

Title 18. Public Revenues

Division 2. State Board of Equalization -Business Taxes

Chapter 8.7. Cannabis Tax Regulations 18 CCR § 3700

§ 3700. Cannabis Excise and Cultivation Taxes.

(a) Definitions. For purposes of this chapter (Cannabis Tax Regulations, commencing with Regulation 3700), the definitions of terms in part 14.5, Cannabis Tax, (commencing with section 34010) of division 2 of the Revenue and Taxation Code shall apply and the following terms are defined or further defined below.

(1) "Cannabis flowers" means the flowers of the plant *Cannabis sativa* L. that have been harvested, dried, and cured, and prior to any processing whereby the plant material is transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. The term "cannabis flowers" excludes leaves and stems.

(2) "Cannabis leaves" means all parts of the plant *Cannabis sativa* L. other than cannabis flowers that are sold or consumed.

(3) "Cultivator" means all persons required to be licensed to cultivate cannabis pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that cultivates cannabis as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(4) "Distributor" means a person required to be licensed as a distributor pursuant to division 10 (commencing with section 26000) of the Business and Professions, including a microbusiness that acts as a licensed distributor as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(5) "Fresh cannabis plant" means the flowers, leaves, or a combination of adjoined flowers, leaves, stems, and stalk from the plant *Cannabis sativa* L. that is either cut off just above the roots, or otherwise removed from the plant.

To be considered "fresh cannabis plant," the flowers, leaves, or combination of adjoined flowers, leaves, stems, and stalk must be weighed within two 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.

(6) "Manufacturer" means a person required to be licensed as a manufacturer pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that acts as a licensed manufacturer as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(7) "Ounce" means 28.35 grams.

(8) "Plant waste" means waste of the plant *Cannabis sativa* L. that is not hazardous waste, as defined in section 40141 of the Public Resources Code, and is solid waste, as defined in section 40191 of the Public Resources Code, that has been made unusable and unrecognizable. For the purpose of this subdivision, plant waste is deemed "unusable and unrecognizable" when it is ground and incorporated with other ground material so that the resulting mixture is at least fifty percent non cannabis material by volume.

(9) "Wholesale cost" means the amount paid by the retailer for the cannabis or cannabis product, including transportation charges. Discounts and trade allowances must be added back when determining wholesale cost.

For purposes of this subdivision, "discounts or trade allowances" are price reductions, or allowances of any kind, whether stated or unstated, and include, without limitation, any price reduction applied to a supplier's price list. The discounts may be for prompt payment, payment in cash, bulk purchases, related-party transactions, or "preferred-customer" status.

(b) Collection of Cultivation Tax When Testing Requirement is Waived. For purposes of the cultivation tax imposed on all harvested cannabis that enters the commercial market pursuant to section 34012 of the Revenue and Taxation Code, when the testing requirement is waived pursuant to subdivision (l) of section 26070 of the Business and Professions Code, a distributor shall collect the cultivation tax from cultivators when cannabis is transferred or sold to the distributor.

(c) Cultivation Tax Rates. For transactions made on and after January 1, 2018, the rate of the cultivation tax is as follows:

(1) Nine dollars and twenty-five cents (\$9.25) per dry-weight ounce of cannabis flowers, and at a proportionate rate for any other quantity.

(2) Two dollars and seventy-five cents (\$2.75) per dry-weight ounce of cannabis leaves, and at a proportionate rate for any other quantity.

(3) One dollar and twenty-nine cents (\$1.29) per ounce of fresh cannabis plant, and at a proportionate rate for any other quantity.

(d) Cannabis Removed from a Cultivator's Premises is Presumed Sold.

(1) Unless the contrary is established, it shall be presumed that all cannabis removed from the cultivator's premises, except for plant waste, is sold and thereby taxable pursuant to section 34012 of the Revenue and Taxation Code.

(2) The presumption in subdivision (d)(1) may be rebutted by a preponderance of the evidence demonstrating that the cannabis was removed for purposes other than for entry into the commercial market. Reasons for which cannabis may be removed and not subject to tax on that removal include, but are not limited to, the following:

(A) Fire,

(B) Flood,

(C) Pest control,

(D) Processing,

(E) Storage prior to the completion of, and compliance with, the quality assurance review and testing, as required by Business and Professions Code section 26110, and

(F) Testing.

(e) Reporting the Cannabis Excise Tax. A distributor shall report and remit the cannabis excise tax due with the return for the quarterly period in which the distributor sells or transfers the cannabis or cannabis products to a cannabis retailer.

(f) Penalties.

(1) Late Payments. In addition to any other penalty imposed pursuant to the Fee Collection Procedures Law (commencing with section 55001 of the Revenue and Taxation Code) or any other penalty provided by law, a penalty of 50 percent of the amount of the unpaid cannabis excise tax or cannabis cultivation tax shall be added to the cannabis excise tax and cultivation tax not paid in whole or in part within the time required pursuant to sections 34015 and 55041.1 of the Revenue and Taxation Code.

(2) Relief from Late Payment Penalty for Reasonable Cause. If the Department finds that a person's failure to make a timely payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by subdivision (f)(1) for such failure.

Any person seeking to be relieved of the penalty shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34010, 34011, 34012, 34013, 34015 and 55044, Revenue and Taxation Code.

HISTORY

1. New chapter 8.7 (section 3700) and section filed 12-21-2017 as a deemed emergency pursuant to Revenue and Taxation Code section 34013(d); operative 12-21-2017 (Register 2017, No. 51). A Certificate of Compliance must be transmitted to OAL by 12-21-2019 pursuant to Revenue and Taxation Code section 34013(d) or the emergency language will be repealed by operation of law on the following day.