

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R052-23

May 15, 2024

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

AUTHORITY: §§ 1, 3-5, 7-9, 11-16, 18 and 19, NRS 360.090 and 372A.050; §§ 2, 6, 10 and 17, NRS 360.090, 372A.050 and 678B.640.

A REGULATION relating to taxation; establishing certain requirements relating to the excise tax on cannabis concerning cannabis and adult-use cannabis products obtained or purchased by a cannabis consumption lounge; requiring an adult-use cannabis retail store to document and report to the Department of Taxation each sale of cannabis or an adult-use cannabis product to an independent cannabis consumption lounge; imposing and revising certain requirements relating to the keeping of records concerning the excise tax on cannabis; imposing certain requirements on cannabis sales facilities and cannabis consumption lounges relating to the payment of sales tax; revising the manner in which the Department will calculate the fair market value at wholesale of cannabis; eliminating certain obsolete and duplicative provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store or cannabis consumption lounge at the rate of 10 percent of the sales price of the cannabis or cannabis products. Existing law also imposes an excise tax on the first wholesale sale of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment at the rate of 15 percent of: (1) the fair market value at wholesale of the cannabis, if the sale is made to an affiliate of the medical or adult-use cannabis cultivation facility; or (2) the sales price of the cannabis, if the sale is made to a cannabis establishment that is not an affiliate of the medical or adult-use cannabis cultivation facility. (NRS 372A.290) Existing regulations set forth various procedures and requirements concerning the excise tax on cannabis. (NAC 372A.100-372A.160)

Existing law authorizes a retail cannabis consumption lounge to obtain from the adult-use cannabis retail store to which the lounge is attached or immediately adjacent: (1) single-use cannabis products for the purposes of resale; and (2) cannabis or cannabis products for the purposes of producing ready-to consume cannabis products to be sold to customers of the lounge. (NRS 678D.470) Existing law similarly authorizes an independent cannabis consumption lounge to obtain such cannabis and cannabis products for such purposes from an adult-use cannabis retail store with which the lounge has entered into a contract. (NRS 678D.475) Existing

regulations require a taxpayer, in each month following a month for which the taxpayer is subject to the imposition of the excise tax on cannabis, to file with the Department of Taxation a return and remit to the Department any tax due for the month covered by the return. (NAC 372A.160)

Sections 11 and 12 of this regulation provide that any cannabis or adult-use cannabis product obtained or purchased by a cannabis consumption lounge is not subject to the excise tax on cannabis and must not be included in the measure of the tax on a tax return until the cannabis consumption lounge: (1) for a single use cannabis product, sells the single-use cannabis product to a customer of the lounge; or (2) uses the cannabis or adult-use cannabis product to prepare a ready-to-consume cannabis product and sells the ready-to-consume cannabis product to a customer of the lounge.

Section 13 of this regulation requires each adult-use cannabis retail store that has entered into a contract with an independent cannabis consumption lounge to sell cannabis and cannabis products to the lounge to document each sale of cannabis or an adult-use cannabis product to the lounge on a form prescribed by the Department and submit the form with the tax return required to be filed by the adult-use cannabis retail store concerning the excise tax on cannabis. **Section 13** additionally requires an adult-use cannabis retail store or independent cannabis consumption lounge that has entered into such a contract to maintain a copy of the contract and make the copy available to the Department upon request.

Section 14 of this regulation provides that sales of cannabis and cannabis products to a consumer by a cannabis sales facility or cannabis consumption lounge are subject to sales tax and sets forth certain requirements concerning the imposition of sales tax on such sales.

Existing law requires each person responsible for maintaining the records of a person subject to the excise tax on cannabis to keep such records as may be necessary to determine the amount of the liability of the taxpayer for the excise tax on cannabis. (NRS 372A.270) **Section 15** of this regulation provides that such records: (1) may include receipts, invoices and other pertinent papers; and (2) must be kept in such form as required by the Department.

Before the enactment of Assembly Bill No. 430 (A.B. 430) of the 2023 Legislative Session, existing law required the Department to adopt regulations to establish procedures to determine the fair market value at wholesale of cannabis. (NRS 678B.640) A.B. 430 amended that requirement to require that such regulations provide that the fair market value of cannabis: (1) will be calculated and published by the Department on a quarterly basis not more than 30 days after the end of each calendar quarter; and (2) is the median sales price for wholesale sales between cannabis cultivation facilities and cannabis establishments that are not affiliates, per pound or each, during the calendar quarter. (NRS 678B.640, as amended by section 9 of Assembly Bill No. 430, chapter 450, Statutes of Nevada 2023, at page 2753) Existing regulations adopted before the enactment of A.B. 430 establish various categories of cannabis and set forth the manner in which the Department will calculate the fair market value at wholesale of cannabis for those categories. (NAC 372A.155) **Section 17** of this regulation revises the manner by which the Department will calculate the fair market value at wholesale of a category of cannabis to conform to the requirements imposed by A.B. 430. Additionally, **section 17** revises the categories of cannabis for which the Department will calculate the fair market value at wholesale.

Before the enactment of A.B. 430, existing law imposed the excise tax on cannabis on each wholesale sale in this State of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment. (NRS 372A.290) A.B. 430 revised provisions imposing the excise tax on wholesale sales of cannabis to apply the tax only to the first

wholesale sale in this State of cannabis. (NRS 372A.290) **Section 18** of this regulation removes provisions of existing regulations that have been rendered duplicative of provisions of existing law after the enactment of A.B. 430. **Section 18** also revises provisions requiring each taxpayer to keep documentation for verification that the excise tax on wholesale sales of cannabis was paid to instead require all taxpayers, whether subject to the excise tax on wholesale sales or retail sales of cannabis, to keep documentation for verification that the applicable excise tax on cannabis was properly reported and paid.

Sections 2-10 of this regulation define words and terms used in this regulation. **Section 16** of this regulation makes a conforming change to indicate the proper placement of **sections 2-15** in the Nevada Administrative Code.

Section 19 of this regulation repeals certain obsolete provisions concerning the administration and enforcement of certain taxes imposed on certain sales of cannabis by a marijuana cultivation facility or retail marijuana store.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *“Adult-use cannabis product” has the meaning ascribed to it in NRS 678A.055.*

Sec. 3. *“Affiliate” has the meaning ascribed to it in NRS 372A.290.*

Sec. 4. *“Cannabis sales facility” has the meaning ascribed to it in NRS 678A.130.*

Sec. 5. *“Independent cannabis consumption lounge” has the meaning ascribed to it in NRS 678A.157.*

Sec. 6. *“Pre-roll” means an individual cannabis cigarette or joint.*

Sec. 7. *“Ready-to-consume cannabis product” has the meaning ascribed to it in NRS 678A.227.*

Sec. 8. *“Retail cannabis consumption lounge” has the meaning ascribed to it in NRS 678A.237.*

Sec. 9. *“Single-use cannabis product” has the meaning ascribed to it in NRS 678A.238.*

Sec. 10. *“Wholesale sale” has the meaning ascribed to it in NRS 372A.290.*

Sec. 11. *Any cannabis or adult-use cannabis product obtained by a retail cannabis consumption lounge from the adult-use cannabis retail store to which the retail cannabis*

consumption lounge is attached or immediately adjacent is not subject to the excise tax on cannabis and must not be included in the measure of the tax on a return required by NAC 372A.160 until the retail cannabis consumption lounge:

1. For a single-use cannabis product, sells the single-use cannabis product to a customer of the lounge; or

2. Uses the cannabis or adult-use cannabis product to prepare a ready-to-consume cannabis product and sells the ready-to-consume cannabis product to a customer of the lounge.

Sec. 12. *Any cannabis or adult-use cannabis product purchased by an independent cannabis consumption lounge from an adult-use cannabis retail store with which the independent cannabis consumption lounge has entered into a contract pursuant to NRS 678D.475 is not subject to the excise tax on cannabis and must not be included in the measure of the tax on a return required by NAC 372A.160 until the independent cannabis consumption lounge:*

1. For a single-use cannabis product, sells the single-use cannabis product to a customer of the lounge; or

2. Uses the cannabis or adult-use cannabis product to prepare a ready-to-consume cannabis product and sells the ready-to-consume cannabis product to a customer of the lounge.

Sec. 13. *1. Each adult-use cannabis retail store that has entered into a contract with an independent cannabis consumption lounge pursuant to NRS 678D.475 shall:*

(a) Document on a form prescribed by the Department each sale of cannabis or an adult-use cannabis product by the adult-use cannabis retail store to the independent cannabis consumption lounge; and

(b) Submit the form described in paragraph (a) to the Department with each return required by NAC 372A.160.

2. Each adult-use cannabis retail store and independent cannabis consumption lounge shall maintain a copy of any contract entered into pursuant to NRS 678D.475 and make the copy available to the Department upon request.

Sec. 14. *Sales of cannabis and cannabis products to a consumer by a cannabis sales facility or cannabis consumption lounge are subject to sales tax. Each cannabis sales facility and cannabis consumption lounge shall obtain a permit pursuant to NRS 360.5971 or register pursuant to NRS 360B.200. Returns must be filed and payments must be remitted in accordance with the provisions of chapters 372 and 374 of NRS.*

Sec. 15. *The records required by paragraph (a) of subsection 1 of NRS 372A.270:*

1. May include receipts, invoices and other pertinent papers; and

2. Must be kept in such form as required by the Department.

Sec. 16. NAC 372A.100 is hereby amended to read as follows:

372A.100 As used in NAC 372A.100 to 372A.160, inclusive, *and sections 2 to 15, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 372A.102 to 372A.140, inclusive, *and sections 2 to 10, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 17. NAC 372A.155 is hereby amended to read as follows:

372A.155 ~~The~~

1. During the month immediately following the end of each calendar quarter, but not later than 30 days after the end of the calendar quarter, the Department will ~~calculate~~ :

(a) Calculate the fair market value at wholesale ~~using the reported sales or transfer of cannabis in~~ of each category of cannabis described in ~~this section~~ subsection 3 using the methodology described in ~~subsections 1 to 6, inclusive~~ this section; and

(b) Post on the Internet website of the Department the fair market value at wholesale of each category of cannabis described in subsection 3.

2. The fair market value at wholesale of each category of cannabis becomes effective on the first day of the month immediately following the month in which the fair market value at wholesale is posted on the Internet website of the Department pursuant to paragraph (b) of subsection 1.

3. The fair market value at wholesale of:

~~1.1~~ (a) 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.

~~1.2~~ (b) 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.

~~1.3~~ (c) Immature cannabis plants must be calculated on the basis of the total number of immature cannabis plants sold.

~~1.4~~ (d) 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)~~ (1) 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)~~ (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 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~~ *pursuant to* this ~~subsection~~ *paragraph* 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. Pursuant to paragraph (a) or (b).~~

(e) Pre-rolls must be calculated on the basis of the total weight of all cannabis that is:

(1) Contained in a pre-roll that is assembled and sold by a cannabis cultivation facility;

or

(2) Sold by a cannabis cultivation facility which is intended for use by another cannabis establishment to assemble a pre-roll.

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

4. To calculate the fair market value at wholesale of a category of cannabis described in subsection 3, the Department will:

(a) Identify each wholesale sale of cannabis in the category between a cannabis cultivation facility and another cannabis establishment that is not an affiliate of the cannabis cultivation facility that occurred in the immediately preceding calendar quarter, as recorded by computer software used by the Cannabis Compliance Board for the seed-to-sale tracking of cannabis. If the Department determines that an insufficient number of such sales occurred in the immediately preceding calendar quarter to determine a median sales price that is statistically valid, the Department may additionally identify wholesale sales of cannabis in the category between a cannabis cultivation facility and another cannabis establishment that is not an affiliate of the cannabis cultivation facility that occurred in each immediately preceding calendar quarter until a sufficient number of such sales are identified to draw a statistically valid conclusion.

(b) Standardize the sales prices for all wholesale sales identified pursuant to paragraph (a) by adjusting the actual sales price for each wholesale sale to an amount that reflects the sales price per pound or per unit, as applicable. If subsection 3 requires the fair market value at wholesale of the category of cannabis to be calculated on the basis of:

(1) Total weight, the sales prices must be adjusted to amounts that reflect sales prices per pound.

(2) Total number sold, the sales prices must be adjusted to amounts that reflect the sales prices per unit.

(c) Identify each wholesale sale identified pursuant to paragraph (a):

(1) That was recorded as an internal transfer, sample, display, promotion, tester or trial;
or

(2) For which the sales price, after being standardized pursuant to paragraph (b), was less than 15 percent or more than 500 percent of the fair market value at wholesale of the category of cannabis at the time in which the sale was made.

(d) Determine the median of all the standardized sales prices determined pursuant to paragraph (b), but not including any wholesale sale identified pursuant to paragraph (c).

5. The fair market value at wholesale of a category of cannabis calculated by the Department pursuant to subsection 1 must be equal to the median standardized price determined pursuant to paragraph (d) of subsection 4.

6. As used in this section, “calendar quarter” means a period of 3 consecutive months commencing on the first day of March, June, September or December in any year.

Sec. 18. 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 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 *applicable* excise tax ~~imposed by subsection 1 or 2 of NRS 372A.290~~ *on cannabis* was *properly reported and* paid. ~~on the first wholesale sale of cannabis.~~

~~5.~~ 3. 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. 19. NAC 453D.230 and 453D.233 are hereby repealed.

TEXT OF REPEALED SECTIONS

453D.230 Provisions governing payment, collection, administration and enforcement of marijuana taxes also applicable to excise tax on marijuana and marijuana cultivation facilities. (NRS 453D.200) The provisions of NRS 372A.200 to 372A.380, inclusive, which apply to:

1. The excise tax on marijuana, as defined in NRS 372A.220, also apply to the excise tax on marijuana imposed pursuant to NRS 453D.500.

2. A taxpayer, as defined in NRS 372A.250, also apply to a marijuana cultivation facility.

453D.233 Marijuana and marijuana products sold at retail marijuana store subject to sales tax; submission of returns and payments. (NRS 453D.200) Marijuana and marijuana products sold pursuant to chapter 453D of NRS are subject to sales tax when sold at a retail

marijuana store. Returns and payments must be submitted as provided in NRS 372.354 to 372.395, inclusive.