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## Legislative Revenue Office

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# Measure 108

## Tobacco Tax Increase

### SUMMARY

This research brief describes Oregon's current tobacco taxes and changes that occur if Measure 108 is passed by voters this November. Measure 108 is a legislative referral of HB 2270 from the 2019 legislative session. If passed, it would implement three statutory changes: increase the current cigarette tax from \$1.33 per pack to \$3.33; create a tax on inhalant delivery systems as part of Other Tobacco Products; and increase the cap on cigar taxes from \$0.50 to \$1 per cigar. The changes would take effect on January 1, 2021 and are projected to raise \$111 million during the 2019-21 biennium and \$331 million during the 2021-23 biennium.

### CURRENT LAW

Tobacco products are taxed as either cigarettes and Other Tobacco Products (OTP). Cigarettes are any roll of tobacco intended for smoking or, because of its appearance, likely to be offered to or purchased by a consumer as a cigarette. OTP includes products such as cigars, smokeless tobacco (moist snuff, chewing tobacco, dissolvables containing tobacco, etc.), pipe tobacco, roll-your-own—basically any type of tobacco that can be chewed or smoked except cigarettes. Cigarette taxes are imposed on a per cigarette basis while OTP is taxed at a percentage of wholesale price.

#### Cigarette Taxation

The total tax imposed on cigarettes is currently \$1.33 per pack of 20 cigarettes. It is defined in three different parts of statute, each of which describes the distribution of collected funds. The first statute describing the tax on cigarettes, ORS 323.030(1), details the collection of \$0.58 in tax per pack of 20 cigarettes.<sup>1</sup> ORS 323.020(4) mandates \$0.15 in tax per pack of cigarettes. Finally, ORS 323.031 prescribes an additional \$0.60 in tax per pack.

Statute also outlines the current distribution of cigarette tax funds. ORS 323.455 details the distribution of the \$0.58 tax per pack of cigarettes described in ORS 323.030(1). The distribution provides funds for the General Fund, the Oregon Health Plan (OHP), TURA (Tobacco Use Reduction Account), Cities, Counties, and Department of Transportation (DOT) Elderly Transportation. ORS 323.455 also outlines the distribution of the \$0.15 tax per pack of cigarettes described in ORS 323.030(4), all of which is dedicated

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<sup>1</sup> Statute references mills per cigarette; a mill is equal to 1/1000th of a US dollar (\$0.001 per cig). The taxes have been translated into dollars per pack of cigarettes (typically 20 cigarettes) for an easier understanding of the tax. For example, a tax of 29 mills translates into \$0.58 per pack.

to Oregon Health Authority (OHA) Mental Health programs. Finally, ORS 323.457 details the distribution of the additional \$0.60 in tax per pack of cigarettes outlined in ORS 323.031. The funds are split between OHP, TURA, Cities, Counties, and DOT Elderly Transportation. The table below summarizes the taxes and distributions outlined in statute.

| Statutes and Tax |                   | Distributions (\$ per pack of 20 cigarettes) |              |              |              |              |                    |                   |
|------------------|-------------------|--|--------------|--------------|--------------|--------------|--------------------|-------------------|
| Statute (ORS)    | Tax Per Pack (\$) | General Fund                                 | OHP          | TURA         | Cities       | Counties     | DOT Elderly Trans. | OHA Mental Health |
| 323.030(1)       | 0.58              | 0.220  | 0.270        | 0.030        | 0.020        | 0.020        | 0.020              |                   |
| 323.030(4)       | 0.15              |  |              |              |              |              |                    | 0.150             |
| 323.031          | 0.60              |  | 0.587        | 0.004        | 0.003        | 0.003        | 0.003              |                   |
| <b>Totals</b>    | <b>1.33</b>       | <b>0.220</b>                                 | <b>0.857</b> | <b>0.034</b> | <b>0.023</b> | <b>0.023</b> | <b>0.023</b>       | <b>0.150</b>      |

## Other Tobacco Products (OTP) Taxation

The current law tax rate for OTP is 65% of wholesale price. These products include moist-snuff, little cigars, and other tobacco products that are not cigarettes. Tobacco products are taxed under ORS 323.500 to ORS 323.645. ORS 323.505 describes the tax imposed on cigars, moist snuff, and all other tobacco products that are not cigarettes. The table below identifies the tax rates for each type of product.

| Statutes and Tax |               |   | Distributions |        |       |
|------------------|---------------|---|---------------|--------|-------|
| Product          | Statute (ORS) | Tax Per Pack (\$)   | General Fund  | OHP    | TURA  |
| Cigars           | 323.505 2(a)  | 65% of wholesale price of cigar, up to \$0.50                 | 53.84%        | 41.54% | 4.62% |
| Moist Snuff      | 323.505 2(b)  | \$1.78 per ounce<br>\$2.14 minimum price per retail container |               |        |       |
| All Other        | 323.505 2(c)  | 65% of wholesale price  |               |        |       |

## ESTIMATED REVENUE IMPACT

The revenue impact analysis presented here is based on an updated Economic and Revenue Forecast. The original estimates for HB 2270 were made in 2019, during the legislative session. The incorporated changes from the HB 2270 estimates are described below.

### Cigarette Tax

The measure increases the cigarette tax rate by \$2 per pack of 20 cigarettes, from \$1.33 to \$3.33. Cigarette taxes serve various policy purposes and indicated in the distribution table above. The increase would take effect on January 1, 2021 if voters approve the measure. The additional revenue is dedicated to the Oregon Health Authority. The revenue impact of \$111 million for the 2019-21 biennium reflects only the last six months of the biennium, including a floor tax (inventory tax) of an estimated \$25.4 million. Going forward, the \$2 per pack tax increase is expected to bring in additional estimated revenue of about \$150 million a year. Little cigars would be taxed as cigarettes under this measure, whereas they are currently taxed as other tobacco products.<sup>2</sup> The additional estimated revenue from that change is less than \$0.5 million a year.

<sup>2</sup> Little cigars typically resemble cigarettes and are smaller filtered cigars often sold individually or in smaller packs.

## Taxation of Inhalant Delivery Systems

The measure also creates a tax on inhalant delivery systems, including them under the definition of Other Tobacco Products. These products are taxed at 65% of their wholesale price. This tax is new to Oregon and the revenue impact draws from experience of other states with similar taxing programs. Since the passage of HB 2270 in 2019, tobacco markets have experienced changes due to voluntary action taken by Juul to stop selling flavored products toward the end of 2019, the outbreak of vaping sickness in late 2019 and corresponding regulatory changes, and the global pandemic in 2020. These changes were significant and lead to lower revenue projections than were originally made in 2019.

## Increase in the Cigar Tax Cap

Under current law, the tax rate on cigars is 65% of the wholesale price with a cap of 50 cents per cigar. Under Measure 108, the cap on cigar taxes increases to \$1 per cigar. Currently revenue from the tax on cigars with the 50-cent cap are slightly less than \$1 million annually. Some additional revenue is expected with the increase in the cap, roughly \$0.6 million annually.

|  | Biennium |         |         |
|--|----------|---------|---------|
|  | 2019-21  | 2021-23 | 2023-25 |
| Total Tobacco Taxes  | \$111.1  | \$331.4 | \$325.1 |
| Cigarette Tax (\$2 per pack, little cigars, floor tax)     | \$106.1  | \$310.5 | \$303.4 |
| Inhalant Delivery System                                   | \$4.7    | \$19.7  | \$20.4  |
| Increase in cigar tax cap (from 50 cents to \$1 per cigar) | \$0.3    | \$1.2   | \$1.3   |

## DISTRIBUTIONS

If Measure 108 passes in November, after administrative costs are covered the remaining funds are distributed to OHA for two distinct purposes. Ninety percent of funds distributed to the Oregon Health Authority are used, “for the purposes of funding the maintenance and expansion of the number of persons eligible for medical assistance and funding the maintenance of benefits available under the medical assistance program, including mental health services.” The remaining 10% of funds distributed to OHA are used, “for distribution to tribal health providers, Urban Indian Health programs, regional health equity coalitions, culturally specific and community-specific health programs and state and local public health programs that address prevention and cessation of tobacco and nicotine use by youth and adults, tobacco-related health disparities and the prevention and management of chronic disease related to tobacco and nicotine.” The table below is identical to the one provided above, except it includes the impact of Measure 108.

| Statutes and Tax   |                   | Distributions (\$ per pack of 20 cigarettes)                                       |              |              |              |              |                    |                   |
|--------------------|-------------------|--|--------------|--------------|--------------|--------------|--------------------|-------------------|
| Statute (ORS)      | Tax Per Pack (\$) | General Fund   | OHP          | TURA         | Cities       | Counties     | DOT Elderly Trans. | OHA Mental Health |
| 323.030(1)         | 0.58              | 0.220  | 0.270        | 0.030        | 0.020        | 0.020        | 0.020              |                   |
| 323.030(4)         | 0.15              |  |              |              |              |              |                    | 0.150             |
| 323.031            | 0.60              |  | 0.587        | 0.004        | 0.003        | 0.003        | 0.003              |                   |
| <b>Current Law</b> | <b>1.33</b>       | <b>0.220</b>   | <b>0.857</b> | <b>0.034</b> | <b>0.023</b> | <b>0.023</b> | <b>0.023</b>       | <b>0.150</b>      |
| <b>Measure 108</b> | <b>2.00</b>       | <b>\$1.80 for OHP and Mental Health; \$0.20 for distribution to other entities</b> |              |              |              |              |                    |                   |
| Total              | 3.33              |  |              |              |              |              |                    |                   |

### POTENTIAL IMPACT OF COVID-19

The COVID-19 pandemic presents some unique circumstances that may affect future revenue collections compared to the estimates presented above. First, the duration of the pandemic could result in further changes to consumer spending. Although tobacco markets are relatively inelastic, changes in consumption could occur due to ongoing restrictions related to the pandemic. The estimates for Measure 108 also include estimated changes in consumption based on price increases to products if the measure passes.<sup>3</sup> Additionally, since COVID-19 is a respiratory infection decreases in smoking habits could occur as people try to protect themselves from outbreaks of the pandemic. Alternatively, given the increase in stress due to the effects of the pandemic, smoking consumption could increase as a result of increased stress. Finally, uncertainty regarding when economy will be fully reopened may affect forecasts for the economy in general. Depending on the timing of the pandemic and recovery, as forecasts for future economic conditions change, these estimates above could change as well.

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<sup>3</sup> The relationship between price changes and corresponding consumption changes is often described in terms of elasticity, a technical term indicating how responsive consumption of a particular good is to changes in price of that same product.