

House Bill 2072

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor John A. Kitzhaber for Department of Revenue)

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**.

Provides consistency between statutes administering taxes imposed on cigarettes and taxes imposed on tobacco products other than cigarettes. Allows Department of Revenue to disclose information related to tax on tobacco products other than cigarettes to government entities that regulate tobacco products. Removes obsolete provisions relating to cigarette tax jeopardy determinations.

Applies to cigarette tax reporting periods and tobacco tax reporting periods beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to administration of tobacco tax; creating new provisions; amending ORS 323.010, 323.015,
3 323.211, 323.215, 323.230, 323.250, 323.385, 323.500, 323.538, 323.540, 323.560 and 323.605; and
4 prescribing an effective date.

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

6 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS 323.500**
7 **to 323.645.**

8 **SECTION 2. To promote administrative and regulatory efficiency and compliance with**
9 **laws regulating or taxing tobacco products, the Department of Revenue may transmit infor-**
10 **mation obtained under ORS 323.500 to 323.645 to the proper officers of federal and state**
11 **governmental units inside and outside Oregon that regulate or tax tobacco products and that**
12 **reciprocate in the exchange of relevant information. Federal and state governmental units**
13 **that receive information pursuant to this section may use or disclose the information solely**
14 **for the purpose of administering or enforcing laws regulating or taxing tobacco products.**

15 **SECTION 3. Any consumer or user subject to the tax resulting from a distribution of**
16 **tobacco products and from whom the tax has not been collected shall on or before the 20th**
17 **day of the month following receipt of untaxed tobacco products file with the Department of**
18 **Revenue a report of the quantity of tobacco products received by the consumer or user in**
19 **the preceding calendar month, in a form and with information prescribed by the department,**
20 **submitting with the report the amount of tax due. The consumer shall pay any tax resulting**
21 **from a distribution of tobacco products for personal use or consumption in a quantity of**
22 **more than 100 cigars or tobacco products with a wholesale sales price of more than \$50.**

23 **SECTION 4. ORS 323.010 is amended to read:**

24 323.010. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

25 (1) "Cigarette" means any product that contains nicotine, is intended to be burned or heated
26 under ordinary conditions of use and consists of or contains:

27 (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

28 (b) Tobacco, in any form, that is functional in the product and that, because of its appearance,

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 the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or
 2 purchased by, consumers as a cigarette; or

3 (c) Any roll of tobacco that is wrapped in any substance containing tobacco and that, because
 4 of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to
 5 be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this sub-
 6 section.

7 (2) "Cigarette activity in this state":

8 (a) Means importing, storing or manufacturing cigarettes in this state, or exporting cigarettes
 9 out of this state, in order to sell the cigarettes either within or outside this state.

10 (b) Does not include importing, storing, manufacturing or exporting of cigarettes that are to be
 11 consumed by the person doing the importing, storing, manufacturing or exporting.

12 (3) "Contraband cigarettes" means cigarettes or packages of cigarettes:

13 (a) That do not comply with the requirements of ORS 323.005 to 323.482 or 323.856 or the ciga-
 14 rette tax laws of another state or the federal government;

15 (b) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
 16 trademark laws; or

17 (c) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
 18 180.440.

19 (4) "Department" means the Department of Revenue.

20 [(5) "Dealer" includes every person, other than a manufacturer or a person holding a distributor's
 21 license, who engages in this state in the sale of cigarettes.]

22 [(6)] (5) "Exporting" means the act of carrying or conveying goods from a point of manufacture
 23 or storage in this state to a location outside this state and may be further defined by the department
 24 by rule.

25 [(7)] (6) "Importing" means the act of bringing goods to a point of storage in this state from a
 26 location outside this state and may be further defined by the department by rule.

27 [(8)] (7) "In this state" means within the exterior limits of the State of Oregon and includes all
 28 territory within these limits owned by or ceded to the United States of America.

29 [(9)] (8) "Manufacturer" means any person who makes, manufactures or fabricates cigarettes for
 30 sale.

31 [(10)] (9) "Package" means the individual package, box or other container in which retail sales
 32 or gifts of cigarettes are normally made or intended to be made.

33 [(11)] (10) "Person" includes any individual, firm, copartnership, joint venture, association, social
 34 club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate, this state, any
 35 county, municipality, district or other political subdivision of the state, or any other group or com-
 36 bination acting as a unit.

37 (11) "Retailer" includes every person, other than a manufacturer or a distributor, who
 38 engages in this state in the sale of cigarettes.

39 (12) "Sale" includes any transfer of title or possession for a consideration, exchange or barter,
 40 in any manner or by any means whatsoever, but does not include the sale of cigarettes by a man-
 41 ufacturer to a distributor.

42 (13) "Taxpayer" means a distributor or other person required to pay a tax under ORS 323.005
 43 to 323.482, and includes a distributor required to prepay a tax under ORS 323.068.

44 (14) "Transporter" means any person importing or transporting into this state, or transporting
 45 in this state, cigarettes obtained from a source located outside this state, or from any person not

1 licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor, a
 2 common carrier to whom is issued a certificate or permit by the United States Surface Transporta-
 3 tion Board to carry commodities in interstate commerce, or to a carrier of federal tax-free cigarettes
 4 in bond, or any person transporting no more than 199 cigarettes at any one time.

5 (15) “Untaxed cigarette” means any cigarette that has not yet been distributed in such manner
 6 as to result in a tax liability under ORS 323.005 to 323.482.

7 (16) “Use or consumption” includes the exercise of any right or power over cigarettes incident
 8 to the ownership thereof, other than the sale of the cigarettes or the keeping or retention thereof
 9 for the purpose of sale.

10 (17) “Wholesaler” means any [*dealer*] **retailer** who engages in the sale of cigarettes to any other
 11 [*dealer*] **retailer** for purposes other than use or consumption.

12 **SECTION 5.** ORS 323.015 is amended to read:

13 323.015. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

14 (1) “Distribution” includes:

15 (a) The sale in this state of untaxed cigarettes.

16 (b) The use or consumption in this state of untaxed cigarettes.

17 (c) The receipt or retention in this state of untaxed cigarettes at a place of business where
 18 cigarettes are customarily sold or offered for sale to consumers.

19 (d) The placing of cigarettes in vending machines in this state.

20 (e) The use or consumption by the first person in possession in this state of untaxed cigarettes
 21 transported to the state in quantities of more than 199 in a single shipment.

22 (f) Donations of sample cigarettes or gift cartons by the manufacturers of the cigarettes, except
 23 sample packages containing not more than five cigarettes and labeled as “sample,” “not for sale”
 24 or with similar wording.

25 (g) The possession in this state of untaxed cigarettes that were transported to this state in
 26 quantities of more than 199, unless the person in possession of the untaxed cigarettes is in pos-
 27 session of the untaxed cigarettes in order to transport the cigarettes to a location outside this state.

28 (2) “Distributor” includes:

29 (a) Any person who distributes cigarettes.

30 (b) Any person who sells or accepts orders for cigarettes that are to be transported from a point
 31 outside this state to a consumer within this state.

32 (c) Notwithstanding the provisions of ORS 323.010 [(5)] (11), any [*dealer*] **retailer** who serves as
 33 the [*dealer’s*] **retailer’s** own distributor or who buys directly from a manufacturer for resale in this
 34 state shall be deemed to be both a distributor and a [*dealer*] **retailer** under ORS 323.005 to 323.482.

35 (3) “Distributor engaged in business in this state” includes any of the following:

36 (a) Any distributor maintaining, occupying or using, permanently or temporarily, directly or in-
 37 directly, or through a subsidiary or agent, by whatever name called, an office, place of distribution,
 38 sales or sample room or place, warehouse or storage place or any other place of business.

39 (b) A distributor having a representative, agent, salesperson, canvasser or solicitor operating in
 40 this state under the authority of the distributor or its subsidiary for the purpose of selling, deliver-
 41 ing, or the taking of orders for cigarettes.

42 **SECTION 6.** ORS 323.211 is amended to read:

43 323.211. Every distributor and [*dealer*] **retailer** or other person engaging in the sale of cigarettes
 44 through the use of one or more vending machines[,] must affix in a conspicuous place on each
 45 machine[,] a card or decal bearing the name, telephone number, address[,] and place of business of

1 the operator or owner who regularly places cigarettes in the vending machine. If a person fails to
 2 comply with this section, the Department of Revenue may seize the vending machine and its con-
 3 tents.

4 **SECTION 7.** ORS 323.215 is amended to read:

5 323.215. Every distributor and [dealer] **retailer** or other person engaging in the sale of cigarettes
 6 through the use of one or more vending machines shall keep a detailed record of each vending ma-
 7 chine operated for the sale of cigarettes, showing the location of the machine and the date of placing
 8 the machine on location.

9 **SECTION 8.** ORS 323.230 is amended to read:

10 323.230. The Department of Revenue or its authorized representative, upon oral or written de-
 11 mand, may make such examinations of the books, papers, records and equipment of persons dealing
 12 in, transporting, or storing cigarettes and such other investigations as it may deem necessary in
 13 carrying out the provisions of ORS 323.005 to 323.482. In addition to any other reports required
 14 under ORS 323.005 to 323.482, the department may, by rule or otherwise, require additional, other,
 15 or supplemental reports from distributors, [dealers] **retailers**, transporters, common and private
 16 carriers, warehousemen, bailees and other persons and prescribe the form, including verification, of
 17 the information to be given and the times for filing of such additional, other or supplemental reports.

18 **SECTION 9.** ORS 323.250 is amended to read:

19 323.250. To promote administrative **and regulatory** efficiency **and compliance with laws reg-**
 20 **ulating or taxing cigarettes**, the Department of Revenue may transmit information obtained under
 21 ORS 323.005 to 323.482 to the proper officers of **federal and state** governmental units **inside and**
 22 **outside Oregon [which] that regulate or tax tobacco products and [which] that reciprocate in the**
 23 **exchange of relevant information. Federal and state governmental units that receive informa-**
 24 **tion pursuant to this section may use or disclose the information solely for the purpose of**
 25 **administering or enforcing laws regulating or taxing tobacco products.**

26 **SECTION 10.** ORS 323.385 is amended to read:

27 323.385. [(1)] If the Department of Revenue believes that the collection of any [amount of tax
 28 required to be paid by any person] **tax imposed** under ORS 323.005 to 323.482 will be jeopardized
 29 by delay, it shall [thereupon] make a determination of the [amount of] tax **or the amount of tax**
 30 **required to be collected**, noting that fact upon the determination. The amount determined is im-
 31 mediately due and payable[, with interest and penalty as provided in ORS 323.381]. **The department**
 32 **shall assess the tax, notify the person required to pay the tax and proceed to collect the tax**
 33 **in the same manner and using the same procedures as for the collection of income taxes**
 34 **under ORS 314.440.**

35 [(2) *If the amount of the tax, interest, and penalty specified in the jeopardy determination is not*
 36 *paid within 20 days after service upon the person of notice of the determination, the determination be-*
 37 *comes final, unless a petition for redetermination is filed within the 20 days.*]

38 [(3) *The person against whom a jeopardy determination is made may petition for the redetermi-*
 39 *nation thereof pursuant to ORS 323.416. The person shall, however, file the petition for redetermination*
 40 *with the department within 20 days after the service upon the person of notice of the determination.*
 41 *The person shall at the time of filing the petition for redetermination deposit with the department such*
 42 *security as the department may deem necessary to ensure compliance with ORS 323.005 to 323.482.*
 43 *The security may be sold by the department at public sale if it becomes necessary in order to recover*
 44 *any amount due. Notice of the sale may be served upon the person who deposited the security per-*
 45 *sonally or by mail in the same manner as prescribed pursuant to ORS 323.403. Upon any such sale,*

1 *the surplus, if any, above the amount due under ORS 323.005 to 323.482 shall be returned to the person*
 2 *who deposited the security.]*

3 **SECTION 11.** ORS 323.500 is amended to read:

4 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

15 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
 16 products:

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

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

20 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
 21 trademark laws; or

22 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
 23 180.486.

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*] **retailers** in this state, to be
 31 sold, stored, used or consumed by those [*retail dealers*] **retailers**;

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

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

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

36 (7) "Distributor" means:

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

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

41 (c) Any person engaged in the business of selling tobacco products without this state who ships
 42 or transports tobacco products to [*retail dealers*] **retailers** in this state, to be sold by those [*retail*
 43 *dealers*] **retailers**;

44 (d) Any person, including a [*retail dealer*] **retailer**, who sells untaxed tobacco products in this
 45 state; or

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

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

3 (9) "Moist snuff" means:

4 (a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in
5 a nasal cavity; or

6 (b) Any other product containing tobacco that is intended or expected to be consumed without
7 being combusted.

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

11 (11) ["Retail dealer"] "**Retailer**" means any person who is engaged in the business of selling or
12 otherwise dispensing tobacco products to consumers. The term also includes the operators of or re-
13 cipients of revenue from all places such as smoke shops, cigar stores and vending machines, where
14 tobacco products are made or stored for ultimate sale to consumers.

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

19 (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
20 323.500 to 323.645.

21 (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
22 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
23 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
24 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
25 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not
26 include cigarettes as defined in ORS 323.010.

27 (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
28 323.500 to 323.645 has not been paid.

29 (16) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf
30 of a seller by a purchaser of the untaxed tobacco products.

31 **SECTION 12.** ORS 323.538 is amended to read:

32 323.538. (1) A sales invoice for the wholesale sale of tobacco products in this state, including a
33 sales invoice required under ORS 323.540, shall contain the following:

34 (a) The name and address of the seller, the name and address of the purchaser, the date of the
35 sale of tobacco products, the quantity and product description of tobacco products, the price paid
36 for tobacco products and any discount applied in determining the price paid for tobacco products;

37 (b) The applicable license identification number for the distributor;

38 (c) A certified statement by the distributor of the tobacco products that all taxes due under ORS
39 323.500 to 323.645 have been or will be paid; and

40 (d) Any other information the Department of Revenue may prescribe by rule.

41 (2) A distributor must provide a copy of the sales invoice to the purchaser of the tobacco
42 product and the purchaser shall retain a copy of the invoice for five years following the date of
43 purchase.

44 (3) Each purchaser that then sells the tobacco products to a subsequent purchaser shall provide
45 the subsequent purchaser with a sales invoice that meets the requirements of this section.

1 (4)(a) A purchaser in possession of tobacco products who is unable to present a sales invoice
2 that meets the requirements of this section is presumed to be in possession of tobacco products for
3 which the tax imposed under ORS 323.500 to 323.645 has not been paid.

4 (b) In the case of a purchaser in possession of untaxed tobacco products, the tax is due imme-
5 diately, along with a penalty equal to 100 percent of the tax due. Amounts due under this paragraph
6 may be collected as provided in ORS 323.605.

7 (c) If the purchaser in possession of untaxed tobacco products is a [*retail dealer*] **retailer**, the
8 Department of Revenue may impose a civil penalty for the possession of untaxed tobacco products.
9 A civil penalty imposed under this paragraph may not exceed \$1,000 per violation. A penalty im-
10 posed under this paragraph may be appealed to the magistrate division of the tax court in the time
11 and manner prescribed in ORS 305.404 to 305.560.

12 (5) This section does not apply to a consumer in possession of less than 100 cigars or tobacco
13 products with a wholesale sales price of less than \$50.

14 **SECTION 13.** ORS 323.540 is amended to read:

15 323.540. (1) Any distributor, and any person dealing in, transporting or storing tobacco products,
16 shall keep at each registered place of business complete and accurate records for that place of
17 business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in
18 or caused to be brought in from without the state or shipped or transported to [*retail dealers*]
19 **retailers** in this state, and of all sales of tobacco products made, except sales to consumers.

20 (2) The records required by subsection (1) of this section shall show the names and addresses
21 of purchasers and other pertinent papers and documents relating to the purchase, sale or disposition
22 of tobacco products.

23 (3) When a licensed distributor sells tobacco products exclusively to consumers at the address
24 given in the certificate and sells only tobacco products for which taxes imposed under ORS 323.500
25 to 323.645 have been paid prior to sale, an invoice of any individual sale of less than 100 cigars or
26 of tobacco products with a wholesale sales price of less than \$50 is not required. Itemized invoices
27 of all tobacco products transferred to other places of business owned or controlled by that licensed
28 distributor shall be made and retained.

29 (4)(a) All books, records and other papers and documents required by this section to be kept
30 shall be preserved for a period of at least five years after the initial date of the books, records and
31 other papers or documents, or the date of entries appearing therein, unless the Department of Re-
32 venue, in writing, authorizes their destruction or disposal at an earlier date.

33 (b) The department or its authorized representative, upon oral or written demand, may make
34 such examinations of the books, papers, records and equipment required to be kept under this sec-
35 tion as it may deem necessary in carrying out the provisions of ORS 323.500 to 323.645.

36 (c) If the department, or any of its agents or employees, are denied free access or are hindered
37 or interfered with in making such examination, the license of the distributor at such premises shall
38 be subject to cancellation, suspension or revocation by the department.

39 **SECTION 14.** ORS 323.560 is amended to read:

40 323.560. When tobacco products, upon which the tax imposed under ORS 323.500 to 323.645 has
41 been reported and paid, are shipped or transported by the distributor to [*retail dealers*] **retailers**
42 outside this state, to be sold by those [*retail dealers*] **retailers**, or are returned to the manufacturer
43 by the distributor or destroyed by the distributor, credit for the paid tax may be made to the dis-
44 tributor.

45 **SECTION 15.** ORS 323.605 is amended to read:

1 323.605. If the Department of Revenue believes that the collection of any tax imposed under ORS
2 323.500 to 323.645 or any amount of the tax required to be paid to the state or of any determination
3 will be jeopardized by delay, it shall make a determination of the tax or **the** amount of tax required
4 to be collected, noting that fact upon the determination. The amount determined is immediately due
5 and payable and the department shall assess the taxes, notify the person **required to pay the tax**
6 and proceed to collect the tax in the same manner and using the same procedures as for the col-
7 lection of income taxes under ORS 314.440.

8 **SECTION 16. (1) Section 3 of this 2011 Act applies to tobacco tax reporting periods be-**
9 **ginning on or after January 1, 2012.**

10 **(2) The amendments to ORS 323.385 by section 10 of this 2011 Act apply to cigarette tax**
11 **reporting periods beginning on or after January 1, 2012.**

12 **SECTION 17. This 2011 Act takes effect on the 91st day after the date on which the 2011**
13 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

14