

# House Bill 2228

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., 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. Removes obsolete provisions relating to cigarette tax jeopardy determinations.

Applies to cigarette tax reporting periods and tobacco products tax reporting periods beginning on or after January 1, 2014.

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, 323.385, 323.500, 323.538, 323.540, 323.560 and 323.605; and prescribing  
4 an effective date.

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

6 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 323.500**  
7 **to 323.645.**

8 **SECTION 2. Any consumer subject to the tax resulting from a distribution of tobacco**  
9 **products and from whom the tax has not been collected shall, on or before the 20th day of**  
10 **the month following receipt of untaxed tobacco products, file with the Department of Re-**  
11 **venue a report of the quantity of tobacco products received by the consumer in the preceding**  
12 **calendar month, in a form and with information prescribed by the department, submitting**  
13 **with the report the amount of tax due. The consumer shall pay any tax resulting from a**  
14 **distribution of tobacco products for personal use or consumption in a quantity of 100 or more**  
15 **cigars or other tobacco products with a wholesale sales price of \$50 or more.**

16 **SECTION 3. Every distributor engaged in business in this state and selling or accepting**  
17 **orders for tobacco products with respect to the sale of which the taxes imposed by ORS**  
18 **323.500 to 323.645 are inapplicable shall, at the time of making the sale or accepting the order**  
19 **or, if the purchaser is not at that time obligated to pay the taxes with respect to the dis-**  
20 **tribution of the tobacco products, at the time the purchaser becomes so obligated, collect the**  
21 **tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give**  
22 **to the purchaser a receipt for the tax paid in the manner and form prescribed by the De-**  
23 **partment of Revenue.**

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

25 323.010. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

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

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

**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 (b) Tobacco, in any form, that is functional in the product and that, because of its appearance,  
 2 the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or  
 3 purchased by, consumers as a cigarette; or

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

8 (2) “Cigarette activity in this state”:

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

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

13 (3) “Contraband cigarettes” means cigarettes or packages of cigarettes:

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

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

18 (c) That have been sold, offered for sale or possessed for sale in this state in violation of ORS  
 19 180.440.

20 (4) “Department” means the Department of Revenue.

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

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

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

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

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

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

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

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

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

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

45 (14) “Transporter” means any person importing or transporting into this state, or transporting

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

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

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

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

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

14 323.015. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

15 (1) "Distribution" includes:

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

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

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

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

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

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

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

29 (2)(a) "Distributor" includes:

30 [(a)] (A) Any person who distributes cigarettes[.]; **and**

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

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

37 (3) "Distributor engaged in business in this state" includes any of the following:

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

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

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

45 323.211. Every distributor and [*dealer*] **retailer** or other person engaging in the sale of cigarettes

1 through the use of one or more vending machines[,] must affix in a conspicuous place on each  
 2 machine[,] a card or decal bearing the name, telephone number, address[,] and place of business of  
 3 the operator or owner who regularly places cigarettes in the vending machine. If a person fails to  
 4 comply with this section, the Department of Revenue may seize the vending machine and its con-  
 5 tents.

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

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

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

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

21 **SECTION 9.** ORS 323.385 is amended to read:

22 323.385. [(1)] If the Department of Revenue believes that the collection of any [*amount of tax*  
 23 *required to be paid by any person*] **tax imposed** under ORS 323.005 to 323.482 will be jeopardized  
 24 by delay, it shall [*thereupon*] make a determination of the [*amount of*] tax **or the amount of tax**  
 25 **required to be collected**, noting that fact upon the determination. The amount determined is im-  
 26 mediately due and payable[, *with interest and penalty as provided in ORS 323.381*]. **The department**  
 27 **shall assess the tax, notify the person required to pay the tax and proceed to collect the tax**  
 28 **in the same manner and using the same procedures as for the collection of income taxes**  
 29 **under ORS 314.440.**

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

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

43 **SECTION 10.** ORS 323.500 is amended to read:

44 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

45 (1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose

1 of selling or distributing tobacco products in this state.

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

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

10 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco  
 11 products:

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

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

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

17 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS  
 18 180.486.

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

20 (6) "Distribute" means:

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

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

25 (c) Shipping or transporting tobacco products to [*retail dealers*] **retailers** in this state, to be  
 26 sold, stored, used or consumed by those [*retail dealers*] **retailers**;

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

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

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

31 (7)(a) "Distributor" means:

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

34 [(b)] (B) Any person who makes, manufactures or fabricates tobacco products in this state for  
 35 sale in this state;

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

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

41 [(e)] (E) A consumer in possession of untaxed tobacco products in this state.

42 (b) **Notwithstanding the provisions of subsection (11) of this section, any retailer who**  
 43 **serves as the retailer's own distributor or who buys directly from a manufacturer for resale**  
 44 **in this state shall be deemed to be both a distributor and a retailer under ORS 323.500 to**  
 45 **323.645.**

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

2 (9) "Moist snuff" means:

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

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

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

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

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

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

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

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

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

30 **SECTION 11.** ORS 323.538 is amended to read:

31 323.538. (1) A sales invoice for the wholesale sale of tobacco products in this state, including a  
32 sales invoice required under ORS 323.540, shall contain the following:

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

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

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

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

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

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

45 (4)(a) A purchaser in possession of tobacco products who is unable to present a sales invoice

1 that meets the requirements of this section is presumed to be in possession of tobacco products for  
 2 which the tax imposed under ORS 323.500 to 323.645 has not been paid.

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

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

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

13 **SECTION 12.** ORS 323.540 is amended to read:

14 323.540. (1) Any distributor, and any person dealing in, transporting or storing tobacco products,  
 15 shall keep at each registered place of business complete and accurate records for that place of  
 16 business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in  
 17 or caused to be brought in from without the state or shipped or transported to [*retail dealers*]  
 18 **retailers** in this state, and of all sales of tobacco products made, except sales to consumers.

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

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

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

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

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

38 **SECTION 13.** ORS 323.560 is amended to read:

39 323.560. When tobacco products, upon which the tax imposed under ORS 323.500 to 323.645 has  
 40 been reported and paid, are shipped or transported by the distributor to [*retail dealers*] **retailers**  
 41 outside this state, to be sold by those [*retail dealers*] **retailers**, or are returned to the manufacturer  
 42 by the distributor or destroyed by the distributor, credit for the paid tax may be made to the dis-  
 43 tributor.

44 **SECTION 14.** ORS 323.605 is amended to read:

45 323.605. If the Department of Revenue believes that the collection of any tax imposed under ORS

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

7 **SECTION 15. (1) Sections 2 and 3 of this 2013 Act apply to tobacco products tax reporting**  
8 **periods beginning on or after January 1, 2014.**

9 **(2) The amendments to ORS 323.385 by section 9 of this 2013 Act apply to cigarette tax**  
10 **reporting periods beginning on or after January 1, 2014.**

11 **SECTION 16. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
12 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

13