST COGS @ 45%	$ 650,000	$ 650,000
ADJ GROSS INCOME	*$ 350,000*	*$ 350,000*
DEDUCTIBLE OPERATION EXPENSES	$ 225,000	280E DISALLOWED
TAXABLE INCOME	**$ 125,000**	**$ 350,000**
30% TAX RATE	$ 37,500	$ 105,000
INCOME AFTER TAX	**$ 87,500**	**$ 20,000**

Rather than increase taxes, as requested in HB 2015, Cities' revenue can be increased by a review of the State shared municipality distribution formula. The municipalities who are generating the revenue should have a more equitable share since they are most impacted by the activities of the day-to-day operations of the businesses.

I appreciate your time and consideration of my comments. Please feel free to reach out should there be further questions.

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