
ASSEMBLY BILL NO. 70—COMMITTEE ON TAXATION

(ON BEHALF OF THE DEPARTMENT OF TAXATION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Taxation

SUMMARY—Provides for the administration and enforcement of excise taxes on medical marijuana. (BDR 32-322)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to taxation; providing for the administration and enforcement of taxes on the sale of marijuana, edible marijuana products and marijuana-infused products by medical marijuana establishments; eliminating certain duties of the Department of Taxation relating to the rates of such taxes; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law imposes taxes on: (1) the sale of controlled substances, which are
2 defined to exclude marijuana, edible marijuana products and marijuana-infused
3 products; and (2) the wholesale and retail sales of marijuana, edible marijuana
4 products and marijuana-infused products by medical marijuana establishments.
5 (NRS 372A.070, 372A.075) **Sections 4-21** of this bill generally provide for the
6 administration and enforcement of the taxes imposed on sales by medical marijuana
7 establishments. **Section 10** adopts by reference provisions of general applicability
8 relating to the payment, collection, administration and enforcement of taxes.
9 **Sections 11 and 12** require that a taxpayer maintain certain records and provide for
10 the inspection of those records by the Department of Taxation or its authorized
11 representative. **Sections 1 and 2** of this bill and **sections 13-15** adopt provisions
12 governing penalties for failure to pay, claims for refunds and credits, and the
13 payment of interest on any overpayment of the tax on medical marijuana. **Section**
14 **16** sets forth the procedure by which the denial of a claim for a refund or credit may
15 be appealed to the Nevada Tax Commission and provides that the Commission’s
16 final decision on an appeal is a final decision for the purposes of judicial review
17 pursuant to the Nevada Administrative Procedure Act. **Section 17** denies standing



18 to commence or maintain a proceeding for judicial review to anyone other than the
19 person who made the disputed payment. If judgment is rendered for the claimant in
20 such a proceeding, **section 18** provides for the allowance and computation of
21 interest on the amount found to have been erroneously or illegally collected.
22 **Section 19** prohibits proceedings to prevent or enjoin the collection of the tax and
23 requires that a timely claim for a refund or credit be made as a prerequisite to any
24 proceeding for the recovery of a refund. **Section 20** makes it a gross misdemeanor
25 for any person to file a false or fraudulent return or engage in other conduct with
26 intent to defraud the State or evade payment of the tax. **Section 21** provides that the
27 remedies of the State relating to the administration of the tax are cumulative,
28 meaning that the pursuit of one remedy by the Department or the Attorney General
29 does not preclude the pursuit of any other authorized remedy.

30 Under existing law, the Department is required regularly to review the rates of
31 the taxes imposed on sales by medical marijuana establishments and make
32 recommendations to the Legislature regarding adjustments of those rates. (NRS
33 372A.075) **Section 23** of this bill eliminates that requirement. With that exception,
34 **sections 22-28** of this bill reflect a reorganization of the provisions of chapter 372A
35 of NRS, but make no substantive changes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 360.2937 is hereby amended to read as
2 follows:

3 360.2937 1. Except as otherwise provided in this section,
4 NRS 360.320 or any other specific statute, and notwithstanding the
5 provisions of NRS 360.2935, interest must be paid upon an
6 overpayment of any tax provided for in chapter 362, 363A, 363B,
7 369, 370, 372, 374, 377, 377A or 377C of NRS, *any of the taxes*
8 *provided for in NRS 372A.075*, any fee provided for in NRS
9 444A.090 or 482.313, or any assessment provided for in NRS
10 585.497, at the rate of 0.25 percent per month from the last day of
11 the calendar month following the period for which the overpayment
12 was made.

13 2. No refund or credit may be made of any interest imposed on
14 the person making the overpayment with respect to the amount
15 being refunded or credited.

16 3. The interest must be paid:

17 (a) In the case of a refund, to the last day of the calendar month
18 following the date upon which the person making the overpayment,
19 if the person has not already filed a claim, is notified by the
20 Department that a claim may be filed or the date upon which the
21 claim is certified to the State Board of Examiners, whichever is
22 earlier.

23 (b) In the case of a credit, to the same date as that to which
24 interest is computed on the tax or the amount against which the
25 credit is applied.



1 **Sec. 2.** NRS 360.417 is hereby amended to read as follows:
2 360.417 Except as otherwise provided in NRS 360.232 and
3 360.320, and unless a different penalty or rate of interest is
4 specifically provided by statute, any person who fails to pay any tax
5 provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377,
6 377A, 377C, 444A or 585 of NRS, *any of the taxes provided for in*
7 *NRS 372A.075*, or any fee provided for in NRS 482.313, and any
8 person or governmental entity that fails to pay any fee provided for
9 in NRS 360.787, to the State or a county within the time required,
10 shall pay a penalty of not more than 10 percent of the amount of the
11 tax or fee which is owed, as determined by the Department, in
12 addition to the tax or fee, plus interest at the rate of 0.75 percent per
13 month, or fraction of a month, from the last day of the month
14 following the period for which the amount or any portion of the
15 amount should have been reported until the date of payment. The
16 amount of any penalty imposed must be based on a graduated
17 schedule adopted by the Nevada Tax Commission which takes into
18 consideration the length of time the tax or fee remained unpaid.

19 **Sec. 3.** Chapter 372A of NRS is hereby amended by adding
20 thereto the provisions set forth as sections 4 to 21, inclusive, of this
21 act.

22 **Sec. 4.** *As used in NRS 372A.075 and sections 4 to 21,*
23 *inclusive, of this act, unless the context otherwise requires, the*
24 *words and terms defined in sections 5 to 9, inclusive, of this act*
25 *have the meanings ascribed to them in those sections.*

26 **Sec. 5.** *“Cultivation facility” has the meaning ascribed to it*
27 *in NRS 453A.056.*

28 **Sec. 6.** *“Excise tax on medical marijuana” means any of the*
29 *excise taxes imposed by NRS 372A.075.*

30 **Sec. 7.** *“Facility for the production of edible marijuana*
31 *products or marijuana-infused products” has the meaning*
32 *ascribed to it in NRS 453A.105.*

33 **Sec. 8.** *“Medical marijuana dispensary” has the meaning*
34 *ascribed to it in NRS 453A.115.*

35 **Sec. 9.** *“Taxpayer” means a:*

36 1. *Cultivation facility;*
37 2. *Facility for the production of edible marijuana products or*
38 *marijuana-infused products; or*

39 3. *Medical marijuana dispensary.*

40 **Sec. 10.** *The provisions of chapter 360 of NRS relating to the*
41 *payment, collection, administration and enforcement of taxes,*
42 *including, without limitation, any provisions relating to the*
43 *imposition of penalties and interest, shall be deemed to apply to*
44 *the payment, collection, administration and enforcement of the*
45 *excise tax on medical marijuana to the extent that those provisions*



1 *do not conflict with the provisions of NRS 372A.075 and sections 4*
2 *to 21, inclusive, of this act.*

3 **Sec. 11.** 1. *Each person responsible for maintaining the*
4 *records of a taxpayer shall:*

5 *(a) Keep such records as may be necessary to determine the*
6 *amount of the liability of the taxpayer pursuant to the provisions*
7 *of NRS 372A.075 and sections 4 to 21, inclusive, of this act;*

8 *(b) Preserve those records for 4 years or until any litigation or*
9 *prosecution pursuant to NRS 372A.075 and sections 4 to 21,*
10 *inclusive, of this act is finally determined, whichever is longer;*
11 *and*

12 *(c) Make the records available for inspection by the*
13 *Department upon demand at reasonable times during regular*
14 *business hours.*

15 2. *Any person who violates the provisions of subsection 1 is*
16 *guilty of a misdemeanor.*

17 **Sec. 12.** 1. *To verify the accuracy of any return filed by a*
18 *taxpayer or, if no return is filed, to determine the amount required*
19 *to be paid, the Department, or any person authorized in writing by*
20 *the Department, may examine the books, papers and records of*
21 *any person who may be liable for the excise tax on medical*
22 *marijuana.*

23 2. *Any person who may be liable for the excise tax on medical*
24 *marijuana and who keeps outside of this State any books, papers*
25 *and records relating thereto shall pay to the Department an*
26 *amount equal to the allowance provided for state officers and*
27 *employees generally while traveling outside of the State for each*
28 *day or fraction thereof during which an employee of the*
29 *Department is engaged in examining those documents, plus any*
30 *other actual expenses incurred by the employee while he or she is*
31 *absent from his or her regular place of employment to examine*
32 *those documents.*

33 **Sec. 13.** *If the Department determines that the excise tax on*
34 *medical marijuana or any penalty or interest has been paid more*
35 *than once or has been erroneously or illegally collected or*
36 *computed, the Department shall set forth that fact in the records of*
37 *the Department and certify to the State Board of Examiners the*
38 *amount collected in excess of the amount legally due and the*
39 *person from whom it was collected or by whom it was paid. If*
40 *approved by the State Board of Examiners, the excess amount*
41 *collected or paid must, after being credited against any amount*
42 *then due from the person in accordance with NRS 360.236, be*
43 *refunded to the person or his or her successors in interest.*

44 **Sec. 14.** 1. *Except as otherwise provided in NRS 360.235*
45 *and 360.395:*



1 (a) No refund of the excise tax on medical marijuana may be
2 allowed unless a claim for refund is filed with the Department
3 within 3 years after the last day of the month following the month
4 for which the overpayment was made.

5 (b) No credit may be allowed after the expiration of the period
6 specified for filing claims for refund unless a claim for credit is
7 filed with the Department within that period.

8 2. Each claim must be in writing and must state the specific
9 grounds upon which the claim is founded.

10 3. The failure to file a claim within the time prescribed in
11 subsection 1 constitutes a waiver of any demand against the State
12 on account of any overpayment.

13 **Sec. 15.** 1. Except as otherwise provided in subsection 2,
14 NRS 360.320 or any other specific statute, interest must be paid
15 upon any overpayment of the excise tax on medical marijuana at
16 the rate set forth in, and in accordance with the provisions of,
17 NRS 360.2937.

18 2. If the Department determines that any overpayment has
19 been made intentionally or by reason of carelessness, the
20 Department shall not allow any interest on the overpayment.

21 **Sec. 16.** 1. Within 30 days after rejecting a claim for refund
22 or credit in whole or in part, the Department shall serve written
23 notice of its action on the claimant in the manner prescribed for
24 service of a notice of deficiency determination. Within 30 days
25 after the date of service of the notice, a claimant who is aggrieved
26 by the action of the Department may file an appeal with the
27 Nevada Tax Commission.

28 2. If the Department fails to serve notice of its action on a
29 claim for refund or credit within 6 months after the claim is filed,
30 the claimant may consider the claim to be disallowed and file an
31 appeal with the Nevada Tax Commission within 30 days after the
32 last day of the 6-month period.

33 3. The final decision of the Nevada Tax Commission on an
34 appeal is a final decision for the purposes of judicial review
35 pursuant to chapter 233B of NRS.

36 **Sec. 17.** 1. A proceeding for judicial review of a decision of
37 the Nevada Tax Commission may not be commenced or
38 maintained by an assignee of the claimant or by any other person
39 other than the person who paid the amount at issue in the claim.

40 2. The failure of a claimant to file a timely petition for
41 judicial review constitutes a waiver of any demand against the
42 State on account of any overpayment.

43 **Sec. 18.** 1. If judgment is rendered for the claimant in a
44 proceeding for judicial review, any amount found by the court to
45 have been erroneously or illegally collected must first be credited



1 *to any tax due from the claimant. The balance of the amount must*
2 *be refunded to the claimant.*

3 *2. In any such judgment, interest must be allowed at the rate*
4 *of 3 percent per annum upon any amount found to have been*
5 *erroneously or illegally collected from the date of payment of the*
6 *amount to the date of allowance of credit on account of the*
7 *judgment, or to a date preceding the date of the refund warrant by*
8 *not more than 30 days. The date must be determined by the*
9 *Department.*

10 **Sec. 19.** *1. No injunction, writ of mandate or other legal or*
11 *equitable process may issue in any suit, action or proceeding in*
12 *any court against this State or against any officer of the State to*
13 *prevent or enjoin the collection of the excise tax on medical*
14 *marijuana or any amount of tax, penalty or interest required to be*
15 *collected.*

16 *2. No suit or proceeding, including, without limitation, a*
17 *proceeding for judicial review, may be maintained in any court for*
18 *the recovery of any amount alleged to have been erroneously or*
19 *illegally determined or collected unless a claim for refund or credit*
20 *has been filed within the time prescribed in section 14 of this act.*

21 **Sec. 20.** *1. A person shall not, with intent to defraud the*
22 *State or evade payment of the excise tax on medical marijuana or*
23 *any part of the tax:*

24 *(a) Make, cause to be made or permit to be made any false or*
25 *fraudulent return or declaration or false statement in any return*
26 *or declaration.*

27 *(b) Make, cause to be made or permit to be made any false*
28 *entry in books, records or accounts.*

29 *(c) Keep, cause to be kept or permit to be kept more than one*
30 *set of books, records or accounts.*

31 *2. Any person who violates the provisions of subsection 1 is*
32 *guilty of a gross misdemeanor.*

33 **Sec. 21.** *The remedies of the State provided for in NRS*
34 *372A.075 and sections 4 to 21, inclusive, of this act are*
35 *cumulative, and no action taken by the Department or the*
36 *Attorney General constitutes an election by the State to pursue any*
37 *remedy to the exclusion of any other remedy for which provision is*
38 *made in those sections.*

39 **Sec. 22.** *NRS 372A.060 is hereby amended to read as follows:*
40 *372A.060 1. ~~[This chapter does]~~ The provisions of this*
41 *section, NRS 372A.070 and 372A.080 to 372A.130, inclusive, do*
42 *not apply to:*

43 *(a) Any person who is registered or exempt from registration*
44 *pursuant to NRS 453.226 or any other person who is lawfully in*
45 *possession of a controlled substance; or*



1 (b) ~~[Except as otherwise provided in NRS 372A.075, any]~~ Any
2 person who acquires, possesses, cultivates, manufactures, delivers,
3 transfers, transports, supplies, sells or dispenses marijuana for the
4 medical use of marijuana as authorized pursuant to chapter 453A of
5 NRS.

6 2. Compliance with *the provisions of* this ~~[chapter]~~ *section,*
7 *NRS 372A.070 and 372A.080 to 372A.130, inclusive,* does not
8 immunize a person from criminal prosecution for the violation of
9 any other provision of law.

10 **Sec. 23.** NRS 372A.075 is hereby amended to read as follows:
11 372A.075 1. An excise tax is hereby imposed on each
12 wholesale sale in this State of marijuana by a cultivation facility to
13 another medical marijuana establishment at the rate of 2 percent of
14 the sales price of the marijuana. The excise tax imposed pursuant to
15 this subsection is the obligation of the cultivation facility.

16 2. An excise tax is hereby imposed on each wholesale sale in
17 this State of edible marijuana products or marijuana-infused
18 products by a facility for the production of edible marijuana
19 products or marijuana-infused products to another medical
20 marijuana establishment at the rate of 2 percent of the sales price of
21 those products. The excise tax imposed pursuant to this subsection
22 is the obligation of the facility for the production of edible
23 marijuana products or marijuana-infused products which sells the
24 edible marijuana products or marijuana-infused products to the other
25 medical marijuana establishment.

26 3. An excise tax is hereby imposed on each retail sale in this
27 State of marijuana, edible marijuana products or marijuana-infused
28 products by a medical marijuana dispensary at the rate of 2 percent
29 of the sales price of the marijuana, edible marijuana products or
30 marijuana-infused products. The excise tax imposed pursuant to this
31 subsection:

- 32 (a) Is the obligation of the medical marijuana dispensary.
33 (b) Is separate from and in addition to any general state and
34 local sales and use taxes that apply to retail sales of tangible
35 personal property.
36 (c) Must be considered part of the total retail price to which
37 general state and local sales and use taxes apply.

38 4. The revenues collected from the excise taxes imposed
39 pursuant to subsections 1, 2 and 3 must be distributed as follows:

40 (a) Seventy-five percent must be paid over as collected to the
41 State Treasurer to be deposited to the credit of the State Distributive
42 School Account in the State General Fund.

43 (b) Twenty-five percent must be expended to pay the costs of
44 the Division of Public and Behavioral Health of the Department of



1 Health and Human Services in carrying out the provisions of NRS
2 453A.320 to 453A.370, inclusive.

3 5. ~~["The Department shall review regularly the rates of the~~
4 ~~excise taxes imposed pursuant to subsections 1, 2 and 3 and make~~
5 ~~recommendations to the Legislature, as appropriate, regarding~~
6 ~~adjustments that the Department determines would benefit the~~
7 ~~residents of this State.~~

8 ~~—6.]~~ As used in this section:

9 (a) ~~["Cultivation facility" has the meaning ascribed to it in~~
10 ~~NRS 453A.056.~~

11 ~~—(b)]~~ "Edible marijuana products" has the meaning ascribed to it
12 in NRS 453A.101.

13 ~~[(c) "Facility for the production of edible marijuana products or~~
14 ~~marijuana infused products" has the meaning ascribed to it in~~
15 ~~NRS 453A.105.~~

16 ~~—(d)]~~ (b) "Marijuana-infused products" has the meaning ascribed
17 to it in NRS 453A.112.

18 ~~[(e) "Medical marijuana dispensary" has the meaning ascribed~~
19 ~~to it in NRS 453A.115.~~

20 ~~—(f)]~~ (c) "Medical marijuana establishment" has the meaning
21 ascribed to it in NRS 453A.116.

22 **Sec. 24.** NRS 372A.080 is hereby amended to read as follows:

23 372A.080 1. Except as otherwise provided in NRS 239.0115,
24 all information which is submitted to the Department by or on
25 behalf of a dealer in controlled substances pursuant to ~~[this chapter]~~
26 ~~NRS 372A.060, 372A.070 and 372A.080 to 372A.130, inclusive,~~
27 and all records of the Department which contain the name, address
28 or any other identifying information concerning a dealer are
29 confidential.

30 2. No criminal prosecution may be initiated on the basis of:

31 (a) Information which was submitted to the Department; or

32 (b) Evidence derived from information submitted to the
33 Department, pursuant to ~~[this chapter]~~ ~~NRS 372A.060, 372A.070~~
34 ~~and 372A.080 to 372A.130, inclusive,~~ or any regulation adopted
35 pursuant thereto.

36 3. No information described in paragraph (a) or (b) of
37 subsection 2 is admissible in a criminal prosecution, unless the
38 prosecution shows that the information:

39 (a) Was independently discovered; or

40 (b) Inevitably would have been discovered based on
41 independent information.

42 4. This section does not prohibit the Department from
43 publishing statistics that do not disclose the identity of a dealer or
44 the contents of a particular return or report submitted to the
45 Department by a dealer.



1 5. Any person who releases or reveals confidential information
2 in violation of this section is guilty of a gross misdemeanor.

3 **Sec. 25.** NRS 372A.090 is hereby amended to read as follows:
4 372A.090 1. The Department shall:

5 (a) Design suitable stamps for the purpose of ~~{this chapter.}~~
6 *NRS 372A.060, 372A.070 and 372A.080 to 372A.130, inclusive.*

7 (b) Have as many stamps printed as may be required.

8 (c) Sell the stamps to dealers in controlled substances who are
9 registered.

10 2. The stamps must be serially numbered and the Department
11 shall maintain a record of the number of each stamp with the name
12 of the dealer to whom it was sold.

13 **Sec. 26.** NRS 372A.110 is hereby amended to read as follows:
14 372A.110 1. All taxes and fees collected by the Department

15 pursuant to ~~{this chapter.}~~ *NRS 372A.060, 372A.070 and 372A.080*
16 *to 372A.130, inclusive*, after deducting the actual cost of producing
17 the stamps and administering ~~{this chapter.}~~ *the provisions of those*
18 *sections*, must be deposited with the State Treasurer for credit to the
19 State General Fund and accounted for separately.

20 2. The Governor or his or her designee shall administer the
21 money credited to the State General Fund pursuant to subsection 1.
22 The money may be expended only for grants to county and city law
23 enforcement agencies for the enforcement of chapter 453 of NRS.

24 3. Any civil penalty collected by a district attorney pursuant to
25 NRS 372A.070 must be deposited in the county treasury for the
26 purposes of law enforcement and conducting criminal prosecutions.

27 **Sec. 27.** NRS 372A.120 is hereby amended to read as follows:
28 372A.120 1. The Department shall immediately deliver any

29 controlled substances which come into its possession in the course
30 of administering ~~{this chapter.}~~ *NRS 372A.060, 372A.070 and*
31 *372A.080 to 372A.130, inclusive*, with a full accounting to the
32 Investigation Division of the Department of Public Safety.

33 2. The Investigation Division of the Department of Public
34 Safety and every other law enforcement agency shall notify the
35 Department of each person it discovers having possession of a
36 controlled substance and the serial number of any stamps affixed.

37 **Sec. 28.** NRS 372A.130 is hereby amended to read as follows:
38 372A.130 No person may bring suit to enjoin the assessment or

39 collection of any taxes, interest or civil penalties imposed by ~~{this~~
40 ~~chapter.}~~ *NRS 372A.060, 372A.070 and 372A.080 to 372A.130,*
41 *inclusive.*

42 **Sec. 29.** This act becomes effective on July 1, 2015.

