

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB FILE NO. R108-201

**The following document is the initial draft regulation proposed
by the agency submitted on 06/26/2020**

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[Date]

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

AUTHORITY: §1, NRS 360.090, 372A.290, 678B.640

A REGULATION relating to taxation; concerning the calculation of fair market value of cannabis at wholesale; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that an excise tax is imposed on the wholesale sale in this State of cannabis by an adult-use cannabis cultivation facility or a medical cannabis cultivation facility to another cannabis establishment at the rate of 15 percent of the fair market value at wholesale of cannabis. Existing law also provides that the Department of Taxation will establish procedures to determine the fair market value of cannabis at wholesale of cannabis.

This regulation provides the procedures to determine the fair market value of cannabis for imposition of the excise tax.

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

Sec. 2. 1. *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 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 such taxpayer shall file a return even if the taxpayer has no liability for the tax.*

2. *Each taxpayer shall pay the excise tax on marijuana to the Department upon the first sale of marijuana or marijuana products to a marijuana cultivation facility, marijuana product manufacturing facility, retail marijuana store or a consumer.*

3. If a marijuana cultivation facility sells marijuana to another marijuana cultivation facility and pays to the Department the excise tax imposed by NRS 372A.290 on the sale, the excise tax imposed by NRS 372A.290 is not required for any subsequent wholesale sale of that marijuana.

4. Each marijuana cultivation facility and retail marijuana store shall keep all supporting documentation for verification that the excise tax imposed by NRS 372A.290 was paid on the first wholesale sale of marijuana.

5. The Department may require a marijuana 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 marijuana establishment.

6. The Department will calculate the fair market value at wholesale using the reported sales or transfer of marijuana in each category of marijuana described in this subsection using the methodology described in paragraphs (a) to (f), inclusive. The fair market value at wholesale of:

(a) Marijuana bud must be calculated on the basis of the total weight of all marijuana bud that is sold, excluding the inadvertent inclusion of an inconsequential amount of marijuana bud in a sale of marijuana trim.

(b) Marijuana trim must be calculated on the basis of the total weight of all marijuana trim that is sold, including the total weight of an inconsequential amount of marijuana bud which is inadvertently included.

(c) Immature marijuana plants must be calculated on the basis of the total number of immature marijuana plants sold.

(d) Whole wet marijuana plants must be calculated on the basis of the total weight of the entire whole wet marijuana plant. A marijuana cultivation facility shall maintain records of the time each batch containing whole wet marijuana 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 marijuana plant:

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

(2) 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 marijuana 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 paragraph and must be calculated using paragraph (a) or (b).

(e) If included as a category, marijuana seeds must be calculated on the basis of the total number of seeds sold.

(f) Any other category of marijuana must be determined by the Department on a case-by-case basis.

7. As used in this section:

(a) “Excise tax on marijuana” has the meaning ascribed to it in NRS 372A.220.

(b) “Fair market value” means the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.

(c) “Taxpayer” has the meaning ascribed to it in NRS 372A.250.