

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

LCB FILE NO. T004-22P

**The following document is the proposed temporary regulation
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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, 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 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.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, 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 27 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. "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. 29. 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. 30. 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. 31. *Pursuant to NRS 372A.290, the excise tax imposed on each retail sale of cannabis or adult-use cannabis products by an adult-use cannabis retail store or cannabis consumption lounge is the obligation of the seller, whether an adult-use cannabis retail store or a cannabis consumption lounge. The sellers of cannabis or adult-use cannabis products are not statutorily authorized collection agents and therefore cannot collect this tax from the customer.*

Sec. 32. 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.~~[0.75]~~*290.*

Sec. 33. NAC 372A.110 is hereby amended to read as follows:

372A.110 “Excise tax on ~~[medical-marijuana]~~ *cannabis*” means any of the excise taxes imposed by NRS 372A.~~[075]~~ *290 and any subsequent amendments thereto.*

Sec. 34. NAC 372A.120 is hereby amended to read as follows:

372A.120 Medical ~~[marijuana]~~ *cannabis*” means ~~[marijuana]~~cannabis, edible-~~[marijuana]~~ cannabis products and ~~[marijuana]~~ cannabis infused products sold for a medical use as authorized by chapter ~~[453A]~~ *678C* of NRS.

Sec. 35. NAC 372A.130 is hereby amended to read as follows:

372A.130 “Seller” means a taxpayer who makes any sale of ~~[medical-marijuana]~~*cannabis or cannabis product.*

Sec. 36. NAC 372A.140 is hereby amended to read as follows:

372A.140 “Taxpayer” means a:

1. *Cannabis* [E]cultivation facility;
2. [~~Facility for the production of edible marijuana products or marijuana-infused products;~~
~~or~~] *Adult-use Cannabis retail store*;
3. [~~Medical marijuana dispensary.~~] *Retail cannabis consumption lounge*; or
4. *Independent cannabis consumption lounge.*

Sec. 37. NAC 372A.150 is hereby amended to read as follows:

372A.150 1. For the purposes of NRS 372A.[075]290, the Nevada Tax Commission will interpret the term “sales price” to mean the total amount for which [~~medical marijuana~~] *cannabis or cannabis products* [is] *are* sold, valued in money, whether received in money or otherwise, without any deduction for:

- (a) The cost to the seller for the [~~medical marijuana~~] *cannabis or cannabis products* 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.

Ê [~~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~~] *cannabis* is deemed to be on the seller regardless of whether the seller passes the cost of the tax on to the purchaser *in the sales price*.

Sec. 38. NAC 372A.160 is hereby amended to read as follows:

372A.160 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 or cannabis products*, 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 applicable excise tax to the Department based on either the retail or wholesale sales of cannabis or cannabis products to other cannabis establishments or consumers.

4. Each taxpayer shall keep all supporting documentation for verification that the applicable excise tax imposed by NRS 372A.290 was paid as based on either the retail or wholesale sales of cannabis or cannabis products.

5. The Department may require any 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. 39. NAC 372A.170 is hereby amended as follows:

372A.170 ~~[Each taxpayer]~~ *Every cannabis establishment* shall:

1. Keep such records ~~[as are necessary]~~, *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 ~~[medical marijuana]~~ *cannabis*;

(a) 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.

(b) 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.

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. 40. NAC 372A.180 is hereby amended as follows:

372A.180 A taxpayer who believes that it has made an overpayment of the excise tax on ~~[medical-marijuana]~~ *cannabis* 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.