

**March 29, 2017**

**From:** Incredibles  
Colin Mudd, Compliance Director  
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**To:** Department of Taxation

**Re:** **Written comments on proposed regulation LCB File No. T002-17**

**Sec. 5. “Fair Market Value” defined. COMMENT:** Fair Market Value should be defined solely based upon transactions by and between licensed marijuana establishment cultivation facilities and marijuana establishment retail marijuana stores; all such transactions shall be documented in the state inventory tracking system.

**Sec. 21. Transportation of marijuana and marijuana products. COMMENT:** A marijuana establishment shall be permitted to deliver its own manufactured and/or cultivated product to other marijuana establishments.

*Rationale:* If a marijuana establishment cultivator or processor is precluded from wholesaling and distributing its own finished product and therefore are subjected to the power (regarding price fixing) and limitations (on availability for scheduled deliveries) solely dictated by distributors will inevitably cause a chokehold situation creating financial stress and restraints on market growth and competition. Just based upon the current limited amount of interest in the distribution licenses, it is reasonably foreseeable the current proposed structure will result in shortage in quantity of products for sale, increase costs and expenses for shipping and delivery, and significant delays causing restriction on profitability and high risks for business interruption and potential bankruptcy ultimately causing the program to fail. Furthermore, distributors should be subjected to an exclusive distributor tax (similar to an excise tax) for facilitating the transfer of wholesale-cultivated marijuana or marijuana products between the marijuana establishment cultivator and marijuana establishment retail marijuana store.

**Sec. 22(1)(b) Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation. COMMENT:** Maintain copies of any documents required pursuant Section 20 of this chapter for at least 3 *years* after the date on the documentation and provide copies of the documentation to the Department for review upon request.

*Rationale:* Pursuant to the Uniform Preservation of Private Business Records Act (UPPBRA), the requirement for document retention is 3 years. A 3 year retention requirement is more manageable for a corporation.

**Sec. 24(1)(d) Applicability of NRS 453A and NAC 453A to the regulation adopted pursuant to this chapter. COMMENT:** the entire product is infused and shall include a numerical indication for potency, which is based upon the ratio of total active THC potency per serving to total active THC in the entire product. For example, a 100mg chocolate bar that has the net weight of 45 grams and is infused with 100 mg of active THC, and is portioned in to individual servings, easily identifiable and contains is no more than 10mg per serving.

*Rationale:* Proposed language is similar to the FDA requirements, which requires supplement manufacturers to list on their labels a 15% variance +/- for products. In testing manufactured marijuana products, the variance for active THC amounts in a product should be the same. Therefore, a manufactured marijuana product can only be sold to the public because it fell within the acceptable variance of 15% +/- . Furthermore, the average consumer is not going understand the potency based on the ratio of THC to the weight of a product.

**Sec. 24(1)(f) Applicability of NRS 453A and NAC 453A to the regulation adopted pursuant to this chapter. Reasonable restrictions on signage, marketing, display, and advertising. COMMENT:** Please define “reasonable restrictions” as it relates to signage, marketing, display and advertising.

**Sec. 28(4)(a)(1) Excise Tax Returns Required. Payment of tax: monthly return. Calculation of Fair Market Value at wholesale. COMMENT:** → The Department shall change its method of calculating the FMV by determining the most accurate FMV at wholesale based upon the state inventory tracking system. Revaluation shall be conducted on a quarterly basis.

*Rationale:* Must rely upon standardized form of reporting, which is only the state inventory tracking system.

**Sec. 28(4)(b) Excise Tax Returns Required. Payment of tax: monthly return. COMMENT:** the tax shall be calculated based on the category of the Marijuana Product with the exception of the concentrated oil manufactured from bud, small popcorn bud, and trim. Alternatively, the tax for concentrated manufactured oil shall be derived from the total yield of concentrated manufactured oil processed from the bud, small popcorn bud or trim. Marijuana establishment manufacturers of concentrated oil should be subjected to a tax based upon on the pre-processed bud, small popcorn bud, and trim.

**Sec. 28(4)(b)(5) Excise Tax Returns Required. Payment of tax: monthly return. COMMENT:** Requesting further clarification regarding the definition for the allowance for water weight and waste.

**Sec. 28(4)(b)(5)(b) Excise Tax Returns Required. Payment of tax: monthly return.**  
**COMMENT:** The state should consider implementing and requiring a state inventory tracking system in addition to the marijuana establishment cultivation facility records.

**Sec. 28(5) Excise Tax Returns Required. Payment of tax: monthly return.**  
**COMMENT:** Requesting clarification regarding the term “first purchaser”. It is not feasible to require third party, non-licensed, private individuals as consumers to maintain documentation of payment of excise tax. All documentation of payment for excise tax should be recorded in the state’s inventory tracking system.

**Sec. 31(1)& (1)(b) Maintenance and availability of records of taxpayer.**  
**COMMENT:** Please provide a definition for the term “person”. Furthermore, clarification is requested regarding whether this Section relates to the marijuana establishments as opposed to individuals. Record retention shall be for 3 years.

**Sec. 31(c) Maintenance and availability of records of taxpayer. COMMENT:** All records that shall be made available for inspection by the Department upon demand shall be kept on site.

*Rationale:* All marijuana establishments are under 24/7 surveillance and by requiring business records subject to inspection to be kept on site will reduce the likelihood of tampering with record keeping and wrongful misappropriation of files.