

CHAPTER 2

AN ACT

HB 4051

[2002 Third Special Session]

Relating to taxation; creating new provisions; amending ORS 323.170 and section 5, chapter 869, Oregon Laws 2001; appropriating money; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. Sections 2 and 4 to 7 of this 2002 third special session Act are added to and made a part of ORS 323.005 to 323.482.

SECTION 2. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of 30 mills for the distribution of each cigarette in this state.

(2) Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482 may not be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(3) Moneys received under this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds:

(a) .29/30 of the moneys shall be credited to the Oregon Health Plan Fund established under section 9 of this 2002 third special session Act;

(b) .14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the cities of this state;

(c) .14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the counties of this state;

(d) .14/30 of the moneys are continuously appropriated to the Department of Transportation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund established under ORS 391.800; and

(e) .21/30 of the moneys shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

(4)(a) Moneys distributed to cities and counties under this section shall be distributed to each city or county using the proportions used for distributions made under ORS 323.455.

(b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Transportation Fund at the same time moneys are distributed to cities, counties and the Elderly and Disabled Special Transportation Fund under ORS 323.455.

SECTION 3. Section 2 of this 2002 third special session Act applies to distributions of cigarettes occurring on or after the first day of the month following the effective date of this 2002 third special session Act.

SECTION 4. (1) In addition to and not in lieu of any other tax, for the privilege of holding or storing cigarettes for sale, use or consumption, a floor tax is imposed upon every dealer at the rate of 30 mills for each cigarette in the possession of or under the control of the dealer in this state at 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act.

(2) The tax imposed by this section is due and payable on or before 20 days after the first day of the month following the effective date of this 2002 third special session Act. Any amount of tax that is not paid within the time required shall bear interest at the rate established under ORS 305.220 per month, or fraction of a month, from the date on which the tax is due to be paid, until paid.

(3) On or before 20 days after the first day of the month following the effective date of this 2002 third special session Act, every dealer must file a report with the Department of Revenue in such form as the department may prescribe. The report must state the number of cigarettes in the possession of or under the control of the dealer in this state at 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act and the amount of tax due. Each report must be accompanied by a remittance payable to the department for the amount of tax due.

SECTION 5. In addition to and not in lieu of any other tax, for the privilege of distributing cigarettes as a distributor and for holding or storing cigarettes for sale, use or consumption, a floor tax and cigarette adjustment indicia tax is imposed upon every distributor in the amount of 75 cents for each Oregon cigarette tax stamp bearing the designation "25," in the amount of 60 cents for each Oregon cigarette tax stamp bearing the designation "20" and in the amount of 30 cents for each Oregon cigarette tax stamp bearing the designation "10" that is affixed to any package of cigarettes in the possession of or under the control of the distributor at 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act.

SECTION 6. (1) Every distributor must take an inventory as of 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act of all packages of cigarettes to which are affixed Oregon cigarette tax stamps and of all unaffixed Oregon cigarette

tax stamps in the possession of or under the control of the distributor.

(2) Every distributor must file a report with the Department of Revenue on or before 20 days after the first day of the month following the effective date of this 2002 third special session Act in such form as the department may prescribe, showing:

(a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that were affixed to packages of cigarettes in the possession of or under the control of the distributor at 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act; and

(b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the stamps, that were in the possession of or under the control of the distributor at 12:01 a.m. on the first day of the month following the effective date of this 2002 third special session Act.

(3) The amount of tax required to be paid with respect to the affixed Oregon cigarette tax stamps shall be computed pursuant to section 5 of this 2002 third special session Act and remitted with the distributor's report. Any amount of tax not paid within the time specified for the filing of the report shall bear interest at the rate established under ORS 305.220 per month, or fraction of a month, from the due date of the report until paid.

SECTION 7. All moneys received by the Department of Revenue from the taxes imposed by sections 4 and 5 of this 2002 third special session Act shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds:

(1) 29.58/30 of the moneys shall be credited to the Oregon Health Plan Fund established under section 9 of this 2002 third special session Act;

(2) .14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the cities of this state;

(3) .14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the counties of this state; and

(4) .14/30 of the moneys are continuously appropriated to the Department of Transportation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund established under ORS 391.800.

SECTION 8. (1) Notwithstanding sections 2 (3) and 7 of this 2002 third special session Act, for the biennium beginning July 1, 2001, \$2 million in moneys credited to the Oregon Health Plan Fund established under section 9 of this 2002 third special session Act shall be transferred from the Oregon Health Plan Fund to the

Tobacco Use Reduction Account established under ORS 431.832.

(2) Moneys transferred to the Tobacco Use Reduction Account under this section shall be used to fund programs that qualify for Tobacco Use Reduction Account grants under ORS 431.832 and 431.834 and that are administered by the Department of Human Services or any other state agency. Moneys transferred to the Tobacco Use Reduction Account under this section may not be used to fund programs administered by a city, county or other local government.

SECTION 9. (1) The Oregon Health Plan Fund is established, separate and distinct from the General Fund. Interest earned by the Oregon Health Plan Fund shall be retained by the Oregon Health Plan Fund.

(2) Moneys in the Oregon Health Plan Fund are continuously appropriated to the Department of Human Services for the purposes of funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan and funding the maintenance of the benefits available under the Oregon Health Plan.

SECTION 10. ORS 323.170 is amended to read:

323.170. (1) Stamps shall be sold to a licensed distributor at their denominated values less a sum allowed as compensation to a distributor for services in affixing stamps to packages as required by ORS 323.005 to 323.482. Payment for stamps shall be made at the time of purchase, provided that a licensed distributor, subject to the conditions and provisions of ORS 323.005 to 323.482, may be permitted to defer stamp payments.

(2) The compensation to each distributor for each [*package of 20 cigarettes to which the distributor affixes an*] Oregon stamp sold during the calendar year shall be[.:]

[*(a) For the first 26,000 cases of cigarettes, \$.0024 per package.*]

[*(b) For any volume in excess of 26,000 cases, \$.0018 per package*] **\$0.004 per stamp.**

SECTION 11. The amendments to ORS 323.170 by section 10 of this 2002 third special session Act apply to compensation paid under ORS 323.170 for Oregon stamps sold on or after the first day of the month following the effective date of this 2002 third special session Act.

SECTION 12. Section 5, chapter 869, Oregon Laws 2001, is amended to read:

Sec. 5. Notwithstanding ORS 323.455 and section 3, chapter 385, Oregon Laws 1995, if cigarette tax revenues for the biennium beginning July 1, 2001, that are dedicated to funding the Oregon Health Plan under ORS 323.455 (4) and section 3 (3), chapter 385, Oregon Laws 1995, equal \$175 million, any additional cigarette tax revenues raised during the biennium beginning July 1, 2001, **from the taxes**

imposed under ORS 323.030 or section 3, chapter 385, Oregon Laws 1995, that otherwise would be distributed to the Oregon Health Plan shall be credited to the Senior Prescription Drug Assistance Fund established under *[section 6 of this 2001 Act]* **ORS 414.348**.

SECTION 13. This 2002 third special session Act takes effect on the 91st day after the date on which the third special session of the Seventy-first Legislative Assembly adjourns sine die.

NOTE: Section 13 was repealed by section 1, chapter 3, Oregon Laws 2002 (third special session). Section 2, chapter 3, Oregon Laws 2002 (third special session), referred chapter 2, Oregon Laws 2002 (third special session), to the people for their approval or rejection. Voters approved chapter 2, Oregon Laws 2002 (third special session) (Ballot Measure 20), at a special election on September 17, 2002.

Approved by the Governor July 3, 2002

Filed in the office of Secretary of State July 3, 2002

Effective date October 17, 2002