

CHAPTER 91

AN ACT

SB 1601

Relating to taxation of substances containing cannabinoids; creating new provisions; amending ORS 316.680, 317.363, 475B.345, 475B.705, 475B.710, 475B.730 and 475B.750; and prescribing an effective date.

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

TAX RELIEF FOR REGISTRY IDENTIFICATION CARDHOLDERS

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS 475B.700 to 475B.760.

SECTION 2. (1) As used in this section, “designated primary caregiver,” “registry identification card” and “registry identification cardholder” have the meanings given those terms in ORS 475B.410.

(2) Notwithstanding ORS 475B.705:

(a) A tax is not imposed upon the retail sale of marijuana items in this state to a registry identification cardholder or to a designated primary caregiver who is purchasing a marijuana item for a registry identification cardholder; and

(b) A marijuana retailer may not collect the tax imposed under ORS 475B.705 from a consumer if, at the time at which the retail sale of the marijuana item occurs, the consumer provides proof to the marijuana retailer that the consumer:

(A) Holds a valid registry identification card under ORS 475B.415; or

(B) Holds a valid identification card under ORS 475B.415 (5)(b) and is purchasing the marijuana item for a registry identification cardholder.

(3) The Department of Revenue:

(a) Shall adopt rules establishing procedures by which a marijuana retailer shall document that a consumer holds a valid registry identification card issued under ORS 475B.415 or a valid identification card issued under ORS 475B.415 (5)(b); and

(b) May adopt rules establishing procedures by which the department may verify that a marijuana retailer collects the tax imposed under ORS 475B.705 from consumers of marijuana items who are not registry identification cardholders or designated primary caregivers.

SECTION 3. ORS 475B.345 is amended to read: 475B.345. (1) As used in this section, “designated primary caregiver” and “registry identification cardholder” have the meanings given those terms in ORS 475B.410.

~~[(1)(a)]~~ **(2)(a)** Except as expressly authorized by this section, the authority to impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly.

(b) Except as expressly authorized by this section, a county, city or other municipal corporation or district may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items in this state.

~~[(2)]~~ **(3)** Subject to subsection ~~[(4)]~~ **(5)** of this section, the governing body of a city or county may adopt an ordinance to be referred to the electors of the city or county as described in subsection ~~[(3)]~~ **(4)** of this section that imposes a tax or a fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of a county by a person that holds a license under ORS 475B.110.

~~[(3)]~~ **(4)** If the governing body of a city or county adopts an ordinance under this section, the governing body shall refer the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.

~~[(4)]~~ **(5)** An ordinance adopted under this section may not impose a tax or fee:

(a) In excess of three percent[.]; or

(b) On a registry identification cardholder or on a designated primary caregiver who is purchasing a marijuana item for a registry identification cardholder.

SECTION 4. ORS 475B.730 is amended to read:

475B.730. (1) Notwithstanding the confidentiality provisions of ORS 475B.755, the Department of Revenue may disclose information received under ORS 317.363 and 475B.700 to 475B.760 to:

(a) The Oregon Liquor Control Commission to carry out the provisions of ORS 475B.010 to 475B.395 and 475B.700 to 475B.760[.]; and

(b) The Oregon Health Authority to carry out the provisions of section 2 of this 2016 Act.

(2) The commission may disclose information obtained pursuant to ORS 475B.010 to 475B.395 and 475B.700 to 475B.760 to the department for the purpose of carrying out the provisions of ORS 475B.010 to 475B.395 and 475B.700 to 475B.760.

(3) The authority may disclose information obtained pursuant to ORS 475B.415 or 475B.418 to the department for the purpose of carrying out the provisions of section 2 of this 2016 Act, provided that the authority does not disclose personally identifiable information.

SECTION 5. ORS 475B.750 is amended to read:

475B.750. (1) The Department of Revenue shall administer and enforce ORS 475B.700 to 475B.760. The department is authorized to establish rules and procedures for the implementation and enforcement of ORS 475B.700 to 475B.760 that are consistent with ORS 475B.700 to 475B.760 and that the department

considers necessary and appropriate to administer and enforce ORS 475B.700 to 475B.760.

(2) The Oregon Liquor Control Commission shall enter into an agreement with the department for the purpose of administering and enforcing those provisions of ORS 475B.700 to 475B.760, and rules or procedures established for the purpose of implementing and enforcing ORS 475B.700 to 475B.760, that the commission and the department determine are necessary for the effective and efficient administration, implementation and enforcement of ORS 475B.700 to 475B.760.

(3) **The Oregon Health Authority shall enter into an agreement with the department for the purpose of administering and enforcing the provisions of section 2 of this 2016 Act, and rules or procedures established for the purpose of implementing and enforcing section 2 of this 2016 Act, that the authority and the department determine are necessary for the effective and efficient administration, implementation and enforcement of section 2 of this 2016 Act.**

OTHER TAXATION PROVISIONS

SECTION 6. ORS 475B.705 is amended to read:

475B.705. (1) A tax is hereby imposed upon the retail sale of marijuana items in this state. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required *[to achieve convenience and facility in the collection and administration of the tax]*. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs.

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

(a) 17 percent of the retail sales price of marijuana leaves;

(b) 17 percent of the retail sales price of marijuana flowers;

(c) 17 percent of the retail sales price of immature marijuana plants;

(d) 17 percent of the retail sales price of a cannabinoid edible;

(e) 17 percent of the retail sales price of a cannabinoid concentrate;

(f) 17 percent of the retail sales price of a cannabinoid extract;

(g) 17 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and

(h) 17 percent of the retail sales price of cannabinoid products other than those described in paragraph (g) of this subsection.

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

(4) **Except as otherwise provided by the Department of Revenue by rule,** the amount of the tax shall be separately stated on an invoice, receipt

or other similar document that the marijuana retailer provides to the consumer, *or shall be otherwise disclosed to the consumer.* **at the time at which the retail sale occurs.**

(5) A person may not knowingly sell, purchase, install, transfer or possess **electronic devices or software programs** *[or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items.]* **for the purposes of:**

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

(b) **Falsifying records of retail sales of marijuana items.**

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

(b) Paragraph (a) of this subsection does not affect any provision of ORS 475B.010 to 475B.395 or any rule adopted by the Oregon Liquor Control Commission pursuant to ORS 475B.010 to 475B.395 that is related to the retail sale of marijuana items.

SECTION 7. ORS 475B.710 is amended to read:

475B.710. (1) Except as otherwise provided in ORS 475B.700 to 475B.760, the tax imposed upon the consumer under ORS 475B.705 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.

(2) The marijuana retailer shall *[submit]* **file** a return to the Department of Revenue on or before the last day of January, April, July and October of each year for the previous calendar quarter.

(3) The marijuana retailer shall pay the tax to the department in the form and manner prescribed by the department, but not later than with each quarterly return, without regard to *[extensions]* **an extension granted** under subsection (5) of this section.

(4) Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.

(5) **For good cause,** the department *[for good cause]* may extend the time for *[making any]* **filing** a return under this section. The extension may be granted at any time if a written request is filed with the department during or prior to the period for which the extension may be granted. The department may not grant an extension of more than 30 days.

(6) Interest shall be added at the rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment.

(7) **If a marijuana retailer fails to file a return or pay the tax as required by this section, the department shall impose a penalty in the manner provided in ORS 314.400.**

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

[(8)(a)] **(9)(a)** The department shall first apply any overpayment of tax **by a marijuana retailer** to any marijuana tax that is [then] **owed by the marijuana retailer**.

(b) If after any offset against any delinquent amount the overpayment of tax remains greater than \$1,000, the [entire] **remaining** refund shall be applied as a credit against the next subsequent calendar quarter as an estimated payment.

[(9)] **(10)** The department may not make a refund of, or credit, any overpayment of tax under ORS 475B.700 to 475B.760 that was credited to the account of a marijuana retailer under subsection [(8)(b)] **(9)(b)** of this section if the return for that tax period is not filed within three years after the due date of that return.

SECTION 8. ORS 316.680 is amended to read:

316.680. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(e)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(f) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a savings network account for higher education established under ORS 178.300 to 178.355.

[(i) Any federal deduction that the taxpayer would have been allowed for the production, processing or sale of marijuana items authorized under ORS 475B.010 to 475B.395 but for section 280E of the Internal Revenue Code.]

[(j)] **(i)** If included in taxable income for federal tax purposes, any distributions from an ABLE account that do not exceed the qualified disability expenses of the designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by the Oregon 529 Savings Board.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territo-

rial possession of the United States that by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 178.300, from a savings network account for higher education established under ORS 178.300 to 178.355, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(k) If the taxpayer makes a distribution from an ABLE account that is not a qualified disability expense of the designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by the Oregon 529 Savings Board, the amount of the distribution that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection

(2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

SECTION 9. ORS 316.680, as amended by section 8 of this 2016 Act, is amended to read:

316.680. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(e)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(f) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a savings network account for higher education established under ORS 178.300 to 178.355.

(i) Any federal deduction that the taxpayer would have been allowed for the production, processing or sale of marijuana items authorized under ORS 475B.010 to 475B.395 or 475B.400 to 475B.525 but for section 280E of the Internal Revenue Code.

[(i)] (j) If included in taxable income for federal tax purposes, any distributions from an ABLE account that do not exceed the qualified disability expenses of the designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by the Oregon 529 Savings Board.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States that by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 178.300, from a savings network account for higher education established under ORS 178.300 to 178.355, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(k) If the taxpayer makes a distribution from an ABLE account that is not a qualified disability expense of the designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by the Oregon 529 Savings Board, the amount of the distribution that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

SECTION 10. ORS 317.363 is amended to read:
317.363. Section 280E of the Internal Revenue Code applies to all trafficking in controlled substances in Schedule I or Schedule II that is prohibited by federal law or the laws of this state, other than conduct authorized under ORS 475B.010 to 475B.395 or 475B.400 to 475B.525.

SECTION 11. (1) The amendments to ORS 316.680 by section 8 of this 2016 Act apply to conduct occurring on or after July 1, 2015, and before January 1, 2016, and to tax years ending before January 1, 2016.

(2) The amendments to ORS 316.680 and 317.363 by sections 9 and 10 of this 2016 Act apply to conduct occurring on or after January 1, 2016, and to tax years beginning on or after January 1, 2016.

CAPTIONS

SECTION 12. The unit captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

EFFECTIVE DATE

SECTION 13. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Approved by the Governor March 29, 2016
Filed in the office of Secretary of State March 29, 2016
Effective date June 2, 2016
