NOTICE OF WORKSHOP

To: To All Interested Parties
From: Shellie Hughes, Executive Director, Department of Taxation
Date: November 2, 2021
Re: Workshop on LCB Draft of Proposed Permanent Regulation R0108-20

The Department of Taxation will hold a workshop to solicit comments from interested parties on the following proposed permanent regulation:

This proposed regulation (LCB File No. R108-20) is revising provisions relating to taxation; setting forth the method of calculating the fair market value at wholesale of cannabis; imposing certain requirements on certain cannabis establishments relating to the payment of excise taxes on cannabis; repealing certain superseded provisions; and providing other matters properly relating thereto.

Date and Time of Meeting: November 16, 2021  11:00 a.m.

The workshop will be held at the following location:

Place of Meeting:

Nevada Department of Taxation
1550 College Parkway STE 115
Large Conference Room
Carson City, Nevada 89706

This meeting will also be available by zoom. Please use the link below to join the webinar:
https://us02web.zoom.us/j/88365075560
Or One tap mobile:
+13462487799, 88365075560# US (Houston)
+16699009128, 88365075560# US (San Jose)

Or join by phone:
Dial (for higher quality, dial a number based on your current location):
US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
Webinar ID: 883 6507 5560
International numbers available: https://us02web.zoom.us/u/kl2OEVwq0
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A copy of the regulation referenced above can be found on the Department’s website at https://tax.nv.gov/Boards/Public_Meetings/ and at the Nevada Legislature’s website at https://www.leg.state.nv.us/App/Notice/A/.

All interested parties will have the opportunity to present their ideas. Please submit all suggestions in writing at least one week prior to the Workshop so the suggestions can be disseminated at the meeting. Written comments may be accepted at any time. All public input will be considered in preparing a proposed regulation to be presented to the Nevada Tax Commission for adoption.

Members of the public who are disabled and require accommodations or assistance at the Workshop 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 Workshop.

Notice has been posted at the following location: The Department of Taxation - 1550 College Parkway, STE 115, Carson City, Nevada.

Notice has been EMAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Las Vegas, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada, Interested Parties Group & Mailing List maintained by the Department & the Nevada Public Notice Website : https://notice.nv.gov/.

Notice of this meeting was posted on the Department of Taxation website https://tax.nv.gov/ and on the Legislative website at https://www.leg.state.nv.us/.

If you have any questions, please feel free to call Sarah Glazner at 775-684-2059.
PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION

LCB File No. R108-20

February 2, 2021

EXPLANATION – Matter in italics is new; matter in brackets [omitted-material] is material to be omitted.


A REGULATION relating to taxation; setting forth the method of calculating the fair market value at wholesale of cannabis; imposing certain requirements on certain cannabis establishments relating to the payment of excise taxes on cannabis; repealing certain superseded provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an excise tax on certain wholesale and retail sales of cannabis. For each retail sale of cannabis or cannabis products by an adult-use cannabis retail store, an excise tax is imposed at the rate of 10 percent of the sales price of the cannabis or cannabis products. For wholesale sales of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment, an excise tax is imposed at the rate of 15 percent of the fair market value at wholesale of the cannabis. (NRS 372A.290)

Before the enactment of Assembly Bill No. 533 (A.B. 533) of the 2019 Legislative Session, the excise tax on wholesale sales of cannabis to a medical marijuana establishment and the excise tax on wholesale sales of cannabis by a marijuana cultivation facility were imposed by separate sections of NRS. (NRS 372A.290, as that section existed before July 1, 2020, 453D.500, as that section existed before July 1, 2020) Accordingly, the Department of Taxation adopted separate regulations prescribing separate procedures and requirements for the administration and enforcement of those excise taxes. (NAC 372A.100-372A.180, 453D.236)

The authority to regulate persons and establishments involved in the cannabis industry in this State were generally transferred by A.B. 533 from the Department to the Cannabis Compliance Board. However, the Department retained its authority over the administration and enforcement of the excise taxes on cannabis. (Assembly Bill No. 533, chapter 595, Statutes of Nevada 2019, at page 3767) A.B. 533 combined provisions relating to the excise tax on wholesale sales of cannabis by a medical cannabis cultivation facility and the excise tax on wholesale sales of cannabis by an adult-use cannabis cultivation facility into a single section of chapter 372A of NRS. (Sections 213 and 245 of Assembly Bill No. 533, chapter 595, Statutes of Nevada 2019, at pages 3873, 3896) Existing law requires the Department to adopt all necessary regulations to carry out the provisions of that chapter. (NRS 372A.050) Additionally, existing
law requires the Department to adopt regulations to establish procedures to determine the fair market value at wholesale of cannabis. (NRS 678B.640)

This regulation revises provisions of existing regulations relating to the excise tax on wholesale sales of medical cannabis to incorporate provisions relating to the excise tax on wholesale sales of adult-use cannabis, thereby providing standardized procedures and requirements for the administration and enforcement of both excise taxes. (NAC 372A.100-372A.180) Section 11 of this regulation sets forth the method by which the Department will calculate the fair market value at wholesale for various categories of cannabis. The method set forth in section 11 is substantially similar to the method of calculating the fair market value at wholesale of cannabis that was previously adopted by the Department in the context of adult-use cannabis. (NAC 453D.236)

Section 16 of this regulation imposes certain requirements on cannabis establishments related to the payment of the excise taxes on cannabis. Section 16 requires the payment of an excise tax on cannabis upon the first sale of cannabis or cannabis products to a cannabis establishment or consumer. Additionally, section 16 requires a taxpayer to maintain certain documentation and authorizes the Department to require the submission of certain financial statements under certain circumstances. The provisions established by section 16 are substantially similar to the provisions governing the administration and enforcement of the excise taxes on cannabis that were previously adopted by the Department in the context of adult-use cannabis. (NAC 453D.236)

Section 18 of this regulation repeals a number of existing sections of the Nevada Administrative Code relating to excise taxes on cannabis that are either superseded by or duplicative of provisions of existing law. (NRS 372A.247, 372A.270, 372A.300-372A.360) Sections 12-15 and 17 of this regulation make conforming changes.

Section 1. Chapter 372A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. “Batch” means the usable flower and trim contained within one or more specific lots of cannabis grown by a cannabis cultivation facility from one or more seeds or cuttings of the same strain of cannabis and harvested on or before a specified final date of harvest.

Sec. 3. “Cannabis” has the meaning ascribed to it in NRS 372A.015.

Sec. 4. “Cannabis cultivation facility” has the meaning ascribed to it in NRS 372A.210.

Sec. 5. “Cannabis establishment” has the meaning ascribed to it in NRS 678A.095.

Sec. 6. “Cannabis product” has the meaning ascribed to it in NRS 372A.290.
Sec. 7. “Department” means the Department of Taxation.

Sec. 8. “Extraction” has the meaning ascribed to it in NRS 453.0825.

Sec. 9. “Fair market value” means 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 cannabis in the wholesale market.

Sec. 10. “Lot” means:

1. The flowers from one or more cannabis plants of the same batch, in a quantity that weighs 5 pounds or less;

2. The leaves or other plant matter from one or more cannabis plants of the same batch, other than full female flowers, in a quantity that weighs 15 pounds or less; or

3. The wet leaves or other plant matter from one or more cannabis plants of the same batch used only for extraction, in a quantity that weighs 125 pounds or less within 2 hours of harvest.

Sec. 11. The Department will calculate the fair market value at wholesale using the reported sales or transfer of cannabis in each category of cannabis described in this section using the methodology described in subsections 1 to 6, inclusive. The fair market value at wholesale of:

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

Sec. 12. NAC 372A.020 is hereby amended to read as follows:
372A.020 1. Each dealer in controlled substances who purchases revenue stamps from the Department pursuant to NRS 372A.090 shall affix the stamps to each package, packet or container of a controlled substance he or she sells.

2. This section does not apply to any sale that is subject to an excise tax imposed by NRS 372A.075-372A.290.

Sec. 13. NAC 372A.100 is hereby amended to read as follows:

372A.100 As used in NAC 372A.100 to 372A.180, inclusive, and sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NAC 372A.110 to 372A.140, inclusive, and sections 2 to 10, inclusive, of this regulation, have the meanings ascribed to them in those sections.

Sec. 14. NAC 372A.110 is hereby amended to read as follows:

372A.110 “Excise tax on medical marijuana" means any of the excise taxes imposed by cannabis has the meaning ascribed to it in NRS 372A.075-372A.220.

Sec. 15. NAC 372A.140 is hereby amended to read as follows:

372A.140 “Taxpayer” means:

1. Cultivation facility;

2. Facility for the production of edible marijuana products or marijuana infused products; or

3. Medical marijuana dispensary; has the meaning ascribed to it in NRS 372A.250.

Sec. 16. NAC 372A.160 is hereby amended to read as follows:

372A.160 1. Each taxpayer 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 medical marijuana cannabis, file with the Department a return on a form prescribed by the

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LCB Draft of Proposed Regulation R108-20
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 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 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 shall keep all supporting documentation for verification that the excise tax imposed by subsection 1 or 2 of NRS 372A.290 was paid on the first wholesale sale of cannabis.

5. 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.

Sec. 17. NAC 555.005 is hereby amended to read as follows:

555.005 As used in this chapter, unless the context otherwise requires:

1. “Crop grown for seed production” means any crop that is grown:
(a) To produce seed that is not intended for human consumption or as feed for animals; and
(b) With the sole intent of the seed being:

(1) Planted; or

(2) Processed to produce industrial or cosmetic oil that is not edible.

2. “Department” means the State Department of Agriculture.

3. “Director” means the Director of the Department.
4. "Drug or medicinal crop" means any plant that produces or from which is derived a drug or chemical substance that is used for pharmaceutical or medicinal purposes. The term does not include [medical-marijuana,] cannabis, as defined in [NAC 372A.120] NRS 678A.085, which is cultivated for the medical use of cannabis, as defined in NRS 678A.215.

5. "Pesticide residue tolerance" means the allowable amount of the residue of a pesticide that is prescribed by the United States Environmental Protection Agency.

6. "Seed conditioner" means a person who disposes of seed screening in compliance with state and federal laws and regulations.

7. "Seed screening" means all matter separated from seeds through the use of screens.

Sec. 18. NAC 372A.120, 372A.130, 372A.150, 372A.170, 372A.180 and 453D.236 are hereby repealed.

TEXT OF REPEALED SECTIONS

372A.120 "Medical marijuana" defined. (NRS 360.090, 372A.050, 372A.075)
"Medical marijuana" means marijuana, edible marijuana products and marijuana-infused products sold for a medical use as authorized by chapter 453A of NRS.


372A.150 "Sales price" interpreted. (NRS 360.090, 372A.050, 372A.075)
1. For the purposes of NRS 372A.075, the Nevada Tax Commission will interpret the term “sales price” to mean the total amount for which medical marijuana is sold, valued in money, whether received in money or otherwise, without any deduction for:

(a) The cost to the seller for the medical marijuana sold;

(b) The cost of materials used, the cost of labor or services, interest, losses, costs of transportation to the seller or any other expenses of the seller;

(c) Any amount for which credit is given to the purchaser by the seller;

(d) Any charges by the seller for any services necessary to complete the sale; or

(e) Except as otherwise provided in this subsection, any tax imposed upon the seller or the seller’s predecessors in the supply chain.

The term does not include the amount of the seller’s obligation for the excise tax on medical marijuana.

2. For the purposes of this section, the legal incidence of the excise tax on medical marijuana is deemed to be on the seller regardless of whether the seller passes the cost of the tax on to the purchaser.

372A.170 Maintenance and inspection of records. (NRS 360.090, 372A.050, 372A.075) Each taxpayer shall:

1. Keep such records as are necessary to determine the amount of the liability of the taxpayer for the excise tax on medical marijuana;

2. 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

3. Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.
372A.180  Overpayment: Claim for refund or credit. (NRS 360.090, 372A.050,
372A.075)  A taxpayer who believes that it has made an overpayment of the excise tax on
medical marijuana may file with the Department a claim for a refund or credit of the amount of
the alleged overpayment. The claim must be filed as prescribed by NRS 363B.150 for claims
filed pursuant to chapter 363B of NRS. The Department shall process and administer the claim
as prescribed by NRS 363B.140 to 363B.230, inclusive, for claims filed pursuant to chapter
363B of NRS.

453D.236  Monthly filing of returns; payment of tax; maintenance of documentation
and verification of payment; submission of financial statement upon request; calculation of
fair market value at wholesale. (NRS 453D.200)

1. Each taxpayer 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 marijuana, 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 such taxpayer shall file a return even if the
taxpayer has no liability for the tax.

2. Each taxpayer shall pay the excise tax on marijuana to the Department upon the first sale
of marijuana or marijuana products to a marijuana cultivation facility, marijuana product
manufacturing facility, retail marijuana store or a consumer.

3. If a marijuana cultivation facility sells marijuana to another marijuana cultivation facility
and pays to the Department the excise tax imposed by NRS 453D.500 on the sale, the excise tax
imposed by NRS 453D.500 is not required for any subsequent wholesale sale of that marijuana.
4. Each marijuana cultivation facility and retail marijuana store shall keep all supporting documentation for verification that the excise tax imposed by NRS 453D.500 was paid on the first wholesale sale of marijuana.

5. The Department may require a marijuana 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 marijuana establishment.

6. The Department will calculate the fair market value at wholesale using the reported sales or transfer of marijuana in each category of marijuana described in this subsection using the methodology described in paragraphs (a) to (f), inclusive. The fair market value at wholesale of:

(a) Marijuana bud must be calculated on the basis of the total weight of all marijuana bud that is sold, excluding the inadvertent inclusion of an inconsequential amount of marijuana bud in a sale of marijuana trim.

(b) Marijuana trim must be calculated on the basis of the total weight of all marijuana trim that is sold, including the total weight of an inconsequential amount of marijuana bud which is inadvertently included.

(c) Immature marijuana plants must be calculated on the basis of the total number of immature marijuana plants sold.

(d) Whole wet marijuana plants must be calculated on the basis of the total weight of the entire whole wet marijuana plant. A marijuana cultivation facility shall maintain records of the time each batch containing whole wet marijuana 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 marijuana plant:
(1) The plant must not undergo any further processing, including, without limitation, drying the plant and subsequently selling separately the marijuana bud and marijuana trim from the plant, before being weighed; and

(2) 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 marijuana 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 paragraph and must be calculated using paragraph (a) or (b).

(c) Marijuana seeds must be calculated on the basis of the total number of seeds sold.

(f) Any other category of marijuana must be determined by the Department on a case-by-case basis.

7. As used in this section:

(a) “Excise tax on marijuana” has the meaning ascribed to it in NRS 372A.220.

(b) “Taxpayer” has the meaning ascribed to it in NRS 372A.250.
1. Background

This proposed regulation (LCB File No. R108-20) revises provisions relating to taxation, setting forth the method of calculating the fair market value at wholesale of cannabis; imposing certain requirements on certain cannabis establishments relating to the payment of excise taxes on cannabis; repealing certain superseded provisions; and providing other matters properly relating thereto.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No R108-20. The proposed language and questionnaire were dispersed to the following:

- Emailed by the Department to 210 members of its interested parties list.
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

The content of the response is summarized below:

- No response was received for LCB Draft of Proposed Regulation - File No. R108-20.

Anyone interested in obtaining a copy of the completed small business impact questionnaire used for this summary, can contact:

Sarah Glazner  
Nevada Department of Taxation  
1550 College Parkway Ste 115  
Carson City, NV 89706  
Phone: (775) 684-2059  
Fax: (775) 684-2020  
sglazner@tax.state.nv.us
3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small businesses.

No response was received for LCB Draft of Proposed Regulation R108-20. Since no response was received, the Department analyzed the proposed language and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and Indirect adverse effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses.

Direct and indirect beneficial effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect beneficial economic effect on small businesses.

5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The proposed regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore, no efforts were required to reduce the impact on small businesses.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The proposed regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

7. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed permanent regulation does not include new fees or increase an existing fee.

8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of
why such duplicative or more stringent provisions are necessary.

The proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities.

9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The Department has determined that there will be no adverse impacts to small businesses based on its analysis of comment received.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.

[Signature]
Shellie Hughes, Executive-Director
November 2, 2021
Nevada Department of Taxation Regulatory Workshop
Draft of Proposed Regulation R0108-20

NEVADA DEPARTMENT OF
TAXATION
1550 College Pkwy STE 115
Large Conference Room
Carson City, Nevada 89706

November 16, 2021
11:00 AM

Note: Items on this agenda may be taken in a different order than listed.
Items may be combined for consideration by the Department of Taxation.
Items may be pulled or removed from the agenda at any time.

I. Public Comment – In consideration of others, who may also wish to provide public comment,
please avoid repetition and limit your comments to no more than five (5) minutes.

II. The Department will hold a workshop to solicit comments from interested parties on the
following topic:

This proposed regulation (LCB File No. R108-20) revises provisions relating to taxation; setting forth the
method of calculating the fair market value at wholesale of cannabis; imposing certain requirements on
certain cannabis establishments relating to the payment of excise taxes on cannabis; repealing certain
superseded provisions; and providing other matters properly relating thereto.

III. **Public Comment – In consideration of others, who may also wish to provide public
comment, please avoid repetition and limit your comments to no more than five (5) minutes.

IV. Adjourn

**This item is to receive public comment on any issue and any discussion of those issues; provided
that comment will be limited to areas relevant to and within the authority of the Nevada Department
of Taxation. No action will be taken on any items raised in the public comment period. Public
Comment may not be limited based on viewpoint.

Please contact Sarah Glazner 775-684-2059 or sglazner@tax.state.nv.us for any support materials. The
support materials will be available at https://tax.nv.gov/ and made available during the meeting located
at the Nevada Department of Taxation, 1550 College Pkwy STE 115, Carson City, NV.

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

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