

Requested by Representative WITT

**PROPOSED AMENDMENTS TO
HOUSE BILL 2734**

1 In line 2 of the printed bill, after “tax” insert “; creating new provisions;
2 amending ORS 305.992; prescribing an effective date; and providing for reve-
3 nue raising that requires approval by a three-fifths majority”.

4 Delete lines 4 through 10 and insert:

5 **“SECTION 1. As used in sections 1 to 14 of this 2021 Act:**

6 **“(1) ‘Dealer’ has the meaning given that term in ORS 830.700.**

7 **“(2) ‘Motorboat’ has the meaning given that term in ORS 830.005.**

8 **“(3) ‘Retail sales price’ means the total price paid at retail for a**
9 **taxable wake boat, exclusive of the amount of any excise, privilege or**
10 **use tax, to a dealer by a purchaser of the taxable wake boat.**

11 **“(4) ‘Taxable wake boat’ means a new or used wake boat that is sold**
12 **at retail and has a maximum loading weight, including ballast, in ex-**
13 **cess of 4,000 pounds.**

14 **“(5) ‘Wake boat’ means a motorboat that is designed for and capa-**
15 **ble of creating a wake that is large enough for people towed by the**
16 **motorboat to engage in wakeboarding or wake surfing.**

17 **“SECTION 2. (1) An excise tax of five percent of the retail sales**
18 **price is imposed on each sale in this state of a taxable wake boat and**
19 **becomes due upon the sale.**

20 **“(2) The excise tax is a liability of the purchaser of the taxable wake**
21 **boat.**

1 “(3) The amount of the excise tax shall be separately stated on an
2 invoice, receipt or other similar document that the dealer provides to
3 the purchaser or shall be otherwise disclosed to the purchaser.

4 “(4) A dealer shall collect the excise tax at the time of the taxable
5 sale.

6 “(5) A purchaser’s liability for the excise tax is satisfied by a valid
7 receipt given to the purchaser by the dealer of the taxable wake boat
8 showing payment of the excise tax.

9 “SECTION 3. (1) A use tax is imposed on the storage, use or other
10 consumption in this state of taxable wake boats purchased at retail
11 from any dealer.

12 “(2) The use tax shall be computed at the rate of five percent of the
13 retail sales price of the taxable wake boat.

14 “(3) The use tax is a liability of the purchaser of the taxable wake
15 boat.

16 “(4) The use tax shall be reduced, but not below zero, by the amount
17 of any privilege, excise, sales or use tax imposed by any jurisdiction
18 on the sale, or on the storage, use or other consumption, of the taxa-
19 ble wake boat. The reduction under this subsection shall be made only
20 upon a showing by the purchaser that a privilege, excise, sales or use
21 tax has been paid.

22 “(5) The amount of the use tax shall be separately stated on an in-
23 voice, receipt or other similar document that the dealer provides to
24 the purchaser or shall be otherwise disclosed to the purchaser.

25 “(6) A purchaser’s liability for the use tax is satisfied by a valid
26 receipt given to the purchaser under section 4 of this 2021 Act by the
27 dealer of the taxable wake boat.

28 “SECTION 4. (1) A dealer shall collect the use tax imposed under
29 section 3 of this 2021 Act from a purchaser of a taxable wake boat and
30 give the purchaser a receipt for the use tax in the manner and form

1 **prescribed by the Department of Revenue if:**

2 **“(a) The dealer is:**

3 **“(A) Engaged in business in this state;**

4 **“(B) Required to collect the use tax; or**

5 **“(C) Authorized by the department, under rules the department**
6 **adopts, to collect the use tax and, for purposes of the use tax, regarded**
7 **as a dealer engaged in business in this state; and**

8 **“(b) The dealer makes sales of taxable wake boats for storage, use**
9 **or other consumption in this state that are subject to the use tax.**

10 **“(2) A dealer required to collect the use tax under this section shall**
11 **collect the tax:**

12 **“(a) At the time of the taxable sale; or**

13 **“(b) If the storage, use or other consumption of the taxable wake**
14 **boat is not taxable at the time of sale, at the time the storage, use or**
15 **other consumption becomes taxable.**

16 **“(3) To ensure the proper administration of section 3 of this 2021**
17 **Act, and to prevent evasion of the use tax, the following presumptions**
18 **are established:**

19 **“(a) A taxable wake boat is stored, used or otherwise consumed in**
20 **this state if it is present in this state for private or public display or**
21 **storage.**

22 **“(b)(A) A taxable wake boat sold by any dealer for delivery in this**
23 **state was sold for storage, use or other consumption in this state un-**
24 **less the contrary is proved.**

25 **“(B) The burden of proving the contrary is on the dealer unless the**
26 **dealer takes from the purchaser a resale certificate to the effect that**
27 **the taxable wake boat was purchased for resale in the ordinary course**
28 **of the purchaser’s business.**

29 **“(c)(A) A taxable wake boat delivered outside this state to a pur-**
30 **chaser known by the dealer to be a resident of this state was pur-**

1 chased from the dealer for storage, use or other consumption in this
2 state and stored, used or otherwise consumed in this state unless the
3 contrary is proved.

4 “(B) The contrary may be proved by:

5 “(i) A statement in writing, signed by the purchaser or an author-
6 ized agent of the purchaser and retained by the dealer, that the taxa-
7 ble wake boat was purchased for storage, use or other consumption
8 exclusively at a designated point or points outside this state; or

9 “(ii) Other evidence satisfactory to the department that the taxable
10 wake boat was not purchased for storage, use or other consumption
11 in this state.

12 “SECTION 5. (1) The Department of Revenue shall deposit all reve-
13 nue collected from the excise tax imposed under section 2 of this 2021
14 Act and the use tax imposed under section 3 of this 2021 Act in a sus-
15 pense account established under ORS 293.445 for the purposes of re-
16 ceiving the tax revenue. The department may pay expenses for the
17 administration and enforcement of the excise tax and the use tax out
18 of moneys received from the excise tax and the use tax. Amounts
19 necessary to pay administrative and enforcement expenses are con-
20 tinuously appropriated to the department from the suspense account.

21 “(2) After payment of administrative and enforcement expenses
22 under subsection (1) of this section and refunds or credits arising from
23 erroneous overpayments, the department shall transfer the balance
24 of the moneys received from the excise tax and the use tax to the
25 Wake Boat Enforcement Fund established under section 15 of this 2021
26 Act.

27 “SECTION 6. (1) Except as otherwise provided in sections 1 to 14
28 of this 2021 Act, the excise tax imposed under section 2 of this 2021
29 Act and the use tax imposed under section 3 of this 2021 Act shall be
30 collected at the point of sale and remitted by each dealer that engages

1 in the retail sale of taxable wake boats. Each tax is considered a tax
2 upon the dealer that is required to collect the tax, and the dealer is
3 considered a taxpayer.

4 “(2) Each dealer of taxable wake boats that collects taxes under
5 sections 2 and 3 of this 2021 Act shall file a return with the Department
6 of Revenue, in the form and manner prescribed by the department, on
7 or before the last day of January, April, July and October of each year
8 for the previous calendar quarter. The return shall show the amount
9 of wake boat taxes due for retail sales made during the calendar
10 quarter to which the return relates.

11 “(3) Each dealer shall pay the applicable wake boat taxes to the
12 department in the form and manner prescribed by the department, but
13 not later than the date of submitting each quarterly return, without
14 regard to extensions under subsection (5) of this section.

15 “(4) Dealers of taxable wake boats shall file the returns required
16 under this section with respect to the excise tax imposed under section
17 2 of this 2021 Act regardless of whether any taxes are owed.

18 “(5) The department may extend the time for making any return
19 required under this section if a written request is filed with the de-
20 partment during or prior to the period for which the extension may
21 be granted. The department may not grant an extension of more than
22 30 days.

23 “(6) Interest shall be added to delinquent tax amounts at the rate
24 established under ORS 305.220 from the time the return to which the
25 delinquent tax amounts relate was originally required to be filed to the
26 time of payment.

27 **“SECTION 7. (1) Every dealer of taxable wake boats who collects**
28 **any amount of wake boat taxes shall hold the amount in trust for the**
29 **State of Oregon and for payment to the Department of Revenue in the**
30 **manner and at the time provided in section 6 of this 2021 Act.**

1 **“(2) If a dealer of taxable wake boats fails to remit any amount of**
2 **wake boat taxes, whether collected or not, the department may en-**
3 **force collection by the issuance of a distraint warrant for the col-**
4 **lection of the delinquent amount and all penalties, interest and**
5 **collection charges accrued on the delinquent amount. The warrant**
6 **shall be issued and proceeded upon in the same manner and shall have**
7 **the same force and effect as is prescribed with respect to warrants for**
8 **the collection of delinquent income taxes.**

9 **“(3)(a) In the case of a dealer that is assessed under the provisions**
10 **of ORS 305.265 (12) and 314.407 (1), the department may issue a notice**
11 **of liability to any officer, employee or member of the dealer at any**
12 **time within three years after the assessment. Within 30 days after the**
13 **date on which the notice of liability is mailed to the officer, employee**
14 **or member, the officer, employee or member shall pay the assessment,**
15 **plus penalties and interest, or advise the department in writing of ob-**
16 **jections to the liability and, if desired, request a conference. A con-**
17 **ference shall be governed by the provisions of ORS 305.265 pertaining**
18 **to a conference requested from a notice of deficiency.**

19 **“(b) After a conference or, if no conference is requested, a deter-**
20 **mination of the issues raised in the written objections, the department**
21 **shall mail the officer, employee or member a conference letter af-**
22 **firming, canceling or adjusting the notice of liability. Within 90 days**
23 **after the date on which the conference letter is mailed to the officer,**
24 **employee or member, the officer, employee or member shall pay the**
25 **assessment, plus penalties and interest, or appeal to the tax court in**
26 **the manner provided for an appeal from a notice of assessment.**

27 **“(c) If the department does not receive payment or written ob-**
28 **jection to the notice of liability within 30 days after the notice of li-**
29 **ability was mailed, the notice of liability becomes final. The officer,**
30 **employee or member may appeal the notice of liability to the tax court**

1 within 90 days after the notice became final in the manner provided
2 for an appeal from a notice of assessment.

3 “(4)(a) In the case of a dealer that fails to file a return on the due
4 date, in addition to any action described in the provisions of ORS
5 305.265 (10) and 314.400, the department may issue a notice of determi-
6 nation and assessment to any officer, employee or member of the
7 dealer at any time within three years after the assessment. The time
8 of assessment against the officer, employee or member is 30 days after
9 the date on which the notice of determination and assessment is
10 mailed. Within 30 days after the date on which the notice of determi-
11 nation and assessment is mailed to the officer, employee or member,
12 the officer, employee or member shall pay the assessment, plus pen-
13 alties and interest, or advise the department in writing of objections
14 to the assessment and, if desired, request a conference. A conference
15 shall be governed by the provisions of ORS 305.265 pertaining to a
16 conference requested from a notice of deficiency.

17 “(b) After a conference or, if no conference is requested, a deter-
18 mination of the issues raised in the written objections, the department
19 shall mail the officer, employee or member a conference letter af-
20 firming, canceling or adjusting the notice of determination and as-
21 sessment. Within 90 days after the date on which the conference letter
22 is mailed to the officer, employee or member, the officer, employee
23 or member shall pay the assessment, plus penalties and interest, or
24 appeal to the tax court in the manner provided for an appeal from a
25 notice of assessment.

26 “(c) If the department does not receive payment or written ob-
27 jection to the notice of determination and assessment within 30 days
28 after the notice of determination and assessment was mailed, the no-
29 tice of determination and assessment becomes final. The officer, em-
30 ployee or member may appeal the notice of determination and

1 assessment to the tax court within 90 days after the notice became
2 final in the manner provided for an appeal from a notice of assess-
3 ment.

4 “(5)(a) More than one officer or employee of a corporation may be
5 held jointly and severally liable for payment of wake boat taxes.

6 “(b) Notwithstanding the confidentiality provisions of section 12 of
7 this 2021 Act, if the department determines that more than one officer
8 or employee of a corporation may be held jointly and severally liable
9 for payment of the wake boat taxes, the department may require any
10 or all of the officers or employees to appear before the department for
11 a joint determination of liability. The department shall notify each
12 officer or employee of the time and place set for the determination of
13 liability.

14 “(c) Each individual notified of a joint determination under this
15 subsection must appear and present such information as is necessary
16 to establish the individual’s liability or nonliability for payment of the
17 taxes to the department. If an individual who was notified fails to ap-
18 pear, the department shall make the determination on the basis of all
19 the information and evidence presented. The department’s determi-
20 nation is binding on all individuals notified and required to appear
21 under this subsection.

22 “(d)(A) If any individual determined to be liable for unpaid wake
23 boat taxes under this subsection appeals the determination to the
24 Oregon Tax Court under section 11 of this 2021 Act, the individual
25 plaintiff shall implead all individuals required to appear with the
26 plaintiff before the department under this subsection. The department
27 may implead any officer or employee who may be held jointly and se-
28 verally liable for the payment of the wake boat taxes. Each individual
29 impleaded under this paragraph shall be made a party to the action
30 before the tax court and shall make available to the tax court the in-

1 formation that was presented before the department, as well as other
2 information that may be presented to the tax court.

3 “(B) The tax court may determine that one or more individuals
4 impleaded under this paragraph are liable for unpaid wake boat taxes
5 without regard to any earlier determination by the department that
6 an impleaded individual was not liable for the unpaid taxes.

7 “(C) If an individual required to appear before the tax court under
8 this subsection fails or refuses to appear or bring such information in
9 part or in whole, or is outside the jurisdiction of the tax court, the tax
10 court shall make its determination on the basis of all the evidence
11 introduced. Notwithstanding section 12 of this 2021 Act, the evidence
12 introduced in the tax court constitutes a public record and shall be
13 available to the parties and the tax court. The determination of the
14 tax court is binding on all individuals made parties to the action under
15 this subsection.

16 “(e) This subsection may not be construed to preclude a determi-
17 nation by the department or the tax court that more than one officer
18 or employee is jointly and severally liable for unpaid wake boat taxes.

19 “SECTION 8. Any purchaser liable for the excise tax imposed under
20 section 2 of this 2021 Act or the use tax imposed under section 3 of this
21 2021 Act and from whom the tax has not been collected shall, on or
22 before the 30th day following the date on which the tax became due,
23 file with the Department of Revenue a report of the amount of tax due
24 from the purchaser in a form and manner prescribed by the depart-
25 ment. The purchaser shall remit the amount of tax due with the re-
26 port.

27 “SECTION 9. (1)(a) A dealer shall keep receipts, invoices and other
28 pertinent records related to retail sales of taxable wake boats in the
29 form required by the Department of Revenue. Each record shall be
30 preserved for five years from the time to which the record relates, or

1 for as long as the dealer retains the taxable wake boats to which the
2 record relates, whichever is later.

3 “(b) During the retention period and at any time prior to the de-
4 struction of records, the department may give written notice to the
5 dealer not to destroy records described in the notice without written
6 permission of the department.

7 “(c) Notwithstanding any other provision of law, the department
8 shall preserve reports and returns filed with the department for at
9 least five years.

10 “(2) ORS 314.425 applies to the authority of the Department of
11 Revenue to examine, or cause to be examined by an agent or repre-
12 sentative designated by the department for the purpose, any books,
13 papers, records or memoranda bearing upon the matter required to be
14 included in any return required under sections 1 to 14 of this 2021 Act
15 for the purpose of ascertaining the correctness of the return or for the
16 purpose of making an estimate of the taxable sales of the taxpayer.

17 “SECTION 10. (1) The Department of Revenue may, by order or
18 subpoena to be served with the same force and effect and in the same
19 manner as a subpoena is served in a civil action in the circuit court
20 or the Oregon Tax Court, require the production at any time and place
21 the department designates of any books, papers, accounts or other
22 information necessary to carry out sections 1 to 14 of this 2021 Act.
23 The department may require the attendance of any individual having
24 knowledge of the premises, and may take testimony and require proof
25 material for the information, with power to administer oaths to the
26 individual.

27 “(2)(a) If an individual fails to comply with a subpoena or order of
28 the department or to produce or permit the examination or inspection
29 of any books, papers, records and equipment pertinent to an investi-
30 gation or inquiry under sections 1 to 14 of this 2021 Act, or to testify

1 to any matter regarding which the individual is lawfully interrogated,
2 the department may apply to the Oregon Tax Court or to the circuit
3 court of the county in which the individual resides or where the indi-
4 vidual is for an order to the individual to attend and testify or other-
5 wise comply with the demand or request of the department.

6 “(b) The department shall apply to the court by ex parte motion,
7 upon which the court shall make an order requiring the individual
8 against whom the motion is directed to comply with the request or
9 demand of the department within 10 days after the service of the or-
10 der, or within the additional time granted by the court, or to justify
11 the failure within that time. The order shall be served upon the indi-
12 vidual to whom it is directed in the manner required by this state for
13 service of process, which is required to confer jurisdiction upon the
14 court.

15 “(3) Failure to obey any order issued by the court under this section
16 is contempt of court.

17 “(4) The remedy provided by this section is in addition to other
18 remedies, civil or criminal, existing under the tax laws or other laws
19 of this state.

20 **“SECTION 11. (1) Notwithstanding the confidentiality provisions of**
21 **section 12 of this 2021 Act, the Department of Revenue may disclose**
22 **information received under sections 1 to 14 of this 2021 Act to the State**
23 **Marine Board for the purposes of carrying out the provisions of sec-**
24 **tion 3 this 2021 Act.**

25 “(2) The State Marine Board may disclose information obtained
26 under section 3 of this 2021 Act to the Department of Revenue for the
27 purposes of carrying out the provisions of sections 1 to 14 of this 2021
28 Act.

29 “(3) Any officer or employee of the State Marine Board to whom
30 information is disclosed under subsection (1) of this section is not re-

1 **quired to execute a certificate under ORS 314.840 (3)(a).**

2 **“(4) Except as otherwise provided in sections 1 to 14 of this 2021 Act,**
3 **a person aggrieved by an act or determination of the Department of**
4 **Revenue or its authorized agent under sections 1 to 14 of this 2021 Act**
5 **may appeal, within 90 days after the act or determination, to the**
6 **Oregon Tax Court in the manner provided in ORS 305.404 to 305.560.**
7 **These appeal rights are the exclusive remedy available to determine**
8 **the person’s liability for the wake boat taxes.**

9 **“SECTION 12. Except as otherwise provided in sections 1 to 14 of**
10 **this 2021 Act or where the context requires otherwise, the provisions**
11 **of ORS chapters 305 and 314 as to the audit and examination of re-**
12 **turns, periods of limitation, determinations of and notices of defi-**
13 **ciencies, assessments, collections, liens, delinquencies, claims for**
14 **refund and refunds, conferences, appeals to the Oregon Tax Court,**
15 **stays of collection pending appeal, confidentiality of returns and the**
16 **related penalties, and the related procedures, apply to the determi-**
17 **nations of taxes, penalties and interest under sections 1 to 14 of this**
18 **2021 Act.**

19 **“SECTION 13. (1) The Department of Revenue shall administer and**
20 **enforce sections 1 to 14 of this 2021 Act.**

21 **“(2) The department may adopt or establish rules and procedures**
22 **that the department considers necessary or appropriate for the imple-**
23 **mentation, administration and enforcement of sections 1 to 14 of this**
24 **2021 Act and that are consistent with sections 1 to 14 of this 2021 Act.**

25 **“SECTION 14. (1) The Department of Revenue and the State Marine**
26 **Board shall enter into an agreement pursuant to which the State Ma-**
27 **rine Board shall assist the Department of Revenue in the collection**
28 **of the use tax imposed under section 3 of this 2021 Act and any other**
29 **functions of the Department of Revenue under sections 1 to 14 of this**
30 **2021 Act as may be provided under the agreement.**

1 “(2) The agreement is not intended to preclude performance by the
2 Department of Revenue of collection functions as from time to time
3 may be required, nor is the agreement intended to preclude the per-
4 formance of functions by the State Marine Board, under less formal
5 arrangements made with the Department of Revenue, with respect to
6 the use tax imposed under section 3 of this 2021 Act if the functions
7 are not specifically mentioned in the agreement.

8 “(3) The State Marine Board may contact, consult with and enter
9 into agreements with any public or private person for the purpose of
10 assisting the Department of Revenue in the collection of the use tax
11 under this section.

12 “(4) The collection of taxes under sections 1 to 14 of this 2021 Act
13 by the State Marine Board does not render the State Marine Board or
14 the agents and employees of the State Marine Board responsible for
15 collection of the taxes.

16 “SECTION 15. The Wake Boat Enforcement Fund is established in
17 the State Treasury, separate and distinct from the General Fund. In-
18 terest earned by the Wake Boat Enforcement Fund must be credited
19 to the fund. The Wake Boat Enforcement Fund consists of moneys
20 deposited in the fund under section 5 of this 2021 Act and may include
21 moneys appropriated, allocated, deposited or transferred to the fund
22 by the Legislative Assembly or otherwise and interest earned on
23 moneys in the fund. The moneys in the fund are continuously appro-
24 priated to the State Marine Board for the purpose of providing grants
25 to law enforcement agencies for funding law enforcement actions on
26 the Willamette and Columbia rivers and their Oregon tributaries.

27 “SECTION 16. ORS 305.992 is amended to read:

28 “305.992. (1) If any returns required to be filed under ORS 320.400 to
29 320.490, 475B.700 to 475B.760 or 803.203 or **sections 1 to 14 of this 2021 Act**
30 **or** ORS chapter 118, 314, 316, 317, 318, 321 or 323 or under a local tax ad-

1 ministered by the Department of Revenue under ORS 305.620 are not filed for
2 three consecutive years by the due date (including extensions) of the return
3 required for the third consecutive year, there shall be a penalty for each year
4 of 100 percent of the tax liability determined after credits and prepayments
5 for each such year.

6 “(2) The penalty imposed under this section is in addition to any other
7 penalty imposed by law. However, the total amount of penalties imposed for
8 any taxable year under this section, ORS 305.265 (13), 314.400, 323.403, 323.585
9 or 475B.755 **or section 12 of this 2021 Act** may not exceed 100 percent of
10 the tax liability.

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

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