

PROPOSED REGULATION OF THE

DEPARTMENT OF TAXATION

LCB File No. T002-17

Draft: March 16, 2017

Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this chapter.

Sec. 2. *As used in sections 2 to 33, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” defined. “Department” means the Department of Taxation.*

Sec. 4. *“Division” defined. “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 5. *“Fair Market Value” defined. “Fair Market Value” is the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 6. *“Marijuana Establishment” defined. A “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 7. *“Marijuana Establishment Agent” defined. A “Marijuana Establishment Agent” means an owner, officer, board member, employee or volunteer of a marijuana establishment,*

an independent contractor who provides labor relating to the cultivation, processing, or distribution of marijuana or the production of marijuana or marijuana products for a marijuana establishment, or an employee of such an independent contractor.

Sec. 8. *“Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.*

Sec. 9. *“Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.*

Sec. 10. *“Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.*

Sec. 11. *“Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.*

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Temporary licensing of marijuana establishments except marijuana distributor

Sec. 12. **Procedures for the issuance and revocation of a temporary license to operate a marijuana establishment.**

- 1. A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is operating and in good standing, as defined in subsection 4 of this section, under its medical marijuana establishment registration certificate may apply for a marijuana establishment temporary license no later than May 31, 2017.*
- 2. The application must be submitted on a form prescribed by the Department pursuant to of NRS 453D.210 and must include, without limitation:*
 - (a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:*

- (1) \$20,000 for a Retail Establishment;*
- (2) \$30,000 for a Cultivation Facility;*
- (3) \$10,000 for a Production/Manufacturing Facility; or*
- (4) \$15,000 for a Testing Facility*
- (5) \$15,000 for a Marijuana Distributor*

- (b) That the applicant is applying for a temporary marijuana establishment license;*
- (c) The type of temporary marijuana establishment license for which the applicant is applying;*
- (d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;*
- (e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;*
- (f) The mailing address of the applicant;*
- (g) The telephone number of the applicant;*
- (h) The electronic mail address of the applicant;*
- (i) Authorization for the Department to review the records of the Division necessary to determine if the applicant is in good standing under its medical marijuana establishment registration;*
- (j) An attestation that the applicant is properly zoned in compliance NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e);*

(k) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana License;

(l) An attestation that the information provided to the Department to apply for the temporary marijuana establishment license is true and correct according to the information known by the affiant at the time of signing; and

(m) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application.

3. Upon receipt of the application by the Department, the Department shall approve the issuance of a temporary marijuana establishment license if:

(a) The applicant holds the same or similar license type under NRS 453A for which it is applying or is applying for a marijuana distributor license;

(b) The applicant is operating and in good standing under its medical marijuana establishment registration certificate; and

(c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f).

4. As used in this section, a medical marijuana establishment is in “good standing” if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 1 year of the date of this application;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant

to a written agreement with the Department; or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are complete and on time, as defined in Section 16 of this chapter.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

5. As used in this section, a medical marijuana establishment is “operating” if it filed a return and paid the tax imposed by NRS 372A.290 prior to May 31, 2017.

Sec. 13. Temporary marijuana license except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a temporary marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this chapter;

(b) The applicant is not in good standing as required by Section 12 of this chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements; and

(d) The applicant has not paid fees required by NRS 453D.

2. The Department will revoke or suspend a temporary marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

- (b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;*
- (c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;*
- (d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;*
- (e) Any license issued pursuant to NRS 453A is suspended or revoked; or*
- (f) The marijuana establishment fails to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.*

Temporary licensing of marijuana distributors

Sec. 14. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

- 1. Pursuant to NRS 453D.210(3), the Department has determined that there is an insufficient number of distributor licenses from persons holding a wholesaler liquor dealer's license and will accept distributor applications from individuals meeting the following criteria:*
 - (a) Liquor wholesaler dealers licensed pursuant to NRS 369;*
 - (b) Medical marijuana establishments that hold a registration certificate pursuant to NRS 453A.322(5) and are operating and in good standing as provided in Section 12 of this chapter; and*

(c) Applicants who are currently in the business of transporting medical marijuana and whose employees hold valid agent cards pursuant to NRS 453A.332

(a) For the applicant and each person who is proposed to be an owner, officer or board member of the entity that is currently in the business of transporting medical marijuana must comply with the provisions set forth in NRS 453A.322 and NRS 453.332 regarding fingerprinting and background checks.

Sec. 15. Temporary marijuana establishment license for marijuana distributor. Procedures for the issuance of a temporary marijuana distributor license for an applicant who does not hold a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant who does not have a medical marijuana establishment registration certificate must be submitted on or before May 31, 2017 on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

- (a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee; and*
- (b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;*
- (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;*

- (d) *Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;*
- (e) *The physical address where the proposed marijuana distributor will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;*
- (f) *The mailing address of the applicant;*
- (g) *The telephone number of the applicant;*
- (h) *The electronic mail address of the applicant;*
- (i) *An attestation that the information provided to the Department to apply for the temporary marijuana distributor license is true and correct according to the information known by the affiant at the time of signing;*
- (j) *The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;*
- (k) *Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:*
 - (1) *That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and*
 - (2) *The source of those liquid assets.*

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

(1) An organizational chart showing all owners, officers and board members of the proposed marijuana distributor; and

(2) A list of all owners, officers and board members of the proposed marijuana distributor that contains the following information for each person:

(a) The title of the person;

(b) A short description of the role the person will serve in for the organization and his or her responsibilities;

(c) Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

(d) Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked or suspended;

(e) Whether the person has previously had a medical marijuana establishment agent registration card revoked;

(f) Whether the person is a law enforcement officer;

(g) Whether the person is currently an employee or contractor of the Department;

(h) Whether the person has an ownership or financial investment interest in a medical marijuana establishment;

(i) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana Distributor License;

- (j) A complete set of fingerprints and written permission of the owner, officer or board member authorizing either the Department or the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
- (1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.*
- (k) A signed copy of the Child Support Verification Form; and*
- (l) The completed Driver Verification Form*
- (m) For each owner, officer and board member of the proposed marijuana distributor:*
 - (1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,*
 - (2) An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
 - (3) That the information provided to support the application for a temporary marijuana distributor license is true and correct;*
 - (4) A narrative description, not to exceed 750 words, demonstrating:*
 - (a) Any previous experience at operating other businesses or nonprofit organizations; and*
 - (b) Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.*

(5) *A resume.*

(n) *A financial plan which includes, without limitation:*

(1) *Financial statements showing the resources of the applicant;*

(2) *If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a distributor license to the applicant and the applicant obtains the necessary approvals from local governments to operate; and*

(3) *Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.*

(o) *Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:*

(1) *A detailed budget for the proposed marijuana distributor, including pre-opening, construction and first year operating expenses;*

(2) *An operations manual that demonstrates compliance with NRS 453D and this chapter;*

(3) *An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana distributor; and*

(4) *An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be*

in compliance with NRS 453D.210 prior to issuance of a temporary marijuana distributor license.

- 2. The Department will not issue a temporary marijuana distributor license until the Department completes an inspection of the marijuana distributor. Such an inspection may require more than one visit to the marijuana distributor.*

Sec. 16. Temporary distributor license: Suspension for operational deficiencies; plan of correction.

1. If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its temporary marijuana distributor license and request a written plan of correction from the marijuana distributor.

2. A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

3. If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.

Sec. 17. Temporary distributor license: Grounds for denial, suspension or revocation of a temporary license to operate as a marijuana distributor to an applicant who does not hold a medical marijuana registration certificate.

1. The Department will deny an application for a temporary marijuana distributor license if:

(a) The applicant for the temporary marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or

(b) An owner, officer or board member of the applicant for the temporary marijuana distributor license:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or

(3) Provides false or misleading information to the Department.

2. The Department will revoke a temporary marijuana distributor license if:

(a) The marijuana distributor engages in any of the following:

(1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;

(2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.

3. The Department may revoke or suspend any temporary marijuana distributor license issued or may deny any application under the provisions of this chapter and NRS 453D upon any of the following grounds:

(a) Violation by the marijuana distributor of any of the provisions of this chapter or NRS 453D;

(b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this chapter or NRS 453D;

(c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;

(d) Operating as a marijuana distributor without a temporary marijuana distributor license;

(e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 16 of this chapter;

(f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 16 of this chapter; or

(g) The failure or refusal to cooperate fully with an investigation or inspection by the Department;

4. If the Department revokes a temporary marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.

5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.

Sec. 18. Temporary licensing of a marijuana distributor with a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant that has a medical marijuana establishment registration certificate must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must:

(a) Include a one-time, nonrefundable application fee of \$5,000 plus a \$15,000 license fee;

and

(b) Comply with all provisions of Section 12 of this chapter.

Sec. 19. Agents of temporary licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.

2. A licensed marijuana distributor that wishes to retain as a volunteer or employ a marijuana distributor agent shall submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:

- (a) The name, address and date of birth of the prospective marijuana distributor agent;*
- (b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter;*
- (c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;*
- (d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing either the Department or the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
 - (1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.*
- (e) The application fee, as allowed by law; and*
- (f) Such other information as the Department may require.*

3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.

4. A person shall not serve as a marijuana distributor agent if he or she:

- (a) Has been convicted of an excluded felony offense; or*

(b) Is less than 21 years of age.

5. Either the Department or the Division shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.

6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.

Sec. 20. Marijuana distributor duties and responsibilities.

1. A licensed marijuana distributor may transport marijuana and marijuana products between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment; and

(c) To the State Department of Agriculture for laboratory testing.

2. Before transporting marijuana or marijuana products pursuant to subsection 1 of this chapter, a licensed marijuana distributor must:

(a) Complete a trip plan that includes, without limitation:

(1) The name of the marijuana establishment agent in charge of the transportation;

(2) The date and start time of the trip;

(3) A description, including the amount, of the marijuana or marijuana products being transported; and

(4) The anticipated route of transportation.

(b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.

3. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:

(a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 2 of this section with him or her for the duration of the trip;

(b) Have his or her marijuana distributor agent card in his or her immediate possession;

(c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana, or marijuana products;

(d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and

(e) Ensure that all marijuana or marijuana products are not visible.

(1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes

to the trip plan that was completed pursuant to paragraph (a) of subsection 2 of this section.

4. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section, must:

(a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs; and

(b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 22 of this chapter.

5. A marijuana distributor shall:

(a) Maintain the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section; and

(b) Provide a copy of the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section to the Department for review upon request.

6. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 2 and subsection 4 (a) and (b) of this section.

Sec. 21. Transportation of marijuana and marijuana products.

1. A marijuana establishment is prohibited from transporting marijuana and marijuana products unless the establishment has a marijuana distributor license. This provision does not apply to:

(a) A medical marijuana establishment;

(b) An independent contractor of a medical marijuana establishment transporting only medical marijuana; or

(c) A marijuana establishment delivering not more than 10 ounces of marijuana or marijuana product to a consumer.

(1) When transporting marijuana or marijuana products to a consumer pursuant to subsection 1 of this section, a marijuana distributor agent must:

(a) Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;

(b) Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and

(c) Review and document the government-issued identification to determine the consumer's age and secure a signature from the consumer when the items are delivered and may only leave the items with the consumer.

(d) Comply with the requirements in Section 20, subsections 2 through 6 of this chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 13 of this chapter.

Sec. 22. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 20 of this chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 23. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this chapter is valid for 45 days after the adoption of the permanent regulations of NAC 453D.

Sec. 24. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

(a) Requirements for the security of marijuana establishments;

(b) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(e) Requirements for record keeping by marijuana establishments;

(f) Reasonable restrictions on signage, marketing, display, and advertising;

(g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and

(h) Procedures and requirements for agent registration cards except those applying as agents of temporary licensed marijuana distributors pursuant to Section 19 of this chapter.

Sec. 25. Civil penalties.

1. The Department may:

(a) Impose a civil penalty of \$1,000 on any person who:

(1) Operates a marijuana establishment without a license

(b) Impose a civil penalty of up to \$1000 on any person who:

(2) Omits, neglects or refuses to:

(a) Comply with any duty imposed up on him or her pursuant to the provisions of this chapter and NRS 453D;

(b) Do or cause to be done any of the things required pursuant to those provisions; or

(c) Does anything prohibited by the provisions of this chapter and NRS 453D

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 26. Applicability of NRS 360.

1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.

Sec. 27. Sales and Use Tax Returns Required. Payment of tax; monthly return.

1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.

Sec. 28. Excise Tax Returns Required. Payment of tax: monthly return.

- 1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the fair market value at wholesale of the marijuana.*
- 2. Each marijuana cultivator shall, on or before the last day of the month immediately following each month for which the marijuana is sold, 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. A return must be filed whether or not a sale or purchase has occurred.*

3. *The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.*

4. *Calculation and Payment of Tax.*

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales of each category. The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

- (3) *The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.*
- (4) *The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.*
- (5) *The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.*
- (a) *The Marijuana Wet Whole Plant must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the excise tax on such plant*

cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each plant was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

5. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale, and the weight of the product being sold.

Sec. 29. Designation of medical marijuana inventory as retail marijuana inventory

- 1. Under the current tax provisions in NRS 453D, marijuana sold by a marijuana cultivation facility is subject to a 15% wholesale tax on the fair market value of the transaction. The tax is the responsibility of the cultivator.*
- 2. Under the current tax provisions in NRS 372A, marijuana sold by medical marijuana establishments is subject to a 2% tax at cultivation, a 2% tax at production and 2% tax at the dispensary.*

3. *Inventory sold by medical marijuana establishments and inventory sold by marijuana establishments must be designated and separated based on the different taxation requirements.*
4. *Unless legislation is enacted and effective prior to July 1, 2017, to apply the tax treatment of marijuana sold by marijuana establishments to marijuana sold by medical marijuana establishments, each medical marijuana establishment, except Independent Testing Laboratories must, no later than June 16, 2017, designate a portion of its medical marijuana inventory as inventory that may be sold as retail marijuana as provided in NRS 453D. The designation must be submitted to the Department and must contain the following:*
 - (a) *A list of all inventory within the medical marijuana establishments tracking control system by inventory and tracking control number;*
 - (b) *A list of all inventory that the medical marijuana establishment is designating as retail marijuana by inventory and tracking control number; and*
 - (c) *A list of all inventory that the marijuana establishment is designating as medical marijuana by inventory and tracking control number.*
5. *Once inventory is designated as retail marijuana it cannot be sold as medical marijuana. Once inventory is designated as medical marijuana it cannot be sold as retail marijuana.*

Sec. 30. Tax treatment of designated inventory.

1. *Once inventory is designated as retail marijuana inventory it must be taxed as provided in NRS 453D.500 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453D or this chapter.*

2. *Once inventory is designated as medical marijuana inventory it must be taxed as provided in NRS 372A.900 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453A or NAC 453A.*

Sec. 31. Maintenance and availability of records of taxpayer.

1. *Each person responsible for maintaining the records of a taxpayer shall:*

- (a) *Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.*

- (b) *Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and*

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

Sec. 32. Examination of records by Department.

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

Sec. 33. Miscellaneous tax provisions

1. *The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.*