

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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RETAIL MARIJUANA EXCISE TAX

39-28.8-302

- (1) **Incidence of Tax.** The excise tax is imposed upon the Retail Marijuana Cultivation Facility, which shall pay the excise tax to the Department on the first sale or Transfer of Retail Marijuana to a Retail Marijuana Store, ~~or a Retail Marijuana Products Manufacturing Facility, or, in some cases,~~ No Colorado Retail Marijuana Excise Tax is imposed on the sale or Transfer of Retail Marijuana from one Retail Marijuana Cultivation Facility to another Retail Marijuana Cultivation Facility. In such case, the Colorado Retail Marijuana Excise Tax will be imposed on the subsequent sale or Transfer of the Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility.
- (2) **Local Incidence of Tax.** See §§ 29-2-114 and 32-1-1004, C.R.S. and the applicable local ordinance or resolution for information about the application of any local excise taxes to retail marijuana sales and Transfers.
- (23) **Wholesale Exempt Sales and Transfers.** ~~The excise point of taxation for seeds and Immature Plants is the first sale or Transfer of such product from a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility. The point of taxation for Bud, Trim, and Wet Whole Plants is the first sale or Transfer of such product from a Retail Marijuana Cultivation Facility to another Retail Marijuana Cultivation Facility, Retail Marijuana Store, or Retail Marijuana Products Manufacturing Facility. In addition, No excise tax is imposed on the sale or Transfer of unprocessed medical marijuana by a marijuana cultivation facility to a medical marijuana center. The Transfer of Retail Marijuana to a testing facility for testing purposes is exempt from Retail Marijuana Excise Tax so long as the marijuana is destroyed by the Retail Marijuana Testing Facility during or following the testing. as a result of testing.~~
- (34) **Inventory Tracking System.** When a sale or Transfer is entered into the Inventory Tracking System, all sales or Transfers between ~~Unaffiliated Marijuana Business Licensees a Retail Marijuana Cultivation Facility and a non-affiliated licensee~~ must be entered in a manner that allows the price to be recorded in such system. When entering the price, the actual price charged, ~~exclusive of tax,~~ must be recorded in such system.
- (45) **Calculation and Payment of Tax.**
  - (a) The method for calculating Colorado excise tax depends upon whether the first sale or Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility is between Unaffiliated Marijuana Business Licensees or Affiliated Marijuana Business Licensees.
    - (i) Unaffiliated Marijuana Business Licensees –

(A) If the first sale or Transfer is between Unaffiliated Marijuana Business Licensees, the excise tax is calculated based on the contract price of the Retail Marijuana sold or Transferred.

(B) If no contract price is established at the time of the first sale or Transfer the excise tax is calculated based on the Average Market Rate of the Retail Marijuana sold or Transferred. Examples of such sales or Transfers include:

(I) a temporary Transfer, that does not constitute a sale, of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Products Manufacturing Facility that will process or manufacture the Retail Marijuana before returning it to the Retail Marijuana Cultivation Facility or to a Retail Marijuana Store affiliated with the Retail Marijuana Cultivation Facility; or

(II) a Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to an unaffiliated Retail Marijuana Store for which a price is not established at the time of Transfer, but instead depends upon the revenue generated from the subsequent sale of the Retail Marijuana to the end consumer.

(ii) Affiliated Marijuana Business Licensees - If the first sale or Transfer is between Affiliated Marijuana Business Licensees, the excise tax is calculated based on the Average Market Rate of the Retail Marijuana sold or Transferred.

(b) *Contract Price*

(i) The contract price is the invoice price charged by a Retail Marijuana Cultivation Facility to each licensed purchaser for each sale or Transfer of Unprocessed Retail Marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. For the purpose of this paragraph (4)(b)(i), the invoice price charged includes all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt.

(ac) *Calculation of Average Market Rate.*

(i) The Department will calculate the Average Market Rate using reported sales of each category during the Test Period. The Department will determine the best methodology to arrive at the Average Market Rate. The Department may, from time to time, change its method of calculating the Average Market Rate if, in the judgment of the Department, such change is necessary to arrive at the most accurate Average Market Rate given the market conditions.

(bd) In the case of excise tax calculated using Average Market Rate, ~~the~~ tax shall be calculated based on the category of ~~the~~ Retail Marijuana ~~Product~~ (i.e., Bud, Trim, Immature Plant, Wet Whole Plant, ~~or~~ Seed, or Contaminated Product Allocated for Extractions) being sold or Transferred. The provisions of this paragraph (4)(d) apply only to excise tax calculated using Average Market Rate.

(i) The excise tax for Bud is computed on the total weight of all Bud that will be sold or Transferred. Notwithstanding this rule, the inadvertent inclusion of

inconsequential amounts of Bud in a sale or Transfer that is otherwise Trim shall not be treated as the sale of Bud.

- (ii) The excise tax for Trim is calculated on the total weight of all Trim that will be sold or Transferred. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale or Transfer that is otherwise Trim shall be treated as the sale of Trim.
- (iii) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold or Transferred.
- (iv) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Retail Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Average Market Rate for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.
  - (A) The Retail Marijuana Wet Whole Plant must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.
  - (B) The Retail Marijuana Cultivation Facility must maintain records of the time each plant (identified by its RFID tag) was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.
- (v) The excise tax for seeds is calculated on the total number of Seeds being sold or Transferred.
- (vi) **The excise tax for Contaminated Product Allocated for Extraction is computed on the total weight of all Contaminated Product Allocated for Extraction that will be sold or Transferred.**
- (vii) The excise tax for Retail Marijuana Concentrate created by a Retail Marijuana Cultivation Facility can be paid based on the amount of Bud and/or Trim used or can be paid on the Wet Whole Plant basis pursuant to paragraphs (4)(b)(i), (4)(b)(ii), and (4)(b)(iv) of this rule.
  - (A) Example: A Retail Marijuana Cultivation Facility uses 100 grams of Bud and 348 grams of Trim to make 15 grams of concentrate on March 9, 2016. (Note: Average Markets Rates are based on the rates effective on January 1, 2016.) The following calculation will need to be performed:

Bud:

100 grams /453.592 grams = 0.2205 lb. used to create the concentrate

0.2205 lb. x \$1948/lb. = \$430 (Taxable Amount)

\$430 x 15% = \$65

Trim:

348 grams /453.592 grams = 0.7672 lb. used to create the concentrate

0.7672 lb. x \$464/lb. = \$356 (Taxable Amount)

\$356 x 15% = \$53

Total Due is \$65 + \$53 = **\$118**

\*448 grams per pound is acceptable to use in this calculation.

(56) **Evidence of Payment of Tax.**

- (a) Both the Retail Marijuana Cultivation Facility and the first purchaser or transferee shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase or Transfer invoice, so long as the invoice shows the name and license number of the Retail Marijuana Cultivation Facility, name and license number of first purchaser or transferee, the amount of excise tax paid **or that will be paid** by the Retail Marijuana Cultivation Facility **when it files its next Retail Marijuana Excise Tax Return**, the category of product being sold or Transferred, the date of sale or Transfer, and the weight of the product being sold or Transferred.