



November 22, 2022

Shellie Hughes
Executive Director
Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706-7937

Subject: November 17, 2022 Tax Workshop and Proposed Regulations (LCB File No. T004-22)

Dear Director Hughes,

On behalf of the members of the Nevada Cannabis Association (“NCA”), thank you for considering these comments. The NCA represents the majority of dispensaries in Nevada, as well as cultivation, production, and distribution licensees and affiliated businesses.

During the November 17, 2022 Workshop on the proposed regulations (LCB File No. T004-22), we raised concerns about Sections 32 and Sections 33. Specifically, we stated that portions of Section 32 and Section 33 were confusing and, if interpreted as the Deputy Attorney General suggested during the hearing, would be a significant departure from standard industry practice for the past five years and not in compliance with Nevada law. We will use this letter to address those concerns and request that the Commission *not* adopt the proposed regulations as written because they do not comport with either the statute or the legislative history regarding the retail excise tax.

A. The Cannabis Retail Excise Tax Should Not Be Included in the Sales Price.

During the November 17, 2022 Workshop, it was stated that the retail excise tax should not be broken out as a separate line item on a receipt, and that if the retail excise tax is passed to the consumer then it should be incorporated into the sales price rather than broken out.

This would represent a significant departure to how the cannabis industry has conveyed the retail excise tax to consumers for years. In reviewing Department of Tax guidance, there is no indication that the current practice of breaking out the tax was not permitted.

At the workshop, there was no reason stated for why this change should be enacted. Further, there are several reasons why including the retail excise tax in the sales price would be problematic.

First, medical patients who show a patient card at the point of sale are not charged the 10% retail excise tax. If the retail excise tax is incorporated into the sale price, medical patients would be charged the excise tax as part of the inflated sales price. Most products on the shelf are not designated medical or recreational; rather, the retail excise tax is currently applied or waived at the point of sale.

Second, adding 15% to the price of legal products without indicating that it is a tax would make it more challenging for licensees to compete with the illicit market. Consumers acknowledge that taxes help generate revenue for education in Nevada and support a regulated, safe industry.



Removing this tax from the receipt removes transparency and looks like a price increase compared to prices in the illicit market. The legal industry faces considerable challenges competing with prices in the unlicensed market, and increasing the base sales price for legal sales by 15% would have a significant detrimental impact on the legal industry.

Third, if the retail excise tax is added to the sales price, then the sales and use taxes would be calculated on the sales price plus the retail excise tax. This is contrary to Nevada law. As discussed below, the legislature specifically did not intend for the retail excise tax to be included as part of the sales price for calculating sales tax.

B. The Cannabis Retail Excise Tax May Not be Considered Part of the Sales Price to Which Sales and Use Taxes Apply.

The only apparent reason to include retail excise taxes in the sales price would be to increase the amount of sales tax collected. While this was once permitted under statute, it has not been allowed since the legislature overhauled the excise tax structure in 2017.

In the early days of medical sales, the 2% retail excise tax was considered part of the total retail price to which sales and use taxes applied; however, this provision was removed from NRS 372A.290 by Senate Bill 487 in 2017. Specifically, Amendment 4490 to SB 487 *deleted* the statutory language stating that the retail excise tax "(c) Must be considered part of the total retail price to which general state and local sales and use taxes apply." In presenting the amendment deleting that language, Senator Julia Ratti stated that various types of cannabis taxes were considered in totality to reach a tax rate that would encourage customers to buy from licensed dispensaries instead of the illicit market:

Multiple proposals on the table address making sure the overall taxation rate does not exceed a level that would encourage black market sales. A lot of work was done on that because if the overall tax rate is to be examined, then business license fees for local governments, sales tax, the wholesale 15 percent and the retail excise tax must also be examined. To get the effective tax rate, all of those must be factored in. Through much work, a number was agreed upon that achieves both consistency across jurisdictions and places the effective tax rate into a space that would not encourage the black market.

(Testimony by Senator Julia Ratti, Minutes from the Senate Revenue and Economic Development Committee Hearing, May 9, 2017)

For the foregoing reasons, we ask the Commission to not adopt the proposed regulations in Section 32 and 33. Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink that reads "L. Martin".

Layke A. Martin, Esq.
Executive Director
Nevada Cannabis Association