

Chapter 320

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CROSS REFERENCES

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REVENUE AND TAXATION

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

(1) "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 video games of any type, 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.

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

(3) "Display or operation" means the display by a person for gain, benefit or advantage of any amusement or music device for use by the public or for the operation by the public of the device and includes but is not limited to a device that is displayed or operated by or for the use of the members of any private club, lodge, fraternal society or other like organization whose membership is limited to a portion of the public.

~~(a) An amusement or music device that is displayed or operated by or for the use of the members of any private club, lodge, fraternal society or other like organization whose membership is limited to a portion of the public.~~

~~(b) An amusement or music device that is displayed or operated under authority of the Oregon State Lottery.~~

(4)(a) "Game of chance" means any contest, game, gaming scheme or gaming mechanism or other amusement device in which the outcome depends in a material degree upon an element of chance as opposed to an element of knowledge, expertise, physical ability or other skill of the user which may affect the outcome in a material way notwithstanding that chance may also be a factor. Game of chance does not include an on-line terminal of the Oregon State Lottery used to sell lottery game tickets.

(b) A game of chance is exemplified by poker, blackjack, keno, roulette, racing or other gaming device.

(c) A game of knowledge, expertise, physical ability or other skill is exemplified by a pinball machine, shuffleboard, video or other game where the user has control of any object, for example a human character, space ship, car, ball or coin in order that the user may direct the object to a destination or cause the object to assume a particular or different form.

(d) "Game of chance" may be defined further by the department by rule.

(5)(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.

(b) Any separate loudspeaker, phonograph, juke box or television outlet from which music or a visual picture emits shall be construed to be a separate "music device." However, if 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 to be one music device.

(6)(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. [1957 c.384 §2; 1975 c.651 §1; 1985 c.476 §1; 1991 c.459 §267]

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 Music and amusement device excise tax; amount. (1) An excise tax is imposed upon every person for the privilege of engaging in the business of display or operation of an amusement or music device within this state for gain, benefit or advantage. The excise shall be imposed on an annual basis and shall be measured as provided in subsections (2) to (5) of this section.

(2) The excise shall be \$37.50 for display or operation of each amusement device designed and used solely to provide rides for amusement.

(3) The excise shall be \$100 for display or operation of each amusement device designed and played as a game of chance.

(4) The excise shall be \$75 for display or operation of every other type of amusement device.

(5) The excise shall be \$37.50 for display or operation of each music device.

(6) The excise 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)]

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

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

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 fund-raising project.

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

(4) Amusement devices operated on the payment of or insertion of one or two pennies.

(5) Amusement devices that are operated solely at five or fewer local festivals, carnivals, bazaars or other fairs or exhibitions if the gross receipts from the operation of the amusement device do not exceed \$500 for each such event. [Amended by 1975 c.651 §3; 1981 c.677 §3; 1985 c.476 §2]

320.040 Designation of tax year; computation on basis of quarter years. (1) The tax year, for the purposes of this chapter, begins on July 1 and ends on June 30. Except as provided under subsection (2) of this section, the excise tax imposed by this chapter is payable and shall be computed on the basis of quarter years. The excise tax shall be paid for the quarter in which it becomes payable plus the remaining quarters in the tax year. The excise tax may be paid or is payable upon display or operation of the amusement or music device and as provided under ORS 320.050.

(2) Any person may obtain a temporary permit to display or operate any amusement or music device for a period of 90 consecutive calendar days at the rate of \$37.50 (\$50

for a game of chance) per each 90-day period. [Amended by 1975 c.651 §4; 1989 c.786 §2; 1991 c.459 §270]

320.050 When tax or penalty payable; separate tax on each device; substitution of devices. (1) The excise tax and any penalty imposed by this chapter shall be paid to the department before the amusement or music device is displayed or operated in this state or, if the device was not displayed or operated during the previous calendar quarter, within 10 days after the close of the calendar quarter in which it becomes payable. A separate and individual tax shall be paid for the privilege of display or operation by the person of each amusement or music device.

(2) The taxpayer shall, at the time the tax and any penalty is paid, designate and identify to the department each amusement or music device displayed or operated by trade name or manufacturer's number if any.

(3) If an amusement or music device with respect to which tax measured by its display or operation has been paid is removed from display or operation by a taxpayer by substitution of another amusement or music device with respect to which the measure of the tax is the same, the tax with respect to display or operation of the substituted device shall be considered paid.

(4) All payments received shall be credited first to penalty and then to tax due. [Amended by 1955 c.574 §4; 1957 c.384 §4; 1981 c.677 §4; 1991 c.459 §271; 1991 c.567 §5]

320.060 Issuance of receipt; receipt to be displayed; penalty for failure to comply. (1) Upon payment of the excise tax and any penalty, the department shall issue to each taxpayer a receipt for each device with respect to which the tax and penalty are paid.

(2) No person shall, after the date that the tax becomes due, display or permit the operation in any public or private place of amusement or business in this state of any amusement or music device unless there is prominently:

(a) Displayed on the premises the receipt of the department for the payment of the tax and any penalty; and

(b) Displayed on the amusement or music device the name and address of the person who is engaged in the business of display or operation of that amusement or music device. Absence of the duly issued tax receipt is prima facie evidence that the tax and any penalty have not been paid.

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

(4) No person shall avoid or attempt to avoid the payment of any tax or any penalty due under this chapter by displaying anything similar in design, size or color to a department 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 or any penalty due under this chapter by using the receipt for tax or any penalty paid on any device for any other device, except where a substitution is made pursuant to ORS 320.050.

(6)(a) Except as provided in paragraph (b) of this subsection, a penalty of \$150 is imposed on the person displaying or allowing the operation of an amusement or music device for failing to display or failing to cause the display on the premises where the amusement or music device is located of a receipt of the department for the tax remitted pursuant to the provisions of this chapter.

(b) In the case of a game of chance, the penalty under paragraph (a) of this subsection is \$200 rather than \$150. [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]

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 the person has first registered with the Department of Revenue. [1975 c.651 §8]

320.070 Display of device without payment of tax or penalty; liability of person in possession of premises; sealing device.

(1) If any device subject to excise tax under this chapter is displayed or permitted to be operated without the tax and any penalty imposed by this chapter being paid and the receipt displayed as provided in this chapter, the person in possession of the premises where the device is so displayed or operated is liable jointly and severally for the tax and penalty with the person.

(2) For every amusement or music device found to have been displayed or operated for gain, benefit or advantage without the tax imposed by this chapter having been paid, a penalty of \$150 (\$200 in the case of a game of chance) shall be imposed.

(3) Every agent of the department may, upon discovery of an amusement or music device being displayed or operated for gain, benefit or advantage without payment of the tax and penalty due, place on said device a seal, provided pursuant to rule, in a manner that renders the 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. 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; 1981 c.677 §6; 1989 c.786 §5; 1991 c.459 §272a; 1991 c.567 §7]

320.080 Procedure on failure to pay tax or penalty. (1) If any tax or penalty imposed by this chapter is not paid as required by this chapter 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 directed to the sheriff of any county of the state commanding the sheriff 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 the 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. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded 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. 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 the sheriff is entitled to the same fees for 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. [Amended by 1981 c.677 §7; 1983 c.696 §13; 1985 c.761 §16; 1989 c.625 §77]

320.090 [Repealed by 1981 c.677 §8]

320.100 Disposal of receipts. (1) Except as provided in subsection (2) of this section, all money received under this chapter as

taxes or penalty shall be paid by the Department of Revenue to the State Treasurer quarterly and for moneys paid for fiscal periods beginning on or after July 1, 1991, shall be by the State Treasurer allocated for payment in the following manner:

(a) Thirty-three percent (33%) thereof shall be credited to the General Fund to be available for payment of general governmental expenses.

(b) Thirty-one percent (31%) 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) Thirty-six percent (36%) 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) The money received from the tax imposed under ORS 320.011 (3) shall be allocated for payment in the following manner:

(a) Seventy-five percent (75%) of the money shall be credited, appropriated or remitted in the same manner and in the same proportions as money credited, appropriated or remitted under subsection (1) of this section is credited, appropriated or remitted.

(b) Twenty-five percent (25%) of the money is 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.

(3) 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]

320.110 Rulemaking. The department may adopt rules necessary for the administration and enforcement of this chapter. [Amended by 1991 c.459 §272b]

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

(3) Violation of ORS 320.060 (4) and (5) and 320.070 (3) 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]