

# House Bill 2837

Sponsored by Representative SCHAUFLER (at the request of Jan Esler-Rowe)

## 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**.

Exempts amounts paid in federal tobacco tax from calculation of state tax on tobacco products other than cigarettes.

Applies to tobacco tax reporting periods beginning on or after January 1, 2010.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to federal tobacco products tax; creating new provisions; amending ORS 323.500; and pre-  
3 scribing an effective date.

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

5 **SECTION 1.** ORS 323.500 is amended to read:

6 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

7 (1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose  
8 of selling or distributing tobacco products in this state.

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

14 (3) "Consumer" means any person who purchases tobacco products in this state for the person's  
15 use or consumption or for any purpose other than for reselling the tobacco products to another  
16 person.

17 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco  
18 products:

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

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

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

24 (5) "Department" means the Department of Revenue.

25 (6) "Distribute" means:

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

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

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

**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 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) "Place of business" means any place where tobacco products are sold or where tobacco  
17 products are manufactured, stored or kept for the purpose of sale or consumption, including any  
18 vessel, vehicle, airplane, train or vending machine.

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

23 (11) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a con-  
24 sideration, and includes and means all sales made by any person. It includes a gift by a person en-  
25 gaged in the business of selling tobacco products, for advertising, as a means of evading the  
26 provisions of ORS 323.500 to 323.645, or for any other purpose.

27 (12) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS  
28 323.500 to 323.645.

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

35 (14) "Untaxed tobacco products" means tobacco products for which the tax required under ORS  
36 323.500 to 323.645 has not been paid.

37 (15) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf  
38 of a seller by a purchaser of the untaxed tobacco products, **but does not include the tax imposed**  
39 **under section 5701 of the Internal Revenue Code or any other federal tobacco products tax.**

40 **SECTION 2. The amendments to ORS 323.500 by section 1 of this 2009 Act apply to to-**  
41 **bacco tax reporting periods beginning on or after January 1, 2010.**

42 **SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the reg-**  
43 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**