

## RETAIL MARIJUANA EXCISE TAX.

### REGULATION 39-28.8-302.

- (1) **Incidence of Tax.** The excise tax is imposed upon the Retail Marijuana Cultivation Facility, who shall pay the excise tax to the Department upon the first sale or Transfer of Retail Marijuana to a Retail Marijuana Store, a Retail Marijuana Products Manufacturing Facility, or another Retail Marijuana Cultivation Facility.
- (2) **Calculation and Payment of Tax.**
  - (a) *Calculation of Average Market Rate*
    - (i) The Department will calculate the Average Market Rate using reported sales of each category during the ~~Test~~ ~~P~~eriod. 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.
  - (b) The tax shall be calculated on the basis of the category of the Retail Marijuana Product (i.e., ~~Dry Bud~~, ~~Dry Trim~~, ~~or Dry Whole Plant~~, Immature Plant, ~~Wet Bud~~, ~~Wet Trim~~, ~~Wet Whole Plant~~, ~~seed~~) being sold or Transferred.
    - (i) If a sale or Transfer of Retail Marijuana includes any ~~Dry Bud~~ in the transaction, then the total weight of the Retail Marijuana sold or Transferred shall be multiplied by the Average Market Rate for ~~Dry Bud~~ and the result shall be multiplied by 15% to arrive at the amount of tax due. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud and the tax shall be calculated based on the Average Market Rate for ~~Dry Trim~~
    - (ii) If a sale or Transfer of Retail Marijuana is ~~a sale of~~ ~~for Dry Trim~~, and does not include any Bud or Concentrate, then the total weight of the Retail Marijuana sold or Transferred shall be multiplied by the Average Market Rate for Trim and the result shall be multiplied by 15% to arrive at the amount of tax due. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of ~~Dry Bud~~ in a sale that is otherwise ~~Dry Trim~~ shall not be treated as the sale of ~~Dry Bud~~ and the tax shall be calculated based on the Average Market Rate for ~~Dry Trim~~.
    - (iii) ~~If a sale or Transfer of Retail Marijuana is for Dry Whole Plant, the total weight of the Retail Marijuana Dry Whole Plant sold or Transferred shall be multiplied by the Average Market Rate for Dry Whole Plant, and the result shall be multiplied by 15% to arrive at the amount of tax due.~~
    - (iv) In the case of a sale or Transfer of whole Immature Plants, the number of Immature Plants sold shall be multiplied by the Average Market Rate for ~~an~~ ~~Immature Plants~~ and the result shall be multiplied by 15% to arrive at the amount of tax due.
    - (v) ~~If a sale or Transfer of Retail Marijuana includes any Wet Bud in the transaction, then the total weight of the Retail Marijuana sold or Transferred shall be~~

multiplied by the Average Market Rate for Wet Bud and the result shall be multiplied by 15% to arrive at the amount of tax due. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale or transfer of Wet Bud and the tax shall be calculated based on the Average Market Rate for Wet Trim.

- (vi) If a sale or Transfer of Retail Marijuana is for Wet Trim, and does not include any Wet Bud or Concentrate, then the total weight of the Retail Marijuana sold or Transferred shall be multiplied by the Average Market Rate for Wet Trim and the result shall be multiplied by 15% to arrive at the amount of tax due. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Wet Bud in a sale that is otherwise Wet Trim shall not be treated as the sale of Wet Bud and the tax shall be calculated based on the Average Market Rate for Wet Trim.
- (vii) If a sale or Transfer of Retail Marijuana is for Wet Whole Plant, the total weight of the Retail Marijuana Wet Whole Plant sold or Transferred shall be multiplied by the Average Market Rate for Wet Whole Plant, and the result shall be multiplied by 15% to arrive at the amount of tax due.
  - (A) The plant material to be sold or Transferred must be weighed within 6 hours of the plant being harvested, and tax must be calculated and paid on that weight.
- (viii) If a sale or Transfer is for a Retail Marijuana seed, the number of seeds sold shall be multiplied by the Average Market Rate for an Immature Plant and the result shall be multiplied by 15% to arrive at the amount of tax due.
- (ix) In the case of a sale or Transfer of Concentrate created by a Retail Marijuana Cultivation Facility, the tax shall be calculated by multiplying the amount-weight of Trim that was used to create the Concentrate by the Average Market Rate for Trim, adding the product of the amount-weight of Bud used to create the Concentrate multiplied by the Average Market Rate for Bud, and multiplying that sum by 15% to arrive at the amount of tax due.
  - (A) Example. A grow operation uses 100 grams of Trim and 5 grams of Bud to create 7 grams of Concentrate. Assume the Average Market Rate for Trim is \$10 per gram and the Average Market Rate for Bud is \$95 per gram. The calculation described above would be:  
$$((100*\$10)+(5*\$95))*0.15$$
$$=(\$1,000+\$475)*0.15$$
$$= \$221.25 \text{ excise tax}$$

- (3) **Evidence of Payment of Tax.** 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 by the Retail Marijuana Cultivation Facility, the category of product being sold or Transferred, the date of sale or Transfer, and the weight of the product being sold or Transferred.

- (4) Special rule for a One-Time Transfer of Medical Marijuana, Medical Marijuana Concentrate, and / or Medical Marijuana Infused-Product from a Medical Marijuana Business to a Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Cultivation Facility.
- (a) The statutes do not impose the excise tax on Medical Marijuana, Medical Marijuana Concentrate, and / or Medical Marijuana Infused-Product subject to the One-Time Transfer from a Medical Marijuana Business to a Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Cultivation Facility under subsections 12-43.4-104(1)(a)(III) and IV, C.R.S., and Rule R 211 of 1 CCR 212-2.
  - (b) Medical Marijuana and / or Medical Marijuana Concentrate subject to the One-Time Transfer from a Medical Marijuana Cultivation Facility to a Retail Marijuana Cultivation Facility shall be subject to the excise tax upon the first sale or Transfer from the Retail Marijuana Cultivation Facility to a Retail Marijuana Store, a Retail Marijuana Products Manufacturing Facility or another Retail Marijuana Cultivation Facility, including but not limited to a Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment under common ownership with the Retail Marijuana Cultivation Facility.
  - (c) The One-Time Transfer from a Medical Marijuana Business to a Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Cultivation Facility may only occur once per licensee, in accordance with Rule R 211 of 1 CCR 212-2.