



Taxes and the Psilocybin Industry

Oregon Department of
Revenue



Oregon Employer Taxes: an Introduction

Combined Payroll Taxes

- Oregon uses a combined payroll tax reporting system for multiple tax programs that affect employers.
 - Income Tax Withholding,
 - Statewide Transit Tax,
 - Transit District taxes*,
 - Unemployment Insurance,
 - State Worker's Benefit Fund (WBF), and
 - Paid Leave Oregon are all reported on one quarterly combined tax report (Form OQ).
- Reporting for these tax programs can be done electronically with the Oregon Employment Department's *FRANCES Online* system.
 - <https://frances.oregon.gov/Employer/>

*Some local payroll taxes are not administered by the Oregon Department of Revenue, but at a local level.

Combined Payroll Taxes

- All employers registered with the Department of Revenue or Oregon Employment Department must file a form OQ each quarter, **even if you had no payroll during the quarter.**
 - In addition, you may be required to file a Schedule B or Form 132 (an employee detail report).
 - Form OQ quarterly reports are due:
 - 1st quarter, due April 30
 - 2nd quarter, due July 31
 - 3rd quarter, due October 31
 - 4th quarter, due January 31

Registering for a Business Identification Number (BIN)

- All employers with employees working in Oregon must register for a Business Identification Number (BIN) to report and pay Oregon Combined Payroll Taxes.
- You will need basic information about the business as well as Owner/Officer information.
- These can be filed electronically with the Oregon Secretary of State.
<https://secure.sos.state.or.us/cbrmanager/>

Paying Combined Payroll Taxes

- All payments for these tax programs are made to the Oregon Department of Revenue using the form OTC-V (Oregon Combined Payroll Tax Payment Voucher).
- 2022 Version Pictured


**Form OR-OTC-V,
Oregon Combined Payroll Tax
Payment Voucher**
150-211-053 (Rev. 11-19-19, ver. 04)

Pay online at www.oregon.gov/dor
or make check payable to:
Oregon Department of Revenue
PO Box 14800
Salem OR 97309-0920

Business identification number (BIN)
Quarter that payroll was paid to employees (1, 2, 3, or 4)
Year (YYYY)

Unemployment insurance.....
State withholding.....
TriMet Transit District.....
Lane Transit District.....
Workers' Benefit Fund assessment.....
Statewide transit tax.....
Total payment (add all boxes above).....

Office use only



Paying Combined Payroll Taxes

- Tax rates
 - The Workers' Benefit Fund (WBF) assessment rate is 0.022.
 - The taxable wage base for Unemployment Insurance (UI) is \$43,800.
 - Tri-County Metropolitan Transportation District (TriMet) tax rate is 0.008037 as of 1/1/2023.
 - Lane Transit District (LTD) tax rate is 0.0078 as of 1/1/2023.
 - Statewide Transit tax rate is 0.001.
 - Income Tax Withholding – use form OR-W-4 for each employee (Oregon Withholding Statement and Exemption Certificate).
 - If an employee fails to fill out a form, there are rules for how much withholding to perform.
 - Paid Leave Oregon - Payments are shared between employees and employers with 25 or more employees. Employees pay 60% of the contribution rate, while employers with 25 or more employees pay 40%.

Form OR-W-4

Clear this page

2022 Form OR-W-4

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(Rev. 09-30-21, ver. 01)

Oregon Department of Revenue



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Oregon Withholding Statement and Exemption Certificate

First name	Initial	Last name	Social Security number (SSN)	<input type="checkbox"/> Redetermination
Address		City	State	ZIP code

Note: Your eligibility to claim a certain number of allowances or an exemption from withholding may be subject to review by the Oregon Department of Revenue. Your employer may be required to send a copy of this form to the department for review.

- 1. **Select one:** Single Married Married, but withholding at the higher single rate.
Note: Check the "Single" box if you're married and you're legally separated or if your spouse is a nonresident alien.
- 2. **Allowances.** Total number of allowances you're claiming on line **A4**, **B15**, or **C5**. If you meet a qualification to skip the worksheets and you aren't exempt, **enter 0**2.
- 3. **Additional amount**, if any, you want withheld from each paycheck..... 3.
- 4. **Exemption from withholding.** I certify that my wages are exempt from withholding and I meet the conditions for exemption as stated on page 2 of the instructions. Complete **both** lines below:
 - Enter the corresponding exemption code. (See instructions)..... 4a.
 - Write "Exempt"4b.

Sign here. Under penalty of false swearing, I declare that the information provided is true, correct, and complete.

Employee's signature (This form isn't valid unless signed.)	Date
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Employer use only.			
Employer's name	Federal employer identification number (FEIN)		
Employer's address	City	State	ZIP code

— Submit this form to your employer —

Paying Combined Payroll Taxes

- Due Dates
 - Oregon withholding taxes are due the same time as your federal taxes.
 - Unemployment insurance, transit district and statewide transit taxes, Paid Leave Oregon payments, and the Workers' Benefit Fund assessment payments are due the last day of the month following the end of the calendar quarter.

Annual Reports

- In addition to quarterly Combined Tax Reports, all Oregon Employers are required to file an annual Withholding Reconciliation Return, form OR-WR.
- Employers are also required to file copies of W2s and 1099s using iWire.
- Both of these must be filed electronically on the Department of Revenue's Revenue Online system.
 - [https://revenueonline.dor.oregon.gov/tap/ /](https://revenueonline.dor.oregon.gov/tap/)

Other Tax Programs

- In addition, depending on your business, other Oregon taxes may apply, including:
 - Corporate Activity Tax
 - Corporation Excise Tax
 - Corporation Income Tax
 - Partnership Privilege Tax
 - Pass-Through Entity Elective Tax (PTE-E)
 - Personal Income Tax
 - Lane Transit District Self-Employment Tax
 - TriMet Transit District Self-Employment Tax
 - State or Local Lodging Taxes



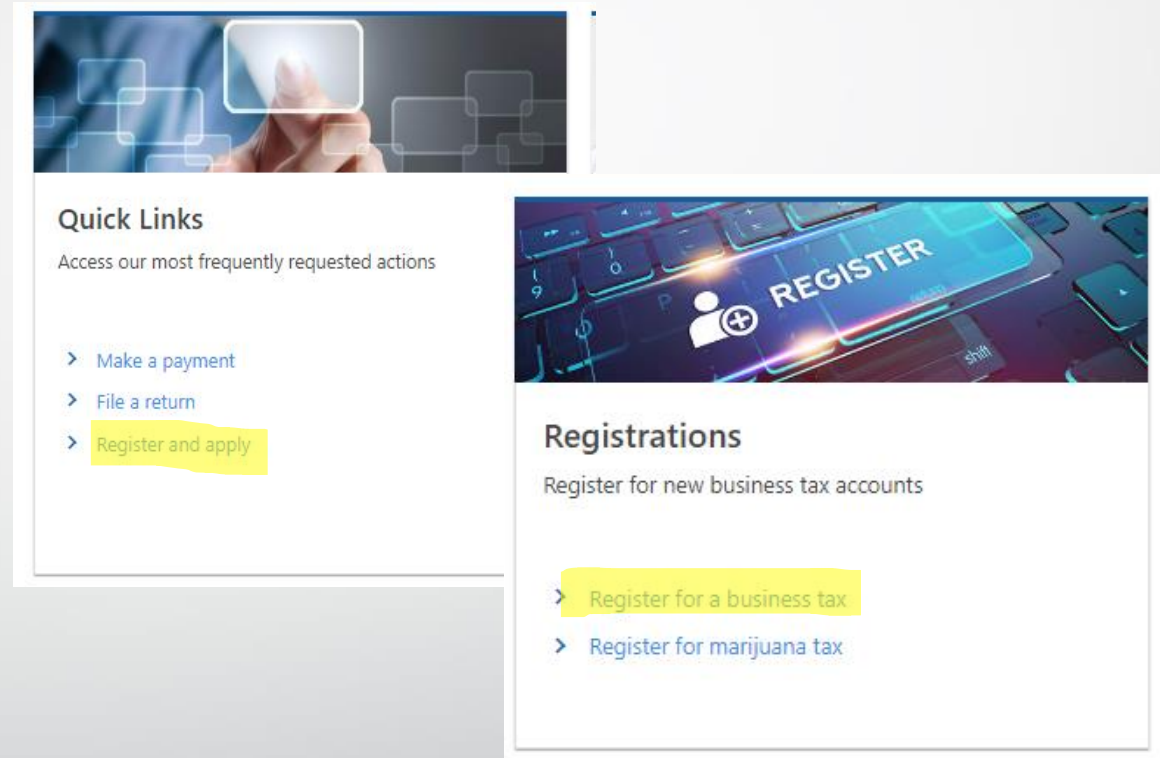
Oregon Psilocybin Tax: an Introduction

Psilocybin Tax Basics: ORS 475A.658-475A.714

- Beginning on January 1, 2023. A 15% tax on the purchase price of psilocybin products sold at OHA licensed psilocybin service centers.
- Associated services are *not* subject to the tax.
- Tax is paid by clients and held in trust by the Psilocybin Service Center Operator to be remitted to the Oregon Department of Revenue.
- If a Service Center Operator charges a client too much tax, they will be required to refund the excess to the client.

Psilocybin Tax: Registration

- All Psilocybin Service Centers must register with the Department of Revenue on Revenue Online as a Psilocybin Tax Collector.



The screenshot displays a user interface for the Department of Revenue's online services. At the top, there is a header image showing a hand interacting with a digital interface. Below this, the 'Quick Links' section is visible, featuring three options: 'Make a payment', 'File a return', and 'Register and apply', with the latter highlighted in yellow. To the right, the 'Registrations' section is shown, with the heading 'Register for new business tax accounts' and two options: 'Register for a business tax' (highlighted in yellow) and 'Register for marijuana tax'.

Quick Links
Access our most frequently requested actions

- > [Make a payment](#)
- > [File a return](#)
- > [Register and apply](#)

Registrations
Register for new business tax accounts

- > [Register for a business tax](#)
- > [Register for marijuana tax](#)

Psilocybin Tax Registration

- Information needed for registration:
 - Business Name
 - Federal Employer Identification Number (FEIN) if registering as a business.
 - Social Security Number or Individual Tax Identification Number (ITIN) if individual.
 - Mailing Address and Physical Location Address.
 - The date you will begin selling psilocybin products.
 - Valid email address or Revenue Online Account.
 - Oregon Health Authority Psilocybin License Number.

Psilocybin Tax: Returns

- Psilocybin Tax Returns are due quarterly on the last business day of the month following the calendar quarter.
 - 1st quarter, due April 30
 - 2nd quarter, due July 31
 - 3rd quarter, due October 31
 - 4th quarter, due January 31
- All returns will be filed electronically on Revenue Online.
- You will need to input the month of sales, the number of psilocybin products sold, and the amount of taxable psilocybin sales.

Psilocybin Rulemaking

- The Department of Revenue held two Rules Advisory Committee meetings (August and September 2022).
- Rules will be published in the November 2022 Bulletin.
- Public Comments on the proposed rules will be accepted, and a Public Hearing will occur on November 17, 2022.

Other issues to remember

- Penalties apply to unpaid taxes and for failure to file a return. The penalties can be up to 100% of the unpaid tax.
- Interest applies to unpaid taxes.
- ORS 475A.674 provides the Department of Revenue authority to hold psilocybin service center operators personally liable for unpaid trust fund taxes.
- Refunds are capped at \$1,000 per quarter. The rest in excess of \$1,000 will be applied to a subsequent filing period.



IRC Section 280E: an Introduction*

*Please consult your tax attorney and/or CPA for any
IRC section 280E questions.

Historical Context of 280E

- Notwithstanding the federal illegality of psilocybin, income derived from all sources is subject to Federal Income Tax. *See James v. US*, 366 U.S. 213 (1961).
- Congress passed section 280E as a result of the United States Tax Court Decision in 1981, *Edmondson v. Commissioner*. In that case, the court had allowed the taxpayer to deduct ordinary and necessary businesses from the income associated with trafficking of controlled substances.
- In response the US congress enacted Section 280E which limits deductions allowed in connection to trafficking of controlled substances.

Internal Revenue Code Section 280E

- No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

Elements of 280E expenses

- 1) Must be associated with a Controlled Substance.
 - Currently, Psilocybin is a Schedule 1 substance under the Controlled Substances Act.
- 2) Trafficking.
 - The Tax Court defines trafficking as “to engage in commercial activity: buy and sell regularly.” *Californians Helping to Alleviate Med. Problems, Inc. v. C.I.R.*, 128 T.C. 173, 182 (2007).
- 3) Trade or Business.
 - Whether an activity is a trade or business requires a fact-based analysis. If a taxpayer has multiple activities, the question of “whether an activity is a trade or business separate from another trade or business is a question of fact that depends on (among other things) the degree of economic interrelationship between the two undertakings...” *Id.*, at 183.

Impact of 280E

- If 280E applies, there are no deductions allowed for federal tax purposes other than the cost of goods sold.
 - IRS Chief Counsel Memorandum 201504011 provides guidance on calculating the cost of goods sold for 280E purposes.
 - The types of costs of goods sold depend on whether your business produces the goods or is a reseller. *See page 6 of Chief Counsel Memo. 201507011.*
 - Critical to maintain records to substantiate costs.
- 280E does *not* disallow deductions attributable to a taxpayer's **separate and lawful** trade or business.

What about Oregon?

- ORS 316.680(1)(j) allows a subtraction from Oregon income for the same ordinary and necessary business expenses incurred for your business that are allowed for other businesses in the state.
- Taxpayers will submit a second Oregon-only schedule to determine the amount of the Oregon Income Tax subtraction. This is filed with the form OR-ASC, section B or OR-ASC-NP, section C.

Contact information/Questions?

- Psilocybin Tax questions?
 - Psilocybin.help@dor.oregon.gov
- General Oregon Tax questions?
 - questions@dor.Oregon.gov
- Questions about 280E?
 - Please contact your tax advisor.