

House Bill 2294

Sponsored by Representative MORGAN (Presession filed.)

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**.

Imposes tax on wholesale sales of marijuana items across county borders. Applies to wholesale sales of marijuana items occurring on or after January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of marijuana sales; creating new provisions; amending ORS 475B.700, 475B.715,
3 475B.720, 475B.745 and 475B.760; prescribing an effective date; and providing for revenue raising
4 that requires approval by a three-fifths majority.

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

6 **SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS 475B.700**
7 **to 475B.760.**

8 **SECTION 2. (1) A tax is hereby imposed upon the wholesale sale of marijuana items in**
9 **this state. The tax imposed by this section is a direct tax on the wholesale marijuana mer-**
10 **chant. The tax shall be imposed upon the wholesale sale of marijuana items at the first sale**
11 **outside the county of origin.**

12 **(2) The tax imposed under this section shall be imposed at the rate of:**

13 **(a) _____ percent of the wholesale price of usable marijuana;**

14 **(b) _____ percent of the wholesale price of immature marijuana plants;**

15 **(c) _____ percent of the wholesale price of a cannabinoid edible;**

16 **(d) _____ percent of the wholesale price of a cannabinoid concentrate;**

17 **(e) _____ percent of the wholesale price of a cannabinoid extract;**

18 **(f) _____ percent of the wholesale price of a cannabinoid product that is intended to**
19 **be used by applying the cannabinoid product to the skin or hair; and**

20 **(g) _____ percent of the wholesale price of cannabinoid products other than those de-**
21 **scribed in paragraph (f) of this subsection.**

22 **(3) If the tax imposed under this section does not equal an amount calculable to a whole**
23 **cent, the tax shall be equal to the next higher whole cent.**

24 **(4) Except as otherwise provided by the Department of Revenue by rule, the amount of**
25 **the tax shall be separately stated on an invoice, receipt or other similar document that the**
26 **wholesale marijuana merchant provides to the purchaser at the time at which the wholesale**
27 **sale occurs.**

28 **(5) A person may not knowingly sell, purchase, install, transfer or possess electronic**
29 **devices or software programs for the purposes of:**

30 **(a) Hiding or removing records of wholesale sales of marijuana items; or**

31 **(b) Falsifying records of wholesale sales of marijuana items.**

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 (6)(a) A wholesale marijuana merchant may not discount a marijuana item or offer a
2 marijuana item for free if the wholesale sale of the marijuana item is made in conjunction
3 with the wholesale sale of any other item.

4 (b) Paragraph (a) of this subsection does not affect any provision of ORS 475B.010 to
5 475B.545 or any rule adopted by the Oregon Liquor Control Commission pursuant to ORS
6 475B.010 to 475B.545 that is related to the wholesale sale of marijuana items.

7 **SECTION 3.** (1) Except as otherwise provided in ORS 475B.700 to 475B.760, the tax im-
8 posed upon a wholesale marijuana merchant under section 2 of this 2021 Act shall be col-
9 lected at the point of sale and remitted by each wholesale marijuana merchant that engages
10 in the wholesale sale of marijuana items. The tax is considered a tax upon the wholesale
11 marijuana merchant that is required to collect the tax, and the wholesale marijuana mer-
12 chant is considered a taxpayer.

13 (2) The wholesale marijuana merchant shall file a return with the Department of Re-
14 venue on or before the last day of January, April, July and October of each year for the
15 previous calendar quarter.

16 (3) The wholesale marijuana merchant shall pay the tax to the department in the form
17 and manner prescribed by the department, but not later than with each quarterly return,
18 without regard to an extension granted under subsection (5) of this section.

19 (4) The wholesale marijuana merchant shall file the returns required under this section
20 regardless of whether any tax is owed.

21 (5) For good cause, the department may extend the time for filing a return under this
22 section. The extension may be granted at any time if a written request is filed with the de-
23 partment during or prior to the period for which the extension may be granted. The depart-
24 ment may not grant an extension of more than 30 days.

25 (6) Interest shall be added at the rate established under ORS 305.220 from the time the
26 return was originally required to be filed to the time of payment.

27 (7) If a wholesale marijuana merchant fails to file a return or pay the tax as required
28 by this section, the department shall:

29 (a) Impose a penalty in the manner provided in ORS 314.400; and

30 (b) If the department has issued to the wholesale marijuana merchant a distraint war-
31 rant or notice of determination and assessment under ORS 475B.715, provide written notifi-
32 cation to the Oregon Liquor Control Commission of the issuance of the distraint warrant or
33 notice of determination and assessment.

34 (8) Except as provided in subsections (9) and (10) of this section, the period prescribed
35 for the department to allow or make a refund of any overpayment of tax paid under ORS
36 475B.700 to 475B.760 is as provided in ORS 314.415.

37 (9)(a) The department shall first apply any overpayment of tax by a wholesale marijuana
38 merchant to any marijuana tax that is owed by the wholesale marijuana merchant.

39 (b) If after any offset against any delinquent amount the overpayment of tax remains
40 greater than \$1,000, the remaining refund shall be applied as a credit against the next sub-
41 sequent calendar quarter as an estimated payment.

42 (10) The department may not make a refund of, or credit, any overpayment of tax under
43 ORS 475B.700 to 475B.760 that was credited to the account of a marijuana producer,
44 processor or wholesaler under subsection (9)(b) of this section if the return for that tax pe-
45 riod is not filed within three years after the due date of that return.

1 **SECTION 4.** (1) There is established the Oregon Wholesale Marijuana Account, separate
2 and distinct from the General Fund.

3 (2) The Oregon Wholesale Marijuana Account shall consist of moneys transferred to the
4 account under ORS 475B.760 (2)(a).

5 (3)(a) The Department of Revenue shall certify quarterly the amount of moneys available
6 in the Oregon Wholesale Marijuana Account.

7 (b) The department shall transfer quarterly the moneys in the Oregon Wholesale
8 Marijuana Account to counties, based upon the amount of taxes collected during that quarter
9 and resulting from wholesale sales of marijuana items that left the boundaries of each
10 county of origin.

11 **SECTION 5.** ORS 475B.700 is amended to read:

12 475B.700. As used in ORS 475B.700 to 475B.760:

13 (1) “Cannabinoid concentrate,” “cannabinoid edible,” “cannabinoid extract,” “cannabinoid prod-
14 uct,” “consumer,” “immature marijuana plant,” “marijuana flowers,” “marijuana items,” “marijuana
15 leaves,” “marijuana processor,” “marijuana producer,” “marijuana retailer” and “usable marijuana”
16 have the meanings given those terms in ORS 475B.015.

17 (2) “Retail sale” means any transfer, exchange, gift or barter of a marijuana item by any person
18 to a consumer.

19 (3) “Retail sales price” means the price paid for a marijuana item, excluding tax, to a marijuana
20 retailer by or on behalf of a consumer of the marijuana item.

21 (4) “Wholesale marijuana merchant” means a marijuana producer, a marijuana processor
22 or a marijuana wholesaler.

23 (5) “Wholesale sale” means the price paid to a wholesale marijuana merchant for a
24 marijuana item.

25 **SECTION 6.** ORS 475B.715 is amended to read:

26 475B.715. (1) Every person who collects any amount under ORS 475B.710 or section 3 of this
27 2021 Act shall hold the same in trust for the State of Oregon and for the payment thereof to the
28 Department of Revenue in the manner and at the time provided in ORS 475B.710 or section 3 of
29 this 2021 Act.

30 (2) At any time a marijuana retailer or a wholesale marijuana merchant fails to remit any
31 amount collected, the department may enforce collection by the issuance of a distraint warrant for
32 the collection of the delinquent amount and all penalties, interest and collection charges accrued
33 thereon. The warrant shall be issued, recorded and proceeded upon in the same manner and shall
34 have the same force and effect as is prescribed with respect to warrants for the collection of de-
35 linquent income taxes.

36 (3)(a) In the case of a marijuana retailer or a wholesale marijuana merchant that is assessed
37 pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice
38 of liability to any officer, employee or member of the marijuana retailer or of the wholesale
39 marijuana merchant within three years from the time of assessment. Within 30 days from the date
40 the notice of liability is mailed to the officer, employee or member, the officer, employee or member
41 shall pay the assessment, plus penalties and interest, or advise the department in writing of ob-
42 jections to the liability and, if desired, request a conference. A conference shall be governed by the
43 provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

44 (b) After a conference or, if no conference is requested, a determination of the issues considering
45 the written objections, the department shall mail the officer, employee or member a conference let-

1 ter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the con-
2 ference letter is mailed to the officer, employee or member, the officer, employee or member shall
3 pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided
4 for an appeal from a notice of assessment.

5 (c) If the department does not receive payment or written objection to the notice of liability
6 within 30 days after the notice of liability was mailed, the notice of liability becomes final. In that
7 event, the officer, employee or member may appeal the notice of liability to the tax court within 90
8 days after it became final in the manner provided for an appeal from a notice of assessment.

9 (4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS
10 305.265 (10) and 314.400, the department, in addition to any action described in the provisions of
11 ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, em-
12 ployee or member any time within three years after the assessment. The time of assessment against
13 the officer, employee or member is 30 days after the date the notice of determination and assessment
14 is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the
15 officer, employee or member, the officer, employee or member shall pay the assessment, plus penal-
16 ties and interest, or advise the department in writing of objections to the assessment and, if desired,
17 request a conference. A conference 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 determination of the issues considering
20 the written objections, the department shall mail the officer, employee or member a conference let-
21 ter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days
22 from the date the conference letter is mailed to the officer, employee or member, the officer, em-
23 ployee or member shall pay the assessment, plus penalties and interest, or appeal in the manner
24 provided for an appeal from a notice of assessment.

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

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

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

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

42 (d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 475B.755 by any person
43 determined to be liable for unpaid taxes under this subsection, each person required to appear be-
44 fore the department under this subsection shall be impleaded by the plaintiff. The department may
45 implead any officer, employee or member who may be held jointly and severally liable for the pay-

1 ment of taxes. Each person impleaded under this paragraph shall be made a party to the action be-
 2 fore the tax court and shall make available to the tax court the information that was presented
 3 before the department, as well as other information that may be presented to the court.

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

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

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

16 **SECTION 7.** ORS 475B.720 is amended to read:

17 475B.720. (1) A marijuana retailer **or wholesale marijuana merchant** shall keep receipts, in-
 18 voices and other pertinent records related to retail sales of marijuana items in the form required
 19 by the Department of Revenue. Each record shall be preserved for five years from the time to which
 20 the record relates, or for as long as the marijuana retailer **or wholesale marijuana merchant** re-
 21 tains the marijuana items to which the record relates, whichever is later. During the retention
 22 period and at any time prior to the destruction of records, the department may give written notice
 23 to the marijuana retailer **or wholesale marijuana merchant** not to destroy records described in
 24 the notice without written permission of the department. Notwithstanding any other provision of
 25 law, the department shall preserve reports and returns filed with the department for at least five
 26 years.

27 (2) The department or its authorized representative, upon oral or written demand, may make
 28 examinations of the books, papers, records and equipment of persons making **wholesale or** retail
 29 sales of marijuana items and any other investigations as the department deems necessary to carry
 30 out the provisions of ORS 475B.700 to 475B.760.

31 **SECTION 8.** ORS 475B.745 is amended to read:

32 475B.745. For the purpose of compensating marijuana retailers **or wholesale marijuana mer-**
 33 **chants** for expenses incurred in collecting the tax imposed under ORS 475B.705 **or section 2 of this**
 34 **2021 Act**, each marijuana retailer is permitted to deduct and retain two percent of the amount of
 35 taxes that are collected by the marijuana retailer **or wholesale marijuana merchant** from all [*re-*
 36 *tail*] sales of marijuana items conducted by the marijuana retailer **or wholesale marijuana mer-**
 37 **chant**.

38 **SECTION 9.** ORS 475B.760 is amended to read:

39 475B.760. (1) All moneys received by the Department of Revenue under ORS 475B.700 to
 40 475B.760 shall be deposited in the State Treasury and credited to a suspense account established
 41 under ORS 293.445. The department may pay expenses for the administration and enforcement of
 42 ORS 475B.700 to 475B.760 out of moneys received from the tax imposed under ORS 475B.705 **and**
 43 **section 2 of this 2021 Act**. Amounts necessary to pay administrative and enforcement expenses are
 44 continuously appropriated to the department from the suspense account.

45 (2) After the payment of administrative and enforcement expenses and refunds or credits arising

1 from erroneous overpayments, the department shall credit the balance of the moneys received by the
2 department under this section **as follows:**

3 **(a) A distributive share proportionate to the amount of moneys received from the tax**
4 **imposed under section 2 of this 2021 Act shall be transferred to the Oregon Wholesale**
5 **Marijuana Account established under section 4 of this 2021 Act.**

6 **(b) The remainder of the balance shall be transferred** to the Oregon Marijuana Account
7 established under ORS 475B.759.

8 **SECTION 10. Sections 2 to 4 of this 2021 Act and the amendments to ORS 475B.700,**
9 **475B.715, 475B.720, 475B.745 and 475B.760 by sections 5 to 9 of this 2021 Act apply to wholesale**
10 **sales of marijuana items occurring on or after January 1, 2022.**

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