

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608 and NRS 233B.0609**

LCB File No. R052-23

1. Background

LCB File No. R052-23, establishes certain requirements relating to the excise tax on cannabis concerning cannabis and adult-use cannabis products obtained or purchased by a cannabis consumption lounge; requires an adult-use cannabis retail store to document and report to the Department of Taxation each sale of cannabis or an adult-use cannabis product to an independent cannabis consumption lounge; imposes and revises certain requirements relating to the keeping of records concerning the excise tax on cannabis; imposes certain requirements on cannabis sales facilities and cannabis consumption lounges relating to the payment of sales tax; revises the manner in which the Department will calculate the fair market value at wholesale of cannabis; eliminates certain obsolete and duplicative provisions; and provides other matters properly relating thereto.

Existing law imposes an excise tax on each retail sale of cannabis or cannabis products by an adult-use cannabis retail store or cannabis consumption lounge at the rate of 10 percent of the sales price of the cannabis or cannabis products. Existing law also imposes an excise tax on the first wholesale sale of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment at the rate of 15 percent of: (1) the fair market value at wholesale of the cannabis, if the sale is made to an affiliate of the medical or adult-use cannabis cultivation facility; or (2) the sales price of the cannabis, if the sale is made to a cannabis establishment that is not an affiliate of the medical or adult-use cannabis cultivation facility. (NRS 372A.290) Existing regulations set forth various procedures and requirements concerning the excise tax on cannabis. (NAC 372A.100-372A.160)

Existing law authorizes a retail cannabis consumption lounge to obtain from the adult-use cannabis retail store to which the lounge is attached or immediately adjacent: (1) single-use cannabis products for the purposes of resale; and (2) cannabis or cannabis products for the purposes of producing ready-to consume cannabis products to be sold to customers of the lounge. (NRS 678D.470) Existing law similarly authorizes an independent cannabis consumption lounge to obtain such cannabis and cannabis products for such purposes from an adult-use cannabis retail store with which the lounge has entered into a contract. (NRS 678D.475) Existing regulations require a taxpayer, in each month following a month for which the taxpayer is subject to the imposition of the excise tax on cannabis, to file with the Department of Taxation a return and remit to the Department any tax due for the month covered by the return. (NAC 372A.160)

Sections 11 and 12 of this regulation provide that any cannabis or adult-use cannabis product obtained or purchased by a cannabis consumption lounge is not subject to the excise tax on cannabis and must not be included in the measure of the tax on a tax return

until the cannabis consumption lounge: (1) for a single use cannabis product, sells the single-use cannabis product to a customer of the lounge; or (2) uses the cannabis or adult-use cannabis product to prepare a ready-to-consume cannabis product and sells the ready-to-consume cannabis product to a customer of the lounge.

Section 13 of this regulation requires each adult-use cannabis retail store that has entered into a contract with an independent cannabis consumption lounge to sell cannabis and cannabis products to the lounge to document each sale of cannabis or an adult-use cannabis product to the lounge on a form prescribed by the Department and submit the form with the tax return required to be filed by the adult-use cannabis retail store concerning the excise tax on cannabis. **Section 13** additionally requires an adult-use cannabis retail store or independent cannabis consumption lounge that has entered into such a contract to maintain a copy of the contract and make the copy available to the Department upon request.

Section 14 of this regulation provides that sales of cannabis and cannabis products to a consumer by a cannabis sales facility or cannabis consumption lounge are subject to sales tax and sets forth certain requirements concerning the imposition of sales tax on such sales.

Existing law requires each person responsible for maintaining the records of a person subject to the excise tax on cannabis to keep such records as may be necessary to determine the amount of the liability of the taxpayer for the excise tax on cannabis. (NRS 372A.270) **Section 15** of this regulation provides that such records: (1) may include receipts, invoices and other pertinent papers; and (2) must be kept in such form as required by the Department.

Before the enactment of Assembly Bill No. 430 (A.B. 430) of the 2023 Legislative Session, existing law required the Department to adopt regulations to establish procedures to determine the fair market value at wholesale of cannabis. (NRS 678B.640) A.B. 430 amended that requirement to require that such regulations provide that the fair market value of cannabis: (1) will be calculated and published by the Department on a quarterly basis not more than 30 days after the end of each calendar quarter; and (2) is the median sales price for wholesale sales between cannabis cultivation facilities and cannabis establishments that are not affiliates, per pound or each, during the calendar quarter. (NRS 678B.640, as amended by section 9 of Assembly Bill No. 430, chapter 450, Statutes of Nevada 2023, at page 2753) Existing regulations adopted before the enactment of A.B. 430 establish various categories of cannabis and set forth the manner in which the Department will calculate the fair market value at wholesale of cannabis for those categories. (NAC 372A.155) **Section 17** of this regulation revises the manner by which the Department will calculate the fair market value at wholesale of a category of cannabis to conform to the requirements imposed by A.B. 430. Additionally, **section 17** revises the categories of cannabis for which the Department will calculate the fair market value at wholesale.

Before the enactment of A.B. 430, existing law imposed the excise tax on cannabis on each wholesale sale in this State of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment. (NRS 372A.290) A.B. 430 revised provisions imposing the excise tax on wholesale sales of cannabis to apply the tax only to the first wholesale sale in this State of cannabis. (NRS 372A.290) **Section 18** of this regulation removes provisions of existing regulations that have been rendered duplicative of provisions of existing law after the enactment of A.B. 430. **Section 18** also revises provisions requiring each taxpayer to keep documentation for verification that the excise tax on wholesale sales of cannabis was paid to instead require all taxpayers, whether subject to the excise tax on wholesale sales or retail sales of cannabis, to keep documentation for verification that the applicable excise tax on cannabis was properly reported and paid.

Sections 2-10 of this regulation define words and terms used in this regulation. **Section 16** of this regulation makes a conforming change to indicate the proper placement of **sections 2-15** in the Nevada Administrative Code.

Section 19 of this regulation repeals certain obsolete provisions concerning the administration and enforcement of certain taxes imposed on certain sales of cannabis by a marijuana cultivation facility or retail marijuana store.

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 R052-23. The proposed language and questionnaire were dispersed to the following:

- Emailed by the Department to 192 members of its interested parties list.
- Mailed to 10 Rural Businesses
- 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. R052-23.

The Department of Taxation also held a public workshop in which feedback was solicited from the public and industry affected by the Regulation. In response to the public feedback, the Department staff had regular meetings with industry after workshop to obtain and understand the effects of the regulation on small businesses. Specific feedback was provided by the Nevada Cannabis Association as follows:

The Nevada Cannabis Association (“Association”) provided written comment and raised concerns about certain provisions in Section 17 of the regulation. In response, the Department has agreed to delete a specific provision (subparagraph (2) of paragraph (e) of subsection 3) related to the wholesale cannabis tax. The issue was that cultivators cannot determine if a buyer will use the product for assembling pre-rolls at the time of sale, so the fair market value (FMV) will now focus on pre-rolls assembled and sold by the cultivator. This change is reflected in the Agency Revised Proposed draft of the regulation intended for adoption by the Tax Commission.

The Association also inquired about outliers affecting the median price (as set forth in subsection 4, paragraph (c), subparagraph (2)). The Department’s Economist analyzed the methodology and confirmed that Nevada does not include these outliers in the median price, similar to other states.

Lastly, the Association asked the Department whether the quantity of product sold in each transaction, as recorded in METRC, affects the FMV. After reviewing the matter, the Department’s Economist concluded that the standardization of price per transaction based on weight or quantity, depending on the specific cannabis category, corrects for any market capitalization that a purely weight-based method would otherwise make susceptible. With the feedback from the Department’s Economist, industry accepted the Regulation on these issues.

Government Affairs Group, Strategies 360, also provided industry feedback and approved of the language of the Regulation, with the amendment proposed regarding pre-rolls identified above.

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

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3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small businesses.

The Department analyzed the proposed language of the regulation and the feedback provided by the industry representatives to conclude that the regulation regarding calculations of fair market value would impact pricing, costs and revenue for cannabis

entities subject to the fair market value calculations. Such impacts were anticipated from the enactment of Assembly Bill 430 (2023). The Department worked with industry to agree on the appropriate calculation, as required by law, to ensure that industry would be equitably impacted as required by law.

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

Adverse and Beneficial Effects

The Department understands that there will be an economic effect on small businesses that are subject to calculation of fair market value (i.e., affiliated entities). However, the intention of the legislation was to ensure the calculation of fair market value more readily represented the pricing in the market closer in time (quarterly) from prior calculations of fair market value that were conducted twice per year. This was intended to have a beneficial effect on these businesses. The exact estimate is difficult to estimate as it is reliant on market factors, including demand for cannabis and cannabis products. Statistical information will be available from the Department regarding the taxable sales and collections as these determinations are updated quarterly.

Direct and Indirect Effects

As required by Assembly Bill 430 of the 2023 Legislative Session, this Regulation incorporates the mandatory changes to calculations of Fair Market Value for wholesale cannabis sales. The Legislation's intent was to provide an equitable marketplace for the sale of cannabis between affiliated and non-affiliated entities, such that affiliated entities would be assessed tax at a fair market value. The Legislation also has the direct effect of requiring this calculation more frequently (quarterly versus semi-annually) such that the fair market value is more reflective of recent activity in the market.

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.

In addition to the public workshop and reviewing industry feedback from the workshop, the Department worked independently with industry to ensure that its provisions regarding calculation of fair market value were equitable and reflective of business operations. The Department also relied heavily on its Economist to research activity in this industry with data available from the Cannabis Compliance Board to ensure that the regulation properly and accurately accounted for activity in the market. Industry representatives approved the final revisions to this regulation accordingly.

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. The Department was already calculating fair market value under its existing regulations and this Regulation merely increased the frequency and codified the Department's process for such calculations in accordance with newly enacted legislative provisions.

- 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.

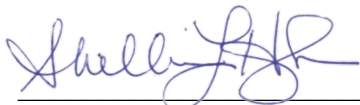
- 8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

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 impacts to small businesses based on its analysis of the proposed regulation.

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.



Shellie Hughes, Executive Director
December 4, 2024