

CHAPTER 890
Taxation of the Retail Sale of Marijuana Items for Recreational Use

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CROSS REFERENCES

ORS 475B.345

888.01 PURPOSE.

For the purposes of this Chapter, every marijuana retailer who sells marijuana items for recreational use in the unincorporated areas of Jackson County is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sale of marijuana items for recreational use.

890.02 AUTHORITY.

(a) Pursuant to Section 6 of the Home Rule Charter of Jackson County, Oregon, adopted by the voters of Jackson County at the 1978 primary election and effective on January 8, 1979, the people of Jackson County, exercising the power to govern themselves provided by Section 10, Article VI of the Oregon Constitution and enabling legislation enacted pursuant thereto, granted the County authority over matters of County concern to the fullest extent then or thereafter granted or allowed by the Oregon Constitution or a law of the United States or of Oregon.

(b) The Board of Commissioners determines that the retail selling of marijuana items for recreational use in the unincorporated areas of Jackson County is a matter of County concern and the imposition of a tax on these activities is within the power granted to the County pursuant to the Home Rule Charter of Jackson County, Oregon.

(c) Oregon Revised Statute 475B.345 provides that a county governing body may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the retail sale of marijuana items for recreational use by a marijuana retailer in the unincorporated areas of the county.

890.03 DEFINITIONS.

(a) Cannabinoid - means any of the chemical compounds that are the active constituents of marijuana.

(b) Cannabinoid Concentrate - means a substance obtained by separating cannabinoids from marijuana by:

- (1) A mechanical extraction process;
- (2) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;
- (3) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or
- (4) Any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

(c) Cannabinoid Edible - means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

(d) Cannabinoid Extract - means a substance obtained by separating cannabinoids from marijuana by:

- (1) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;
- (2) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or
- (3) Any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

(e) Cannabinoid Product - means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair that contains cannabinoids.

(1) Cannabinoid Product does not include:

- A. Usable marijuana by itself;
- B. A cannabinoid concentrate by itself;
- C. A cannabinoid extract by itself; or
- D. Industrial hemp, as defined in ORS 571.300.

(f) Consumer - means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

(g) Marijuana - means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(h) Marijuana Item - means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(i) Marijuana Retailer - means a person that holds a license under ORS 475B.110 who sells marijuana items to a consumer in unincorporated area of Jackson County, Oregon.

(j) Retail Sale - means any transfer, exchange, gift or barter of a marijuana item by any person to a consumer.

(k) Retail Sale Price - means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

(l) Tax - means the tax imposed pursuant to Section 890.04 of this Chapter on the retail sale of marijuana items.

(m) Taxpayer - means the person liable for the payment of a tax.

890.04 LEVY OF TAX ON RETAIL SALE PRICE OF MARIJUANA ITEMS FOR RECREATIONAL USE.

(a) A tax of three percent (3%) is imposed on the retail sale price of marijuana items by a marijuana retailer in the unincorporated areas of Jackson County.

(b) The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required.

890.05 COLLECTION OF TAX ON RETAIL SALE OF MARIJUANA ITEMS FOR RECREATIONAL USE.

The tax imposed upon the consumer under Section 866.04 of this Chapter shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.

890.06 DEDUCTIONS AGAINST TAX ON RETAIL SALE OF MARIJUANA ITEMS FOR RECREATIONAL USE.

The following deductions shall be allowed against the retail sale price received by a marijuana retailer:

(a) Refunds of sales actually returned to any consumer who purchased marijuana items; and

(b) Any adjustments in sales which amount to a refund to a consumer who purchased marijuana items, provided such adjustment pertains to the actual sale of marijuana items and does not include any adjustments for other services furnished by a marijuana retailer.

890.07 FILING RETURN AND REMISSION OF TAX ON RETAIL SALE OF MARIJUANA ITEMS FOR RECREATIONAL USE.

(a) Every marijuana retailer that engages in the retail sale of marijuana items shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) submit a return to the County Treasurer, on forms provided by the County, specifying the total sales subject to the tax on the retail sale of marijuana items and the amount of tax collected. The County Treasurer may establish shorter reporting periods for any marijuana retailer if the County Treasurer deems it necessary in order to insure collection of the tax and the County Treasurer may require further information in the return relevant to payment of the tax. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. A return shall not be considered filed until it is actually received by the County Treasurer. Payment will not be accepted without a return being filed.

(b) At the time the return is filed, the full amount of the tax collected shall be remitted to the County Treasurer. Payments received by the County Treasurer for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the County. A condition considered prejudicial is the imminent expiration of the statute of limitations for the collection of the tax owed.

(c) Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the County Treasurer, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the County in a particular tax or factual situation, the County Treasurer may order such a change. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this Chapter shall be held in trust for the account of the County until payment is made to the County Treasurer. A separate trust bank account is not required in order to comply with this provision.

(d) Every marijuana retailer required to remit the tax imposed in this Chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

(e) Every marijuana retailer must keep and preserve in an accounting format established by the County Treasurer records of all sales made and such other books or accounts as may be required by the County Treasurer. Every marijuana retailer must keep and preserve for a period of three (3) years all such books, invoices and other records. The County Treasurer shall have the right to inspect all such records at all reasonable times.

(f) The County shall not review records of sales made and such other books or accounts in order to identify persons purchasing marijuana items from marijuana retailers for any purpose.

(g) As an alternative to the procedures for the collection of the Tax set forth in this Section, the County may enter into agreements with the State of Oregon or other entity to collect the Tax on behalf of the County.

890.08 PENALTIES AND INTEREST ON TAX.

(a) Any taxpayer who fails to pay any portion of any tax imposed pursuant to this Chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.

(b) Any taxpayer who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

(c) If the County Treasurer determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs 1 and 2 of this section

(d) In addition to the penalties imposed, any taxpayer who fails to pay any tax imposed by this Chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the payment first became delinquent until paid. Interest is calculated at the end of each month based on a 360 day basis.

(e) Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.

890.09 FAILURE TO REPORT AND PAY TAX – DETERMINATION OF TAX BY COUNTY TREASURER.

If any taxpayer should fail to make, within the time provided in this Chapter, any report of the tax required by this Chapter, the County Treasurer shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the County Treasurer shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this Chapter, the County Treasurer shall proceed to determine and assess against such taxpayer liable for the tax, interest and penalties provided for by this Chapter. In case such determination is made, the County Treasurer shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the taxpayer at the last known place of address. Such taxpayer may make an appeal of such determination to the County Hearings Officer. If no appeal is filed, the County Treasurer's determination is final and the amount thereby is immediately due and payable.

890.10 APPEAL OF DETERMINATIONS OF COUNTY TREASURER ON TAX.

Any taxpayer aggrieved by any decision of the County Treasurer with respect to the amount of the tax imposed pursuant to this Chapter or interest and penalties thereon, if any, may appeal that decision to the County Hearings Officer, except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax, interest or penalties due. The hearings officer shall hear and consider any records and evidence presented bearing upon the County Treasurer's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the County Hearings Officer shall be final and conclusive.

890.11 REFUNDS ON TAX.

(a) Whenever the amount of any tax imposed pursuant to this Chapter or interest or penalty thereon, if any, has been overpaid or paid more than once, or has been erroneously collected or received by the County under this Chapter, it may be refunded as provided in paragraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the County Treasurer within one year of the date of payment. The claim shall be on forms furnished by the County Treasurer.

(b) The County Treasurer shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The County Treasurer shall notify the claimant in writing of the County Treasurer's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the County Treasurer to be a valid claim, in a manner prescribed by the County Treasurer a taxpayer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The taxpayer shall notify the County Treasurer of claimant's choice no later than 15 days following the date the County Treasurer mailed the determination. In the event claimant has not notified the County Treasurer of claimant's choice within the 15 day period and the taxpayer is still in business, a credit will be granted against the tax liability for the next reporting period. If the taxpayer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

(c) No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the County Treasurer acknowledged the validity of the claim.

890.12 SEVERABILITY.

The sections, subsections, paragraphs and clauses of this Ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

890.13 EFFECTIVE DATE.

If approved by the voters of the County at the November 8, 2016, General Election, this Chapter shall be effective 30 days following the election, or December 8, 2016.

(Ord. 2016-13. Passed 12-08-16.)