

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

LCB File No. T004-22

December 5, 2022

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 taxes shall be collected and reported to the Department, what records need to be retained by the cannabis establishment.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 32, 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 29 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. "Seller" means a taxpayer who makes any sale of cannabis or cannabis product.

Sec. 29. "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. 30. 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. 31. 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. 32. 1. Every cannabis consumption lounge shall keep such records, 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 cannabis.

2. 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.

3. 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.

4. 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

5. Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 33. NAC 372A.155 is hereby amended to read as follows:

372A.155 1. 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.

2. 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.

3. Immature cannabis plants must be calculated on the basis of the total number of immature cannabis plants sold.

4. 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) 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) 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 this subsection 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. *Pre-rolls must be calculated on the basis of the total weight of cannabis contained in each pre-roll and sold by a cultivator, as reported in the seed-to-sale tracking system, regardless of whether the pre-roll is made by a cultivator or a subsequent cannabis establishment. As used in this subsection, “pre-roll” means an individual cannabis cigarette or joint.*

~~6.7.~~ Any other category of cannabis must be determined by the Department on a case-by-case basis.

Sec. 34. NAC 372A.160 is hereby amended to read as follows:

372A.160 1. Each taxpayer *responsible for an excise tax pursuant to subsection 1, 2 or 3 of NRS 372A.290* 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 *responsible for an excise tax on the wholesale sale of cannabis by an adult-use cannabis cultivation facility to another cannabis establishment pursuant to subsection 1 or 2 of NRS 372.290* 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 *on the wholesale sale of cannabis* 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 responsible for an excise tax on a retail sale of cannabis or cannabis products by an adult-use cannabis retail store or cannabis consumption lounge pursuant to subsection 3 of NRS 372A.290 shall pay the excise tax on cannabis to the Department upon each retail sale based upon the sales price.*

5. Each taxpayer shall keep all supporting documentation for verification that the excise tax imposed by subsection 1 ~~or~~, 2 *or 3* of NRS 372A.290 was *properly reported and* paid ~~[on the first wholesale sale of cannabis]~~.

~~5]6.~~ 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.