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Administrative Regulations

Agency: Department of Taxation

Permanent Regulation
LCB File No. T004-22

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. T004-22 which concerns cannabis excise tax; and provides other matters properly relating thereto. Existing law imposes an excise tax on each wholesale sale of cannabis by a medical cannabis cultivation facility or adult-use cannabis cultivation facility to another cannabis establishment and imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store. (NRS 372A.290) Existing law also imposes an excise tax on sales of cannabis and cannabis products made by a cannabis consumption lounge. (AB 341, 2021) This regulation clarifies how the excise taxes shall be collected and reported to the Department, what records need to be retained by the cannabis establishment and how a claim for refund can be filed on any overpayment of excise tax on cannabis.

Authority citation other than 233B: NRS Chapter 360.090, 372A.050 and Assembly Bill (AB) 341 (2021).

Notice date: November 2, 2022

Date of Adoption by Agency: December 5, 2022

Hearing date: December 5, 2022

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. T004-22

1. A clear and concise explanation of the need for the adopted regulation.

The need and purpose of the temporary proposed regulation (T004-20) concerns cannabis excise tax; and provides other matters properly relating thereto.

Existing law imposes an excise tax on each wholesale sale of cannabis by a medical cannabis cultivation facility or adult-use cannabis cultivation facility to another cannabis establishment and imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store. (NRS 372A.290) Existing law also imposes an excise tax on sales of cannabis and cannabis products made by a cannabis consumption lounge. (AB 341, 2021)

This regulation clarifies how the excise taxes shall be collected and reported to the Department, what records need to be retained by the cannabis establishment and how a claim for refund can be filed on any overpayment of excise tax on cannabis.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
09/22/22	Workshop	10/12/22	208
11/01/22	Workshop	11/17/22	208
11/03/22	Adoption Hearing	12/05/22	208

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

3. The number of persons who:

(a) Attended each hearing:

(b) Testified at each hearing:

(c) Submitted written comments:

Workshop date: October 12, 2022

(a) Number in attendance: 8

(b) Number testifying: 0 –

(c) Written statements submitted: 0

Workshop date: November 17, 2022

(a) Number in attendance: 14

(b) Number testifying: 4

(c) Written statements submitted: 0

Adoption Hearing date: December 5, 2022

(a) Number in attendance: 4

(b) Number testifying: 1

(c) Written statements submitted: 3

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Commented at Workshop:

Name: **Will Adler**

Telephone number: **775-230-0247**

Business address: **204 N. Minnesota Street, Carson City, NV 89701**

Electronic mail address: will@ssgr.us

Name of entity or organization represented: **Silver State Government Relations and Sierra Cannabis Coalition**

Commented at Workshop:

Name: **Layke Martin**

Telephone number: **702-483-7255**

Business address: **PO Box 370398, Las Vegas, NV 89137**

Electronic mail address: layke@nvdispense.com

Name of entity or organization represented: **Nevada Cannabis Association**

Commented at Workshop:

Name: **Sheba Statham**

Telephone number: **702-271-8024**

Business address: **2550 Veronella Street, Henderson, NV 89044**

Electronic mail address: shebastatham@gmail.com

Name of entity or organization represented: **Statham Advising Services LLC**

Commented at Workshop:

Name: **Rose Lujan**

Telephone number: **Unknown**

Business address: **Unknown**

Electronic mail address: **Unknown**

Name of entity or organization represented: **Unknown**

Submitted Written Comment:

Name: **Will Adler**

Telephone number: **775-230-0247**

Business address: **204 N. Minnesota Street, Carson City, NV 89701**

Electronic mail address: will@ssgr.us

Name of entity or organization represented: **SSGR and SCC**

Submitted Written Comment:

Name: **Paul Larsen**

Telephone number: **702-869-8801**

Business address: **10777 West Twain Avenue, Ste. 300, Las Vegas, NV 89135**

Electronic mail address: plarsen@blackwadhamslaw.com

Name of entity or organization represented: **Black & Wadhams Attorneys at Law**

Submitted Written Comment:

Name: **Layke Martin**

Telephone number: **702-483-7255**

Business address: **PO Box 370398, Las Vegas, NV 89137**

Electronic mail address: layke@nvdispense.com

Name of entity or organization represented: **Nevada Cannabis Association**

Testified at Adoption Hearing:

Name: **Will Adler**

Telephone number: **775-230-0247**

Business address: **204 N. Minnesota Street, Carson City, NV 89701**

Electronic mail address: will@ssgr.us

Name of entity or organization represented: **Silver State Government Relations and Sierra Cannabis Coalition**

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected businesses and an explanation of how interested persons may obtain a copy of the summary.

Summary of public responses:

Sections 32, 33 and 35 of the draft presented for the Workshop held on November 17, 2022 were removed in response to feedback received at the Workshop. The Department agreed to consider a separate regulation at another time to address and incorporate industry feedback.

Summary of workshop discussion:

Sections 32, 33 and 35 of the draft presented for the Workshop held on November 17, 2022 were removed in response to feedback received at the Workshop. The Department agreed to consider a separate regulation at another time to address and incorporate industry feedback. Additional clarifications were requested regarding the proposed definition of "pre-rolls" as originating from the cultivator and asked questions regarding other terminology used in the Fair Market Value determination.

In response to public comments received during and after the Workshop on November 17, 2022, the Department circulated a revised draft to the interested parties list on November 30, 2022 and posted the revised version with the agenda for the public meeting of the Nevada Tax Commission held on December 5, 2022.

Summary of Public Comment at Adoption Hearing:

Will Adler, Silver State Government Relations and Sierra Cannabis Coalition:

Mr. Adler offered support for the adoption of the current draft regulation.

A copy of the recorded comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

There were changes made to the regulation after Workshop, which included deleting certain sections to limit the regulation to the imposition of the excise tax and to define pre-rolls of cannabis for purposes of fair market value

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects. The benefits of these regulations are that the industry along with the Department will be provided more clarity in implementing NRS Chapter 360, 372A and Assembly Bill 341, Statutes of Nevada (2021).

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the public. The benefits of these regulations are that the public along with the Department will be provided more clarity in implementing NRS Chapter 360, 372A and Assembly Bill 341, Statutes of Nevada (2021).

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The adopted permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities. Although it does not duplicate other regulations, it does account for the regulation of cannabis consumption lounges adopted by the Cannabis Compliance Board after the 2021 legislation (A.B. 341).

10. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The adopted permanent regulation does not include new fees or increase an existing fee.

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608 and NRS 233B.0609**

LCB File No. T004-22

1. Background

LCB File No. T004-22 is a temporary proposed regulation, relating to taxation; concerning cannabis excise tax; and providing other matters properly relating thereto.

Existing law imposes an excise tax on each wholesale sale of cannabis by a medical cannabis cultivation facility or adult-use cannabis cultivation facility to another cannabis establishment and imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store. (NRS 372A.290) Existing law also imposes an excise tax on sales of cannabis and cannabis products made by a cannabis consumption lounge. (AB 341, 2021)

This regulation clarifies how the excise tax shall be collected and reported to the Department, what records need to be retained by the cannabis establishment and how a claim for refund can be filed on any overpayment of excise tax on cannabis.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No T004-22. The temporary proposed language and questionnaire were dispersed to the following:

- Emailed by the Department to 199 members of its interested parties list.
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

The content of the response is summarized below:

- No response was received for LCB Draft of temporary proposed regulation - File No. T004-22.

Anyone interested in obtaining a copy of the completed small business impact questionnaire used for this summary, can contact:

Sarah Glazner
Nevada Department of Taxation
1550 College Parkway Ste 115
Carson City, NV 89706
Phone: (775) 684-2059
Fax: (775) 684-2020
sglazner@tax.state.nv.us

3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the temporary proposed regulation on small businesses.

No response was received for LCB Draft of temporary proposed regulation T004-22. Since no response was received, the Department analyzed the temporary proposed language and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

4. The estimated economic effect of the temporary proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses.

Direct and indirect beneficial effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect beneficial economic effect on small businesses.

5. A description of the methods that the agency considered to reduce the impact of the temporary proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The temporary proposed regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore, no efforts were required to reduce the impact on small businesses.

6. The estimated cost to the agency for enforcement of the temporary proposed regulation.

The temporary proposed regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

- 7. If the temporary proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The temporary proposed permanent regulation does not include new fees or increase an existing fee.

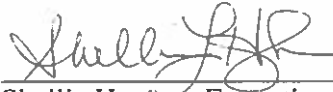
- 8. If the temporary proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The temporary proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities.

- 9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

The Department has determined that there will be no adverse impacts to small businesses based on its analysis of comment received.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the temporary proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.



Shellie Hughes, Executive Director
September 22, 2022

**TEMPORARY PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. T004-22

December 5, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §1, NRS 360.090, NRS 372A.050, Assembly Bill (AB) 341 (2021).

A REGULATION relating to taxation; concerning cannabis excise tax; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes an excise tax on each wholesale sale of cannabis by a medical cannabis cultivation facility or adult-use cannabis cultivation facility to another cannabis establishment and imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store. (NRS 372A.290) Existing law also imposes an excise tax on sales of cannabis and cannabis products made by a cannabis consumption lounge. (AB 341, 2021)

This regulation clarifies how the excise taxes shall be collected and reported to the Department, what records need to be retained by the cannabis establishment.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 29 have the meanings ascribed to them in those sections.*

Sec. 3. *“Adult- use cannabis establishment” means:*

- 1. An adult-use cannabis independent testing laboratory;*
- 2. An adult-use cannabis cultivation facility;*
- 3. An adult-use cannabis production facility;*
- 4. An adult-use cannabis retail store;*

5. *An adult-use cannabis distributor;*
6. *A retail cannabis consumption lounge; or*
7. *An independent cannabis consumption lounge.*

Sec. 4. *“Adult-use cannabis cultivation facility” has the meaning ascribed to it in NRS 678A.025.*

Sec. 5. *“Adult-use cannabis-infused product” has the meaning ascribed to it in NRS 678A.050.*

Sec. 6. *“Adult-use cannabis product” has the meaning ascribed to it in NRS 678A.055.*

Sec. 7. *“Adult-use cannabis retail store” has the meaning ascribed to it in NRS 678A.065.*

Sec. 8. *“Adult-use edible cannabis product” has the meaning ascribed to it in NRS 678A.070.*

Sec. 9. *“Cannabis” has the meaning ascribed to it in NRS 372A.015.*

Sec. 10. *“Cannabis Consumption lounge” means:*

1. *A retail cannabis consumption lounge; or*
2. *An independent cannabis consumption lounge.*

Sec. 11. *“Cannabis cultivation facility” has the meaning ascribed to it in NRS 678A.090.*

Sec. 12. *“Cannabis establishment” has the meaning ascribed to it in NRS 678A.095.*

Sec. 13. *“Cannabis product” has the meaning ascribed to it in NRS 678A.120.*

Sec. 14. *“Cannabis production facility” has the meaning ascribed to it in NRS 678A.125.*

Sec. 15. *“Cannabis sales facility” has the meaning ascribed to it in NRS 678A.130.*

Sec. 16. *“Excise Tax on cannabis” has the meaning ascribed to it in NRS 372A.220.*

Sec. 17. *“Independent cannabis consumption lounge” means a business that:*

1. *Is licensed by the Cannabis Compliance Board pursuant to NRS 678B.250;*
2. *Is not attached or immediately adjacent to an adult-use cannabis retail store; and*

3. Allows single-use cannabis products or ready-to-consume cannabis products to be consumed on the premises of the business by persons 21 years of age or older.

Sec. 18. *“Medical cannabis cultivation facility” has the meaning ascribed to it in NRS 678A.170.*

Sec. 19. *“Medical cannabis dispensary” has the meaning ascribed to it in NRS 678A.175.*

Sec. 20. *“Medical cannabis-infused product” has the meaning ascribed to it in NRS 678A.195.*

Sec. 21. *“Medical cannabis product” has the meaning ascribed to it in NRS 678A.200.*

Sec. 22. *“Medical edible cannabis product” has the meaning ascribed to it in NRS 678A.210.*

Sec. 23. *“Purchase” has the meaning ascribed to it in NRS 372.045.*

Sec. 24. *“Ready-to-consume cannabis product” means an adult-use edible cannabis product that is:*

- 1. Prepared on the premises of a cannabis consumption lounge;*
- 2. Presented in the form of a foodstuff or beverage;*
- 3. Sold in a heated or unheated state; and*
- 4. Intended for immediate consumption; or*
- 5. Further defined by the Cannabis Compliance Board by regulation.*

Sec. 25. *“Retail cannabis consumption lounge” means a business that:*

- 1. Is licensed by the Cannabis Compliance Board pursuant to NRS 678B.250;*
- 2. Is attached or immediately adjacent to an adult-use cannabis retail store; and*
- 3. Allows single-use cannabis products or ready-to-consume cannabis products to be consumed on the premises of the business by persons 21 years of age or older.*

Sec. 26. "Retail Sale" has the meaning ascribed to it in NRS 372.050.

Sec. 27. "Retailer" has the meaning ascribed to it in NRS 372.055.

Sec. 28. "Seller" means a taxpayer who makes any sale of cannabis or cannabis product.

Sec. 29. "Single-use cannabis product" means a type of cannabis or adult-use cannabis product, other than a ready-to-consume cannabis product, that the Cannabis Compliance Board has determined to be appropriate for consumption in a cannabis consumption lounge as further defined by the Cannabis Compliance Board by regulation.

Sec. 30. Cannabis and adult-use cannabis products obtained by a retail cannabis consumption lounge from an adult-use cannabis retail store are not subject to the excise tax on cannabis and should not be included in the taxable measure on the return as provided in NAC 372A.160 until the retail cannabis consumption lounge sells the cannabis or adult-use cannabis products to a consumer.

Sec. 31. 1. Cannabis and adult-use cannabis products purchased by an independent cannabis consumption lounge from an adult-use cannabis retail store to be resold by the independent cannabis consumption lounge are not subject to the excise tax until the adult-use cannabis product is sold by the independent cannabis consumption lounge to a consumer.

2 Sales by an adult-use cannabis retail store to an independent cannabis consumption lounge shall be reported by the adult-use cannabis retail store to the Department on a form prescribed by the Department and remitted with the return as provided in NAC 372A.160. These sales shall also be exempted from the taxable measure on the return.

3 Cannabis and adult-use cannabis products sold are subject to sales tax when sold at an adult-use retail store, a medical cannabis dispensary, a retail cannabis consumption lounge or an independent cannabis consumption lounge. These cannabis establishments must register

with the Department pursuant to NRS 372.125. Sales tax returns and payments must be submitted as provided in NRS 372.354 to 372.395, inclusive.

Sec. 32. 1. Every cannabis consumption lounge shall keep such records, receipts, invoices and other pertinent papers in such form as required by the Department to determine the amount of the liability of the taxpayer for the excise tax on cannabis.

2. Independent cannabis consumption lounges are required to contract with one or more adult-use cannabis retail stores to purchase cannabis and adult-use cannabis products. The records of each such contract must also be maintained and made available to the Department upon request by the Department.

3. Each contract must contain language granting the seller the ability to sell, to the independent cannabis consumption lounge, single-use products for resale and granting any such lounge the ability to purchase and prepay for the ready-to-consume products for sale to customers.

4. Preserve those records for not less than 4 years or until any proceedings pursuant to NRS 360.300 to 360.400, inclusive, are finally determined, whichever is longer; and

5. Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 33. NAC 372A.155 is hereby amended to read as follows:

372A.155 1. Cannabis bud must be calculated on the basis of the total weight of all cannabis bud that is sold, excluding the inadvertent inclusion of an inconsequential amount of cannabis bud in a sale of cannabis trim.

2. Cannabis trim must be calculated on the basis of the total weight of all cannabis trim that is sold, including the total weight of an inconsequential amount of cannabis bud which is

inadvertently included.

3. Immature cannabis plants must be calculated on the basis of the total number of immature cannabis plants sold.

4. Whole wet cannabis plants must be calculated on the basis of the total weight of the entire whole wet cannabis plant. A cannabis cultivation facility shall maintain records of the time each batch containing whole wet cannabis plants is harvested and weighed which contain the weight of each plant, are in writing and are created contemporaneously with the harvesting and weighing. To determine the total weight of the whole wet cannabis plant:

(a) The plant must not undergo any further processing, including, without limitation, drying the plant and subsequently selling separately the cannabis bud and cannabis trim from the plant, before being weighed; and

(b) The plant must be weighed within 2 hours after the harvesting of the batch containing the plant and without any further processing of the plant, including, without limitation, increasing the ambient temperature of the room in which the plant is held or drying, curing or trimming the plant. If the whole wet cannabis plant is not weighed within 2 hours after the harvest of the batch containing the plant or is subjected to further processing, the fair market value at wholesale of the plant must not be calculated using this subsection and must be calculated using subsection 1 or 2.

5. Cannabis seeds must be calculated on the basis of the total number of seeds sold.

6. *Pre-rolls must be calculated on the basis of the total weight of cannabis contained in each pre-roll and sold by a cultivator, as reported in the seed-to-sale tracking system, regardless of whether the pre-roll is made by a cultivator or a subsequent cannabis establishment. As used in this subsection, “pre-roll” means an individual cannabis cigarette or joint.*

~~6.17.~~ Any other category of cannabis must be determined by the Department on a case-by-case basis.

Sec. 34. NAC 372A.160 is hereby amended to read as follows:

372A.160 1. Each taxpayer *responsible for an excise tax pursuant to subsection 1, 2 or 3 of NRS 372A.290* shall, on or before the last day of the month immediately following each month for which the taxpayer is subject to the imposition of the excise tax on cannabis, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. Each taxpayer shall file a return even if the taxpayer has no liability for the tax.

2. Each taxpayer *responsible for an excise tax on the wholesale sale of cannabis by an adult-use cannabis cultivation facility to another cannabis establishment pursuant to subsection 1 or 2 of NRS 372.290* shall pay the excise tax on cannabis to the Department upon the first sale of cannabis or cannabis products to a cannabis establishment or consumer.

3. If a cannabis cultivation facility sells cannabis to another cannabis cultivation facility and pays to the Department the excise tax *on the wholesale sale of cannabis* imposed by subsection 1 or 2 of NRS 372A.290, as applicable, the excise tax imposed by subsection 1 or 2 of NRS 372A.290 is not required for any subsequent wholesale sale of that cannabis.

4. *Each taxpayer responsible for an excise tax on a retail sale of cannabis or cannabis products by an adult-use cannabis retail store or cannabis consumption lounge pursuant to subsection 3 of NRS 372A.290 shall pay the excise tax on cannabis to the Department upon each retail sale based upon the sales price.*

5. Each taxpayer shall keep all supporting documentation for verification that the excise tax imposed by subsection 1 ~~or~~ *, 2 or 3* of NRS 372A.290 was *properly reported and* paid ~~for the first wholesale sale of cannabis~~.

~~5~~6. The Department may require a cannabis establishment to submit a financial statement as determined to be necessary by the Department to ensure the collection of any taxes which may be

owed by the cannabis establishment.