Marijuana Tax Distributions

Overview

The Oregon Department of Revenue (DOR) administers the State Marijuana Retail Tax established in 2015, a 17% tax on recreational marijuana items sold by marijuana retailers licensed with the Oregon Liquor and Cannabis Commission (OLCC). DOR also administers local marijuana taxes on behalf of 85 cities and 7 counties located throughout the state. Additionally, at least 14 cities and 4 counties self-administer local marijuana taxes.

Background

The marijuana tax is collected from consumers by retailers and held in trust until remitted to the department. Retailers are allowed to retain 2% of the tax collected to offset the costs of collecting the tax from consumers and reporting and remitting to DOR.

The department distributes marijuana tax revenue quarterly, according to the formula codified in ORS 475C.726. Receipts are projected by the Oregon Office of Economic Analysis (OEA) to exceed $312 million in the 2023-25 biennium and $339 million in the 2025-27 biennium. In 2020, voters approved a significant change to the distribution of the revenue as part of Ballot Measure 110. Although the Legislature made changes to Ballot Measure 110 during the 2024 legislative session, the distribution of marijuana tax revenue was not modified.

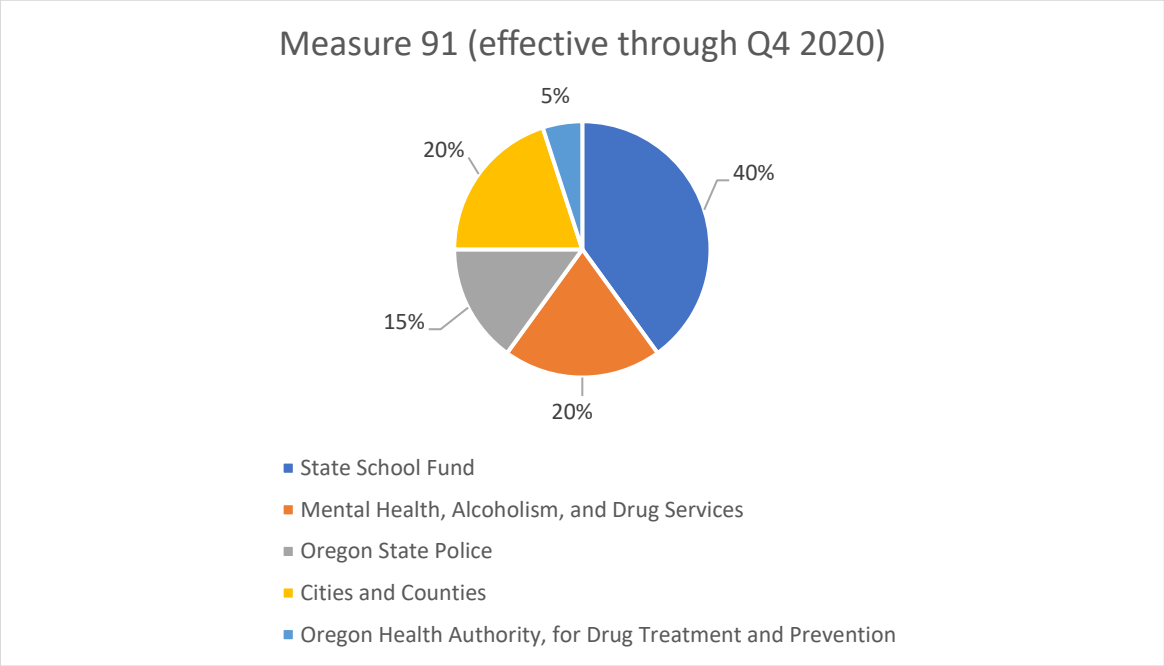
Ballot Measure 91 (2014) established the initial distribution formula for tax revenue from legalized recreational marijuana. The formula was then modified over the next few legislative sessions. DOR first recovers the cost of administering the tax and then, under ORS 475C.728, issues fixed quarterly distributions to OLCC and the Criminal Justice Commission (CJC).

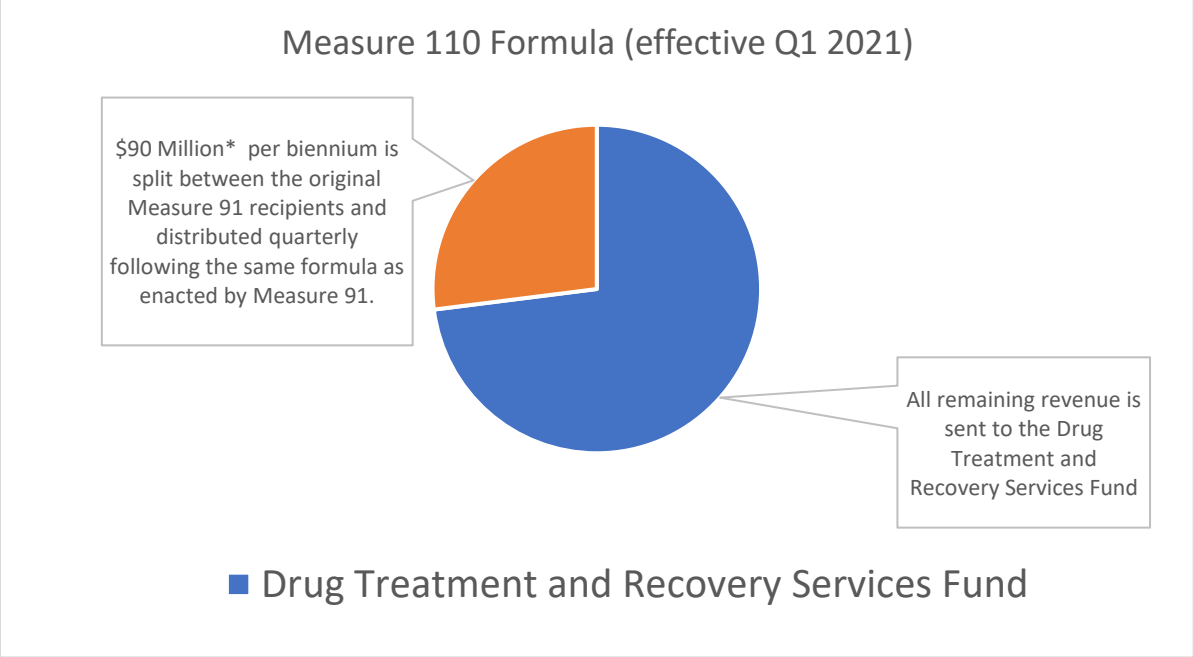
Ballot Measure 110 (2020) created the current formula in effect, as of 2020. It modified Measure 91 by capping the quarterly distributions to Measure 91 recipients at $11.25M ($45M/year = $90M/biennium). Any excess revenue above those amounts is directed to the Drug Treatment and Recovery Services Fund with the first distribution having occurred in March 2021. The Legislature may modify or cap the distribution amounts and did so in Senate Bill 5533 (2021) and House Bill 4056 (2022).

As an illustration of these changes, during the 2019-21 biennium, a total of $252,832,200 was distributed to the Measure 91 recipients. During the 2021-2023 biennium this amount decreased to approximately $90,000,000 due to the new cap. This $90M/biennium amount is indexed for inflation and adjusted annually. The first adjusted distribution occurred in September 2023.

Distributions to the Drug Treatment and Recovery Services Fund in the 2021-23 biennium totaled $209,967,400. For 2023-25, the revenue distribution formula was reconfirmed by HB 5029 (2023).

The following charts illustrate changes in marijuana revenue distribution to various recipients under Measure 91 and Measure 110.





*While the amount distributed to the Measure 91 recipients is capped at $90M adjusted for inflation starting in 2023, the percentages shared by the recipients was not modified by Measure 110.

Inflation Adjustments to Measure 91 Distributions

The distributions to the Measure 91 recipients are adjusted annually based on the "U.S. City Average Consumer Price Index." Previously, without inflation adjustment, the amount allocated to Measure 91 recipients under Measure 110 was $90,000,000 per biennium, or $45,000,000 annually. The adjustment began for Fiscal Year 2023-24 and the first adjustment was 9.79%.

Fiscal Year	Measure 91 Funds	Annual Increase	Drug Treatment and Recovery Fund
22-23	$45,000,000	n/a	$88,026,245
23-24	$49,404,647	9.79%	$96,542,264
24-25	$52,088,057	5.43%	$96,235,032* projected by OEA

*While the June 2024 forecast projected this amount, HB 5029 (2023) allocated a maximum of $196,609,572. This would result in ($3,832,276) available to the Drug Treatment and Recovery Services Fund from the amounts enacted in HB 5029 (2023).

External Impacts

The department administers local marijuana taxes on behalf of 85 cities and 7 counties located throughout the state. Additionally, at least 14 cities and 4 counties self-administer local marijuana taxes.

Cities and counties are required to self-certify with the Oregon Department of Administrative Services (DAS) their eligibility to receive a distribution of state-shared marijuana tax revenue.

Local governments are authorized to adopt up to a 3% tax on the retail sale of marijuana items at OLCC-licensed retailers located within their jurisdiction. Any local tax adopted must be approved by the voters. The local tax is in addition to the 17% state marijuana tax. Local taxes collected by DOR are distributed directly to the local government after administrative costs are recovered.

Current Situation

The department provides data related to tax receipts to OEA to assist in revenue forecasting. To support enforcement, the department provides to OLCC information related to tax non-compliance which OLCC can use in considering imposing sanctions against retail licensees. The department has also requested the suspension of licenses for non-payment of taxes, consistent with businesses in other industries.

In 2023, OLCC adopted a rule that requires all retail marijuana licensees to provide a certificate of tax compliance with an application for an initial or renewed license.

Future Actions

Potential changes at the Federal level that would impact the federal treatment of cannabis or authorize financial services for cannabis businesses would have the largest impact on the work of the department. The Biden administration has proposed a rule that would move cannabis from Schedule 1 to Schedule 3 and has received 40,000 public comments on the proposed rule. As of July 2024, they have not made a final decision.