



STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.state.nv.us>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

BRIAN SANDOVAL
Governor
ROBERT R. BARENGO
Chair, Nevada Tax Commission
CHRISTOPHER G. NIELSEN
Executive Director

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

Posted 2/7/14

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of
LCB No. R073-13

Nevada Tax Commission

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m. on Monday, March 10, 2014** via Video Conference between the Nevada Legislative Building, 401 S Carson St, Room 2134, Carson City, Nevada and Nevada Counsel Bureau, Grant Sawyer State Office Building, 555 E Washington Ave, Room 4412, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of regulations that pertain to LCB File No. R073-13, included in Senate Bill 374 (2013).

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

The need and purpose of the proposed permanent regulation is to provide some guidance to taxpayers in calculating, filing and paying medical marijuana excise tax. See attached summary of public comments for additional information.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed regulation by writing to the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada, 89706; or by calling their office at (775) 684-2030. The proposed regulation is also available for review and downloads on the Department of Taxation website www.tax.nv.gov.

3. Methods used in determining the impact on a small business

The agency used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes which included its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R073-13. LCB File No. R073-13 regulations are simple regulations that implement the collection and facilitation of payment of the excise tax enacted as part of Senate Bill 479 of the 2013 Legislature. They are requirements related to the process or procedure for filing and paying the required tax. In other words, the regulations are administrative and do not contain interpretations of statutory provisions. Nonetheless, as there are no currently existing businesses that would be effected by this regulation in Nevada, the Department prepared a questionnaire that asked for input regarding the potential impact that was sent to the Department's contact list of 322 and the to the listserve maintained by the Medical Marijuana Program at the State Division of Public and Behavioral Health which contains 522 subscribers. The Department also contacted taxpayer industry representatives directly. The Nevada Taxpayers Association ("NTA") sent the questionnaire to the NTA list of interested taxpayers. Finally, the Department also contacted attorneys who represent medical marijuana industry participants to attempt to receive input regarding any potential significant and direct economic impact on small business.

3 returned the questionnaire and the Department received some other limited general comments. However, no one indicated that this regulation would have a direct and significant economic burden upon a small business.

4. Estimated economic effect of regulations on business and the public

a. Adverse and beneficial effects

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. The benefits of these regulations are that the public and the Department will be provided more clarity in NAC 372 A.

b. Immediate and long-term effects

Same as above

5. Cost for enforcement of the regulations

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement.

6. Overlap or duplication of other state or local governmental agencies

The proposed regulations do not overlap or duplicate any regulation of other state or local governmental entities.

7. Regulation required by federal law

Not applicable

8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

9. New or increases in existing fees

The proposed regulations do not include new or increases in existing fees.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Department of Taxation, 1550 College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation – 2550 Paseo Verde Parkway, Suite 180, Henderson; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.



Deonne E. Contine, Deputy Executive Director
February 7, 2014

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2096 no later than five working days prior to the meeting.

Notice has been posted at the following locations: The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

Notice has been EMAILED/FAXED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building I, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada.

Summary of Public Comments on LCB File No. R073-13.

LCB File No. R073-13 contains the regulatory provisions to implement the excise tax provisions contained in the legislation creating medical marijuana dispensaries (the "Regulation"). The Regulation requires the monthly filing of a return and remittance of the excise taxes imposed on certain sales of marijuana, edible marijuana products and marijuana-infused products; requires the maintenance of certain records and providing for the inspection of such records; establishes the procedure for the submission of a claim for a refund or credit for any overpayment of such a tax; and provides for other matters properly relating thereto.

The need for this Regulation is to implement the tax provisions contained in NRS 372A.075 which were enacted in the 2013 legislative session. Specifically, NRS 372A.075 provides for a 2% excise tax on each wholesale sale in this State of:

- 1) marijuana by a cultivation facility to another medical marijuana establishment. The tax is the obligation of the cultivation facility;
- 2) edible marijuana products or marijuana-infused products by a facility for the production of edible marijuana products or marijuana-infused products to another medical marijuana establishment. The tax is the obligation of the production facility.
- 3) edible marijuana products or marijuana-infused products by a medical marijuana dispensary. The tax is the obligation of the medical marijuana dispensary.

Accordingly, the statute contemplates the 2% excise tax at each point in the chain of the wholesale sales. Notwithstanding this requirement, it has been noted and was discussed at the Regulation Workshop, that a single company may likely be licensed as a cultivation facility, production facility and/or dispensary. The question then, was how to treat the transfers from a cultivation facility to a production facility for excise tax purposes when those transfers were not "wholesale sales."

Initially, the Department discussed devising a sale price for purposes of the excise tax on those transfers. However, the Regulation itself contains an interpretation of the term "sales price" to mean the total amount for which medical marijuana is sold, valued in money. . . . Additionally, the issue was reviewed by the Department's counsel at the Attorney General's office and during a subsequent discussion with LCB staff. Thereafter, it was determined that any attempt to assign a sales price when there was actually no wholesale sale would exceed language of the statute as the statute clearly imposes the tax on the wholesale sale. Therefore, upon the advice of counsel, the Regulation will not be amended to attempt to provide a taxable measure for intercompany transfers between cultivation facilities, production facilities or dispensaries when no actual wholesale sale occurs. Furthermore, the Department only expects that a taxpayer would pay the required 2% on wholesale sales measured by the money value of the medical marijuana sold. Accordingly, there have been no changes to the Regulation since the Workshop.

Another issue that has been discussed is the relationship between the excise tax and the application of NRS Chapter 372. Subsection 3 of Section 24.4 of Senate Bill 374 (2013) makes clear that the 2 percent excise tax on retail sales is in addition to the state and local sales and use taxes that are otherwise imposed on the sale of tangible personal property and must be considered part of the retail price to which sales and use tax applies. Accordingly, sales/use tax provisions also apply to the retail sale (sale to the ultimate consumer) and taxpayers would be subject to the provisions in the sales/use tax chapters with respect to the retail sale of medical marijuana. One reoccurring question has been whether medical marijuana would be considered an exempt medicine. While such analysis is beyond the scope of this Regulation, we have been advised by the Attorney General's office that medical marijuana would

not be considered a medicine because it does not satisfy the medical exemption requirements in NRS 372 and 360B.

Finally, while it was originally suggested that separate returns be filed for each facility owned by a single taxpayer, in designing the return form and analyzing processing of the form, Department staff has requested that a single taxpayer file a return that includes each of its facilities on the single form. A copy of the form the Department intends to use is attached hereto. Accordingly, the Department is asking that LCB File No. R1073-13 be adopted with the omission of the final sentence of Section 8 which reads as follows.

“A separate return must be filed for each cultivation facility, facility for the production of edible marijuana products or marijuana infused products and medical marijuana dispensary operated by the taxpayer.”

Medical Marijuana Tax Return Cultivator, Producer, & Dispensary

Mail original to: NEVADA DEPARTMENT OF TAXATION
1550 COLLEGE PARKWAY
CARSON CITY, NV 89706

TID#

FOR DEPARTMENT USE ONLY

PERIOD ENDING:

DUE ON OR BEFORE:

DATE PAID:

If the address as shown is incorrect, please make any corrections before mailing the return. Use the space on the left for these corrections.

CULTIVATION FACILITY

1. TOTAL SALES MADE THIS PERIOD

PRODUCTION FACILITY

2. TOTAL SALES MADE THIS PERIOD

MEDICAL MARIJUANA DISPENSARY

3. TOTAL SALES MADE THIS PERIOD

4. TOTAL COMBINED SALES MADE THIS PERIOD - (Line 1 + Line 2 + Line 3)

5. TOTAL CALCULATED TAX [Line 4 x 2% (0.02)]

6. CREDITS (Overpayments as determined by the Department)

7. NET TAX DUE (Line 5 minus Line 6)

8. PREVIOUS DEBITS (Outstanding Liabilities as determined by the Department)

9. TOTAL AMOUNT DUE AND PAYABLE (Line 7 + Line 8)

10. AMOUNT PAID

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

MAKE CHECKS PAYABLE TO NEVADA DEPT OF TAXATION -- A RETURN MUST BE FILED EVEN IF NO TAX LIABILITY EXISTS

Signature	Phone Number	Date
Title	FEIN of Business Named Above	

I hereby certify that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return. THIS RETURN MUST BE SIGNED.

MEDICAL MARIJUANA TAX RETURN

Revised 1-23-14

Nevada Department of Taxation
MEDICAL MARIJUANA TAX RETURN

Definitions:

For the purposes of this document, the "*Department*" shall refer to the Nevada Department of Taxation.

The following definitions are to be used to determine the classification of the facility relating to the payment of the Medical Marijuana Tax.

Sales Price: The term "sales price" means the total amount for which medical marijuana is sold, valued in money, whether received in money or otherwise, without any deduction for:

1. The sellers cost for the medical marijuana sold
2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, and any other expense incurred by the seller
3. Any amount for which credit is given to the purchaser by the seller
4. Any charges by the seller for any services necessary to complete the sale
5. Sales price does not include the amount of the seller's obligation for the excise tax on medical marijuana

Cultivation Facility: A "Cultivation Facility", as defined in NRS 453A.056 means a business that:

1. Is registered with the Division pursuant to NRS 453A.322; and,
2. Acquires, possesses, *cultivates*, delivers, transfers, transports, supplies or sells marijuana and related supplies to:
 - a. Medical Marijuana Dispensaries
 - b. Facilities for the production of edible marijuana products or marijuana-infused products or;
 - c. Other Cultivation Facilities

Production Facility (Facility for the production of edible marijuana products or marijuana infused products): as defined in NRS 453A.105: means a business that:

1. Is registered with the Nevada Division of Public and Behavioral Health of the Department of Health and Human Services pursuant to NRS 453.A.322 and
2. Acquires, possesses, manufactures, delivers, transfers, transports, supplies or sells edible marijuana products or marijuana-infused products to medical marijuana dispensaries

Medical Marijuana Dispensary: A "Medical Marijuana Dispensary", as defined in NRS 453A.115 means a business that:

1. Is registered with the Nevada Division of Public and Behavioral Health of the Department of Health and Human Services pursuant to NRS 453.322 and
2. Acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana, edible marijuana, and marijuana-infused products, and related supplies and educational materials to the holder of a valid registry identification card

A "Cultivation Facility" may sell to another Cultivation facility, Production Facility or to a Medical Marijuana Dispensary. An excise tax is imposed on each wholesale sale in this State of marijuana made by the Cultivation Facility at the rate of 2 percent of the sales price. The excise tax imposed for those particular sales are the obligation of the Cultivation Facility.

A "Production Facility" may produce and sell edible marijuana or marijuana-infused products to a "Medical Marijuana Dispensary" only. An excise tax is imposed on each wholesale sale in this State of those products at the rate of 2 percent of the sales price. The excise tax imposed for those particular sales are the obligation of the Production Facility.

A "Medical Marijuana Dispensary" may sell or dispense marijuana, edible marijuana products or marijuana-infused products to the holder of a valid registry identification card. An excise tax is imposed on the retail sales price at the rate of 2 percent of the sales price for those products. The excise tax imposed for those particular sales are the obligation of the Medical Marijuana Dispensary.

Nevada Department of Taxation
MEDICAL MARIJUANA TAX RETURN

Instructions for filling out this form:

Determine the type of facility your entity is registered with the Nevada Division of Public and Behavioral Health of the Department of Health and Human Services. For businesses operating in multiple capacities i.e. a licensed Cultivation Facility may also be a Production Facility and/or a Medical Marijuana Dispensary. Each time the marijuana, edible marijuana, marijuana-infused products is sold, it is subject to be taxed i.e. the excise tax is calculated at the sales price if making a wholesale sale of marijuana, edible marijuana or marijuana infused products or and the final retail sales price for those products when sold at retail.

Cultivation Facility:

Line 1: Enter the Total Sales for the period. The amount of which the product is sold determines the "sales price".

Production Facility:

Line 2: Enter the Total Sales for the period. The amount of which the product is sold determines the "sales price".

Medical Marijuana Dispensary:

Line 3: Enter the Total Sales of the marijuana product for the period. The amount of which the product is sold determines the "sales price".

Line 4: Combined Sales made this period. (Line 1 + Line 2 + Line 3)

Line 5: Total Calculated Tax. [Multiply Line 4 by 2% (0.02)]

Line 6: Credits: Enter the amount of overpayment of Medical Marijuana Tax made in prior reporting periods for which you have received a Department of Taxation credit notice. Credit notices received from the Department are not cumulative. Do not take the credit if you have applied for a refund. NOTE: Only credits established by the Department may be used.

Line 7: Net Tax Due: Line 5 minus Line 6. This amount is due and payable by the due date; the last day of the month following the applicable month.

Line 8: Previous Debits. Outstanding liabilities established by the Department: Enter only those liabilities that have been established for prior periods by the Department and for which you have received a liability notice from the Department.

Line 9: Total Amount Due and Payable. (Line 7 + Line 8)

Line 10: Amount Paid: Enter the total amount remitted with the return.

GENERAL INFORMATION:

Who Must File: Any business registered with the Nevada Division of Public and Behavioral Health of the Department of Health and Human Services as a Cultivation Facility, Production Facility, or a Medical Marijuana Dispensary. You must file a return even if no liability exists for the month.

Businesses that have ceased doing business in Nevada must notify the Department of Taxation in writing of the date the business ceased doing operations.

The Department will send written notice when a credit request has been processed and the credit is available for use/refund.

Please do not use/apply a credit prior to receiving Departmental notification that it is available.

PLEASE COMPLETE THE SIGNATURE PORTION OF THE RETURN AND SUBMIT TO THE "MAIL TO" ADDRESS PROVIDED

If you have questions concerning this return, please contact our Call Center at (866) 962-3707.

**** For up-to-date information on tax issues, be sure to check our website: <http://tax.nv.gov> ****