

## **City Council Action Item Cover Sheet**

DATE: November 7, 2018

### **Agenda Item:**

Finance Committee Recommendation to Increase the Transient Lodging Tax

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### **Question Before Council:**

Discussion of Finance Committee's Recommendation

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### **Person/Group Initiating Request:**

Finance Committee

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### **Item Summary/Background:**

The Finance Committee has researched local Transient Lodging Tax (TLT) Percentages in areas close to Yachats.  
Based on that research, the Committee is recommending that the Council consider a 1% increase  
to the Yachats TLT - from 9% to 10%. A comparison, and a memo summarizing TLT, is attached.

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Recommendation: Upon review and discussion, please provide any questions to the City Manager  
for research and a report back to Council.

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## **Transient Occupancy Rate Comparison on the Oregon Coast**

City of Yachats (9.0% City; 1.8% County)	10.8%
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Outside Yachats City Limits, but within our zip code	11.8%
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Waldport	11.8%
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Seaside	11.8%
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Lincoln City	11.3%
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Newport	11.3%
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Florence	10.8%
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Our 2018 revenue projection for TOT shows anticipated revenue of \$1,037,658

A .5% increase in our TOT would generate an additional \$ 57,658 in revenue

A 1.0% increase in our TOT would generate an additional \$ 115,295 in revenue

A 1.0% rate increase would put us on a par with the TOT charged for Yachats area lodging that is outside our city limits and with Waldport, and just slightly higher than Newport or Florence.

9/12/2018





DATE: October 10, 2018

TO: Finance Committee

FROM: Shannon Beaucaire, City Manager

SUBJECT: Summary of Transient Lodging Tax

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In 2003, the Oregon Legislature preempted local control over (Transient Lodging Tax) TLTs and restricted much of a local government's decision-making in allocating funds from local TLTs. The 2003 legislation placed restrictions on any new or increased TLT imposed by cities or counties by requiring at least 70 percent of the net revenue to go towards "tourism promotion" or "tourism-related facilities."

Cities like Yachats with existing TLTs already in place were "grandfathered" under the 2003 legislation. Local governments with pre-existing TLTs must maintain the distribution ratios they had in place on July 1, 2003 but cannot decrease the percentage of total tax revenue actually expended to fund tourism promotion or tourism-related facilities. For example, if a local government had a 5 percent tax in place on July 1, 2003, with 50 percent of the revenue going to tourism promotion and 50 percent going toward the general fund, the local government must not decrease the portion of the tax revenue going toward tourism promotion and tourism-related facilities below the established 50 percent.

The percentage of the City's current TLT that must be spent on tourism, Yachats needs to look back to what Yachats generated in revenue from the TLT back in 2003 and how it spent that money back in 2003. From those numbers Yachats would be able to figure out the ratio of tourism to general fund spending. That same ratio would then be applied to your current TLT revenue. Any increase to Yachats TLT tax rate since 2003 the calculation gets a little more complicated. For any increased taxes since 2003, the statutory required 70/30 ratio applies to the increased rate.

For the restricted portion of the TLT revenue, the expenditures can go towards tourism-related facilities or tourism promotion as defined in ORS 320.300 (8) and (9).



# State of Oregon Lodging Tax Program



[www.oregon.gov/dor](http://www.oregon.gov/dor)

## How did this tax come about?

The 2003 Oregon Legislature passed House Bill (HB) 2267 to establish a state lodging tax. The revenue this tax generates funds Oregon Tourism Commission programs. HB 2197, passed in 2005, expanded the definition of "transient lodging" and the list of who must pay the tax.

HB 2656, passed in 2013, expanded the list of who must collect and pay the tax. HB 2656 took effect on October 7, 2013 and requires transient lodging providers and transient lodging intermediaries to collect and remit taxes computed on the total retail price paid for occupancy of transient lodging.

The 2016 legislature passed HB 4146, which included two changes to the state lodging tax rate. Beginning July 1, 2016, the tax rate will be 1.8 percent of the total price charged for lodging. The rate will drop to 1.5 percent on July 1, 2020.

## Who must pay this tax?

Transient lodging providers and transient lodging intermediaries must collect and remit the tax. Under the law, *whoever collects payment* for occupancy of the transient lodging ("transient lodging tax collector") is responsible for collecting and remitting the tax.

A person who furnishes temporary overnight lodging is considered a transient lodging provider. A transient lodging intermediary is a person, other than a provider, that facilitates the retail sale and charges for the occupancy of transient lodging. Transient lodging intermediaries include, but are not limited to, online travel companies, travel agents, and tour outfitter companies. Transient lodging includes:

- Hotels and motels;
- Bed and breakfast facilities;
- RV sites in RV parks or campgrounds;
- Resorts and inns;
- Lodges and guest ranches;
- Cabins;
- Condominiums;
- Short-term rental apartments and duplexes;
- Vacation rental houses;
- Tent sites and yurts in private and public campgrounds; and

- Any other dwelling unit, or portion of a dwelling unit, used for temporary overnight stays.

## How much is this tax?

If you collect payment for transient lodging directly from customers, then you must collect and remit this tax. The tax rate is based on the date of payment:

Payment date	Tax rate
Before July 1, 2016	1%
On or after July 1, 2016	1.8%
On or after July 1, 2020	1.5%

You will hold this tax in trust and send it quarterly to the Oregon Department of Revenue. If you don't pay this tax in a timely manner, we will charge you penalty and interest.

The law allows you to withhold 5 percent of the state lodging taxes you collect to cover your costs for record keeping, reporting, and collecting the tax.

## How is this tax different from the city or county tax I'm already paying?

This tax promotes statewide tourism. City and county taxes fund local programs.

## What lodging facilities are exempt from the tax?

- Health care facilities, hospitals, long-term care facilities, and residential care facilities that are licensed, registered, or certified by Oregon Department of Human Services.
- Drug or alcohol abuse treatment facilities and mental health treatment facilities.
- Facilities with less than 30 days of rentals in a calendar year.
- Emergency temporary shelter funded by a government agency.
- Nonprofit youth or church camps, nonprofit conference centers, and qualifying nonprofit facilities.

## Are any lodgers exempt from the tax?

- Lodgers who spend 30 or more consecutive days at the same facility.
- Federal employees on federal business.

## How and when do I pay the tax?

You must file a quarterly return and submit the tax on or before the last day of April, July, October, and January. You must file a zero return even if you didn't collect any tax for the reporting period.

You'll need to report your taxable gross receipts for each region in which you conduct business as a transient lodging tax collector. Include gross receipts from all regions on the same return. Do not file separate returns for each region or facility address. To determine the region in which a specific property is located, visit us at [www.oregon.gov/dor/business](http://www.oregon.gov/dor/business). Look for the ZIP code/region directory.

File and pay electronically using Revenue Online at [www.oregon.gov/dor](http://www.oregon.gov/dor). Revenue Online will calculate the tax you owe, allow for payment, and verify when we receive your filing and payment.

For more information on how to file and pay the state lodging tax, see our publication, *Filing State Lodging Tax Returns*, or contact us at [spa.help@oregon.gov](mailto:spa.help@oregon.gov) or (503) 945-8247.

## Do you have questions or need help?

Lodging tax information ..... [www.oregon.gov/dor/business](http://www.oregon.gov/dor/business)

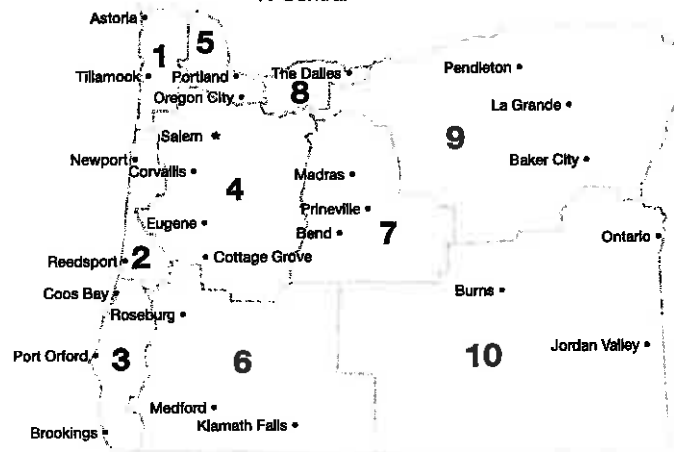
General tax information..... [www.oregon.gov/dor](http://www.oregon.gov/dor)  
(503) 378-4988 or (800) 356-4222

[questions.dor@oregon.gov](mailto:questions.dor@oregon.gov)

Contact us for ADA accommodations or assistance in other languages.

### OREGON'S TEN REGIONS

- |                  |                      |                     |
|------------------|----------------------|---------------------|
| 1. North Coast   | 4. Willamette Valley | 8. Mt. Hood / Gorge |
| 2. Central Coast | 5. Portland Metro    | 9. Northeastern     |
| 3. South Coast   | 6. Southern          | 10. Southeastern    |
|                  | 7. Central           |                     |





## Chapter 320 — Miscellaneous Taxes

ORS sections in this chapter were amended or repealed by the Legislative Assembly during its 2018 regular session. See the table of ORS sections amended or repealed during the 2018 regular session: [2018 A&R Tables](#)

New sections of law were added by legislative action to this ORS chapter or to a series within this ORS chapter by the Legislative Assembly during its 2018 regular session. See sections in the following 2018 Oregon Laws chapters: [2018 Session Laws 0034](#)

### 2017 EDITION

#### MISCELLANEOUS TAXES

#### REVENUE AND TAXATION

#### AMUSEMENT DEVICE TAXES

- 320.005 Definitions for ORS 320.005 to 320.150
- 320.011 Amusement device excise tax; amount
- 320.012 Increase in tax when net receipts exceed specified amounts; rules
- 320.013 Additional tax for Oregon Youth Conservation Corps
- 320.016 When tax is due; replacing amusement devices
- 320.075 Joint and several liability for tax; late payment penalty
- 320.080 Procedure on failure to pay tax or penalty
- 320.100 Distribution of tax receipts
- 320.110 Rules
- 320.120 Employment of agents
- 320.130 Law enforcement officers to enforce tax and assist department
- 320.140 Tax does not legalize ownership, display or operation in violation of law
- 320.150 Oregon State Lottery assistance in tax collection responsibilities

## LOCAL CONSTRUCTION TAXES

- 320.170 Restriction on construction tax imposed by school district
- 320.171 Restriction on construction tax imposed by local government, local service district or special government body
- 320.173 Exemptions
- 320.176 Limitations; rates; adjustment by Department of Revenue
- 320.179 School district resolutions; collections; requirements
- 320.183 Long-term facilities plan for capital improvements
- 320.186 Payment of obligations
- 320.189 Payment of taxes
- 320.192 City or county ordinance or resolution to impose tax; requirements; payment of taxes
- 320.195 Deposit of revenues; required uses

## TRANSIENT LODGING TAXES

### (Definitions)

- 320.300 Definitions for ORS 320.300 to 320.350
- 320.302 Certain terms definable by rule

### (State Transient Lodging Tax)

- 320.305 Rate and computation of tax; total retail price; collector reimbursement
- 320.308 Exemptions
- 320.310 Records and statements
- 320.315 Due date and form of returns; payment of tax
- 320.320 Refunds
- 320.325 Amounts held in trust; enforcement
- 320.330 Applicability of other provisions of tax law

320.332 Disclosure of confidential information by Department of Revenue and local governments; rules

320.335 Distribution of moneys received

320.340 Exemption from public records law

(Local Transient Lodging Taxes)

320.345 Collector reimbursement charges

320.347 Alternative remittance of receipts from tax on camping and recreational vehicle spaces

320.350 Tax moratorium; exceptions; uses of revenues

TRANSPORTATION PRESERVATION AND MODERNIZATION TAXES

(Transportation Project Taxes)

320.400 Definitions for ORS 320.400 to 320.490 and 803.203

320.405 Tax for privilege of engaging in business of selling motor vehicles at retail; collection of privilege tax from purchaser

320.410 Tax on use in Oregon of motor vehicles purchased out of state at retail; tax as liability of purchaser; reduction for other taxes paid

320.415 Excise tax on retail sale of bicycles; tax as liability of purchaser; collection at time of sale

320.420 Collection of use tax; time of collection; presumptions of use in this state

320.425 Exempt sales; nonresident purchasers; certain auction sales; resale certificates

320.430 Refunds for excess payments; overpayment to be applied to outstanding transportation project taxes

320.435 Deposit of revenue from motor vehicle privilege and use taxes

320.440 Deposit of revenue from excise tax on bicycles

320.445 Collection at point of sale of use tax and excise tax; returns and payment of transportation project taxes

- 320.450 Liability for taxes; amounts held in trust; warrants for collection; conference; appeal
- 320.455 When purchasers required to remit use tax and excise tax
- 320.460 Sellers required to keep records; examination of records by Department of Revenue
- 320.465 Subpoena authority of Department of Revenue; enforcement; contempt of court
- 320.470 Disclosure of information; appeal
- 320.475 Applicability of other provisions of tax law
- 320.480 Department of Revenue to administer and enforce transportation project tax laws; agreement with Department of Transportation for purposes of ORS 803.203
- 320.485 Agreement with Department of Transportation for collection of use tax
- 320.490 Local government motor vehicle tax moratorium

(Tax on Wages for Public Transportation Services)

- 320.550 Tax on wages; employers and periodic payers to withhold; liability of lender or surety; annual returns submitted to Department of Revenue; certain residents to report and pay tax
- 320.555 Applicability of other provisions of tax law
- 320.560 Distribution of moneys received

PENALTIES

- 320.990 Penalties

AMUSEMENT DEVICE TAXES

**320.005 Definitions for ORS 320.005 to 320.150.** As used in ORS 320.005 to 320.150, unless the context requires otherwise:

(1) "Amusement device" means a video lottery game terminal, including but not limited to any electronic, mechanical-electronic or nonmechanical device that:

- (a) Displays a ticket through the use of a video display screen;
- (b) Is available for consumer play upon the payment of consideration;
- (c) Determines winners through the element of chance; and
- (d) Displays possible prizes on the device.

(2) "Department" means the Department of Revenue.

(3) "Net receipts" has the meaning given the term "net receipts from video lottery games" under ORS 461.547.

(4) "Operate" means to make an amusement device available for use by the public for gain, benefit or advantage.

(5)(a) "Person" means every individual, partnership (limited or not), corporation (for-profit or not-for-profit), company, cooperative, joint stock company, joint venture, firm, business trust, association, organization, institution, club, society, receiver, assignee, trustee in bankruptcy, auctioneer, syndicate, trust, trustee, estate, personal representative or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

(b) "Person" includes this or another state, a municipal corporation, quasi-municipal corporation or political subdivision of this or another state, and the agencies, departments and institutions of this or another state, irrespective of the nature of the activities engaged in or functions performed, but does not include the United States or a foreign government or any agency, department or instrumentality of the United States or of any foreign government.

(6) "Tax year" means a period of 12 months beginning July 1 and ending the following June 30. [1957 c.384 §2; 1975 c.651 §1; 1985 c.476 §1; 1991 c.459 §267; 1993 c.803 §1; 1999 c.501 §1; 2005 c.94 §91]

**320.010** [Amended by 1955 c.574 §1; 1957 c.384 §3; 1959 c.155 §1; 1967 c.344 §7; 1975 c.651 §2; 1981 c.677 §2; 1989 c.786 §1; repealed by 1991 c.459 §268 (320.011 enacted in lieu of 320.010)]

**320.011 Amusement device excise tax; amount.** (1) An excise tax is imposed upon every person for the privilege of operating an amusement device within this state. The tax shall be imposed as provided in subsection (2) of this section and ORS 320.012.

(2) The tax shall be \$125 for operating an amusement device during the tax year.

(3) If an amusement device is not in operation in each quarter of the tax year, the tax imposed under this section shall be prorated, based on the number of calendar quarters in which the amusement device was operating for one day or more.

(4) The tax imposed by this section is in addition to all other excises, taxes, fees or other charges and shall not be used to reduce amounts otherwise accruing to the State Lottery Fund under contracts or agreements with lottery operators or retailers or in any other manner. [1991 c.459 §269 (enacted in lieu of 320.010); 1993 c.803 §2; 1999 c.501 §2]

**320.012 Increase in tax when net receipts exceed specified amounts; rules.** (1) If at any point during the tax year, net receipts from one or more amusement devices operating at a single location exceed \$104,000, the tax imposed under ORS 320.011 shall be increased by an additional \$50 for each device at the location.

(2) If at any point during the tax year, net receipts from one or more amusement devices operating at a single location exceed \$260,000, the tax imposed under ORS 320.011 and subsection (1) of this section shall be increased by an additional \$75 for each device at the location.

(3) The department may adopt rules defining the term "location" for purposes of this section. [1993 c.803 §4; 1995 c.79 §173; 1995 c.255 §3; 1999 c.501 §3]

**320.013 Additional tax for Oregon Youth Conservation Corps.** (1) In addition to the excise tax imposed by ORS 320.011, an excise tax is imposed upon every person for the

privilege of operating an amusement device within this state. The tax shall be \$10 for each amusement device operated during the tax year.

(2) All moneys received from the tax imposed under subsection (1) of this section, not including penalties, shall be paid by the Department of Revenue into the State Treasury quarterly and are continuously appropriated to pay the expenses of the state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663. [1993 c.803 §4a; 1995 c.259 §4; 1999 c.501 §4]

**320.015** [1955 c.574 §3; repealed by 1957 c.384 §6]

**320.016 When tax is due; replacing amusement devices.** (1) If an amusement device was in operation before July 1 of the tax year and is to be operating on July 1 of the tax year, the excise tax imposed under ORS 320.011 and 320.013 shall be due on June 30 preceding the tax year.

(2) If an amusement device begins operating at a location on or after July 1 of the tax year, the excise tax imposed under ORS 320.011 and 320.013 shall be due on the day the amusement device begins operating.

(3) If additional taxes are due under ORS 320.012, the additional taxes shall be due on the 14th day after the close of the calendar quarter in which the net receipts from amusement devices operating at a location equal or exceed the level at which the additional taxes are due.

(4) If taxes imposed under ORS 320.011 or 320.013 have been paid for operating an amusement device that, during the tax year, is taken out of operation as the result of being replaced by another amusement device, the taxes that have been paid for the amusement device that has been taken out of operation shall be taken into account in determining any taxes due on the replacement amusement device.

(5) The Department of Revenue may not refund any amusement device tax to an amusement device taxpayer who, at the time of payment, was responsible for the payment of the tax and who subsequently is no longer the person responsible for the payment of the tax. [1999 c.501 §5]

**320.020** [Repealed by 1991 c.459 §272c]

**320.030** [Amended by 1975 c.651 §3; 1981 c.677 §3; 1985 c.476 §2; repealed by 1993 c.803 §16]

**320.031** [1995 c.255 §2; repealed by 1999 c.501 §12]

**320.040** [Amended by 1975 c.651 §4; 1989 c.786 §2; 1991 c.459 §270; 1993 c.803 §6; repealed by 1999 c.501 §12]

**320.050** [Amended by 1955 c.574 §4; 1957 c.384 §4; 1981 c.677 §4; 1991 c.459 §271; 1991 c.567 §5; 1993 c.18 §87; 1993 c.803 §7; repealed by 1999 c.501 §12]

**320.060** [Amended by 1955 c.574 §5; 1957 c.384 §5; 1959 c.155 §2; 1975 c.651 §5; 1981 c.677 §5; 1989 c.786 §4; 1991 c.459 §272; 1991 c.567 §6; 1993 c.803 §8; 1995 c.255 §5; repealed by 1999 c.501 §12]

**320.065** [1975 c.651 §8; 1993 c.803 §9; repealed by 1999 c.501 §12]

**320.070** [Amended by 1955 c.574 §6; 1959 c.155 §3; 1975 c.651 §6; 1981 c.677 §6; 1989 c.786 §5; 1991 c.459 §272a; 1991 c.567 §7; 1993 c.803 §10; repealed by 1999 c.501 §12]

**320.075 Joint and several liability for tax; late payment penalty.** (1) Each person responsible by law or contract for the operation of an amusement device in this state, together with any officer or partner thereof, shall be liable jointly and severally for the taxes imposed under ORS 320.005 to 320.150 and for any penalties arising under ORS 320.005 to 320.150.

(2) If an amusement device is operated in this state without a tax imposed by ORS 320.005 to 320.150 having been paid on or before 30 days after the date the tax is due, a penalty of \$200 shall be imposed.

(3) The penalty imposed in subsection (2) of this section shall be waived if the sole reason the tax was not paid is because of the failure of the Oregon State Lottery to act under the agreement described in ORS 320.150. [1999 c.501 §6; 2005 c.94 §92]

**320.080 Procedure on failure to pay tax or penalty.** (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant for the payment of the amount of the tax, with the added penalty and the cost of executing the warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant under this section may be directed to any agent authorized by the department to collect taxes, and in the execution of the warrant the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) Until a warrant issued under this section is satisfied in full, the department has the same remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax. [Amended by 1981 c.677 §7; 1983 c.696 §13; 1985 c.761 §16; 1989 c.625 §77; 2003 c.576 §202; 2005 c.94 §93; 2011 c.389 §2; 2011 c.661 §5]

**320.090** [Repealed by 1981 c.677 §8]

**320.100 Distribution of tax receipts.** (1) All moneys received from the taxes imposed under ORS 320.011 and 320.012, including penalties, shall be paid by the Department of Revenue in the following manner:

(a) Seventy-five percent (75%) of the moneys shall be credited, appropriated or remitted as follows:

(A) Forty-three and two-tenths percent (43.2%) thereof shall be credited to the General Fund to be available for payment of general governmental expenses.

(B) Nine and seven-tenths percent (9.7%) is continuously appropriated to pay the expenses of state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663.

(C) Forty-seven and one-tenth percent (47.1%) thereof shall be remitted to the county treasurers of the several counties of the state. Each county shall receive such share of the moneys as its population, determined by Portland State University, bears to the total population of the counties of the state, as determined by the census last preceding such apportionment.

(b) Twenty-five percent (25%) of the moneys shall be continuously appropriated to pay the expenses of the state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663.

(2) All revenues received under this section by the treasurers of the several counties shall be placed in the general fund of each county to be expended by the county courts or the board of county commissioners of the several counties for general governmental expenses. [Amended by 1959 c.143 §1; 1963 c.644 §3; 1967 c.323 §1; 1969 c.230 §1; 1989 c.786 §3; 1991 c.459 §272e; 1993 c.803 §11; 1995 c.259 §3; 1999 c.501 §7; 2013 c.768 §133a]

**320.110 Rules.** The Department of Revenue may adopt rules necessary for the administration and enforcement of ORS 320.005 to 320.150. [Amended by 1991 c.459 §272b; 2005 c.94 §94]

**320.120 Employment of agents.** (1) The Department of Revenue may employ the agents necessary for the administration and enforcement of ORS 320.005 to 320.150. Agents of the department charged with the enforcement of ORS 320.005 to 320.150 have all the power and authority of police officers in the performance of such duties.

(2) The Oregon State Lottery and the agents and employees of the Oregon State Lottery may not be considered agents of the department charged with the enforcement of ORS 320.005 to 320.150. [Amended by 1999 c.501 §8; 2005 c.94 §95]

**320.130 Law enforcement officers to enforce tax and assist department.** The state police, sheriffs, constables, police and other law enforcement officers within the State of Oregon shall enforce all provisions of ORS 320.005 to 320.150 and shall assist the Department of Revenue. [Amended by 2005 c.94 §96]

**320.140 Tax does not legalize ownership, display or operation in violation of law.** Nothing in ORS 320.005 to 320.150 shall be construed as licensing, authorizing or legalizing the ownership, possession, display or operation, in violation of any law of this state, of any amusement device. [Amended by 1993 c.270 §64; 1993 c.803 §14; 2005 c.94 §97]

**320.150 Oregon State Lottery assistance in tax collection responsibilities.** The Department of Revenue and the Oregon State Lottery Commission shall enter into an agreement



pursuant to which the Oregon State Lottery shall assist the department in the collection of excise taxes imposed under ORS 320.005 to 320.150 on amusement devices operated under the authority of the Oregon State Lottery Commission pursuant to ORS 461.215 and 461.217 and any other functions of the department under ORS 320.005 to 320.150 as may be provided under the agreement. The agreement is not intended to preclude performance by the department of collection functions as from time to time may be required, nor is the agreement intended to preclude the performance of functions by the Oregon State Lottery, under less formal arrangements made with the department, with respect to the tax imposed under ORS 320.005 to 320.150 if the functions are not specifically mentioned in the agreement. The collection of taxes under ORS 320.005 to 320.150 by the Oregon State Lottery does not render the Oregon State Lottery or the agents and employees of the Oregon State Lottery responsible for collection of the tax. [1993 c.803 §13; 1999 c.501 §9; 2005 c.94 §98]

## LOCAL CONSTRUCTION TAXES

**320.170 Restriction on construction tax imposed by school district.** (1) A school district, as defined in ORS 330.005, may impose a construction tax only in accordance with ORS 320.170 to 320.195.

(2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179, by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code. [2007 c.829 §2; 2009 c.534 §1; 2016 c.59 §2]

**320.171 Restriction on construction tax imposed by local government, local service district or special government body.** (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in ORS 320.170 to 320.195.

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of ORS 320.170 to 320.195, construction taxes are limited to privilege taxes imposed under ORS 320.170 to 320.195 and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income. [2007 c.829 §1; 2016 c.59 §4]

**320.173 Exemptions.** Construction taxes may not be imposed on the following:

(1) Private school improvements.

(2) Public improvements as defined in ORS 279A.010.

(3) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the area in which the construction tax

is imposed, for a period of at least 60 years following the date of construction of the residential housing.

(4) Public or private hospital improvements.

(5) Improvements to religious facilities primarily used for worship or education associated with worship.

(6) Agricultural buildings, as defined in ORS 455.315 (2)(a).

(7) Facilities that are operated by a not-for-profit corporation and that are:

(a) Long term care facilities, as defined in ORS 442.015;

(b) Residential care facilities, as defined in ORS 443.400; or

(c) Continuing care retirement communities, as defined in ORS 101.020. [2007 c.829 §3; 2009 c.534 §2]

**320.176 Limitations; rates; adjustment by Department of Revenue.** (1) Construction taxes imposed by a school district pursuant to ORS 320.170 may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, "construction cost index" means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule. [2007 c.829 §4; 2016 c.59 §5]

**320.179 School district resolutions; collections; requirements.** (1) A school district imposing a construction tax shall impose the tax by a resolution adopted by the district board of the school district. The resolution shall state the rates of tax, subject to ORS 320.176.

(2) Prior to collecting a construction tax, a school district shall enter into an intergovernmental agreement with each local government, local service district, special government body, state agency or state official collecting the tax that includes:

(a) Collection duties and responsibilities;

(b) The specific school district accounts into which construction tax revenues are to be deposited and the frequency of such deposits; and

(c) The amount of the administrative fee that the entity or official collecting the tax may use to recoup expenses incurred in collecting the construction tax, either through retention or reimbursement. An administrative fee under this paragraph may not exceed four percent of tax revenues. [2007 c.829 §5; 2009 c.534 §§3,4]

**320.183 Long-term facilities plan for capital improvements.** (1) After deducting the costs of administering a construction tax and payment of refunds of such taxes, a school district shall use net revenues only for capital improvements.

(2) A construction tax may not be imposed under ORS 320.170 to 320.195 unless the school district imposing the tax develops a long-term facilities plan for making capital improvements. The plan shall be adopted by resolution of the district board of the school district.

(3) As used in this section, "capital improvements":

(a) Means:

- (A) The acquisition of land;
- (B) The construction, reconstruction or improvement of school facilities;
- (C) The acquisition or installation of equipment, furnishings or other tangible property;
- (D) The expenditure of funds for architectural, engineering, legal or similar costs related to capital improvements and any other expenditures for assets that have a useful life of more than one year; or

(E) The payment of obligations and related costs of issuance that are issued to finance or refinance capital improvements.

(b) Does not include operating costs or costs of routine maintenance. [2007 c.829 §6]

**320.186 Payment of obligations.** A school district may pledge construction taxes imposed pursuant to ORS 320.170 to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183. [2007 c.829 §7; 2016 c.59 §6]

**320.189 Payment of taxes.** Construction taxes must be paid by the person undertaking the construction at the time that a permit authorizing the construction or the expansion of square footage of a facility or building is issued. [2007 c.829 §8; 2009 c.534 §5]

**320.192 City or county ordinance or resolution to impose tax; requirements; payment of taxes.** (1) The governing body of a city or county may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of this section and ORS 320.195.

(2)(a) A tax may be imposed on improvements to residential real property that result in a new residential structure or additional square footage in an existing residential structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate of the tax. The tax may not exceed one percent of the permit valuation for residential construction permits issued by the city or county either directly or through the Building Codes Division of the Department of Consumer and Business Services.

(3)(a) A tax may be imposed on improvements to commercial and industrial real property, including the commercial and industrial portions of mixed-use property, that result in a new structure or additional square footage in an existing structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate and base of the tax.

(4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS 320.189 to the city or county that imposed the tax.

(5)(a) This section and ORS 320.195 do not apply to a tax described in ORS 320.171 (2).

(b) Conformity of a tax imposed pursuant to this section by a city or county to the requirements of this section and ORS 320.195 shall be determined without regard to any tax described in ORS 320.171 (2) that is imposed by the city or county. [2016 c.59 §8]

**320.195 Deposit of revenues; required uses.** (1) As soon as practicable after the end of each fiscal quarter, a city or county that imposes a construction tax pursuant to ORS 320.192 shall deposit the construction tax revenues collected in the fiscal quarter just ended in the general fund of the city or county.

(2) Of the revenues deposited pursuant to subsection (1) of this section, the city or county may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the city or county incurred in complying with this section.

(3) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use the remaining revenues received under ORS 320.192 (2) as follows:

(a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309 (5)(c) and (d) and (7);

(b) Fifteen percent to be distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance; and

(c) Thirty-five percent for programs and incentives of the city or county related to affordable housing as defined by the city or county, respectively, for purposes of this section and ORS 320.192.

(4) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use 50 percent of the remaining revenues received under ORS 320.192 (3) to fund programs of the city or county related to housing. [2016 c.59 §9]

## TRANSIENT LODGING TAXES

### (Definitions)

**320.300 Definitions for ORS 320.300 to 320.350.** As used in ORS 320.300 to 320.350:

(1) "Collection reimbursement charge" means the amount a transient lodging tax collector may retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting and reporting a transient lodging tax and in maintaining transient lodging tax records.

(2) "Conference center" means a facility that:

(a) Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and

(b) Meets the current membership criteria of the International Association of Conference Centers.

(3) "Convention center" means a new or improved facility that:

(a) Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting

rooms and any other associated space, including without limitation banquet facilities, loading areas and lobby and registration areas;

(b) Has a total meeting room and ballroom space between one-third and one-half of the total size of the center's exhibition space;

(c) Generates a majority of its business income from tourists;

(d) Has a room-block relationship with the local lodging industry; and

(e) Is owned by a unit of local government, a governmental agency or a nonprofit organization.

(4) "Local transient lodging tax" means a tax imposed by a unit of local government on the sale, service or furnishing of transient lodging.

(5) "State transient lodging tax" means the tax imposed under ORS 320.305.

(6) "Tourism" means economic activity resulting from tourists.

(7) "Tourism promotion" means any of the following activities:

(a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;

(b) Conducting strategic planning and research necessary to stimulate future tourism development;

(c) Operating tourism promotion agencies; and

(d) Marketing special events and festivals designed to attract tourists.

(8) "Tourism promotion agency" includes:

(a) An incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis.

(b) A nonprofit entity that manages tourism-related economic development plans, programs and projects.

(c) A regional or statewide association that represents entities that rely on tourism-related business for more than 50 percent of their total income.

(9) "Tourism-related facility" means:

(a) A conference center, convention center or visitor information center; and

(b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

(10) "Tourist" means a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:

(a) Requires the person to travel more than 50 miles from the community of residence; or

(b) Includes an overnight stay.

(11) "Transient lodging" means:

(a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;

(b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or

(c) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy.

(12) "Transient lodging intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging.

(13) “Transient lodging provider” means a person that furnishes transient lodging.

(14) “Transient lodging tax collector” means a transient lodging provider or a transient lodging intermediary.

(15) “Unit of local government” has the meaning given that term in ORS 190.003.

(16) “Visitor information center” means a building, or a portion of a building, the main purpose of which is to distribute or disseminate information to tourists. [Formerly 305.824; 2005 c.187 §1; 2013 c.610 §3]

**Note:** Sections 2 and 14, chapter 610, Oregon Laws 2013, provide:

**Sec. 2.** The Legislative Assembly declares that it is the purpose of the amendments to ORS 320.300, 320.305, 320.310, 320.315, 320.320, 320.325, 320.330, 320.345, 320.347 and 320.350 by sections 3 to 12 of this 2013 Act to enhance the administration and enforcement of existing law governing transient lodging taxes in this state. [2013 c.610 §2]

**Sec. 14.** Section 2 of this 2013 Act is repealed on January 2, 2023. [2013 c.610 §14]

**320.302 Certain terms definable by rule.** The Department of Revenue may by rule define “dwelling unit,” “nonprofit facility,” “temporary human occupancy” and other terms for purposes of ORS 320.300 to 320.350. [2005 c.187 §5]

(State Transient Lodging Tax)

**320.305 Rate and computation of tax; total retail price; collector reimbursement.** (1)(a) A tax of 1.8 percent is imposed on any consideration rendered for the sale, service or furnishing of transient lodging.

(b)(A) The tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the transient lodging.

(B) The total retail price paid by a person for occupancy of transient lodging that is part of a travel package may be determined by reasonable and verifiable standards from books and records kept in the ordinary course of the transient lodging tax collector’s business.

(c) The tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.

(d) The tax imposed by this subsection is in addition to and not in lieu of any local transient lodging tax.

(2) The transient lodging tax collector may withhold a collection reimbursement charge of five percent of the amount collected under subsection (1) of this section. [2003 c.818 §2; 2013 c.610 §4; 2016 c.102 §1]

**Note:** The amendments to 320.305 by section 3, chapter 102, Oregon Laws 2016, apply to consideration rendered on or after July 1, 2020, for the sale, service or furnishing of transient lodging. See section 4, chapter 102, Oregon Laws 2016. The text that applies to consideration rendered on or after July 1, 2020, for the sale, service or furnishing of transient lodging, is set forth for the user’s convenience.

**320.305.** (1)(a) A tax of 1.5 percent is imposed on any consideration rendered for the sale, service or furnishing of transient lodging.

(b)(A) The tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the transient lodging.

(B) The total retail price paid by a person for occupancy of transient lodging that is part of a travel package may be determined by reasonable and verifiable standards from books and records kept in the ordinary course of the transient lodging tax collector's business.

(c) The tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.

(d) The tax imposed by this subsection is in addition to and not in lieu of any local transient lodging tax.

(2) The transient lodging tax collector may withhold a collection reimbursement charge of five percent of the amount collected under subsection (1) of this section.

**320.308 Exemptions.** The following are exempt from the state transient lodging tax:

(1) A dwelling unit in a hospital, health care facility, long term care facility or any other residential facility that is licensed, registered or certified by the Department of Human Services or the Oregon Health Authority;

(2) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

(3) A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

(4) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

(5) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or

(6) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(a) All dwelling units occupied are within the same facility; and

(b) The person paying consideration for the transient lodging is the same person throughout the consecutive period. [2005 c.187 §3; 2009 c.595 §206]

**Note:** 320.308 was added to and made a part of 320.300 to 320.350 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**320.310 Records and statements.** Every transient lodging tax collector shall keep records, render statements and comply with rules adopted by the Department of Revenue with respect to the tax imposed under ORS 320.305. The records and statements required by this section must be sufficient to show whether there is a tax liability under ORS 320.305. [2003 c.818 §3; 2013 c.610 §5]

**320.315 Due date and form of returns; payment of tax.** (1) Every transient lodging tax collector is responsible for collecting the tax imposed under ORS 320.305 and shall file a return with the Department of Revenue, on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter. The department shall prescribe the form of the return required by this section. The rules of the department shall require that returns be made under penalties for false swearing.

(2) When a return is required under subsection (1) of this section, the transient lodging tax collector required to make the return shall remit the tax due to the department at the time fixed for filing the return. [2003 c.818 §4; 2013 c.610 §6]

**320.320 Refunds.** If the amount paid by the transient lodging tax collector to the Department of Revenue under ORS 320.315 exceeds the amount of tax payable, the department shall refund the amount of the excess with interest thereon at the rate established under ORS 305.220 during a period beginning 45 days after the later of the due date of the return to which the excess relates or the date the excess was paid, and ending on the date the refund is paid. A refund may not be made to a transient lodging tax collector that fails to claim the refund within two years after the due date for filing the return to which the claim for refund relates. [2003 c.818 §5; 2013 c.610 §7; 2017 c.278 §12]

**320.325 Amounts held in trust; enforcement.** (1) Every transient lodging tax collector is deemed to hold the amount of state transient lodging taxes collected in trust for the State of Oregon and for payment to the Department of Revenue in the manner and at the time provided under ORS 320.315.

(2) At any time the transient lodging tax collector fails to remit any amount of state transient lodging taxes deemed to be held in trust for the State of Oregon, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued on the delinquent amount. The warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as warrants for the collection of delinquent income taxes. [2003 c.818 §6; 2013 c.610 §8]

**320.330 Applicability of other provisions of tax law.** Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 governing the audit and examination of reports and returns, confidentiality of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and related procedures, apply to ORS 320.305 to 320.340 as if the state transient lodging tax were a tax imposed upon or measured by net income. The provisions apply to the taxpayer liable for the tax and to the transient lodging tax collector required to collect the tax. Any amount collected and required to be remitted to the Department of Revenue is considered a tax upon the transient lodging tax collector required to collect the tax and the transient lodging tax collector is considered a taxpayer. [2003 c.818 §7; 2013 c.610 §9]

**320.332 Disclosure of confidential information by Department of Revenue and local governments; rules.** (1) As used in this section, "confidential information" means information contained in state transient lodging tax returns required under ORS 320.315, any information in state transient lodging tax reports from which information about a particular taxpayer may be determined and any other information or reports exchanged by the Department of Revenue and a unit of local government related to transient lodging taxpayers that is confidential pursuant to the confidentiality provisions of ORS 320.330.

(2)(a) Notwithstanding ORS 314.835 and the confidentiality provisions of ORS 320.330 and except as provided in paragraph (d) of this subsection, upon written request, the Department of Revenue shall disclose information received under ORS 320.305 to 320.340, or any reports or



other form of analysis based on the information, to a unit of local government for purposes of local transient lodging taxes imposed or administered by the unit of local government.

(b) Before making a request under paragraph (a) of this subsection, the unit of local government must provide written notice, to the officers, employees and agents of the unit of local government who will receive the confidential information, of the provisions of ORS 314.835 and 314.991 (2) relating to the penalties for unlawful disclosure of confidential information.

(c) Before disclosing confidential information requested under this subsection to officers, employees and agents, the unit of local government must receive from the officers, employees and agents certification of receipt of the notice required under paragraph (b) of this subsection.

(d) The department may refuse to comply with a request if compliance would be unduly burdensome or expensive.

(3)(a) Notwithstanding any other provision of law and except as provided in paragraph (b) of this subsection, upon written request, a unit of local government shall disclose information received under ORS 320.345 to 320.350, or any reports or other form of analysis based on the information, to the Department of Revenue for purposes of the administration of the state transient lodging tax by the department.

(b) The unit of local government may refuse to comply with a request if compliance would be unduly burdensome or expensive.

(4)(a) A unit of local government may disclose confidential information only to qualified personnel for management audits, financial audits or research conducted by any accredited university, the League of Oregon Cities or the Association of Oregon Counties.

(b) Personnel who receive information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the personnel obtained the information.

(c) For audits or research, personnel who receive confidential information may not directly or indirectly disclose in a report or any other manner the identity of a taxpayer, including a taxpayer identification number or Social Security number.

(5) Information requested under this section is not required to be provided more frequently than once per calendar quarter.

(6) A request made under subsection (2) or (3) of this section remains in effect until the unit of local government that made the request or the department, respectively, requests in writing to discontinue receiving the information.

(7) The Department of Revenue, after consultation with local governments, shall adopt rules establishing the process for making requests under this section, including, but not limited to, forms and timing, information that may be disclosed and the notice and certification requirements under subsection (2)(b) and (c) of this section. [2017 c.89 §2]

**Note:** 320.332 was added to and made a part of 320.300 to 320.350 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**320.335 Distribution of moneys received.** All moneys received by the Department of Revenue pursuant to ORS 320.305 to 320.340, and interest thereon, shall be paid to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds:

(1) Moneys necessary to reimburse the Department of Revenue for the actual costs incurred by the department in administering the state transient lodging tax, not to exceed two percent of state transient lodging tax collections, are continuously appropriated to the department; and

(2) The balance of the moneys received shall be transferred to the account of the Oregon Tourism Commission established under ORS 284.131. The moneys transferred under this subsection are continuously appropriated to the Oregon Tourism Commission for the purposes set forth in ORS 284.131. [2003 c.818 §8]

**320.340 Exemption from public records law.** (1) Public records of moneys received by the Department of Revenue pursuant to ORS 320.305 to 320.340 are exempt from disclosure under ORS 192.311 to 192.478. Nothing in this section shall limit the use that can be made of such information for regulatory purposes or its use and admissibility in any enforcement proceedings.

(2) If a conflict is found to exist between subsection (1) of this section and ORS 314.835, ORS 314.835 controls. [2003 c.818 §8a]

#### (Local Transient Lodging Taxes)

**320.345 Collector reimbursement charges.** (1) On or after January 1, 2001, a unit of local government that imposed a local transient lodging tax on December 31, 2000, and allowed a transient lodging tax collector to retain a collection reimbursement charge on that tax, may not decrease the rate of the collection reimbursement charge.

(2) A unit of local government that imposes a new local transient lodging tax on or after January 1, 2001, shall allow a transient lodging tax collector to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues. The unit of local government may increase the rate of the collection reimbursement charge.

(3) A unit of local government that increases a local transient lodging tax on or after January 1, 2001, shall allow a transient lodging tax collector to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues, including revenues that would have been collected without the increase. The unit of local government may increase the rate of the collection reimbursement charge.

(4) A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges allowed under this section by:

(a) Increasing the rate of the local transient lodging tax;

(b) Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or

(c) Increasing or imposing a new fee solely on transient lodging tax collectors or tourism promotion agencies that are funded by the local transient lodging tax. [2003 c.818 §10; 2013 c.610 §11]

**320.347 Alternative remittance of receipts from tax on camping and recreational vehicle spaces.** (1) Except as provided in this section, a unit of local government that imposes a tax on the rental of privately owned camping or recreational vehicle spaces shall, regardless of a schedule imposed by the unit of local government for remitting tax receipts, allow a transient lodging tax collector to hold the tax collected until the amount of money held equals or exceeds \$100.

(2) Once the amount held by a transient lodging tax collector equals or exceeds \$100, or by December 31 of each year if the \$100 threshold is not met, the transient lodging tax collector shall remit the tax collected at the next following reporting period established by the unit of local government for payment of the tax.

(3) A unit of local government may not assess any penalty or interest against a transient lodging tax collector that withholds payments pursuant to this section. [2005 c.610 §4; 2013 c.610 §12]

**320.350 Tax moratorium; exceptions; uses of revenues.** (1) A unit of local government that did not impose a local transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

(3) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not decrease the percentage of total local transient lodging tax revenues that are actually expended to fund tourism promotion or tourism-related facilities on or after July 2, 2003. A unit of local government that agreed, on or before July 1, 2003, to increase the percentage of total local transient lodging tax revenues that are to be expended to fund tourism promotion or tourism-related facilities, must increase the percentage as agreed.

(4) Notwithstanding subsections (1) and (2) of this section, a unit of local government that is financing debt with local transient lodging tax revenues on November 26, 2003, must continue to finance the debt until the retirement of the debt, including any refinancing of that debt. If the tax is not otherwise permitted under subsection (1) or (2) of this section, at the time of the debt retirement:

(a) The local transient lodging tax revenue that financed the debt shall be used as provided in subsection (5) of this section; or

(b) The unit of local government shall thereafter eliminate the new tax or increase in tax otherwise described in subsection (1) or (2) of this section.

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt, provided that:

(A) The net revenue may be used for administrative costs only if the unit of local government provides a collection reimbursement charge; and

(B) Upon retirement of the debt, the unit of local government reduces the tax by the amount by which the tax was increased to finance or refinance the debt.

(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than

30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.

(7)(a)(A) A local transient lodging tax must be computed on the total retail price, including all charges other than taxes, paid by a person for occupancy of the transient lodging.

(B) The total retail price paid by a person for occupancy of transient lodging that is part of a travel package may be determined by reasonable and verifiable standards from books and records kept in the ordinary course of the transient lodging tax collector's business.

(b) The tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging. [2003 c.818 §11; 2013 c.610 §10]

## TRANSPORTATION PRESERVATION AND MODERNIZATION TAXES

### (Transportation Project Taxes)

**320.400 Definitions for ORS 320.400 to 320.490 and 803.203.** As used in ORS 320.400 to 320.490 and 803.203:

(1)(a) "Bicycle" means a vehicle that is designed to be operated on the ground on wheels and is propelled exclusively by human power.

(b) "Bicycle" does not include durable medical equipment.

(2) "New motor vehicle" has the meaning given that term in ORS 803.350 (8)(c).

(3) "Retail sales price" means the total price paid at retail for a taxable vehicle, exclusive of the amount of any excise, privilege or use tax, to a seller by a purchaser of the taxable vehicle.

(4) "Seller" means:

(a) With respect to the privilege tax imposed under ORS 320.405 and the use tax imposed under ORS 320.410, a vehicle dealer.

(b) With respect to the excise tax imposed under ORS 320.415, a person engaged in whole or in part in the business of selling bicycles.

(5) "Taxable bicycle" means a new bicycle that has wheels of at least 26 inches in diameter and a retail sales price of \$200 or more.

(6) "Taxable motor vehicle" means a new motor vehicle with a gross vehicle weight rating of 26,000 pounds or less that is:

(a) A vehicle as defined in ORS 744.850, other than an all-terrain vehicle;

(b) A bus trailer as defined in ORS 801.165;

(c) A camper as defined in ORS 801.180;

(d) A commercial bus as defined in ORS 801.200;

(e) A commercial motor vehicle as defined in ORS 801.208;

(f) A commercial vehicle as defined in ORS 801.210;

(g) An electric assisted bicycle as defined in ORS 801.258;

(h) A fixed load vehicle as defined in ORS 801.285;

(i) A moped as defined in ORS 801.345;

(j) A motor assisted scooter as defined in ORS 801.348;

(k) A motor home as defined in ORS 801.350;

(L) A motor truck as defined in ORS 801.355;

(m) A tank vehicle as defined in ORS 801.522;

(n) A truck tractor as defined in ORS 801.575;

(o) A truck trailer as defined in ORS 801.580; or

(p) A worker transport bus as defined in ORS 801.610.

(7) "Taxable vehicle" means a taxable bicycle or a taxable motor vehicle.

(8) "Transportation project taxes" means the privilege tax imposed under ORS 320.405, the use tax imposed under ORS 320.410 and the excise tax imposed under ORS 320.415.

(9)(a) "Vehicle dealer" means:

(A) A person engaged in business in this state that has been issued a vehicle dealer certificate under ORS 822.020; and

(B) A person engaged in business in another state that would be subject to ORS 822.005 if the person engaged in business in this state.

(b) Notwithstanding paragraph (a) of this subsection, a person is not a vehicle dealer for purposes of ORS 320.400 to 320.490 and 803.203 to the extent the person:

(A) Conducts an event that lasts less than seven consecutive days, for which the public is charged admission and at which otherwise taxable motor vehicles are sold at auction; or

(B) Sells an otherwise taxable motor vehicle at auction at an event described in this paragraph. [2017 c.750 §89]

**320.405 Tax for privilege of engaging in business of selling motor vehicles at retail; collection of privilege tax from purchaser.** (1) A tax is imposed on each vehicle dealer for the privilege of engaging in the business of selling taxable motor vehicles at retail in this state.

(2) The privilege tax shall be computed at the rate of 0.5 percent of the retail sales price of the taxable motor vehicle. The tax may be rounded to the nearest whole cent.

(3)(a) A vehicle dealer may collect the amount of the privilege tax computed on the retail sales price of a taxable motor vehicle from the purchaser of the taxable motor vehicle.

(b) Notwithstanding paragraph (a) of this subsection, the purchaser of a taxable motor vehicle from whom the privilege tax is collected is not considered a taxpayer for purposes of the privilege tax imposed under this section. [2017 c.750 §90]

**Note:** Section 112, chapter 750, Oregon Laws 2017, provides:

**Sec. 112.** (1) It is the intent of the Legislative Assembly that revenue from the privilege tax imposed under section 90 of this 2017 Act [320.405] is not subject to the provisions of Article IX, section 3a, of the Oregon Constitution.

(2) Original jurisdiction to determine whether section 90 of this 2017 Act imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a, of the Oregon Constitution, is conferred on the Supreme Court.

(3)(a) Any person interested in or affected or aggrieved by section 90 of this 2017 Act may petition for judicial review under this section. A petition for review must be filed within 30 days after the effective date of this 2017 Act [October 6, 2017].

(b) The petition must state facts showing how the petitioner is interested, affected or aggrieved and the grounds upon which the petition is based.

(4) The filing of a petition under this section shall stay the transfer under section 96 (2)(a) of this 2017 Act [320.435 (2)(a)] of the balance of moneys received, pending the determination of the Supreme Court. The Supreme Court may not stay the imposition of the tax under section 90 of this 2017 Act or the collection and enforcement of the tax under any provision of law.

(5) Judicial review under this section shall be limited to:

(a) The provisions of this 2017 Act authorizing the imposition of the privilege tax; and

(b) The legislative history and any supporting documents related to Article IX, section 3a, of the Oregon Constitution.

(6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

(7) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(8) If the Supreme Court determines that section 90 of this 2017 Act imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a, of the Oregon Constitution, sections 90 and 91 [320.410] of this 2017 Act are repealed and moneys from the privilege tax imposed under section 90 of this 2017 Act that, as of the date of the determination, have not been expended or irrevocably pledged for repayment of bonded indebtedness shall be transferred to the State Highway Fund. [2017 c.750 §112]

**320.410 Tax on use in Oregon of motor vehicles purchased out of state at retail; tax as liability of purchaser; reduction for other taxes paid.** (1) A use tax is imposed on the storage, use or other consumption in this state of taxable motor vehicles purchased at retail from any seller.

(2) The use tax shall be computed at the rate of 0.5 percent of the retail sales price of the taxable motor vehicle.

(3) The use tax is a liability of the purchaser of the taxable motor vehicle.

(4) The use tax shall be reduced, but not below zero, by the amount of any privilege, excise, sales or use tax imposed by any jurisdiction on the sale, or on the storage, use or other consumption, of the taxable motor vehicle. The reduction under this subsection shall be made only upon a showing by the purchaser that a privilege, excise, sales or use tax has been paid.

(5) The amount of the use tax shall be separately stated on an invoice, receipt or other similar document that the seller provides to the purchaser or shall be otherwise disclosed to the purchaser.

(6) A purchaser's liability for the use tax is satisfied by a valid receipt given to the purchaser under ORS 320.420 by the seller of the taxable motor vehicle. [2017 c.750 §91]

**320.415 Excise tax on retail sale of bicycles; tax as liability of purchaser; collection at time of sale.** (1) An excise tax of \$15 is imposed on each sale at retail in this state of a taxable bicycle.

(2) The excise tax is a liability of the purchaser of the taxable bicycle.

(3) The amount of the excise tax shall be separately stated on an invoice, receipt or other similar document that the seller provides to the purchaser or shall be otherwise disclosed to the purchaser.

(4) A seller shall collect the excise tax at the time of the taxable sale.

(5) A purchaser's liability for the excise tax is satisfied by a valid receipt given to the purchaser by the seller of the taxable bicycle. [2017 c.750 §92]

**320.420 Collection of use tax; time of collection; presumptions of use in this state.** (1) A seller shall collect the use tax imposed under ORS 320.410 from a purchaser of a taxable motor vehicle and give the purchaser a receipt for the use tax in the manner and form prescribed by the Department of Revenue if:

- (a) The seller is:
  - (A) Engaged in business in this state;
  - (B) Required to collect the use tax; or
  - (C) Authorized by the department, under rules the department adopts, to collect the use tax and, for purposes of the use tax, regarded as a seller engaged in business in this state; and
- (b) The seller makes sales of taxable motor vehicles for storage, use or other consumption in this state that are subject to the use tax.
- (2) A seller required to collect the use tax under this section shall collect the tax:
  - (a) At the time of the taxable sale; or
  - (b) If the storage, use or other consumption of the taxable motor vehicle is not taxable at the time of sale, at the time the storage, use or other consumption becomes taxable.
- (3) To ensure the proper administration of ORS 320.410, and to prevent evasion of the use tax, the following presumptions are established:
  - (a) A taxable motor vehicle is stored, used or otherwise consumed in this state if it is present in this state for private or public display or storage.
  - (b)(A) A taxable motor vehicle sold by any seller for delivery in this state was sold for storage, use or other consumption in this state unless the contrary is proved.
  - (B) The burden of proving the contrary is on the seller unless the seller takes from the purchaser a resale certificate to the effect that the taxable motor vehicle was purchased for resale in the ordinary course of the purchaser's business.
  - (c)(A) A taxable motor vehicle delivered outside this state to a purchaser known by the seller to be a resident of this state was purchased from the seller for storage, use or other consumption in this state and stored, used or otherwise consumed in this state unless the contrary is proved.
  - (B) The contrary may be proved by:
    - (i) A statement in writing, signed by the purchaser or an authorized agent of the purchaser and retained by the seller, that the taxable motor vehicle was purchased for storage, use or other consumption exclusively at a designated point or points outside this state; or
    - (ii) Other evidence satisfactory to the department that the taxable motor vehicle was not purchased for storage, use or other consumption in this state. [2017 c.750 §93]

**320.425 Exempt sales; nonresident purchasers; certain auction sales; resale certificates.** (1) Notwithstanding ORS 320.405, a seller is not liable for the privilege tax with respect to a taxable motor vehicle that is sold to:

- (a) A purchaser who is not a resident of this state; or
  - (b) A business if the storage, use or other consumption of the taxable motor vehicle will occur primarily outside this state.
- (2) Notwithstanding ORS 320.405, a seller is not liable for the privilege tax with respect to an otherwise taxable motor vehicle that is sold at an event that lasts less than seven consecutive days, for which the public is charged admission and at which otherwise taxable motor vehicles are sold at auction.
- (3) Notwithstanding ORS 320.405 to 320.420, a resale certificate taken from a purchaser ordinarily engaged in the business of selling taxable vehicles relieves the seller from the obligation to collect and remit transportation project taxes. A resale certificate must be substantially in the form prescribed by the Department of Revenue by rule. [2017 c.750 §94]

**320.430 Refunds for excess payments; overpayment to be applied to outstanding transportation project taxes.** (1) If the amount of transportation project taxes paid by a seller or purchaser exceeds the amount of taxes due, the Department of Revenue shall refund the amount of the excess.

(2) Except as provided in subsection (3) of this section, the period prescribed for the department to allow or make a refund of any overpayment of transportation project taxes paid shall be as provided in ORS 314.415.

(3) The department shall apply any overpayment of tax first to any amount of transportation project taxes that is then outstanding. [2017 c.750 §95]

**320.435 Deposit of revenue from motor vehicle privilege and use taxes.** (1) The Department of Revenue shall deposit all revenue collected from the privilege tax imposed under ORS 320.405 and the use tax imposed under ORS 320.410 in a suspense account established under ORS 293.445 for the purpose of receiving the revenue. The department may pay expenses for the administration and enforcement of the privilege and use taxes out of moneys received from the privilege and use taxes. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

(2) After payment of administrative and enforcement expenses under subsection (1) of this section and refunds or credits arising from erroneous overpayments, the department shall transfer the balance of the moneys received from the privilege and use taxes as follows:

(a) Moneys attributable to the privilege tax shall be transferred as follows:

(A) \$12 million shall be transferred annually to the Zero-Emission Incentive Fund established under section 152, chapter 750, Oregon Laws 2017.

(B) After the transfer required under subparagraph (A) of this paragraph, the balance of the moneys shall be transferred to the Connect Oregon Fund established under ORS 367.080.

(b) Moneys attributable to the use tax shall be transferred to the State Highway Fund. [2017 c.750 §96]

**Note:** The amendments to 320.435 by section 96a, chapter 750, Oregon Laws 2017, become operative January 1, 2024. See section 96b, chapter 750, Oregon Laws 2017. The text that is operative on and after January 1, 2024, is set forth for the user's convenience.

**320.435.** (1) The Department of Revenue shall deposit all revenue collected from the privilege tax imposed under ORS 320.405 and the use tax imposed under ORS 320.410 in a suspense account established under ORS 293.445 for the purpose of receiving the revenue. The department may pay expenses for the administration and enforcement of the privilege and use taxes out of moneys received from the privilege and use taxes. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

(2) After payment of administrative and enforcement expenses under subsection (1) of this section and refunds or credits arising from erroneous overpayments, the department shall transfer the balance of the moneys received from the privilege and use taxes as follows:

(a) Moneys attributable to the privilege tax shall be transferred to the Connect Oregon Fund established under ORS 367.080.

(b) Moneys attributable to the use tax shall be transferred to the State Highway Fund.



**320.440 Deposit of revenue from excise tax on bicycles.** (1) The Department of Revenue shall deposit all revenue collected from the excise tax imposed under ORS 320.415 in a suspense account established under ORS 293.445 for the purposes of receiving the excise tax revenue. The department may pay expenses for the administration and enforcement of the excise tax out of moneys received from the excise tax. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

(2) After payment of administrative and enforcement expenses under subsection (1) of this section and refunds or credits arising from erroneous overpayments, the department shall transfer the balance of the moneys received from the excise tax to the Connect Oregon Fund established under ORS 367.080 for the purpose of providing grants for bicycle and pedestrian transportation projects. [2017 c.750 §97]

**320.445 Collection at point of sale of use tax and excise tax; returns and payment of transportation project taxes.** (1) Except as otherwise provided in ORS 320.400 to 320.490 and 803.203, the use tax imposed under ORS 320.410 and the excise tax imposed under ORS 320.415 shall be collected at the point of sale and remitted by each seller that engages in the retail sale of taxable vehicles. Each tax is considered a tax upon the seller that is required to collect the tax, and the seller is considered a taxpayer.

(2) Each seller of taxable vehicles that is liable for transportation project taxes shall file a return with the Department of Revenue, in the form and manner prescribed by the department, on or before the last day of January, April, July and October of each year for the previous calendar quarter.

(3) Each seller shall pay the applicable transportation project taxes to the department in the form and manner prescribed by the department, but not later than the date of submitting each quarterly return, without regard to extensions under subsection (5) of this section.

(4) Sellers of taxable vehicles shall file the returns required under this section with respect to the privilege tax imposed under ORS 320.405 and the excise tax imposed under ORS 320.415 regardless of whether any taxes are owed.

(5) The department may extend the time for making any return required under this section 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 to delinquent tax amounts at the rate established under ORS 305.220 from the time the return to which the delinquent tax amounts relate was originally required to be filed to the time of payment. [2017 c.750 §98]

**320.450 Liability for taxes; amounts held in trust; warrants for collection; conference; appeal.** (1) Every seller of taxable vehicles who collects any amount of transportation project taxes shall hold the amount in trust for the State of Oregon and for payment to the Department of Revenue in the manner and at the time provided in ORS 320.445.

(2) If a seller of taxable vehicles fails to remit any amount of transportation project taxes, whether collected or not, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued on the delinquent amount. The warrant shall be issued and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

(3)(a) In the case of a seller that is assessed under the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member of the seller at any time within three years after the assessment. Within 30 days after the date on which the notice of liability is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues raised in the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days after the date on which the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(c) If the department does not receive payment or written objection to the notice of liability within 30 days after the notice of liability was mailed, the notice of liability becomes final. The officer, employee or member may appeal the notice of liability to the tax court within 90 days after the notice became final in the manner provided for an appeal from a notice of assessment.

(4)(a) In the case of a seller that fails to file a return on the due date, in addition to any action described in the provisions of ORS 305.265 (10) and 314.400, the department may issue a notice of determination and assessment to any officer, employee or member of the seller at any time within three years after the assessment. The time of assessment against the officer, employee or member is 30 days after the date on which the notice of determination and assessment is mailed. Within 30 days after the date on which the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues raised in the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days after the date on which the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(c) If the department does not receive payment or written objection to the notice of determination and assessment within 30 days after the notice of determination and assessment was mailed, the notice of determination and assessment becomes final. The officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after the notice became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of transportation project taxes.

(b) Notwithstanding the confidentiality provisions of ORS 320.475, if the department determines that more than one officer or employee of a corporation may be held jointly and severally liable for payment of the transportation project taxes, the department may require any or all of the officers or employees to appear before the department for a joint determination of

liability. The department shall notify each officer or employee of the time and place set for the determination of liability.

(c) Each individual notified of a joint determination under this subsection must appear and present such information as is necessary to establish the individual's liability or nonliability for payment of the taxes to the department. If an individual who was notified fails to appear, the department shall make the determination on the basis of all the information and evidence presented. The department's determination is binding on all individuals notified and required to appear under this subsection.

(d)(A) If any individual determined to be liable for unpaid transportation project taxes under this subsection appeals the determination to the Oregon Tax Court under ORS 320.470, the individual plaintiff shall implead all individuals required to appear with the plaintiff before the department under this subsection. The department may implead any officer or employee who may be held jointly and severally liable for the payment of the transportation project taxes. Each individual impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court the information that was presented before the department, as well as other information that may be presented to the tax court.

(B) The tax court may determine that one or more individuals impleaded under this paragraph are liable for unpaid transportation project taxes without regard to any earlier determination by the department that an impleaded individual was not liable for the unpaid taxes.

(C) If an individual required to appear before the tax court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the tax court shall make its determination on the basis of all the evidence introduced. Notwithstanding ORS 320.475, the evidence introduced in the tax court constitutes a public record and shall be available to the parties and the tax court. The determination of the tax court is binding on all individuals made parties to the action under this subsection.

(e) This subsection may not be construed to preclude a determination by the department or the tax court that more than one officer or employee is jointly and severally liable for unpaid transportation project taxes. [2017 c.750 §99]

**320.455 When purchasers required to remit use tax and excise tax.** Any purchaser liable for the use tax imposed under ORS 320.410 or the excise tax imposed under ORS 320.415 and from whom the tax has not been collected shall, on or before the 20th day of the month following the close of the month in which the tax became due, file with the Department of Revenue a report of the amount of tax due from the purchaser in a form and manner prescribed by the department. The purchaser shall remit the amount of tax due with the report. [2017 c.750 §100]

**320.460 Sellers required to keep records; examination of records by Department of Revenue.** (1)(a) A seller of taxable vehicles shall keep receipts, invoices and other pertinent records related to retail sales of taxable vehicles in the form required by the Department of Revenue. Each record shall be preserved for five years from the time to which the record relates, or for as long as the seller retains the taxable vehicles to which the record relates, whichever is later.

(b) During the retention period and at any time prior to the destruction of records, the department may give written notice to the seller not to destroy records described in the notice without written permission of the department.

(c) Notwithstanding any other provision of law, the department shall preserve reports and returns filed with the department for at least five years.

(2) ORS 314.425 applies to the authority of the Department of Revenue to examine, or cause to be examined by an agent or representative designated by the department for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in any return required under ORS 320.400 to 320.490 and 803.203 for the purpose of ascertaining the correctness of the return or for the purpose of making an estimate of the taxable sales of the taxpayer. [2017 c.750 §101]

**320.465 Subpoena authority of Department of Revenue; enforcement; contempt of court.** (1) The Department of Revenue may, by order or subpoena to be served with the same force and effect and in the same manner as a subpoena is served in a civil action in the circuit court or the Oregon Tax Court, require the production at any time and place the department designates of any books, papers, accounts or other information necessary to carry out ORS 320.400 to 320.490 and 803.203. The department may require the attendance of any individual having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to the individual.

(2)(a) If an individual fails to comply with a subpoena or order of the department or to produce or permit the examination or inspection of any books, papers, records and equipment pertinent to an investigation or inquiry under ORS 320.400 to 320.490 and 803.203, or to testify to any matter regarding which the individual is lawfully interrogated, the department may apply to the Oregon Tax Court or to the circuit court of the county in which the individual resides or where the individual is for an order to the individual to attend and testify or otherwise comply with the demand or request of the department.

(b) The department shall apply to the court by ex parte motion, upon which the court shall make an order requiring the individual against whom the motion is directed to comply with the request or demand of the department within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order shall be served upon the individual to whom it is directed in the manner required by this state for service of process, which is required to confer jurisdiction upon the court.

(3) Failure to obey any order issued by the court under this section is contempt of court.

(4) The remedy provided by this section is in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [2017 c.750 §102]

**320.470 Disclosure of information; appeal.** (1) Notwithstanding the confidentiality provisions of ORS 320.475, the Department of Revenue may disclose information received under ORS 320.400 to 320.490 and 803.203 to the Department of Transportation for the purposes of carrying out the provisions of ORS 320.410 and 803.203.

(2) The Department of Transportation may disclose information obtained under ORS 320.410 and 803.203 to the Department of Revenue for the purposes of carrying out the provisions of ORS 320.400 to 320.490 and 803.203.

(3) Except as otherwise provided in ORS 320.400 to 320.490 and 803.203, a person aggrieved by an act or determination of the Department of Revenue or its authorized agent under ORS 320.400 to 320.490 and 803.203 may appeal, within 90 days after the act or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to 305.560. These appeal rights

are the exclusive remedy available to determine the person's liability for the transportation project taxes. [2017 c.750 §103]

**320.475 Applicability of other provisions of tax law.** Except as otherwise provided in ORS 320.400 to 320.490 and 803.203 or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determinations of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the related penalties, and the related procedures, apply to the determinations of taxes, penalties and interest under ORS 320.400 to 320.490 and 803.203. [2017 c.750 §104]

**320.480 Department of Revenue to administer and enforce transportation project tax laws; agreement with Department of Transportation for purposes of ORS 803.203.** (1) The Department of Revenue shall administer and enforce ORS 320.400 to 320.490 and 803.203.

(2) The department may adopt or establish rules and procedures that the department considers necessary or appropriate for the implementation, administration and enforcement of ORS 320.400 to 320.490 and 803.203 and that are consistent with ORS 320.400 to 320.490 and 803.203.

(3) The Department of Transportation shall enter into an agreement with the Department of Revenue for purposes of the implementation, administration and enforcement by the Department of Transportation of those provisions of ORS 803.203, and rules or procedures adopted or established by the Department of Revenue under this section, that the Department of Transportation and the Department of Revenue determine are necessary for the effective and efficient implementation, administration and enforcement of ORS 803.203. [2017 c.750 §105]

**320.485 Agreement with Department of Transportation for collection of use tax.** (1) The Department of Revenue and the Department of Transportation shall enter into an agreement pursuant to which the Department of Transportation shall assist the Department of Revenue in the collection of the use tax imposed under ORS 320.410 and any other functions of the Department of Revenue under ORS 320.400 to 320.490 and 803.203 as may be provided under the agreement.

(2) The agreement is not intended to preclude performance by the Department of Revenue of collection functions as from time to time may be required, nor is the agreement intended to preclude the performance of functions by the Department of Transportation, under less formal arrangements made with the Department of Revenue, with respect to the use tax imposed under ORS 320.410 if the functions are not specifically mentioned in the agreement.

(3) The Department of Transportation may contact, consult with and enter into agreements with any public or private person for the purpose of assisting the Department of Revenue in the collection of the use tax under this section.

(4) The collection of taxes under ORS 320.400 to 320.490 and 803.203 by the Department of Transportation does not render the Department of Transportation or the agents and employees of the Department of Transportation responsible for collection of the taxes. [2017 c.750 §106]

**320.490 Local government motor vehicle tax moratorium.** (1) A local government may not impose a tax described in subsection (2) of this section unless the tax is:

- (a) Authorized by statute; or
- (b) Approved by the governing body of the local government and in effect on or before October 6, 2017.
- (2) This section applies to:
  - (a) A tax on the privilege of engaging in the business of selling taxable motor vehicles at retail; and
  - (b) Any other privilege, excise, sales or use tax on taxable motor vehicles. [2017 c.750 §111]

(Tax on Wages for Public Transportation Services)

**320.550 Tax on wages; employers and periodic payers to withhold; liability of lender or surety; annual returns submitted to Department of Revenue; certain residents to report and pay tax.** (1) As used in this section:

- (a) "Employer" has the meaning given that term in ORS 316.162.
- (b) "Resident of this state" has the meaning given that term in ORS 316.027.
- (c) "Wages" has the meaning given that term in ORS 316.162.
- (2) A tax is imposed at the rate of one-tenth of one percent of:
  - (a) The wages of an employee who is:
    - (A) A resident of this state, regardless of where services are performed.
    - (B) Not a resident of this state, for services performed in this state.
  - (b) The periodic payments under ORS 316.189.
- (3) Every employer at the time of the payment of wages shall deduct and withhold from the total amount of the wages paid for services described under subsection (2) of this section an amount equal to the total amount of wages, without exemption or deduction, multiplied by the rate of tax imposed under subsection (2) of this section.
- (4) Every payer at the time of making a periodic payment under ORS 316.189 shall deduct and withhold from the payment an amount equal to the total amount of the payment, without exemption or deduction, multiplied by the rate of tax imposed under subsection (2) of this section.
- (5) An employer or payer shall report and pay the tax imposed under this section to the Department of Revenue at the time and in the manner determined by the department by rule.
- (6) For purposes of the tax imposed under this section, an employer or payer is considered a taxpayer.
- (7) If a lender, surety or other person who supplies funds to or for the account of an employer for the purpose of paying wages of the employees of such employer has actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the tax required to be deducted and withheld, such lender, surety or other person shall be liable to the State of Oregon in a sum equal to the taxes, together with interest, that are not timely paid over to the Department of Revenue. Such liability shall be limited to the principal amount supplied by the lender, surety or other person, and any amounts so paid to the department shall be credited against the liability of the employer.
- (8)(a) An employer or payer shall submit an annual return pursuant to ORS 316.202 to the Department of Revenue. The amounts deducted from the wages during any calendar year in accordance with this section shall be considered to be in payment of the tax imposed under subsection (2) of this section.

(b) The return submitted by the employer shall be accepted by the Department of Revenue as evidence in favor of the employee of the amounts so deducted from the employee's wages.

(9) Nothing in this section prohibits the Department of Revenue from including the tax imposed under this section in the combined quarterly tax report required under ORS 316.168.

(10) An employer that fails to deduct and withhold the tax required under this section:

(a) Is deemed responsible for the payment of the tax obligation in an amount equal to the amount required to be withheld from the employee's wages and remitted to the Department of Revenue; and

(b) Is subject to a penalty of \$250 per employee, up to a maximum penalty of \$25,000, if the employer knowingly fails to deduct and withhold the tax.

(11) Residents subject to the tax imposed under this section on wages earned outside this state from an employer not doing business within this state shall report and pay the tax at the time and in the manner determined by the Department of Revenue by rule. [2017 c.750 §122a]

**Note:** Section 122k, chapter 750, Oregon Laws 2017, provides:

**Sec. 122k.** Section 122a of this 2017 Act [320.550] applies to tax periods beginning on or after July 1, 2018. [2017 c.750 §122k]

**320.555 Applicability of other provisions of tax law.** Except as otherwise provided in ORS 320.550 or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determination of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, apply to the determinations of taxes, penalties and interest under ORS 320.550. [2017 c.750 §122i]

**320.560 Distribution of moneys received.** (1) All moneys received by the Department of Revenue from the tax imposed under ORS 320.550 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. The department may pay expenses for the administration and enforcement of ORS 320.550 out of moneys received from the tax imposed under ORS 320.550. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

(2) After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the department shall credit the balance of the moneys received by the department to the Statewide Transportation Improvement Fund established under ORS 184.751. [2017 c.750 §122j]

## PENALTIES

**320.990 Penalties.** Violation of any provision of ORS 320.005 to 320.150 is a Class B misdemeanor. [Amended by 1955 c.574 §7; 1971 c.743 §356; 1999 c.501 §10; 2005 c.94 §99; 2011 c.597 §182]

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