

House Bill 2488

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on 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**.

Clarifies definitions and establishes procedures for enforcement of cigarette tax imposed upon cigarettes containing roll-your-own tobacco.

Applies to cigarettes distributed on or after January 1, 2014.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to cigarette tax; creating new provisions; amending ORS 323.010, 323.015 and 323.160; and
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 323.010 is amended to read:

6 323.010. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

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

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

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

13 (c) Any roll of tobacco that is wrapped in any substance containing tobacco and that, because
14 of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to
15 be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this
16 subsection[.]; **or**

17 **(d) Roll-your-own tobacco.**

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

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

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

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

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

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

28 (c) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
29 180.440.

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

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

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

6 (7) "Importing" means the act of bringing goods to a point of storage in this state from a lo-
 7 cation outside this state and may be further defined by the department by rule.

8 (8) "In this state" means within the exterior limits of the State of Oregon and includes all ter-
 9 ritory within these limits owned by or ceded to the United States of America.

10 (9) "Manufacturer" means any person who makes, manufactures or fabricates cigarettes for sale.

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

13 (11) "Person" includes any individual, firm, copartnership, joint venture, association, social club,
 14 fraternal organization, corporation, estate, trust, receiver, trustee, syndicate, this state, any county,
 15 municipality, district or other political subdivision of the state, or any other group or combination
 16 acting as a unit.

17 **(12) "Roll-your-own tobacco" means any tobacco which, because of its appearance, type,
 18 packaging or labeling, is suitable for use and likely to be offered to, or purchased by, con-
 19 sumers as tobacco for making cigarettes.**

20 [(12)] (13) "Sale" includes any transfer of title or possession for a consideration, exchange or
 21 barter, in any manner or by any means whatsoever, but does not include the sale of cigarettes by
 22 a manufacturer to a distributor.

23 [(13)] (14) "Taxpayer" means a distributor or other person required to pay a tax under ORS
 24 323.005 to 323.482, and includes a distributor required to prepay a tax under ORS 323.068.

25 [(14)] (15) "Transporter" means any person importing or transporting into this state, or trans-
 26 porting in this state, cigarettes obtained from a source located outside this state, or from any person
 27 not licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor,
 28 a common carrier to whom is issued a certificate or permit by the United States Surface Transpor-
 29 tation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free ciga-
 30 rattes in bond, or any person transporting no more than 199 cigarettes at any one time.

31 [(15)] (16) "Untaxed cigarette" means any cigarette that has not yet been distributed in such
 32 manner as to result in a tax liability under ORS 323.005 to 323.482.

33 [(16)] (17) "Use or consumption" includes the exercise of any right or power over cigarettes in-
 34 cident to the ownership thereof, other than the sale of the cigarettes or the keeping or retention
 35 thereof for the purpose of sale.

36 [(17)] (18) "Wholesaler" means any dealer who engages in the sale of cigarettes to any other
 37 dealer for purposes other than use or consumption.

38 **SECTION 2.** ORS 323.015 is amended to read:

39 323.015. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

40 (1) "Distribution" includes:

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

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

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

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

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

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

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

9 (2) "Distributor" includes:

10 (a) Any person who distributes cigarettes.

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

13 (c) **Any person who for commercial purposes makes available for consumer use a ma-
14 chine capable of making cigarettes.**

15 [(c)] (d) Notwithstanding the provisions of ORS 323.010 (5), any dealer who serves as the dealer's
16 own distributor or who buys directly from a manufacturer for resale in this state shall be deemed
17 to be both a distributor and a dealer under ORS 323.005 to 323.482.

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

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

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

25 **SECTION 3.** ORS 323.160 is amended to read:

26 323.160. (1) The Department of Revenue shall furnish cigarette tax stamps for sale to distributors
27 required under ORS 323.068 to prepay the taxes imposed under ORS 323.005 to 323.482.

28 (2) Stamps shall be designed according to specifications and denominations prescribed by the
29 department. The department shall prescribe by rule the method and manner in which stamps are to
30 be affixed to packages of cigarettes and may provide for the cancellation of stamps. **The depart-
31 ment may prescribe an alternative method for affixing stamps to packages of cigarettes
32 containing roll-your-own tobacco.**

33 (3) An appropriate stamp shall be affixed to each package of cigarettes prior to the distribution
34 of the cigarettes.

35 **SECTION 4. The amendments to ORS 323.010, 323.015 and 323.160 by sections 1 to 3 of this
36 2013 Act apply to cigarettes distributed on or after January 1, 2014.**

37 **SECTION 5. This 2013 Act takes effect on the 91st day after the date on which the 2013
38 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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