

Oregon Marijuana Tax Statistical Report



January - March 2016



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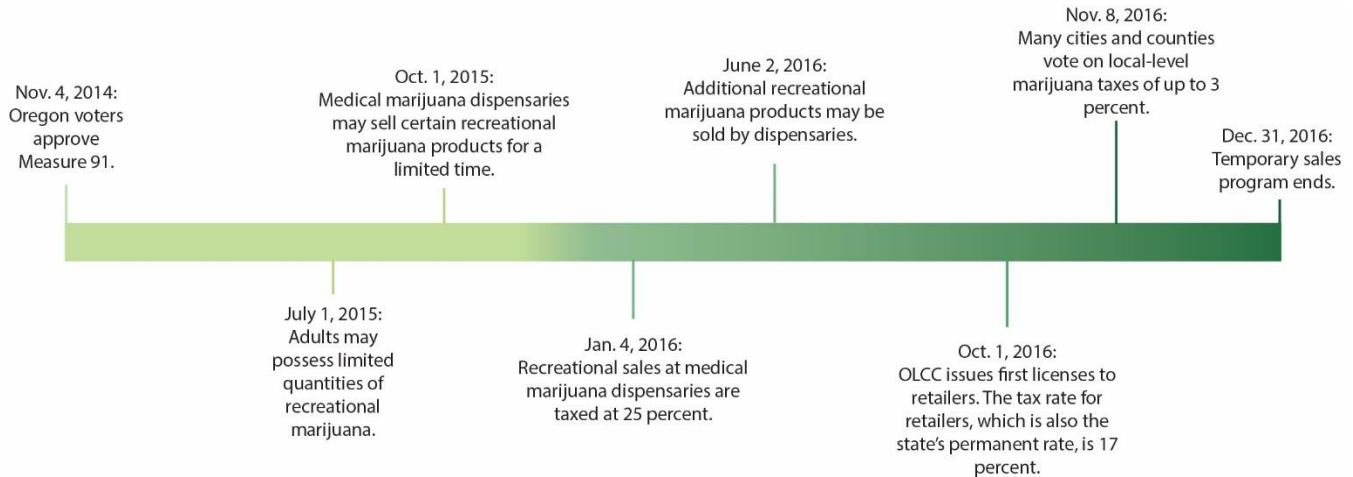
Disclaimer:

This report provides a general description and statistics related to Oregon's marijuana tax. It is not intended to serve as legal interpretation or advice.

Introduction

The purpose of this report is to help policymakers and the general public understand how Oregon’s marijuana tax program operates and the characteristics of taxed recreational marijuana sales in Oregon. This document is the first report by the Department of Revenue to describe this new tax program using data from tax returns filed by registered marijuana businesses. Oregon’s marijuana tax and its operation contain complexities and nuances that differ from other types of taxes. The intent of this document is to assist readers in understanding these items.

Oregon’s Marijuana Tax Timeline



November 2014: Oregon voters approve Measure 91 in a statewide general election, for the purpose of legalizing the production, processing, delivery, possession, and sale of recreational marijuana among adults. Legalized medical marijuana in Oregon already existed because of the approval of Measure 67 in 1998.

July 2015: Adults may possess limited quantities of usable recreational marijuana, up to one ounce outside their homes, and eight ounces at home, but may not buy or sell it until approved retail outlets are available.

October 2015: Based on legislative action (Senate Bill 460), medical marijuana dispensaries registered with the Oregon Health Authority (OHA) may sell limited recreational marijuana products (flower, leaves, seeds, and immature plants) to adults for a limited period, between October 1, 2015 and December 31, 2016. This temporary arrangement, sometimes called Early Start, gives adults a way to purchase the newly legal products in the interim, before the Oregon Liquor Control Commission (OLCC) is able to issue retail licenses. No state retail tax is imposed between October 1, 2015 and January 3, 2016.

January 2016: Sales from medical dispensaries to adults under the temporary program become taxable at a temporary state tax rate of 25 percent of the retail sales price. Cities and counties are prohibited from imposing their own taxes except as outlined in House Bill 3400 of 2015.

June 2016: Based on legislative action and administrative rule, additional product types (edibles, extracts, and non-psychoactive topicals) may be sold by medical marijuana dispensaries in the temporary program.

October 2016: The Oregon Liquor Control Commission issues the first licenses to retailers of recreational marijuana, and those retailers begin operating. The permanent phase of recreational retail sales has begun. For retailers with licenses from OLCC, sales to adults are taxable at a state tax rate of 17 percent of the retail sales

price. Medical cardholders may purchase tax-free from OLCC-licensed retailers. Recreational sales made to adults at medical marijuana dispensaries registered with the Oregon Health Authority are still taxed at the state rate of 25 percent, but that temporary program is phasing out. As additional OLCC licenses are issued and retailers surrender their OHA registrations, those retail sales are taxed at the state rate of 17 percent.

November 2016: Voters in many counties and cities vote on the establishment of local-level marijuana taxes. These taxes may not exceed three percent for recreational marijuana. Medical marijuana may not be taxed locally.

January 2017: The temporary sales program ends. As prior to the temporary program, medical marijuana dispensaries registered with the Oregon Health Authority that have not converted to OLCC licensed retailers may only sell to medical cardholders. Sales made at OLCC licensed retailers are taxed at 17 percent (state tax), plus a possible local tax of up to three percent, depending on the outcome of local elections.

Legislative History of the Marijuana Tax

2014

Measure 91 was approved by Oregon voters in 2014. Briefly, Measure 91 legalized the production, processing, delivery, possession, and sale of recreational marijuana among adults. The measure outlined taxation, regulation, and the distribution of tax revenue. The Oregon Legislative Assembly made several changes to law after that time. The most significant changes related to marijuana taxation are the following.

2015

House Bill 2041 changed the tax structure that was approved in Measure 91 to a tax on the retail sale of marijuana to be collected by the retailer from the consumer at the time of the retail sale. The regular state tax rate was established as 17 percent of the retail sales price across all types of marijuana products. The bill specified a state tax rate of 25 percent of the retail sales price for sales made under the Early Start program, effective from January 4, 2016 through December 31, 2016. The state tax rate of 17 percent applies effective January 1, 2017 or if the retailer has been licensed and is operating under the authority of OLCC, whichever comes first.

House Bill 3400 authorized a local option tax of three percent or less on the sale of recreational marijuana items, subject to local approval in a statewide general election. Local areas may not tax medical marijuana.

Senate Bill 460 allowed medical dispensaries registered with OHA to sell limited marijuana to adults, as a short-term policy to allow recreational consumers to buy marijuana prior to the issuance of retail licenses by OLCC.

2016

Senate Bill 1601 declared that retail sales to medical marijuana cardholders or designated primary caregivers purchasing for cardholders are not subject to taxation, either by the state, cities, or counties. Cardholders must provide proof at the time of purchase. The bill also stated that marijuana retailers may not discount marijuana items when selling them in conjunction with other items, and that a subtraction from federal income is allowed in Oregon for any federal deduction that a taxpayer would have been allowed if not for section 280E of the Internal Revenue Code. That section prohibits businesses from deducting expenses associated with the sale of federally controlled substances, which includes marijuana.

Senate Bill 1511 expanded the types of marijuana products that medical marijuana dispensaries may sell to recreational customers during the Early Start period, including edibles, topicals, and receptacles. The bill also set up a structure in which the recreational marijuana system regulated by the OLCC may produce and provide medical marijuana for cardholders.

Understanding Oregon's Marijuana Tax Administration and Statistics

Under Oregon's recreational marijuana tax system, businesses that sell recreational marijuana to consumers collect the marijuana tax from consumers at the point of sale. In this tax program, the word *business* refers to a specific physical retail location, also known as an *establishment*, rather than a company that might operate several different locations.

On a monthly basis, businesses submit their collected tax for the previous month to the Oregon Department of Revenue. For example, payments are due by the end of November for sales that occurred during October. The Department of Revenue calls these monthly submissions *payments* or *receipts*, because they are amounts that businesses have paid and the department has received. It's important to note that payments made by businesses may not directly match the tax that is owed (the liability). An explanation follows.

On a quarterly basis, retail marijuana businesses fill out and submit tax return forms to the Department of Revenue. Each business location, rather than company, files its own separate return. On these tax return forms, businesses write the dollar value of the products they sold, which allows them to calculate their tax *liability* for the quarter. *Liability* is the amount of tax that corresponds to the reported sales.

Using the tax return, the Department of Revenue compares the liability amount to the payments each business made during the previous months to determine whether the business submitted the correct amount in payments. If the business submitted too little, they owe additional money to the state and need to pay more. If the business submitted too much, the extra is usually treated as an early payment to cover future liability. Refunds greater than \$1,000 are prohibited by state law for the marijuana tax.

Although it would be convenient if payments matched perfectly with tax liability, it's better to think of payments as a close estimate of what businesses expect they will owe in taxes. Since businesses might have paid too much, too little, or off schedule, the value of payments received by the Department of Revenue within a time period does not provide full information about the tax liability of businesses nor sales within the same time period. The best source of information about sales amounts and tax revenue is tax return forms, rather than payment information.

Businesses use tax returns to report the quantity sold of each of the product types written in law (for example, flower in grams, edibles in units, or immature plants in number of plants), the dollar value of sales for each product type, the tax-exempt sales made to medical marijuana cardholders, and the total dollar value of taxable sales. Businesses are allowed to keep two percent of the tax money they collect to cover the administrative costs of collecting the tax. After multiplying taxable sales by the tax rate and subtracting the administrative allowance, the result is the tax liability for the quarter.

If a business does not file a tax return but the Department of Revenue believes it should have, the Department of Revenue files a return on behalf of the business, adding a penalty for the lack of filing. Unless the business files its own return to correct the liability amount, the business owes taxes for the liability calculated by the state. Unfortunately, when businesses do not file tax returns, the department is unable to include their information in detailed statistical reporting in this document to help policymakers and the public understand industry patterns and policy impacts.

Terms Used in this Report

Average grams by establishment. Grams of flower sold during the quarter by each business filing a return in the region, added together and divided by the number of filed returns in the region. An estimate of the average sales volume. Rounded to the nearest thousand grams.

Establishment. Physical retail location of a business that is selling recreational marijuana and submitting marijuana tax to the Department of Revenue.

Filed returns. Tax return forms that are submitted by businesses and filled out adequately for purposes of statistical reporting.

Liability. Amount of tax that corresponds to the reported taxable retail sales of marijuana. If not reported by the business, the liability is estimated by the Department of Revenue.

Important Notes about City and County Level Reporting

Even though several cities and counties have requested special tabulations of revenue associated with their jurisdictions, the Department of Revenue is reporting statistics at the regional level rather than for specific cities or counties. The City of Portland is the only exception, because of its outstandingly large number of marijuana businesses as well as the very large number of marijuana businesses in the greater Portland area that are not within the city limits.

The reason for this limited geographic breakdown is that state law requires the Department of Revenue to protect any information that can be traced to particular tax returns. This principle extends to small groups of returns, because it may be possible to calculate information sourced from one return if other outside information is also available, such as in a newspaper article or knowledge held by one of the covered taxpayers.

Because of state marijuana tax law and the geographic pattern of marijuana businesses, the department cannot release information for both a city and the county that contains that city. Often, only a few businesses are located outside of city limits within a given county. The department cannot release two pieces of information that a reader could compare or subtract to learn something confidential that was itself not directly released. The department also cannot release information about whether a specific taxpayer did or did not file a tax return.

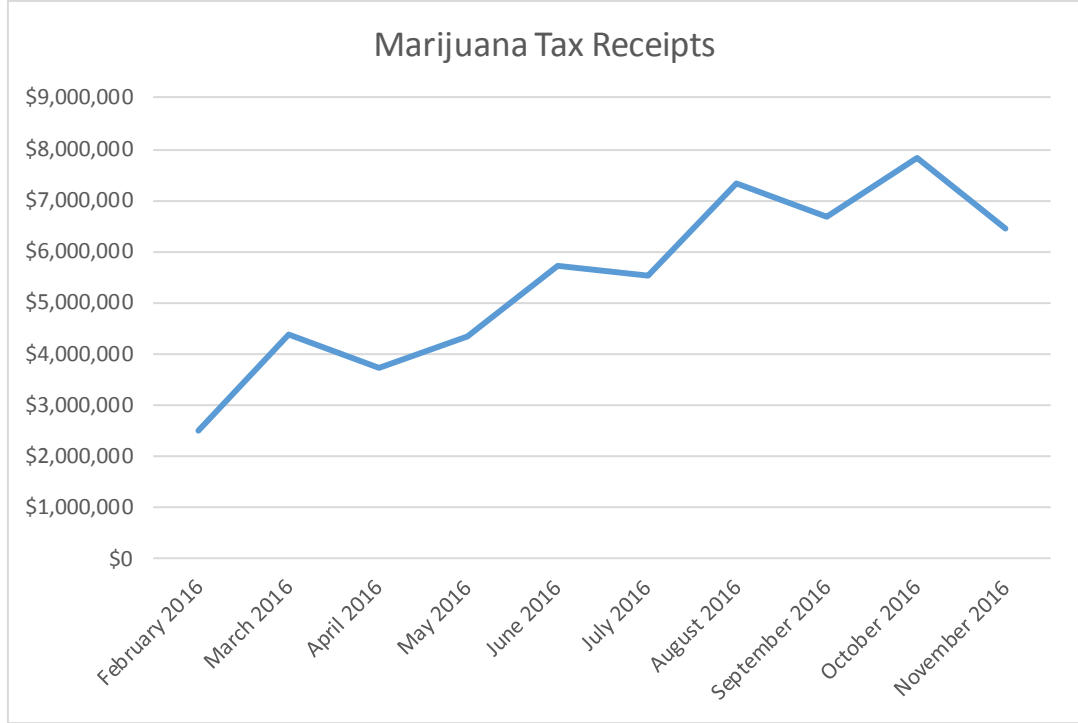
Unfortunately, not all businesses have filed tax returns yet. Tax returns are the main source of information about sales made by marijuana retail establishments. The number of establishments that exist is not always a good indicator of the number of tax returns that are available for reporting of detailed sales statistics.

State Revenue Distribution Formula

After administrative expenses, the current distribution of state recreational marijuana tax revenue is as follows. Common School Fund: 40%. Mental Health, Alcoholism, and Drug Services Account: 20%. Oregon State Police: 15%. Cities (by formula, if not opted-out of licensing): 10%. Counties (by formula, if not opted-out of licensing): 10%. Oregon Health Authority: 5%. Marijuana tax revenue does not go into the General Fund. Distributions are not allowed until start-up costs and administrative expenses have been reimbursed.

Oregon Marijuana Tax Statistics: Accounting Information

| Month | Amount Received (Gross) |
|----------------|-------------------------|
| February 2016 | \$2,484,170 |
| March 2016 | \$4,358,754 |
| April 2016 | \$3,735,111 |
| May 2016 | \$4,339,440 |
| June 2016 | \$5,735,508 |
| July 2016 | \$5,533,949 |
| August 2016 | \$7,345,281 |
| September 2016 | \$6,679,585 |
| October 2016 | \$7,831,157 |
| November 2016 | \$6,463,877 |
| Year to Date | \$54,506,832 |



Source: Oregon Department of Revenue Research Section (monthly receipt report data)

Note: Amounts reflect payments made by businesses during the calendar month, rather than tax liability. Tax liability is determined by a tax return. Amounts cannot be directly translated to sales made by businesses to consumers, for several reasons. Retailers retain two percent of taxes collected as a reimbursement for the cost of tax collection. Payments might have been made later than when they were due, especially when the program was new.

Date updated: December 6, 2016

Oregon Marijuana Tax Statistics: Characteristics of Filed Returns

2016 Quarter 1: sales occurring January 4, 2016 through March 31, 2016

| <u>Region</u> | <u>Number of Filed Returns¹</u> | <u>Grams of Flower Sold² (rounded)</u> | <u>Average Grams by Establishment</u> | | <u>Average Price per Gram</u> | <u>Sales for All Products</u> | | <u>State Tax Liability³ for the Quarter</u> |
|----------------------------|--|---|---------------------------------------|------------------|-------------------------------|-------------------------------|---------------------|--|
| | | | <u>(rounded)</u> | <u>(rounded)</u> | | <u>(rounded)</u> | <u>(rounded)</u> | |
| Central/Gorge/Northeastern | 23 | 406,000 | 18,000 | | \$8.19 | \$3,324,000 | \$814,459 | |
| Oregon Coast | 28 | 376,000 | 13,000 | | \$8.98 | \$3,382,000 | \$828,583 | |
| Portland City Limits | 109 | 2,170,000 | 20,000 | | \$8.42 | \$18,274,000 | \$4,476,425 | |
| Portland Surrounding Areas | 24 | 869,000 | 36,000 | | \$9.42 | \$8,188,000 | \$2,006,167 | |
| Southern Oregon | 23 | 273,000 | 12,000 | | \$8.84 | \$2,414,000 | \$591,883 | |
| Willamette Valley | 46 | 903,000 | 20,000 | | \$9.07 | \$8,183,000 | \$2,000,658 | |
| Statewide Total | 253 | 4,997,000 | 20,000 | | \$8.76 | \$43,766,000 | \$10,718,176 | |

¹Approximately 25 percent of businesses either did not file any tax return for Quarter 1 or filed one that did not contain sensible component information.

²Grams sold only includes flower. Sales of leaves, seeds, and immature plants are too few to report.

³The total liability this quarter is \$13,455,202. That includes returns filed by the Department of Revenue because businesses did not file.

Most businesses made payments even if they didn't file a return.

Some payments were submitted late during the first quarter of the marijuana tax.

The presence of rounding may prevent exact matching of mathematical calculations.

Source: Oregon Department of Revenue Research Section

Statistics as of October 10, 2016