

# House Bill 2160

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## 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**.

Authorizes Department of Revenue to require verification of payment of tax on moist snuff and to adopt rules establishing policies and procedures for verifying tax payment.

Continuously appropriates moneys from suspense account to department for administration of cigarette tax and other tobacco tax programs.

## A BILL FOR AN ACT

1  
2 Relating to administration of tobacco taxes; creating new provisions; amending ORS 323.455, 323.500,  
3 323.510, 323.575 and 323.625; and appropriating money.

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

5 **SECTION 1.** ORS 323.575 is amended to read:

6 323.575. The Department of Revenue shall administer and enforce ORS 323.500 to 323.645. The  
7 department is authorized to [*establish those rules and*] **adopt rules establishing policies and** pro-  
8 cedures for the implementation and enforcement of ORS 323.500 to 323.645 that are consistent with  
9 its provisions and considered necessary and appropriate, **including rules for verifying payment**  
10 **of tax on moist snuff.**

11 **SECTION 2.** ORS 323.455 is amended to read:

12 323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS  
13 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established  
14 under ORS 293.445. **The department may pay expenses for administration of ORS 323.005 to**  
15 **323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts nec-**  
16 **essary to pay administrative expenses are continuously appropriated to the department from**  
17 **the suspense account.** After the payment of **administrative expenses and** refunds, 89.65 percent  
18 shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45  
19 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated  
20 to the Department of Transportation for the purpose of financing and improving transportation ser-  
21 vices for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

22 (2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within  
23 35 days after the end of the month for which a distribution is made. Each city shall receive such  
24 share of the money appropriated to all cities as its population, as determined under ORS 190.510 to  
25 190.590 last preceding such apportionment, bears to the total population of the cities of the state,  
26 and each county shall receive such share of the money as its population, determined under ORS  
27 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

28 (3) The moneys appropriated to the Department of Transportation under subsection (1) of this  
29 section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund  
30 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities

**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 and counties under this section.

2 (4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedi-  
 3 cated to funding the maintenance and expansion of the number of persons eligible for medical as-  
 4 sistance under the Oregon Health Plan, or to funding the maintenance of the benefits available  
 5 under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Re-  
 6 duction Account established under ORS 431.832.

7 **SECTION 3.** ORS 323.625 is amended to read:

8 323.625. All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall  
 9 be deposited in the State Treasury and credited to a suspense account established under ORS  
 10 293.445. **The department may pay expenses for administration of ORS 323.500 to 323.645 out**  
 11 **of moneys received from the tax imposed under ORS 323.505 and 323.565. Amounts necessary**  
 12 **to pay administrative expenses are continuously appropriated to the department from the**  
 13 **suspense account.** After the payment of **administrative expenses and** refunds or credits arising  
 14 from erroneous overpayments, the balance of the money shall be credited to the General Fund. Of  
 15 the amount credited to the General Fund under this section 41.54 percent shall be dedicated to  
 16 funding the maintenance and expansion of the number of persons eligible for medical assistance  
 17 under the Oregon Health Plan, or to funding the maintenance of the benefits available under the  
 18 Oregon Health Plan, or both, and 4.62 percent shall be credited to the Tobacco Use Reduction Ac-  
 19 count established under ORS 431.832.

20 **SECTION 4.** ORS 323.500 is amended to read:

21 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

22 (1) “Business” means any trade, occupation, activity or enterprise engaged in for the purpose  
 23 of selling or distributing tobacco products in this state.

24 (2) “Cigar” means a roll for smoking that is of any size or shape and that is made wholly or in  
 25 part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with  
 26 any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000  
 27 of these rolls collectively weigh more than three pounds. “Cigar” does not include a cigarette, as  
 28 defined in ORS 323.010.

29 (3) “Consumer” means any person who purchases tobacco products in this state for the person’s  
 30 use or consumption or for any purpose other than for reselling the tobacco products to another  
 31 person.

32 (4) “Contraband tobacco products” means tobacco products or packages containing tobacco  
 33 products:

34 (a) That do not comply with the requirements of ORS 323.500 to 323.645;

35 (b) That do not comply with the requirements of the tobacco products tax laws of the federal  
 36 government or of other states; or

37 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal  
 38 trademark laws.

39 (5) “Department” means the Department of Revenue.

40 (6) “Distribute” means:

41 (a) Bringing, or causing to be brought, into this state from without this state tobacco products  
 42 for sale, storage, use or consumption;

43 (b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or  
 44 consumption in this state;

45 (c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored,

1 used or consumed by those retail dealers;

2 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-  
3 sumption in this state;

4 (e) Selling untaxed tobacco products in this state; or

5 (f) As a consumer, being in possession of untaxed tobacco products in this state.

6 (7) "Distributor" means:

7 (a) Any person engaged in the business of selling tobacco products in this state who brings, or  
8 causes to be brought, into this state from without the state any tobacco products for sale;

9 (b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in  
10 this state;

11 (c) Any person engaged in the business of selling tobacco products without this state who ships  
12 or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;

13 (d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

14 (e) A consumer in possession of untaxed tobacco products in this state.

15 (8) "Manufacturer" means a person who manufactures tobacco products for sale.

16 (9) "**Moist snuff**" means any finely cut, ground or powdered tobacco that is not intended  
17 to be smoked or placed in a nasal cavity.

18 [(9)] (10) "Place of business" means any place where tobacco products are sold or where tobacco  
19 products are manufactured, stored or kept for the purpose of sale or consumption, including any  
20 vessel, vehicle, airplane, train or vending machine.

21 [(10)] (11) "Retail dealer" means any person who is engaged in the business of selling or other-  
22 wise dispensing tobacco products to consumers. The term also includes the operators of or recipients  
23 of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco  
24 products are made or stored for ultimate sale to consumers.

25 [(11)] (12) "Sale" means any transfer, exchange or barter, in any manner or by any means, for  
26 a consideration, and includes and means all sales made by any person. It includes a gift by a person  
27 engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-  
28 visions of ORS 323.500 to 323.645, or for any other purpose.

29 [(12)] (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under  
30 ORS 323.500 to 323.645.

31 [(13)] (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut,  
32 crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist to-  
33 bacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings  
34 of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for  
35 chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include  
36 cigarettes as defined in ORS 323.010.

37 [(14)] (15) "Untaxed tobacco products" means tobacco products for which the tax required under  
38 ORS 323.500 to 323.645 has not been paid.

39 [(15)] (16) "Wholesale sales price" means the price paid for untaxed tobacco products to or on  
40 behalf of a seller by a purchaser of the untaxed tobacco products.

41 **SECTION 5.** ORS 323.510 is amended to read:

42 323.510. (1) Except as otherwise provided in ORS 323.500 to 323.645, the tax imposed by ORS  
43 323.505 and 323.565 shall be paid by each distributor and each common carrier or authorized person  
44 specified in ORS 323.565 to the Department of Revenue on or before the last day of January, April,  
45 July and October of each year for the preceding calendar quarter.

1 (2) With each quarterly payment, the taxpayer shall submit a return to the department, in such  
2 form and containing such information as the department shall prescribe.

3 (3) The tax, penalties and interest imposed by ORS 323.500 to 323.645 shall be a personal debt,  
4 from the time liability is incurred, owed by the taxpayer to the State of Oregon until paid.

5 (4) The returns required of distributors and common carriers or authorized persons specified in  
6 ORS 323.565 under this section shall be filed by the distributors, common carriers or authorized  
7 persons regardless of whether any tax is owed by them.

8 (5)(a) The department for good cause may extend the time for making any return under ORS  
9 323.500 to 323.645. The extension may be granted at any time if a written request is filed with the  
10 department within or prior to the period for which the extension may be granted. The department  
11 may not grant an extension of more than one month.

12 (b) When the time for filing a return is extended at the request of a taxpayer, interest shall be  
13 added at the rate established under ORS 305.220 for each month, or fraction of a month, from the  
14 time the return was originally required to be filed to the time of payment.

15 **(6) Notwithstanding subsection (1) of this section, distributors shall prepay tax through**  
16 **the purchase of payment indicia and affix verification of payment to containers of moist**  
17 **snuff if required to do so by the department. The department shall determine if this verifi-**  
18 **cation is practicable and helpful in the administration of the tax required under ORS 323.500**  
19 **to 323.645. The department may adopt rules governing the required indicia, including rules**  
20 **governing the type of indicia, payment dates, refund procedures, collection procedures and**  
21 **other requirements it deems necessary for verification of the payment. The verification may**  
22 **be in the form of physical indicia, devices, identifying marks or any other means that will**  
23 **assist the department and others in determining whether the tax has been paid.**

24 **SECTION 6. The amendments to ORS 323.575, 323.500 and 323.510 by sections 1, 4 and 5**  
25 **of this 2009 Act apply to moist snuff distributed on or after January 1, 2010.**

26 **SECTION 7. The amendments to ORS 323.455 and 323.625 by sections 2 and 3 of this 2009**  
27 **Act apply to moneys received by the Department of Revenue on or after January 1, 2010.**

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