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November 22, 2017

VIA ELECTRONIC MAIL

Shannon Ball
Rules Coordinator
Oregon Department of Revenue
955 Center St NE
Salem, OR 97301

Re: Notice of Proposed Rulemaking - Marijuana Tax: product categories and taxpayer identification number

Dear Ms. Ball:

Thank you for the opportunity to provide public comments on the Oregon Department of Revenue's proposed rule regarding the state's marijuana tax. The purpose of these comments is to assist the Department in developing a coherent regulatory structure. With this purpose in mind, many of the comments identify ways to use existing statutory definitions of terms rather than inserting ambiguity or confusion by redefining the same terms in the administrative rules.

Comments on Proposed Rule 150-475-2100:

- Proposed Rule 150-475-2100(1)(c) creates the defined term "buds" to mean "flowers." The term "flower" is a defined term under ORS 475B.015(16) and subject to a retail sales tax under ORS 475B.705(2)(b). The use of the newly defined term "buds" is unnecessary and the use of the term "flower" should be sufficient.

- Proposed Rule 150-475-2100(1)(d) creates the defined term "shake/trim" to mean "leaves." The term "leaves" is a defined term under ORS 475B.015(18) and subject to a retail sales tax under ORS 475B.705(2)(a). The use of the newly defined term "shake/trim" is unnecessary and the use of the term "leaves" should be sufficient.

- Proposed Rule 150-475-2100(1)(f) creates the defined term "combined product" to mean "any product that combines buds and shake/trim with concentrate and/or extract, or combines concentrate with extract." This definition is confusing and should be redrafted to mean "any combination of two or more of the following: (A) usable

marijuana, (B) concentrate, (C) extract." The Proposed Rule should also be updated to incorporate the defined term "usable marijuana" by reference to ORS 475B.015(34).

- Proposed Rule 150-475-2100(1)(g) creates the defined term "concentrate." The term "concentrate" is a defined term under ORS 475B.015(2). The Proposed Rule mirrors the ORS definition with the exceptions of including ORS 475B.015(2)(d) or confirming to amendments made by SB 1057 without further explanation. The Proposed Rule definition should define "concentrate" by reference to the ORS definition. A separate definition is unnecessary.

- Proposed Rule 150-475-2100(1)(h) creates the defined term "edibles." The term "edibles" is a defined term under ORS 475B.015(3). The Proposed Rule's definition mirrors the current version in the ORS. However, the Proposed Rule definition should define "edible" by reference to the ORS definition. A separate definition is unnecessary.

- Proposed Rule 105-475-2100(1)(i) is used twice. Once to define "extract" and again to define "immature plant." The final version of the rule should be renumbered accordingly.

- Proposed Rule 150-475-2100(1)(i) defines the term "extract." The term "extract" is a defined term under ORS 475B.015(4). The Proposed Rule mirrors the ORS definition with the exception of including ORS 475B.015(4)(c) or conforming to amendments made by SB 1057 without further explanation. The Proposed Rule definition should define "extract" by reference to the ORS definition. A separate definition is unnecessary.

- Proposed Rule 150-475-2100(1)(i) defines the term "immature plant." The term "immature plant" is defined under ORS 475B.015(12). The Proposed Rule mirrors the ORS definition. The Proposed Rule should define "immature plant" by reference to the ORS definition. A separate definition is unnecessary.

- Proposed Rule 150-475-2100(1)(k) uses the term "cannabinoid product." "Cannabinoid product" is not defined in the Proposed Rule, but is a defined term under ORS 475B.015(5). The Proposed Rule should be updated to state "cannabinoid product" has the meaning given under ORS 475B.015(6).

- Proposed Rule 150-475-2100(1)(o) creates the defined term "pre-roll" to mean "a combination of buds and shake/trim in some sort of wrapping, designed for smoking." The use of the conjunction "and" in the defined term pre-roll is likely to cause confusion for marijuana retailers. The term pre-roll is commonly used to define flower, leaves, or a combination of flower and leaves in a wrapping designed for smoking. However, a pre-roll containing only cannabis leaves or only cannabis flower falls outside the Proposed Rule's definition and is likely to cause confusion and

misclassification. The term flower should include any pre-roll that only includes flower. The term leaves should include any pre-roll that includes only leaves. The remaining problem is how to subject "useable marijuana" (*i.e.*, a product containing both flower and leaves) to the retail sales tax. This issue may be solved by redrafting Proposed Rule 150-475-2100(2) to include a new clause that "any combination of flower and leaves must be taxed at the highest rate designated by ORS 475B.705(2)(a) or (b)."

- Proposed Rule 150-475-2100(2)(c) imposes a retail sales tax on the sale of cannabis "seeds" using the rate imposed by ORS 475B.705(2)(c). The rate imposed by ORS 475B.705-2100(2)(c) is applied to "the retail sales price of immature marijuana plants." The term "immature marijuana plant" is defined by ORS 475B.015(11) and Proposed Rule 150-475-2100(1)(i) to mean "a marijuana plant that is not flowering." The term "marijuana seeds" is defined by ORS 475B.015(22)(a) to mean "the seeds of the plant Cannabis family Cannabaceae." The Proposed Rule improperly classifies cannabis "seeds" as "immature plants." Seeds should not be subject to the retail sales tax imposed by ORS 475B.705(c). Furthermore, it would be inappropriate to subject seeds to the retail sales tax imposed on other "cannabinoid products" under ORS 475B.705(h) given the definition of "cannabinoid products" under ORS 475B.015(5). Therefore, "seeds" should not be subject to the retail sales tax imposed by ORS 475B.705.

Regards,

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