

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R108-20

February 2, 2021

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

AUTHORITY: §§ 1-11 and 13, NRS 360.090, 372A.050 and 678B.640; §§ 12 and 14-18, NRS 360.090 and 372A.050.

A REGULATION relating to taxation; setting forth the method of calculating the fair market value at wholesale of cannabis; imposing certain requirements on certain cannabis establishments relating to the payment of excise taxes on cannabis; repealing certain superseded provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an excise tax on certain wholesale and retail sales of cannabis. For each retail sale of cannabis or cannabis products by an adult-use cannabis retail store, an excise tax is imposed at the rate of 10 percent of the sales price of the cannabis or cannabis products. For wholesale sales of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment, an excise tax is imposed at the rate of 15 percent of the fair market value at wholesale of the cannabis. (NRS 372A.290)

Before the enactment of Assembly Bill No. 533 (A.B. 533) of the 2019 Legislative Session, the excise tax on wholesale sales of cannabis to a medical marijuana establishment and the excise tax on wholesale sales of cannabis by a marijuana cultivation facility were imposed by separate sections of NRS. (NRS 372A.290, as that section existed before July 1, 2020, 453D.500, as that section existed before July 1, 2020) Accordingly, the Department of Taxation adopted separate regulations prescribing separate procedures and requirements for the administration and enforcement of those excise taxes. (NAC 372A.100-372A.180, 453D.236)

The authority to regulate persons and establishments involved in the cannabis industry in this State were generally transferred by A.B. 533 from the Department to the Cannabis Compliance Board. However, the Department retained its authority over the administration and enforcement of the excise taxes on cannabis. (Assembly Bill No. 533, chapter 595, Statutes of Nevada 2019, at page 3767) A.B. 533 combined provisions relating to the excise tax on wholesale sales of cannabis by a medical cannabis cultivation facility and the excise tax on wholesale sales of cannabis by an adult-use cannabis cultivation facility into a single section of chapter 372A of NRS. (Sections 213 and 245 of Assembly Bill No. 533, chapter 595, Statutes of Nevada 2019, at pages 3873, 3896) Existing law requires the Department to adopt all necessary regulations to carry out the provisions of that chapter. (NRS 372A.050) Additionally, existing

law requires the Department to adopt regulations to establish procedures to determine the fair market value at wholesale of cannabis. (NRS 678B.640)

This regulation revises provisions of existing regulations relating to the excise tax on wholesale sales of medical cannabis to incorporate provisions relating to the excise tax on wholesale sales of adult-use cannabis, thereby providing standardized procedures and requirements for the administration and enforcement of both excise taxes. (NAC 372A.100-372A.180) **Section 11** of this regulation sets forth the method by which the Department will calculate the fair market value at wholesale for various categories of cannabis. The method set forth in **section 11** is substantially similar to the method of calculating the fair market value at wholesale of cannabis that was previously adopted by the Department in the context of adult-use cannabis. (NAC 453D.236)

Section 16 of this regulation imposes certain requirements on cannabis establishments related to the payment of the excise taxes on cannabis. **Section 16** requires the payment of an excise tax on cannabis upon the first sale of cannabis or cannabis products to a cannabis establishment or consumer. Additionally, **section 16** requires a taxpayer to maintain certain documentation and authorizes the Department to require the submission of certain financial statements under certain circumstances. The provisions established by **section 16** are substantially similar to the provisions governing the administration and enforcement of the excise taxes on cannabis that were previously adopted by the Department in the context of adult-use cannabis. (NAC 453D.236)

Section 18 of this regulation repeals a number of existing sections of the Nevada Administrative Code relating to excise taxes on cannabis that are either superseded by or duplicative of provisions of existing law. (NRS 372A.247, 372A.270, 372A.300-372A.360) **Sections 12-15 and 17** of this regulation make conforming changes.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Batch” means the usable flower and trim contained within one or more specific lots of cannabis grown by a cannabis cultivation facility from one or more seeds or cuttings of the same strain of cannabis and harvested on or before a specified final date of harvest.*

Sec. 3. *“Cannabis” has the meaning ascribed to it in NRS 372A.015.*

Sec. 4. *“Cannabis cultivation facility” has the meaning ascribed to it in NRS 372A.210.*

Sec. 5. *“Cannabis establishment” has the meaning ascribed to it in NRS 678A.095.*

Sec. 6. *“Cannabis product” has the meaning ascribed to it in NRS 372A.290.*

Sec. 7. *“Department” means the Department of Taxation.*

Sec. 8. *“Extraction” has the meaning ascribed to it in NRS 453.0825.*

Sec. 9. *“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 cannabis in the wholesale market.*

Sec. 10. *“Lot” means:*

1. *The flowers from one or more cannabis plants of the same batch, in a quantity that weighs 5 pounds or less;*

2. *The leaves or other plant matter from one or more cannabis plants of the same batch, other than full female flowers, in a quantity that weighs 15 pounds or less; or*

3. *The wet leaves or other plant matter from one or more cannabis plants of the same batch used only for extraction, in a quantity that weighs 125 pounds or less within 2 hours of harvest.*

Sec. 11. *The Department will calculate the fair market value at wholesale using the reported sales or transfer of cannabis in each category of cannabis described in this section using the methodology described in subsections 1 to 6, inclusive. The fair market value at wholesale of:*

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

Sec. 12. 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 NRS ~~372A.075.~~ **372A.290.**

Sec. 13. NAC 372A.100 is hereby amended to read as follows:

372A.100 As used in NAC 372A.100 to ~~372A.180,~~ **372A.160**, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 372A.110 to 372A.140, inclusive, *and sections 2 to 10, inclusive, of this regulation*, have the meanings ascribed to them in those sections.

Sec. 14. NAC 372A.110 is hereby amended to read as follows:

372A.110 “Excise tax on ~~medical marijuana~~” ~~means any of the excise taxes imposed by~~ *cannabis*” *has the meaning ascribed to it in* NRS ~~372A.075.~~ **372A.220.**

Sec. 15. NAC 372A.140 is hereby amended to read as follows:

372A.140 “Taxpayer” ~~means a:~~

- ~~1. Cultivation facility;~~
- ~~2. Facility for the production of edible marijuana products or marijuana-infused products; or~~
- ~~3. Medical marijuana dispensary.~~ *has the meaning ascribed to it in NRS 372A.250.*

Sec. 16. NAC 372A.160 is hereby amended to read as follows:

372A.160 **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 ~~medical marijuana,~~ *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 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 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 shall keep all supporting documentation for verification that the excise tax imposed by subsection 1 or 2 of NRS 372A.290 was paid on the first wholesale sale of cannabis.

5. 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.

Sec. 17. NAC 555.005 is hereby amended to read as follows:

555.005 As used in this chapter, unless the context otherwise requires:

1. “Crop grown for seed production” means any crop that is grown:
 - (a) To produce seed that is not intended for human consumption or as feed for animals; and
 - (b) With the sole intent of the seed being:
 - (1) Planted; or
 - (2) Processed to produce industrial or cosmetic oil that is not edible.
2. “Department” means the State Department of Agriculture.
3. “Director” means the Director of the Department.

4. “Drug or medicinal crop” means any plant that produces or from which is derived a drug or chemical substance that is used for pharmaceutical or medicinal purposes. The term does not include ~~medical marijuana,~~ *cannabis*, as defined in ~~NAC 372A.120,~~ *NRS 678A.085, which is cultivated for the medical use of cannabis, as defined in NRS 678A.215.*

5. “Pesticide residue tolerance” means the allowable amount of the residue of a pesticide that is prescribed by the United States Environmental Protection Agency.

6. “Seed conditioner” means a person who disposes of seed screening in compliance with state and federal laws and regulations.

7. “Seed screening” means all matter separated from seeds through the use of screens.

Sec. 18. NAC 372A.120, 372A.130, 372A.150, 372A.170, 372A.180 and 453D.236 are hereby repealed.

TEXT OF REPEALED SECTIONS

372A.120 “Medical marijuana” defined. (NRS 360.090, 372A.050, 372A.075)

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

372A.130 “Seller” defined. (NRS 360.090, 372A.050, 372A.075) “Seller” means a taxpayer who makes any sale of medical marijuana.

372A.150 “Sales price” interpreted. (NRS 360.090, 372A.050, 372A.075)

1. For the purposes of 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.

372A.170 Maintenance and inspection of records. (NRS 360.090, 372A.050, 372A.075)

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.

372A.180 Overpayment: Claim for refund or credit. (NRS 360.090, 372A.050, 372A.075) 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.

453D.236 Monthly filing of returns; payment of tax; maintenance of documentation and verification of payment; submission of financial statement upon request; calculation of fair market value at wholesale. (NRS 453D.200)

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 453D.500 on the sale, the excise tax imposed by NRS 453D.500 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 453D.500 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) 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) “Taxpayer” has the meaning ascribed to it in NRS 372A.250.