

Chapter 320

1977 REPLACEMENT PART

Privilege Taxes

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CROSS REFERENCES

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Uniformity of taxation, Const. Art. I, §32, Const. Art. IX, §1	
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Note: Section 58, chapter 870, Oregon Laws 1977, provides:

Sec. 58. The provisions of this Act do not apply to the provisions of ORS chapter 320. It is not the intention of this Act to repeal any right of appeal to the Department of Revenue, Oregon Tax Court or to the Supreme Court or to reduce the authority of the department as such authority relates to the audit and examination of reports and returns, determination of deficiencies, assessments, conferences, claims for refund, determination of appeals to the director or to the department or the collection of taxes at any stage, and the procedures relating thereto, which existed prior to the enactment of this Act, and the Act shall be construed so as to preserve all such rights of appeal and authority existing the day before it becomes effective [October 4, 1977]

320.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) A "music device" means any and all mechanical and electrical devices which render, cause to sound or release music or provide visual entertainment where the same may be heard or seen by one or more public patrons. Any separate loudspeaker, phonograph, juke box or television outlet from which such music or visual picture emits shall be construed to be a separate "music device" as herein defined; except where the music or visual picture emits from more than one speaker or outlet transmitting from the same mechanism, the several outlets or speakers in each place of business shall be collectively considered one such music device.

(2) "Displayed or operated" means the display of any music or amusement device for use by the public or the operation by the public of such device and shall include those music and amusement devices which are displayed or operated by or for the use of members of any private club, lodge, fraternal society or other like organization whose membership is limited to a portion of the public. An "amusement device" means any mechanical, electronic, mechanical-electronic or nonmechanical mechanism which is designed for the amusement of the player or operator and is complete in itself having as its purpose the production or creation of a game of skill, amusement, entertainment, or test of strength, including, but not limited to, shuffleboards, coin-operated devices utilizing tables, boards or cases of any size whatever, balls, sticks, cues, pegs or marbles, and whether or not any motivating force involved is furnished by the player or the device.

[1957 c.384 §2; 1975 c.651 §1]

320.010 Privilege tax imposed on music and amusement devices. (1) There hereby is imposed on every music and amusement device displayed or operated in this

state, a privilege tax, as specified in this chapter.

(2) The amount of the privilege tax shall be as follows:

(a) On each music device an annual tax of \$25.

(b) On each amusement device designed and used solely to provide rides for amusement an annual tax of \$25.

(c) On each amusement device operated upon the payment of or insertion of one or two pennies, an annual tax of \$10.

(d) On every other type of amusement device an annual tax of \$50 for each device.

[Amended by 1955 c.574 §1; 1957 c.384 §3; 1959 c.155 §1; 1967 c.344 §7; 1975 c.651 §2]

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

320.020 Tax as addition to other taxes on same property. The tax imposed by ORS 320.010 is in addition to all other taxes or fees imposed upon the same property by any municipality of this state or by the United States Government.

320.030 Exemptions. This chapter does not apply to:

(1) Amusement devices used exclusively for the purpose of selling tangible personal property, such as cold drinks, tobacco products, candies, postage stamps, or other merchandise or services such as pay telephones, parking meters, gas and electric meters or other distributions of public service.

(2) Amusement devices when such devices are operated solely by or for a nonprofit corporation for the purpose of conducting a fair, festival or trade show or special fundraising project.

(3) Amusement devices that are related solely to the operation of pool games and bowling alleys.

[Amended by 1975 c.651 §3]

320.040 Designation of tax year; computation on basis of quarter years. The tax year, for the purposes of this chapter, begins on July 1 and ends on June 30. The tax payable shall be computed on the basis of quarter years, and shall be paid for the quarter in which it becomes payable plus the remaining quarters in the tax year. In lieu of the payment of the foregoing tax, the owner of the property may obtain a temporary permit to operate any amusement device for a period of 90 consecutive calendar days at the rate of \$25 per each 90-day period.

[Amended by 1975 c.651 §4]

320.050 When tax payable; separate tax on each device; substitution of devices. The tax imposed by this chapter shall be paid to the Department of Revenue by the owner of the property subject to the tax before the property is displayed or operated in this state. A separate and individual tax shall be paid on each displayed or operated device or game described in this chapter. The taxpayer shall, at the time the tax is paid, designate and identify to the department each game or device by trade name or manufacturer's number if any. However, the substitution of a game or device for a game or device taxable at the same rate, upon which the tax has been paid, shall not be a violation of any section of this chapter, nor shall it result in the imposition of any additional tax upon such substituted game or device. Substitutions shall be reported immediately by the owner or his agent to the department on forms prescribed by it.

[Amended by 1955 c 574 §4, 1957 c.384 §4]

320.060 Issuance of tax receipt; receipt to be displayed. (1) Upon payment of the tax imposed by this chapter, the Department of Revenue shall issue to each taxpayer a receipt for each device with respect to which the tax is paid.

(2) No person shall display in any public or private place of amusement or business in this state any property subject to the tax imposed by this chapter unless there is prominently displayed on the premises the receipt of the Department of Revenue for the payment of the tax. Absence of the duly issued tax receipt is prima facie evidence that the tax has not been paid.

(3) No person shall alter or change any Department of Revenue receipt issued pursuant to this section in an attempt to avoid payment of any tax imposed by this chapter.

(4) No person shall avoid or attempt to avoid the payment of any tax due under this chapter by displaying anything similar in design, size or color to a Department of Revenue receipt issued pursuant to this section for any device described in this chapter.

(5) No person shall avoid or attempt to avoid the payment of any tax due under this chapter by using the receipt for tax paid on any device for any other device, except where a substitution is made and reported pursuant to ORS 320.050.

(6) A penalty of \$10 is hereby imposed on the owner of the premises where the device is located, for failing to display on the premises

a receipt of the Department of Revenue for the tax remitted pursuant to the provisions of this chapter.

[Amended by 1955 c 574 §5; 1957 c.384 §5; 1959 c 155 §2; 1975 c 651 §5]

320.065 Registration of transferor of music or amusement device. No person shall sell, rent, lease, trade, lend or furnish to another or transfer within this state, except for common carrier, more than two music or amusement devices annually unless he has first registered with the Department of Revenue.

[1975 c.651 §8]

320.070 Display of device without payment of tax; liability of person in possession of premises; sealing device. (1) If any device subject to tax under this chapter is displayed or permitted to be displayed without the tax therefor first being paid and the receipt displayed as provided in this chapter, the person in possession of the premises where the device is so displayed is liable jointly and severally for the tax and penalty with the owner of the device.

(2) For every device found to have been displayed without the tax imposed by this chapter having first been paid, a penalty of \$10 shall be imposed.

(3) Every agent of the Department of Revenue may, upon discovery of a device being operated or displayed for operation without payment of the tax due, place on said device a seal, provided pursuant to regulation, in such a manner as to render such device inoperative. The seal shall remain on the device until the tax and penalty due under this chapter have all been paid. The seal may be removed only by a duly authorized agent of the Department of Revenue. Any other person tampering with, obliterating, defacing, cutting, breaking or in any manner removing or attempting to remove said seal at any time shall be subject to all the penalties provided in ORS 320.990.

[Amended by 1955 c.574 §6, 1959 c.155 §3, 1975 c 651 §6]

320.080 Procedure on failure to pay tax. If any tax imposed by this chapter is not paid as required by this chapter, the Department of Revenue shall issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person or persons named in the warrant and liable for the tax found within his county, for the payment of the amount thereof with the added penalty and

the cost of executing the warrant, and to return the warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified not more than 30 days from the date of the warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the county a copy thereof. Thereupon the clerk shall enter in the judgment docket in the column for judgment debtors, the names of the persons mentioned in the warrant, and in appropriate columns the amount of the tax and penalty for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to any interest in real property or personal property of the persons against whom it is issued in the same manner as a judgment duly docketed in the office of the clerk. The sheriff shall thereupon proceed upon the same in all respects, with like effect and in the manner prescribed by law in respect to execution issued against property upon judgment of a court of record, and he is entitled to the same fees for his services in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the amount of the tax.

320.090 Civil action to recover unpaid tax. The Department of Revenue may recover any tax payable under this chapter by civil action.

320.100 Disposal of tax receipts. (1) All money received under this chapter as taxes or penalty shall be paid by the Department of Revenue to the State Treasurer quarterly and shall be by the State Treasurer allocated for payment in the following manner:

(a) Sixty percent thereof shall be credited to the General Fund to be available for payment of general governmental expenses.

(b) Forty percent thereof shall be remitted to the county treasurers of the several counties of the state. Each county shall receive such share of the money as its population, determined by the State Board of Higher Education, bears to the total population of the counties of the state, as determined by the census last preceding such apportionment.

(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]

320.110 Rules and regulations. The Department of Revenue may promulgate the rules and regulations necessary for the administration and enforcement of this chapter.

320.120 Employment of agents. The Department of Revenue may employ the agents necessary for the administration and enforcement of this chapter. Agents of the department charged with the enforcement of this chapter have all the power and authority of police officers in the performance of such duties.

320.130 Law enforcement officers to enforce chapter and assist department. The state police, sheriffs, constables, police and other law enforcement officers within the State of Oregon shall enforce all provisions of this chapter and shall assist the Department of Revenue.

320.140 Tax does not legalize ownership, display or operation in violation of law. Nothing in this chapter shall be construed as licensing, authorizing or legalizing the ownership, possession, display or operation, in violation of any law of this state, of any of the property taxed under this chapter.

320.990 Penalties. (1) Violation of any provision of this chapter by any person is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than six months, or by both. Justice courts and district courts have concurrent jurisdiction with the circuit courts of any prosecution provided for in this subsection.

(2) Violation of subsection (3) of ORS 320.060 is forgery in the first degree and is punishable as such.

(3) Violation of subsections (4) and (5) of ORS 320.060 and of subsection (3) of ORS 320.070 is punishable, upon conviction, by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both.

[Amended by 1955 c.574 §7, 1971 c 743 §356]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law

Done at Salem, Oregon,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel