

House Bill 2122

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski)

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 increase. Applies tax increase to cigarette and tobacco products reporting periods occurring on or after January 1, 2010, or first day of calendar month following effective date of Act. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tobacco tax; creating new provisions; amending ORS 323.505; appropriating money; pre-
3 scribing an effective date; and providing for revenue raising that requires approval by a three-
4 fifths majority.

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

6 **SECTION 1. Sections 2, 3, 5 and 6 of this 2009 Act are added to and made a part of ORS**
7 **323.005 to 323.482.**

8 **SECTION 2. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any**
9 **other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of 30**
10 **mills for the distribution of each cigarette in this state.**

11 **(2) Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482**
12 **may not be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to**
13 **323.482.**

14 **SECTION 3. All moneys received by the Department of Revenue from the tax imposed**
15 **under section 2 of this 2009 Act shall be paid over to the State Treasurer to be held in a**
16 **suspense account established under ORS 293.445. After the payment of refunds:**

17 **(1) _____ percent shall be transferred to the suspense account created pursuant to ORS**
18 **323.455 (1) and credited in the same manner as moneys received from the tax imposed by ORS**
19 **323.030 (1);**

20 **(2) _____ percent shall be transferred to the suspense account created pursuant to ORS**
21 **323.457 (1) and credited in the same manner as moneys received from the tax imposed by ORS**
22 **323.031 (1);**

23 **(3) _____ percent is continuously appropriated to the Department of Human Services**
24 **for the purposes of health care, public health and health promotion; and**

25 **(4) _____ percent is continuously appropriated to the Department of Transportation for**
26 **senior transportation services.**

27 **SECTION 4. Sections 2 and 3 of this 2009 Act apply to cigarette distributions occurring**
28 **on or after the later of January 1, 2010, or the first day of the calendar month following the**
29 **effective date of this 2009 Act.**

30 **SECTION 5. (1) Notwithstanding ORS 323.030 (3) and in addition to and not in lieu of any**

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 other tax, for the privilege of holding or storing cigarettes for sale, use or consumption, a
2 floor tax is imposed upon every dealer at the rate of 30 mills for each cigarette in the pos-
3 session of or under the control of the dealer in this state at 12:01 a.m. on the later of Jan-
4 uary 1, 2010, or the first day of the calendar month following the effective date of this 2009
5 Act.

6 (2) The tax imposed by this section is due and payable on or before 20 days after the later
7 of January 1, 2010, or the first day of the calendar month following the effective date of this
8 2009 Act. Any amount of tax that is not paid within the time required shall bear interest at
9 the rate established under ORS 305.220 per month, or fraction of a month, from the date on
10 which the tax is due to be paid, until paid.

11 (3) On or before 20 days after the later of January 1, 2010, or the first day of the calendar
12 month following the effective date of this 2009 Act, every dealer must file a report with the
13 Department of Revenue in such form as the department may prescribe. The report must
14 state the number of cigarettes in the possession of or under the control of the dealer in this
15 state at 12:01 a.m. on the later of January 1, 2010, or the first day of the calendar month
16 following the effective date of this 2009 Act and the amount of tax due. Each report must
17 be accompanied by a remittance payable to the department for the amount of tax due.

18 SECTION 6. Notwithstanding ORS 323.030 (3) and in addition to and not in lieu of any
19 other tax, for the privilege of distributing cigarettes as a distributor and for holding or
20 storing cigarettes for sale, use or consumption, a floor tax and cigarette adjustment indicia
21 tax is imposed upon every distributor in the amount of 75 cents for each Oregon cigarette
22 tax stamp bearing the designation "25," in the amount of 60 cents for each Oregon cigarette
23 tax stamp bearing the designation "20," in the amount of 30 cents for each Oregon cigarette
24 tax stamp bearing the designation "10" and in the amount of 3 cents for each Oregon ciga-
25 rette tax stamp bearing the designation "1" that is affixed to any package of cigarettes in
26 the possession of or under the control of the distributor at 12:01 a.m. on the later of January
27 1, 2010, or the first day of the calendar month following the effective date of this 2009 Act.

28 SECTION 7. (1) Every distributor must take an inventory as of 12:01 a.m. on the later
29 of January 1, 2010, or the first day of the calendar month following the effective date of this
30 2009 Act of all packages of cigarettes to which are affixed Oregon cigarette tax stamps and
31 of all unaffixed Oregon cigarette tax stamps in the possession of or under the control of the
32 distributor.

33 (2) Every distributor must file a report with the Department of Revenue on or before 20
34 days after the later of January 1, 2010, or the first day of the calendar month following the
35 effective date of this 2009 Act in such form as the department may prescribe, showing:

36 (a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that
37 were affixed to packages of cigarettes in the possession of or under the control of the dis-
38 tributor at 12:01 a.m. on the later of January 1, 2010, or the first day of the calendar month
39 following the effective date of this 2009 Act; and

40 (b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the
41 stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.
42 on the later of January 1, 2010, or the first day of the calendar month following the effective
43 date of this 2009 Act.

44 (3) The amount of tax required to be paid with respect to the affixed Oregon cigarette
45 tax stamps shall be computed pursuant to section 6 of this 2009 Act and remitted with the

1 distributor's report. Any amount of tax not paid within the time specified for the filing of
 2 the report shall bear interest at the rate established under ORS 305.220 per month, or frac-
 3 tion of a month, from the due date of the report until paid.

4 (4) Notwithstanding ORS 323.320, the department may establish a date after which the
 5 value of stamps sold prior to the effective date of this 2009 Act will not be refunded or
 6 credited to a distributor.

7 **SECTION 8.** All moneys received by the Department of Revenue from the taxes imposed
 8 by sections 5 and 6 of this 2009 Act shall be paid over to the State Treasurer to be held in
 9 a suspense account established under ORS 293.445. After the payment of refunds, the net
 10 amount of revenues remaining shall be distributed as prescribed in section 3 of this 2009 Act.

11 **SECTION 9.** 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] **Ninety** percent of the wholesale sales price of cigars, but not to exceed 50 cents
 19 per cigar; or

20 (b) [Sixty-five] **Ninety** percent of the wholesale sales price of all tobacco products that are not
 21 cigars.

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

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

28 **SECTION 10.** The Department of Revenue may take administrative actions it considers
 29 necessary to implement sections 2, 3, 5, 6 and 7 of this 2009 Act and the amendments to ORS
 30 323.505 by section 9 of this 2009 Act, including but not limited to:

31 (1) Limiting sales of stamps prior to the effective date of this 2009 Act;

32 (2) Selling stamps at the increased rate prior to the effective date of this 2009 Act; or

33 (3) Establishing a date after which stamps sold prior to the effective date of this 2009
 34 Act will not be redeemed.

35 **SECTION 11.** The amendments to ORS 323.505 by section 9 of this 2009 Act apply to to-
 36 bacco products tax reporting periods beginning on or after the later of January 1, 2010, or
 37 the first day of the calendar month following the effective date of this 2009 Act.

38 **SECTION 12.** This 2009 Act takes effect on the 91st day after the date on which the
 39 regular session of the Seventy-fifth Legislative Assembly adjourns sine die.