VIA FAX AND E-MAIL

March 31, 2017

Deonne E. Contine, Executive Director
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706
Fax: (775) 684-2020
Email: marijuana@state.nv.gov

Re: Proposed Regulation of the Department

Dear Ms. Contine:

I am a Nevada attorney who has followed the Nevada laws and regulations regarding marijuana closely for some time.[1] I now represent a number of medical marijuana establishments ("MMEs") who are planning to apply for "Early Start Program" licenses to sell recreational marijuana. I attended the Nevada Department of Taxation Regulatory Workshop conducted on March 29, 2017 and testified. I am following up with these written comments and respectfully submitting proposed amendments.

In my view, the draft regulations overall reflect an excellent and wise approach to the Early Start Program, and appreciate the hard work that they reflect. However, it is my view that the language requiring that a MME be "operating" (Section 12, Subsection 5) is unnecessary and duplicative of the "good standing" requirements (Section 12, Subsection 4). I understand that the Department of Taxation needs to balance access to the Early Start Program with the need to get the program started quickly and safely. However, the "good standing" requirements as currently drafted effectively further the Department's need to make sure that appropriate MMEs participate in the early start program and render the "operating" requirement unnecessary and unduly burdensome for MMEs. The "operating" requirement also unnecessarily restricts the safe, recreational market and would have other unintended consequences.

The "Operational" Requirement Is Not Necessary

Section 12, Subsection 4 of the draft regulations already requires that, in order to establish that it is in "good standing," by May 31, an MME must have a current final (*not provisional*) registration certificate. This meets the goal of making sure that an MME applying for the Early Start program is a fully licensed MME. Notably, getting a final registration certificate is no easy feat and recognizes not only that all zoning and building requirements have been satisfied, but also that the Division of Public and Behavioral Health has, among many other things, fully evaluated and approved an MME's operating procedures and that an MME has trained its employees and is ready

[1] I first became involved in issues pertaining to access for medical patients when I was an attorney at the ACLU of Nevada.

to operate successfully. Thus, this "good standing" already effectively ensures that an MME applying to operate in the Early Start program is capable of operating safely in the highly regulated medical environment—and thus in the Early Start program.

Other provisions of the draft regulations likewise sufficiently ensure that MMEs who are allowed to participate in the Early Start program are not delinquent on their taxes. Subsection 4 requires that 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.***" Further, Section 13, subsection 2(f) allows the department to revoke a license if an MME fails to pay any taxes applicable to marijuana. Thus, there is no risk that an MME that didn't happen to have any tax liability before the end of April is delinquent on its taxes, and the Department can revoke the early start license of any MME who fails to pay taxes going forward.

For these reasons, the "good standing" requirement already sufficiently meets the Department's interests in ensuring that valid MMEs obtain early start licenses and the "operating" requirement is entirely redundant.

Subsection 5 Is Unduly Burdensome and Would Limit the Legal Market

Again, I recognize that the Department needs to draw the line somewhere and needs to move the proposed Early Start program forward. However, removing the "operating" requirement will help further the appropriate balancing better than the current version of the regulations does. While some MMEs have advocated that the deadline to apply be extended, allowing MME certificate holders who are in "good standing" to apply (even if they have not had sales in April requiring taxes be paid) would not necessitate any extensions or a rolling application process. All it does is allow MMEs who may have had some delays (including outside their control) but who have resolved those issues to the satisfaction of the regulatory authorities such that they have been issued final registration certificates to apply. Allowing "good standing" MMEs to apply even if they did not have to pay taxes before the end of April is fair and appropriate since they have already been deemed to be ready to operate as MMEs and final registration certificates.

Thus, deleting Section 12, Subsection 5 promotes fair access for qualified MMEs. More importantly, it allows consumers more access to safe and regulated marijuana and avoids unnaturally and unnecessarily limiting the recreational market. This is of course a good thing, as allowing recreational customers access to product of course meets the goal of reducing the black market for marijuana.

Unintended Consequences

As I think was discussed during the March 29 public hearing, the "operating" language contained in Section 12, Subsection 5 would require that an MME generate taxes in April. However, Section 12, Subsection 1 establishes a May 31, 2017 deadline for application. Thus, the "operating" requirement unnecessarily essentially moves this deadline backwards in time—to a date that is not only before the application deadline but even before the likely date on which the draft regulations

will be approved. This seems unfair, and unnecessarily confusing. Moreover, if MMEs obtain final registration certificates in April or May, they will be incentivized to file a return not because they want to sell product but instead just to try to rush to meet the letter to of Section 12, Subsection 5. Finally, it is unclear whether an entity that has multiple registration certificates will satisfy the requirements by filing a tax return that reflects sales from just one license type. Further, both accountants and MMEs have expressed confusion about Section 12, Subsection 5 to me. In light of these issues, Section 12, Subsection 5 should be deleted. More simply, because the subsection's aim is already met with other language in the draft regulations, it just unnecessarily complicates the application process.

Proposed Amendments

For these reasons, I propose the following amendments:

Section 12, Subsection 1. DELETE "operating and…"

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.

DELETE Section 12, Subsection 5 in its entirety:

~~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.~~

Thank you very much for your consideration of my written comments and proposed amendments as this process moves forward. My clients and I look forward to an effective working relationship with the Department.

Sincerely,

Margaret A. McLetchie