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November 21, 2022

Sent via email: tpadovano@tax.state.nv.us

Shellie Hughes, Executive Director
Attn: Tina Padovano
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937

Re: **Comments of Proposed Department of Taxation Regulation T004-22**

Dear Executive Director Hughes:

In our capacity as regulatory attorneys, rather than as counsel for any specific client or association, the attorneys of Black & Wadhams have reviewed the proposed regulation (LCB File No. T004-22) which was discussed at the noticed Nevada Department of Taxation Regulatory Workshop held on November 17, 2022.

Our review applauds the efforts to conform elements of the Department's Cannabis taxation procedures to the actual parameters set by the Nevada legislature. We have some specific comments on the proposed procedures for claims for overpayments, credits or refunds in proposed Section 35 of Proposed Regulation T004-22. Section 35 provides:

Sec. 35. A taxpayer who believes that it has made an overpayment of the excise tax on cannabis 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.*** [emphasis added].

We believe this section of the proposed regulation actually conflicts with several provisions of NRS Chapter 372A., which provides specifically that:

NRS 372A.260 Applicability of chapter 360 of NRS. ***The provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes,*** [a.k.a. the Taxpayer Bill of Rights] 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 tax on cannabis to the extent that those provisions do not conflict with the provisions of NRS 372A.200 to 372A.380, inclusive. [emphasis added].

NRS 372A.300 Certification of excess amount collected; credit and refund. If the Department determines that the excise tax on cannabis or any penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, *the excess amount collected or paid must, after being credited against any amount then due from the person in accordance with NRS 360.236, be refunded to the person or his or her successors in interest.* [emphasis added]

NRS 372A.310 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver.

1. Except as otherwise provided in NRS 360.235 and 360.395: (a) No refund of the excise tax on cannabis may be allowed unless a claim for refund is filed with the Department within 3 years after the last day of the month following the month for which the overpayment was made. (b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.
2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.
3. The failure to file a claim within the time prescribed in subsection 1 constitutes a waiver of any demand against the State on account of any overpayment. (*Added to NRS by 2015, 2260; A 2017, 3732; 2019, 3767*).

And, finally, the incorporated provisions of the Taxpayers bill of Rights provide in relevant part that:

NRS 360.2935 Refund to taxpayer of overpayment together with payment of interest. Except as otherwise provided in this title, *a taxpayer is entitled to receive on any overpayment of taxes, after the offset required by NRS 360.320 has been made, a refund together with interest at a rate determined pursuant to NRS 17.130.* No interest is allowed on a refund of any penalties or interest paid by a taxpayer.[emphasis added]

These key statutory provisions were last reaffirmed by the legislature in 2019—well after the statutes referenced by the current language of proposed Section 35 which were last addressed by the legislature in 2009—and clearly incorporate by reference the Taxpayer Bill of Rights found

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in NRS 360, and set forth key provisions regarding statutes of limitations, judicial review, and interest on overpayments.

Once must assume, therefore, that the legislature clearly meant for the refund provisions of NRS Chapter 372 and the Taxpayer Bill of Rights to control any claim for refund of the taxes imposed by NRS Chapter 372A. Indeed, there is *no reference* at all to NRS Chapter 363B or its procedures in the provisions of NRS Chapter 372A discussing refunds or credits for tax overpayments. We note there is an obsolete reference to NRS 363B in NAC 372A.180. This regulation was rendered obsolete by the adoption of AB 70 in the 2015 Legislature and should be repealed.

Therefore, we respectfully suggest that proposed Regulation Section 35 directly conflicts with legislative intent expressed in the text of NRS Chapter 372A, and suggest with due respect that Section 35 be amended to read [*italicized text deleted, underlined text added*] as follows:

Sec. 35. A taxpayer who believes that it has made an overpayment of the excise tax on cannabis 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 372A.260 to NRS 372A.360, inclusive, and NRS 360.360.236 to NRS 360.320, inclusive NRS 363B.150 for claims filed pursuant to chapter 363B of NRS. The Department shall process and administer the claim as prescribed by NRS Chapter 372A and NRS Chapter 360 NRS 363B.140 to 363B.230, inclusive, for claims filed pursuant to chapter 372A 363B of NRS.

We thank you for the opportunity to provide these comments, and hope they are in some small way helpful in your promulgation of regulations for the referenced subject matter.

Respectfully,
BLACK & WADHAMS



Paul E. Larsen, Esq.

PEL/jh