Oregon
Kate Brown, Governor

Department of Revenue
955 Center St NE
Salem, OR 97301-2555
www.oregon.gov/dor

Dear Mr. Hobson:

Thank you for the thorough review of proposed rule OAR 150-475-2100; we greatly appreciate the feedback. At your suggestion, we made several changes to the proposed rule text. We have enclosed a copy of the updated rule for your review and consideration. Our response to your specific comments follows.

You expressed concern over using terms that were not in statute, like "shake/trim" and "bud," neither of which appears anywhere in ORS Chapter 475B, suggesting that we instead use the statutory terms "leaves" and "flowers." In fact, this was the deliberate purpose of the rule: in conjunction with OLCC, we have seen that the industry refers to "shake/trim" rather than "leaves" and "buds" rather than "flowers," and our goal was to create a link between the industry's preferred terms and the tax statutes. However, your point about generating confusion by creating new definitions that supplant existing statutory definitions is well taken. Therefore, in all situations where a term relied upon an existing statutory definition, we cited to the definition in Section 46, Chapter 183, Oregon Laws 2017, rather than restating it in rule.

You noted that we did not include a definition for "cannabinoid products" even though we used it in defining a term. We now use the statutory definition, per our rule modification.

You identified an error in the subsection numbering; we have modified that numbering.

You noted that pre-rolls should be taxed based on the nature of the product, rather than at the rate of leaves. We agree. The "pre-roll" definition applies to products that are "a combination of buds and shake/trim in some sort of wrapping, designed for smoking." If the product consists of *entirely* flower ("buds"), then it would be taxed as flower under the rule as written. Combinations are taxed at the "leaves" rate as a way to simplify administration and align with current OLCC practice. In an effort to reduce confusion over this provision, we have modified the term in rule from "pre-rolls" to "blended pre-rolls."

In terms of your commentary on the taxability of marijuana seeds: it is true that seeds are not explicitly called out as a product category in ORS 475B.705. We believe that seeds must be taxed under the following argument:

- ORS 475B.705(1) notes that "a tax is hereby imposed on the retail sale of marijuana items in this state."
- ORS 475B.700(1) notes that "marijuana items" has the meaning given in ORS 475B.015.
- ORS 475B.015(16) notes that "marijuana items" means "marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts."

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- ORS 475B.015(14)(a) notes that "marijuana" means "the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae *and the seeds of the plant Cannabis family Cannabaceae* [emphasis added]."

In plain English: seeds are marijuana, marijuana is included in the definition of marijuana items, and marijuana items are taxed. We characterize seeds as an immature plant as our way of attempting to comply with the statutory language.

Lastly, worth noting is that the taxability of seeds was discussed in the June 6, 2017 hearing of the Joint Committee on Marijuana Regulation (please see http://oregon.granicus.com/MediaPlayer.php?clip_id=23880 at approximately 4:45). Senator Prozanski expressed interest in revisiting the taxability of seeds in the interim session. With this in mind, our understanding of legislative intent is that seeds are currently taxable, but whether they should remain taxable is a subject for future legislative debate.

Please do not hesitate to reach out if you have any further questions.

Sincerely:

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cc: Shannon Ball, Rules Coordinator, Oregon Department of Revenue