

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS - NRS 233B.066
Informational Statement
LCB File No. R052-23

1. A clear and concise explanation of the need for the adopted regulation.

Proposed permanent regulation (R052-23) outlines requirements related to the excise tax on cannabis, particularly regarding transactions involving cannabis consumption lounges. It clarifies tax reporting obligations for cannabis retail stores and consumption lounges, including documenting and reporting sales to the Department of Taxation. The regulation delays payment of the excise tax on cannabis by consumption lounges until the products are sold to customers. It also revises the calculation of fair market value for wholesale cannabis transactions and removes outdated provisions to align with updates from Assembly Bill 430 of the 2023 Legislative Session. Additionally, the regulation sets standards for record-keeping and payment of sales tax by cannabis sales facilities.

This regulation is necessary for the Department to comply with the newly enacted provisions of law set forth in Assembly Bill 430 for calculations of fair market value of cannabis and cannabis products for affiliated entities. Moreover, the regulation and enforcement of cannabis consumption lounges was enacted by Assembly Bill 341 of the 2021 Legislative Session. The Cannabis Compliance Board enacted regulations regarding the licensure and enforcement and this regulation establishes the procedures regarding proper taxability of these lounges as contemplated by statute.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on the public and small businesses and sending notice of workshops and hearings for public meetings to provide public comment by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
6/20/24	Workshop	7/9/24	202
10/30/24	Adoption Hearing	12/4/24	241

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library, Legislative Counsel Bureau, the Department’s website and various Department of Taxation locations throughout the State. Comments were also solicited by direct email.

Summary of public responses from Workshop:

Layke Martin, Nevada Cannabis Association:

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.

Summary of public responses from Hearing:

None.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 3850 Arrowhead Dr., 2nd Floor, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

3. The number of persons (not including Department staff or Commission Members) who:

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: July 9, 2024

- (a) Number in attendance: 12
- (b) Number testifying: 1
- (c) Written statements submitted: 1

Adoption Hearing date: December 4, 2024

- (a) Number in attendance: 0
- (b) Number testifying: 0

(c) Written statements submitted: 0

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Testified at Workshop:

Name: **Layke Martin**

Telephone number: **702-483-7255**

Business address: **310 E. Warm Springs Road, Las Vegas, NV 89119**

Electronic mail address: layke@nvdispense.com

Name of entity or organization represented: **Nevada Cannabis Association**

Provided written public comment for Adoption Hearing: None.

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on the public and small businesses and sending notice of workshops and hearings for public meetings to provide public comment by electronic or regular mail.

See same response as Section 2 for summary of responses.

In addition to comments at the workshop, Department staff met independently with cannabis industry representatives to confirm their concerns and consent to the regulatory provisions, as described above in the comments for the Workshop.

A copy of the written and recorded comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 3850 Arrowhead Dr., 2nd Floor, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The Nevada Tax Commission adopted the regulation with the agreed proposed changes which are reflected in the Agency's Revised Proposed draft of the regulation. These changes were noticed to the public more than 30 days in advance of the Public Hearing to reflect the input and impact to the industry affected by the Regulation. Specifically, the Tax Commission adopted the regulation as prepared by LCB, with the deletion of subparagraph (2) of paragraph (e) of subsection 3.

The Tax Commission further confirmed its intent to adopt the regulation with changes deemed appropriate by LCB in subsections 1 and 2 of sections 11 and 12 regarding application of single use cannabis products.⁷

The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.

(a) Estimated economic effect on the businesses which they are to regulate.

The adopted permanent regulation presents foreseeable adverse beneficial, short-term or long-term economic effects on businesses regulated by this Regulation. However, the estimated effects are difficult to calculate and depend on market conditions, including demand for cannabis and cannabis products. The intention of the regulation is to align with recent statutory changes and ensure that fair market value is calculated more timely (quarterly versus semi-annually) to reflect current market conditions and to ensure equitability in taxation for affiliated and non-affiliation entities. This should benefit non-affiliated entities. Notwithstanding the changes to fair market value in this Regulation, the Department was already calculating fair market value for taxation purposes and this Regulation comports with recent legislative changes and codifies the calculation process into the Nevada Administrative Code.

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation may impact the public in the form of costs for cannabis and cannabis products as well as the amount of tax revenue generated from the sale of cannabis. Again, whether these estimated effects will have adverse, beneficial, short-term or long-term economic effects to the public is difficult to estimate and will be based on market conditions, including demand for cannabis and cannabis products. The Department will maintain these statistics on a monthly basis.

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

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The adopted permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

- 11. If the 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 adopted permanent regulation does not include new fees or increase an existing fee.