

Senate Bill 861

Sponsored by Senator GORSEK

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 that employee of marijuana retailer may be subject to collection for marijuana retail tax not remitted to Department of Revenue, only if employee was authorized to pay or direct payment of tax, and employee was, or should have been, aware that taxes collected by marijuana retailer were not remitted to department.

Applies to tax remittances first owed department on or after January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to marijuana retail tax delinquencies; creating new provisions; amending ORS 475B.715; and
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 475B.715 is amended to read:

6 475B.715. (1) Every person who collects any amount under ORS 475B.710 shall hold the same in
7 trust for the State of Oregon and for the payment thereof to the Department of Revenue in the
8 manner and at the time provided in ORS 475B.710.

9 (2) At any time a marijuana retailer fails to remit any amount collected, the department may
10 enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount
11 and all penalties, interest and collection charges accrued thereon. The warrant shall be issued, re-
12 corded and proceeded upon in the same manner and shall have the same force and effect as is pre-
13 scribed with respect to warrants for the collection of delinquent income taxes.

14 (3)(a) In the case of a marijuana retailer that is assessed pursuant to the provisions of ORS
15 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, *employee*
16 or member of the marijuana retailer, **or to an employee of the marijuana retailer described in**
17 **subsection (6) of this section**, within three years from the time of assessment. Within 30 days from
18 the date the notice of liability is mailed to the officer, employee or member, the officer, employee
19 or member shall pay the assessment, plus penalties and interest, or advise the department in writing
20 of objections to the liability and, if desired, request a conference. A conference shall be governed
21 by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

22 (b) After a conference or, if no conference is requested, a determination of the issues considering
23 the written objections, the department shall mail the officer, employee or member a conference let-
24 ter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the con-
25 ference letter is mailed to the officer, employee or member, the officer, employee or member shall
26 pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided
27 for an appeal from a notice of assessment.

28 (c) If the department does not receive payment or written objection to the notice of liability
29 within 30 days after the notice of liability was mailed, the notice of liability becomes final. In that

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 event, the officer, employee or member may appeal the notice of liability to the tax court within 90
2 days after it became final in the manner provided for an appeal from a notice of assessment.

3 (4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS
4 305.265 (10) and 314.400, the department, in addition to any action described in the provisions of
5 ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, em-
6 ployee or member any time within three years after the assessment. The time of assessment against
7 the officer, employee or member is 30 days after the date the notice of determination and assessment
8 is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the
9 officer, employee or member, the officer, employee or member shall pay the assessment, plus penal-
10 ties and interest, or advise the department in writing of objections to the assessment and, if desired,
11 request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining
12 to a conference requested from a notice of deficiency.

13 (b) After a conference or, if no conference is requested, a determination of the issues considering
14 the written objections, the department shall mail the officer, employee or member a conference let-
15 ter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days
16 from the date the conference letter is mailed to the officer, employee or member, the officer, em-
17 ployee or member shall pay the assessment, plus penalties and interest, or appeal in the manner
18 provided for an appeal from a notice of assessment.

19 (c) If the department does not receive payment or written objection to the notice of determi-
20 nation and assessment within 30 days after the notice of determination and assessment was mailed,
21 the notice of determination and assessment becomes final. In that event, the officer, employee or
22 member may appeal the notice of determination and assessment to the tax court within 90 days after
23 it became final in the manner provided for an appeal from a notice of assessment.

24 (5)(a) More than one officer or employee of a corporation may be held jointly and severally lia-
25 ble for payment of taxes.

26 (b) Notwithstanding the confidentiality provisions of ORS 475B.755, if more than one officer or
27 employee of a corporation may be held jointly and severally liable for payment of taxes, the de-
28 partment may require any or all of the officers, members or employees who may be held liable to
29 appear before the department for a joint determination of liability. The department shall notify each
30 officer, member or employee of the time and place set for the determination of liability.

31 (c) Each person notified of a joint determination under this subsection shall appear and present
32 such information as is necessary to establish that person's liability or nonliability for payment of
33 taxes to the department. If a person who was notified fails to appear, the department shall make its
34 determination on the basis of all the information and evidence presented. The department's deter-
35 mination is binding on all persons notified and required to appear under this subsection.

36 (d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 475B.755 by any person
37 determined to be liable for unpaid taxes under this subsection, each person required to appear be-
38 fore the department under this subsection shall be impleaded by the plaintiff. The department may
39 implead any officer, employee or member who may be held jointly and severally liable for the pay-
40 ment of taxes. Each person impleaded under this paragraph shall be made a party to the action be-
41 fore the tax court and shall make available to the tax court the information that was presented
42 before the department, as well as other information that may be presented to the court.

43 (B) The court may determine that one or more persons impleaded under this paragraph are lia-
44 ble for unpaid taxes without regard to any earlier determination by the department that an
45 impleaded person was not liable for unpaid taxes.

1 (C) If a person required to appear before the court under this subsection fails or refuses to ap-
2 pear or bring such information in part or in whole, or is outside the jurisdiction of the tax court,
3 the court shall make its determination on the basis of all the evidence introduced. Notwithstanding
4 ORS 475B.755, the evidence constitutes a public record and shall be available to the parties and the
5 court. The determination of the tax court is binding on all persons made parties to the action under
6 this subsection.

7 (e) This section may not be construed to preclude a determination by the department or the
8 Oregon Tax Court that more than one officer, employee or member are jointly and severally liable
9 for unpaid taxes.

10 **(6) This section applies to an employee of a marijuana retailer only if the employee:**

11 **(a) Was authorized to pay the marijuana tax or direct the payment of tax at the time the**
12 **duty arose to collect or pay over the unpaid tax; and**

13 **(b) Was, or should have been, aware that the taxes collected by the marijuana retailer**
14 **were not remitted to the department.**

15 **SECTION 2. The amendments to ORS 475B.715 by section 1 of this 2021 Act apply to tax**
16 **remittances first owed the Department of Revenue on or after January 1, 2022.**

17 **SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021**
18 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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