Tax Fundamentals for Cannabis Establishments

There are multiple different tax types that Cannabis Establishments may be responsible for collecting and remitting to the Department of Taxation. Even though the Cannabis Compliance Board took over the licensing and regulatory duties from the Department of Taxation, the Department of Taxation continues to collect the taxes owed by Cannabis Establishments. The Department of Taxation provides monthly updates to the CCB staff regarding Cannabis Establishments with tax compliance issues.

Below is a brief snapshot of each tax type that Cannabis Establishments may be responsible for, as well as a discussion on repercussions for the Cannabis Establishments that fail to timely file, collect, and pay taxes.[1]

- Commerce Tax
    - This is an entity-level tax
    - Due once a year, 45 days after the end of the fiscal year
        - Fiscal year end date is June 30th, return is due August 15th
    - Due on gross revenue received from transactions occurring in the State of Nevada
        - Entities with gross revenue of less than $4.00 million in the fiscal year are exempt from filing
        - Tax is imposed only on the amount of gross revenue in excess of $4.00 million
        - The tax rate is contingent on the entity's North American Industry Classification System (NAICS) code
- Modified Business Tax
    - This is an entity-level tax
    - Due quarterly, 30 days after the end of each calendar quarter
        - Q1 is due April 30th
        - Q2 is due July 31st
        - Q3 is due October 31st
        - Q4 is due January 31st
    - A mirror to unemployment insurance, this tax is due on gross wages paid during the calendar quarter, for all locations owned by that entity
        - Gross wages on the return should match the gross wages reported to Employment Security Department for the same quarter
        - Tax is imposed only on the amount of gross wages in excess of $50,000
        - The tax rate is contingent on the entity's industry – either mining, financial, or general business
- Sales/Use Tax
    - Two different tax types, Sales Tax and Use Tax, that are reported on the same return
    - This is a location-specific tax

[1] This tax presentation is not intended as legal advice. It is meant for educational purposes only. In the event that any of the information contained in this tax presentation does not comport with the Department of Taxation's statutes or regulations, the Department of Taxation's statutes or regulations govern.

        - Entities with multiple locations can request to file one consolidated Sales/Use Tax return to reflect the taxes due from all locations
        - Based on gross sales, returns are either due monthly or quarterly, 30 days after the end of the reporting period
            - For monthly filers, January's return is due February, February's return is due March, etc.
            - For quarterly filers, Q1 is due April 30th, Q2 is due July 31st, etc.
    - Sales Tax is due on the sale of all tangible personal property where the transfer of possession/ownership occurs within the State of Nevada
        - The tax rate is contingent on the county in which the transaction took place
        - Sales Tax is collected from the end-user/consumer at the time of the sale
        - Is considered Trust Money – held in trust by the establishment for the State of Nevada, to be remitted to the State of Nevada
        - Certain Transactions can be exempt from Sales Tax
            - Wholesale Transactions, where a resale certificate has been presented to the seller
            - Certain items of tangible personal property are specifically exempted from Sales Tax by statute
    - Use Tax is due on the purchase price of all tangible personal property purchased to be used or consumed in the State of Nevada, where Sales Tax was not assessed. For example, an establishment purchases totes for product storage online, but Sales Tax was not assessed on the purchase by the vendor. Then Use Tax would be due.
        - The tax rate is contingent on the county in which the item is being used or consumed
- Wholesale Cannabis Tax
    - This is a location-specific tax
    - Due monthly, 30 days after the end of the reporting period
        - Due on the first wholesale sale of cannabis or cannabis product. The tax rate is 15% of:
            - The Fair Market Value for any affiliate sales, regardless of what the product actually sold for; or
            - The actual sales price for any non-affiliate sales
        - Fair Market Value is calculated by Taxation every 3 months, based on the median of industry reported non-affiliate sales price of cannabis and cannabis products
            - Different product categories have different Fair Market Values
- Retail Cannabis Tax
    - This is a location-specific tax
    - Due monthly, 30 days after the end of the reporting period
    - Collected from the end-user/consumer at the time of sale
        - The tax rate is 10% of the sales price of cannabis or cannabis products
            - Does not apply to cannabis paraphernalia (papers, grinders, water pipes) or other items of tangible personal property sold by the establishment
            - Must be separately stated on the receipt

- Regulatory Repercussions
  - Penalties & Interest
    - When a return is filed late, or with partial or no payment, penalties & interest are assessed:
      - A one-time penalty, up to 10% of the tax balance due
        - A graduated penalty, based on how late payment is received
        - The full 10% is assessed 30 days after the due date
      - Interest is assessed at .75% monthly on the tax portion of the unpaid balance
        - Assessed on the 1st of each month, after the due date
        - Interest will not accrue on interest or on penalty
      - A waiver of Penalties and/or Interest can be requested, in certain circumstances
  - Payment Plans
    - Can be requested by establishments with outstanding tax liabilities
    - There are several requirements that establishments must meet:
      - All delinquent (missing) returns must be filed
      - A written request for a Payment Plan must be submitted, along with an initial Payment Plan Payment
      - 2 Owners or Officers must sign a Payment Agreement and Payment Agreement Guaranty, which guarantees that the establishment will timely file and pay all returns going forward, and that all Payment Plan Payments will be remitted timely with good funds (no returned checks)
        - Entity and Personal liens will be placed to secure the outstanding liability
      - Entity and Personal financial statements, similar to the one's the IRS requires, may be required, with attachments
        - Attachments may be:
          - Bank statements,
          - Mortgage Statement
          - Proof of monthly payables
    - If the Payment Plan will take longer than 36 months to pay in full, or the amount of the tax portion of the liability exceeds $50,000, the Payment Plan must be approved by the Nevada Tax Commission
  - Civil Penalties
    - Cannabis Establishments are also subject to Civil Penalties
    - Intentionally failing to file, pay, or properly collect taxes is a Category I violation
    - Unintentionally failing to file and/or pay taxes is a Category III violation
      - Intentional versus unintentional failure to file and/or pay taxes is not defined by Taxation
        - Returns that are late filed, late paid, or delinquent (unfiled & unpaid) are considered to be done so intentionally

- When considering a Waiver of Penalties and/or Interest, statute indicates that the late filing and/or late payment of a return has to meet certain parameters for the tardiness to be considered unintentional, and thereby qualify for a waiver. Those parameters are:
    - Circumstances beyond the establishment's control
    - Occurring despite the exercise of ordinary care
    - Without intent