

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R073-13

Effective June 23, 2014

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

AUTHORITY: §§1-11, NRS 360.090, 372A.050 and 372A.075.

A REGULATION relating to taxation; requiring the monthly filing of a return and remittance of the excise taxes imposed on certain sales of marijuana, edible marijuana products and marijuana-infused products; requiring the maintenance of certain records and providing for the inspection of such records; establishing the procedure for the submission of a claim for a refund or credit for any overpayment of such a tax; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Senate Bill No. 374 of the 77th Session of the Nevada Legislature provides for the registration of medical marijuana establishments authorized to cultivate or dispense marijuana or manufacture edible marijuana products or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana. (Chapter 547, Statutes of Nevada 2013, p. 3695) Section 24.4 of Senate Bill No. 374 (NRS 372A.075) imposes an excise tax of 2 percent of the sales price on each sale of: (1) marijuana by a cultivation facility to another medical marijuana establishment; (2) edible marijuana products or marijuana-infused products by a facility for the production of such products to another medical marijuana establishment; and (3) marijuana, edible marijuana products or marijuana-infused products by a medical marijuana dispensary. (Chapter 547, Statutes of Nevada 2013, p. 3726) **Section 7** of this regulation sets forth the Nevada Tax Commission’s interpretation of the term “sales price” for the purposes of the foregoing provisions. **Section 8** of this regulation requires each such medical marijuana establishment to file a monthly return with the Department of Taxation and remit to the Department any excise tax due. **Section 9** of this regulation requires each such medical marijuana establishment to keep and maintain records relating to its liability for the tax, and to make such records available for inspection by the Department. With respect to any establishment that believes it has overpaid the tax, **section 10** of this regulation provides for the filing of a claim with the Department for a refund or credit, in the manner currently provided by law for such claims in connection with the modified business tax. (NRS 363B.150) Existing regulations require the use of revenue stamps by a dealer in controlled substances. (NAC 372A.020) **Section 11** of this regulation amends that section to provide that it has no application to a sale that is subject to the excise tax imposed by section 24.4 of Senate Bill No. 374 (NRS 372A.075).

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Excise tax on medical marijuana” means any of the excise taxes imposed by section 24.4 of Senate Bill No. 374, chapter 547, Statutes of Nevada 2013, at page 3726 (NRS 372A.075).*

Sec. 4. *“Medical marijuana” means marijuana, edible marijuana products and marijuana-infused products sold for a medical use as authorized by chapter 453A of NRS.*

Sec. 5. *“Seller” means a taxpayer who makes any sale of medical marijuana.*

Sec. 6. *“Taxpayer” means a:*

- 1. Cultivation facility;*
- 2. Facility for the production of edible marijuana products or marijuana-infused products; or*
- 3. Medical marijuana dispensary.*

Sec. 7. 1. *For the purposes of section 24.4 of Senate Bill No. 374, chapter 547, Statutes of Nevada 2013, at page 3726 (NRS 372A.075), the Nevada Tax Commission will interpret the term “sales price” to mean the total amount for which medical marijuana is sold, valued in money, whether received in money or otherwise, without any deduction for:*

- (a) The cost to the seller for the medical marijuana sold;*
- (b) The cost of materials used, the cost of labor or services, interest, losses, costs of transportation to the seller or any other expenses of the seller;*

(c) Any amount for which credit is given to the purchaser by the seller;

(d) Any charges by the seller for any services necessary to complete the sale; or

(e) Except as otherwise provided in this subsection, any tax imposed upon the seller or the seller's predecessors in the supply chain.

↳ The term does not include the amount of the seller's obligation for the excise tax on medical marijuana.

2. For the purposes of this section, the legal incidence of the excise tax on medical marijuana is deemed to be on the seller regardless of whether the seller passes the cost of the tax on to the purchaser.

Sec. 8. Each taxpayer 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 medical marijuana, 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.

Sec. 9. Each taxpayer shall:

1. Keep such records as are necessary to determine the amount of the liability of the taxpayer for the excise tax on medical marijuana;

2. 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

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

Sec. 10. A taxpayer who believes that it has made an overpayment of the excise tax on medical marijuana may file with the Department a claim for a refund or credit of the amount

of the alleged overpayment. The claim must be filed as prescribed by NRS 363B.150 for claims filed pursuant to chapter 363B of NRS. The Department shall process and administer the claim as prescribed by NRS 363B.140 to 363B.230, inclusive, for claims filed pursuant to chapter 363B of NRS.

Sec. 11. NAC 372A.020 is hereby amended to read as follows:

372A.020 *1.* Each dealer in controlled substances who purchases revenue stamps from the Department pursuant to NRS 372A.090 shall affix the stamps to each package, packet or container of a controlled substance he or she sells.

2. This section does not apply to any sale that is subject to an excise tax imposed by section 24.4 of Senate Bill No. 374, chapter 547, Statutes of Nevada 2013, at page 3726 (NRS 372A.075).

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R073-13

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

The need for this Regulation is to implement the tax provisions contained in NRS 372A.075 which were enacted in the 2013 legislative session. Specifically, NRS 372A.075 provides for a 2% excise tax on each wholesale sale in this State of:

- 1) marijuana by a cultivation facility to another medical marijuana establishment. The tax is the obligation of the cultivation facility;
- 2) edible marijuana products or marijuana-infused products by a facility for the production of edible marijuana products or marijuana-infused products to another medical marijuana establishment. The tax is the obligation of the production facility.
- 3) edible marijuana products or marijuana-infused products by a medical marijuana dispensary. The tax is the obligation of the medical marijuana dispensary.

This regulation provides guidance to taxpayers in calculating, filing and paying the medical marijuana excise tax.

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 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</u>	<u>Number Notified</u>
11/21/2013	Workshop	12/11/2013	844
2/7/2014	Adoption Hearing	3/10/2014	844

The mailing list included the interested parties list maintained by the Department as well as the list serve maintained by the Medical Marijuana Program at the State Division of Public and Behavioral Health. Notices were also posted at the Nevada State Library; 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 to other interested parties list maintained by the Department.

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

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at mblanks@tax.state.nv.us.

3. **The number of persons who:**
- (a) **Attended each hearing:** 49 people attended the workshop; 110 people attended the adoption hearing.
 - (b) **Testified at each hearing:** 4 people testified at the workshop; 1 person testified at the adoption hearing.
 - (c) **Submitted written comments:** None of the attendees for both the hearings submitted any written comments after the hearings.
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:**

Testified at Workshop:

Peter D. Krueger

Telephone number: 775-622-9665

Business address: 401 Ryland St. Ste. 111 Reno, NV 89502

Electronic mail address: peter@nv.mma.org

Name of entity or organization represented: NV MMJ Associates

Steven Cookson

Telephone number: (855) 292-8399

Business address: 8441 Warner Drive Culver City, CA 90232

Name of entity or organization represented: The Med Men

Chris Hempel

Electronic mail address: chris@hempelfamily.com

Name of entity or organization represented: Self

Mike Harris

Name of entity or organization represented: Self

Testified at Adoption hearing:

Jeffrey Whitehead

Telephone number: 702.869.8801

Business address: 10777 West Twain Avenue, Third Floor, Las Vegas, NV 89135

Business telephone number: (702) 869-8801

Electronic mail address; jwhitehead@blacklobellolaw.com

Name of entity or organization represented: Black & Lobello Attorneys at law

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 business and an explanation on how interested persons may obtain a copy of the summary.

Summary of public responses:

The following general responses were received by email.

1. One Taxpayer suggested that Nevada should require quarterly filing of excise tax and not monthly filing.
2. One member suggested that Taxpayers should be allowed to deduct the expenses for the medicine that they donate to the patients who cannot afford to buy medication.
3. One member suggested that Nevada should tax on the basis of grams sold and not the sales price as some Taxpayers hide their actual sales by showing undue discounts.
4. One member expressed concern whether revenue stamps will be required.
5. One member protested against Legalizing Marijuana in Nevada.

Summary of workshop discussion

The following summary of the public comment discussions was presented at the Adoption Hearing.

The need for this Regulation is to implement the tax provisions contained in NRS 372A.075 which were enacted in the 2013 legislative session. Specifically, NRS 372A.075 provides for a 2% excise tax on each wholesale sale in this State of:

- 1) marijuana by a cultivation facility to another medical marijuana establishment. The tax is the obligation of the cultivation facility;
- 2) edible marijuana products or marijuana-infused products by a facility for the production of edible marijuana products or marijuana-infused products to another medical marijuana establishment. The tax is the obligation of the production facility.
- 3) edible marijuana products or marijuana-infused products by a medical marijuana dispensary. The tax is the obligation of the medical marijuana dispensary.

Accordingly, the statute contemplates the 2% excise tax at each point in the chain of the wholesale sales. Notwithstanding this requirement, it has been noted and was discussed at the Regulation Workshop, that a single company may likely be licensed as a cultivation facility, production facility and/or dispensary. The question then, was how to treat the transfers from a cultivation facility to a production facility for excise tax purposes when those transfers were not “wholesale sales.”

Initially, the Department discussed devising a sales price for purposes of the excise tax on those transfers. However, the Regulation itself contains an interpretation of the term “sales price” to mean the total amount for which medical marijuana is sold, valued in money. Additionally, the issue was reviewed by the Department’s counsel at the Attorney General’s office and during a subsequent discussion with LCB staff. Thereafter, it was determined that any attempt to assign a sales price when there was actually no wholesale sale would exceed language of the statute as the statute clearly imposes the tax on the wholesale sale. Therefore, upon the advice of counsel, the Regulation will not be amended to attempt to provide a taxable measure for intercompany transfers between cultivation facilities, production facilities or dispensaries when no actual wholesale sale occurs.

Furthermore, the Department only expects that a taxpayer would pay the required 2% on wholesale sales measured by the money value of the medical marijuana sold. Accordingly, there have been no changes to the Regulation since the Workshop.

Another issue that has been discussed is the relationship between the excise tax and the application of NRS Chapter 372. Subsection 3 of Section 24.4 of Senate Bill 374 (2013) makes clear that the 2 percent excise tax on retail sales is in addition to the state and local sales and use taxes that are otherwise imposed on the sale of tangible personal property and must be considered part of the retail price to which sales and use tax applies. Accordingly, sales/use tax provisions also apply to the retail sale (sale to the ultimate consumer) and taxpayers would be subject to the provisions in the sales/use tax chapters with respect to the retail sale of medical marijuana. One reoccurring question has been whether medical marijuana would be considered an exempt medicine. While such analysis is beyond the scope of this Regulation, we have been advised by the Attorney General's office that medical marijuana would not be considered a medicine because it does not satisfy the medical exemption requirements in NRS 372 and 360B.

Finally, while it was originally suggested that separate returns be filed for each facility owned by a single taxpayer, in designing the return form and analyzing processing of the form, Department staff has requested that a single taxpayer file a return that includes each of its facilities on the single form. Accordingly, the Department asked that LCB File No. R1073-13 be adopted with the omission of the final sentence of Section 8 which reads as follows.

“A separate return must be filed for each cultivation facility, facility for the production of edible marijuana products or marijuana infused products and medical marijuana dispensary operated by the taxpayer.”

The regulation was adopted as requested.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at mblanks@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.

The Regulation was adopted as drafted except for the change discussed in question 5. See response to question #5 above for summary of reasons the Regulation was adopted without additional changes.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

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

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to Medical Marijuana industry. The benefits of these regulations are that the industry along with the Department will be provided more clarity in NAC 372 A.

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

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to public. The benefits of these regulations are that the public along with the Department will be provided more clarity in NAC 372 A.

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

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement other than the costs to implement the statutory provisions of the excise tax. \$529,226.00 was allocated to the Department by the Interim Finance Committee through item J2 on the August 29, 2013 agenda.

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 proposed regulations do not overlap or duplicate any regulation of other state or local governmental entities.

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 proposed regulations do not include new or increases in existing fees.