

CHAPTER 38

SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS

I. ADMINISTRATION

38.005. Purpose. For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in Benton County is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

38.010. Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

- (1) “Director” means the Finance Department Director for Benton County or his/her designee.
- (2) “Gross Taxable Sales” means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- (3) “Marijuana” means all parts of the plant of the cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (4) “Oregon Medical Marijuana Program” means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- (5) “Person” means natural person, joint venture, joint stock company, partnership, limited liability company, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision or municipal corporation thereof, or the manager, lessee, agent, officer or employee of any of them.
- (6) “Purchase or Sale” means the retail acquisition or furnishing for consideration by any person of marijuana within the County and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

(7) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

(8) “Retail sale” means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

(9) “Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

(10) “Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

(11) “Taxpayer” means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

II. TAXATION

38.105. Levy of Tax.

(1) There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter.

(2) The amount of tax levied is as follows:

(a) Five percent (5%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.

(b) Ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

38.110. Deductions.

The following deductions shall be allowed against sales received by the seller providing marijuana:

(1) Refunds of sales actually returned to any purchaser;

(2) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

38.115. Seller Responsible For Payment Of Tax.

- (1) Every seller 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) make a return to the Director, on forms provided by the County, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to insure collection of the tax. The Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- (2) At the time the return is filed, the seller must remit to the Director the full amount of the tax collected. Payments received by the Director 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 a period or periods.
- (3) The County will apply non-designated payments 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.
- (4) If the Director, 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 Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the County until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- (5) Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to the County to defray the costs of bookkeeping and remittance.
- (6) Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the seller and such other books or accounts as the Director may require. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

38.120. Penalties And Interest.

- (1) Any seller who fails to remit any portion of any tax imposed by 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.
- (2) Any seller 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.
- (3) If the Director 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 subparagraphs 1 and 2 of this section.
- (4) In addition to the penalties imposed, any seller who fails to remit 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 remittance first became delinquent until paid.
- (5) Every penalty imposed, and any interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
- (6) All sums collected pursuant to the penalty provisions in paragraphs 1, 2 and 3 of this section shall be distributed to the County's general fund.
- (7) Penalties and interest for certain late tax payments may be waived or reduced if approved by the Director pursuant to Board of Commissioner policy. Nothing in this subsection requires the County to reduce or waive penalties or interest.

38.125. Failure To Report and Remit Tax –Determination of Tax by Director.

- (1) If any seller fails to make any report of the tax required by this chapter, within the time provided in this chapter, the Director shall proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Director procures such facts and information, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall determine and assess against such seller the tax, interest and penalties provided for by this chapter.
- (2) If the Director makes such a determination as outlined in subsection 1, the Director shall give notice to the seller of the amount assessed. The notice must be personally served or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.

(3) The seller may appeal the determination as provided in section 38.205. If no appeal is timely filed, the Director's determination is final and the amount assessed is immediately due and payable.

III. APPEAL

38.205. Appeal.

(1) Any seller aggrieved by any decision of the Director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the Decision to the Board of Commissioners.

(2) The seller must file the written notice of appeal with the Board of Commissioners within 10 days of the County's serving or mailing of the determination of tax due.

(3) The Board of Commissioners' decision is final subject only to judicial review pursuant to ORS 34.010 et. seq.

(4) The County will serve the findings upon the appellant in the same manner as that used in subsection 38.125. Any amount found to be due is immediately due and payment upon the service of notice.

IV. REFUNDS

38.305. Refunds.

(1) The County may refund to the seller any tax, interest or penalty amount under any of the following circumstances:

- (a) The seller has overpaid the correct amount of tax, interest or penalty; or
- (b) The seller has paid more than once for the correct amount owed; or
- (c) The County has erroneously collected or received any tax, interest or penalties.

(2) The County may not issue a refund under this subsection unless the seller provides to the Director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

(3) The Director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Director will notify the claimant in writing of the determination by mailing notice the claimant at the address provided on the claim form.

(4) If the Director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the County. The claimant must notify the Director

of the claimant's choice no later than 15 days following the date the Director mailed the determination and the claimant must do so in a manner prescribed by the Director.

(5) If the claimant does not notify the Director of claimant's choice within the 15-day period and the claimant is still in business, the County will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business the County will mail a refund check to claimant at the address provided in the claim form.

(6) The County will not pay a refund unless the claimant establishes by written records the right to a refund and the Director acknowledges the claim's validity.

V. COLLECTIONS AND AUDIT

38.505. Actions to Collect.

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the County. Any tax collected by a seller which has not been paid to the County is a debt owed by the seller to the County. Any person owing money to the County under the provisions of this chapter shall be liable to an action brought in the name of Benton County for the recovery of the amount due and owing. In lieu of filing an action for the recovery, Benton County, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the County has complied with the provisions set forth in ORS 697.105, in the event the County turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

38.510 Violation Infractions.

(1) In addition to the penalties provided in section 38.120, a violation of this chapter is punishable as set forth in BCC ch. 31. It is a violation of this chapter for any seller or other person to:

- (a) Fail or refuse to comply as required herein;
- (b) Fail or refuse to furnish any return required to be made;
- (c) Fail or refuse to permit inspection of records;
- (d) Fail or refuse to furnish a supplemental return or other data required by the Director;
- (e) Render a false or fraudulent return or claim; or
- (f) Fail, refuse or neglect to remit the tax to the County by the due date.

(2) The remedies provided by this section are not exclusive and shall not prevent the County from exercising any other remedy available under the law.

(3) The remedies provided by this section do not prohibit or restrict the County or other appropriate prosecutor from pursuing criminal charges under state law or County ordinance.

38.515 Confidentiality.

Except as otherwise required by law, it shall be unlawful for the County, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the County under the terms of this chapter. Nothing in this section shall prohibit any of the following:

- (1) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- (2) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- (3) Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the County under this chapter; or
- (4) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- (5) The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for more than six months or the tax exceeds five thousand dollars (\$5,000). The Board of Commissioners expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

38.520 Audit of Books, Records or Persons.

The County, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the County for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the County and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

38.525 Forms And Regulations.

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and, to provide for:

- (1) A form of report on sales and purchases to be supplied to all vendors;

(2) The records which sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.

38.530. 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.