

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 1188 - L.D. 1652

An Act To Make Technical Changes to the Taxation of Marijuana

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, state tax law needs to be updated before the 90-day period expires to avoid delay in the development of adult use marijuana rules, to allow the Legislature time to act on that rulemaking before it adjourns and to avoid delay in the processing of adult use marijuana establishment licenses; and

Whereas, legislative action is immediately necessary to ensure continued and efficient administration of state taxation of marijuana and state administration of adult use marijuana; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 28-B MRSA §511, sub-§1, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

1. Record keeping; inspection of records. A licensee shall maintain a complete set of all records of the licensee's business transactions, which must be open to inspection and examination by the department upon demand and without notice during all business hours. Records must be maintained by a licensee at a minimum for a period comprising the current tax year and the 2 5 immediately preceding tax years in accordance with Title 36, section 135.

Sec. A-2. 36 MRSA §172, sub-§1, as amended by PL 2013, c. 368, Pt. V, §57, is further amended to read:

1. Liquor licensee. If the taxpayer is a liquor licensee, to the Department of Administrative and Financial Services, which shall construe that liability and lack of cooperation to be a ground for denying, suspending or revoking the taxpayer's liquor license in accordance with Title 28-A, section 707 and chapter 33; ~~or~~

Sec. A-3. 36 MRSA §172, sub-§2, as amended by PL 1995, c. 65, Pt. A, §137 and affected by §153 and Pt. C, §15, is further amended to read:

2. Motor vehicle dealer. If the taxpayer is a licensed motor vehicle dealer, to the Secretary of State, who shall construe that liability and lack of cooperation to be a ground for denying, suspending or revoking the taxpayer's motor vehicle dealer license in accordance with Title 29-A, section 903; or

Sec. A-4. 36 MRSA §172, sub-§3 is enacted to read:

3. Adult use marijuana licensed establishment. If the taxpayer is a marijuana establishment, as defined in Title 28-B, section 102, subsection 29, to the Department of Administrative and Financial Services, which shall construe that liability and lack of cooperation to be a ground for denying, suspending or revoking the taxpayer's marijuana establishment license in accordance with Title 28-B, chapter 1, subchapter 8.

Sec. A-5. 36 MRSA §1752, sub-§3-B, ¶¶F and G, as enacted by PL 2015, c. 267, Pt. OOOO, §2 and affected by §7, are amended to read:

F. Prepared food; ~~and~~

G. The following food and drinks ordinarily sold for consumption without further preparation:

- (1) Soft drinks and powdered and liquid drink mixes except powdered milk, infant formula, coffee and tea;
- (2) Sandwiches and salads;
- (3) Supplemental meal items such as corn chips, potato chips, crisped vegetable or fruit chips, potato sticks, pork rinds, pretzels, crackers, popped popcorn, cheese sticks, cheese puffs and dips;
- (4) Fruit bars, granola bars, trail mix, breakfast bars, rice cakes, popcorn cakes, bread sticks and dried sugared fruit;
- (5) Nuts and seeds that have been processed or treated by salting, spicing, smoking, roasting or other means;
- (6) Desserts and bakery items, including but not limited to doughnuts, cookies, muffins, dessert breads, pastries, croissants, cakes, pies, ice cream cones, ice cream, ice milk, frozen confections, frozen yogurt, sherbet, ready-to-eat pudding, gelatins and dessert sauces; and
- (7) Meat sticks, meat jerky and meat bars.

As used in this paragraph, "without further preparation" does not include combining an item with a liquid or toasting, microwaving or otherwise heating or thawing a product for palatability rather than for the purpose of cooking the product; and

Sec. A-6. 36 MRSA §1752, sub-§3-B, ¶H is enacted to read:

H. Notwithstanding any other provision of law to the contrary, any food product containing any amount of marijuana or marijuana product.

Sec. A-7. 36 MRSA §1752, sub-§6-E is enacted to read:

6-E. Marijuana. "Marijuana" has the same meaning as in Title 28-B, section 102, subsection 27.

Sec. A-8. 36 MRSA §1752, sub-§6-F is enacted to read:

6-F. Marijuana product. "Marijuana product" has the same meaning as in Title 28-B, section 102, subsection 33.

Sec. A-9. 36 MRSA §1752, sub-§9-G is enacted to read:

9-G. Qualifying patient. "Qualifying patient" has the same meaning as in Title 22, section 2422, subsection 9.

Sec. A-10. 36 MRSA §1811, first ¶, as amended by PL 2017, c. 409, Pt. D, §2, is further amended to read:

A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles or of a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, from October 1, 2013 to December 31, 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, beginning January 1, 2016, the rate of tax is 9% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically.

Notwithstanding the other provisions of this section, beginning on the first day of the calendar month in which adult use marijuana and adult use marijuana products may be sold in the State by a marijuana establishment licensed to conduct retail sales pursuant to Title 28-B, chapter 1, the rate of tax is 10% on the value of adult use marijuana ~~and, adult use marijuana products~~ and, if sold by a person to an individual who is not a qualifying patient, marijuana and marijuana products. Value is measured by the sale price, except as otherwise provided. The value of rental for a period of less than one year of an automobile or of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee.

PART B

Sec. B-1. 28-B MRSA §205, sub-§4, ¶A, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

A. Within 10 days of receiving certification of local authorization from a municipality as required by section 402, subsection 3, paragraph B or, in the case of a marijuana establishment to be located in the unorganized and deorganized areas, from the Maine Land Use Planning Commission as required by section 403, subsection 3, paragraphs B and C, the department shall notify the applicant that certification of local authorization has been confirmed and that, in order for the department to issue an active license, the applicant must:

- (1) Pay the applicable license fee required pursuant to section 207;
- (2) Submit a facility plan that specifies the location, size and layout of the marijuana establishment within the municipality or, in the case of a marijuana establishment to be located in the unorganized and deorganized areas, within the town, plantation or township in which the marijuana establishment will be located;
- (3) If the application is for a license to operate a cultivation facility, submit updated operating and cultivation plans as required under section 302 based upon the actual premises to be licensed, except that, if no changes to the original operating and cultivation plans submitted by the applicant are necessary based upon the actual premises to be licensed, then the applicant may satisfy this requirement by resubmitting the original operating and cultivation plans and noting on those plans that no changes are necessary; ~~and~~
- (4) If the application is for any license except a license to operate a ~~nursery cultivation testing~~ facility, ~~as described in section 301, subsection 5, or a marijuana store,~~ register with the State Tax Assessor pursuant to Title 36, section 1754-B to collect and remit the sales tax on the sale of adult use marijuana and adult use marijuana products imposed under Title 36, section 1811-; and

(5) If the application is for a license to operate a cultivation facility, register with the State Tax Assessor pursuant to Title 36, section 4922 to collect and remit the excise tax on the sale of adult use marijuana imposed under Title 36, chapter 723.

Sec. B-2. 28-B MRSA §501, sub-§3, ¶C, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

C. A nursery cultivation facility may sell and distribute to marijuana stores and other cultivation facilities only immature marijuana plants, seedlings and marijuana seeds. Adult use marijuana sold by a nursery cultivation facility to marijuana stores and other cultivation facilities is subject to the excise tax imposed pursuant to ~~subchapter 10~~ Title 36, chapter 723, which must be paid to the ~~department~~ State Tax Assessor as required by subsection 9.

Sec. B-3. 28-B MRSA §501, sub-§6, ¶B, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by c. 452, §37, is further amended to read:

B. A cultivation facility licensee authorized pursuant to paragraph A to purchase marijuana plants and marijuana seeds from registered caregivers and registered dispensaries that transacts such a purchase shall pay to the ~~department~~ State Tax Assessor the excise taxes ~~that would have been imposed under subchapter 10 pursuant to Title 36, chapter 723~~ on the sale of the marijuana plants and marijuana seeds ~~if the marijuana plants and marijuana seeds had been sold by a cultivation facility licensee to another licensee~~. In addition to payment of the required excise taxes under this paragraph, the cultivation facility licensee shall provide the department with an accounting of the transaction, which must include information on the registered caregiver or registered dispensary from which the licensee purchased the marijuana plants and marijuana seeds, the number of mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds purchased in the transaction and any other information required by the department by rule.

Sec. B-4. 28-B MRSA §501, sub-§9, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

9. Excise tax; sales tax. A cultivation facility licensee shall ensure that the tax imposed on the sale of adult use marijuana ~~by a cultivation facility to other licensees pursuant to subchapter 10 Title 36, chapter 723~~ is paid to the ~~department~~ State Tax Assessor. A nursery cultivation facility licensee shall ensure that the tax imposed on the sale of adult use marijuana and adult use marijuana products under Title 36, section 1811 is collected and remitted in accordance with the requirements of Title 36, Part 3 and the rules adopted pursuant to Title 36, Part 3.

Sec. B-5. 28-B MRSA c. 1, sub-c. 10, as amended, is repealed.

Sec. B-6. 28-B MRSA §1101, sub-§1, ¶A, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

A. Money received from the excise tax imposed on the sale of adult use marijuana ~~by a cultivation facility licensee to other licensees pursuant to subchapter 10 Title 36, chapter 723~~ in the amount required under ~~section 1003~~ Title 36, section 4925;

Sec. B-7. 36 MRSA c. 723 is enacted to read:

CHAPTER 723

MARIJUANA EXCISE TAX

§4921. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult use marijuana. "Adult use marijuana" has the same meaning as in Title 28-B, section 102, subsection 1.

2. Cultivation facility. "Cultivation facility" has the same meaning as in Title 28-B, section 102, subsection 13.

3. Immature marijuana plant. "Immature marijuana plant" has the same meaning as in Title 28-B, section 102, subsection 19.

4. Licensee. "Licensee" has the same meaning as in Title 28-B, section 102, subsection 24.

5. Marijuana establishment. "Marijuana establishment" has the same meaning as in Title 28-B, section 102, subsection 29.

6. Marijuana flower. "Marijuana flower" has the same meaning as in Title 28-B, section 102, subsection 31.

7. Marijuana plant. "Marijuana plant" has the same meaning as in Title 28-B, section 102, subsection 32.

8. Marijuana trim. "Marijuana trim" has the same meaning as in Title 28-B, section 102, subsection 35.

9. Mature marijuana plant. "Mature marijuana plant" has the same meaning as in Title 28-B, section 102, subsection 36.

10. Registered caregiver. "Registered caregiver" has the same meaning as in Title 22, section 2422, subsection 11.

11. Registered dispensary. "Registered dispensary" has the same meaning as in Title 22, section 2422, subsection 6.

12. Seedling. "Seedling" has the same meaning as in Title 28-B, section 102, subsection 51.

§4922. Registration

1. Generally. A cultivation facility licensee operating in this State shall register with the assessor each cultivation facility operated by the cultivation facility licensee and

collect and remit taxes in accordance with the provisions of this chapter. A person required to be registered as a cultivation facility licensee pursuant to this section must also be in compliance with Title 28-B, chapter 1. A registration issued pursuant to this section is not a license within the meaning of that term in the Maine Administrative Procedure Act.

2. Applications; forms. A registration application under this section must be made on a form prescribed by the assessor and must state the name and address of the applicant, the address of the applicant's registered cultivation facility and such other information as the assessor may require for the proper administration of this chapter.

3. Penalties. The following penalties apply to violations of this section.

A. A cultivation facility licensee that sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any adult use marijuana without being registered with the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

B. A cultivation facility licensee that violates paragraph A after having been previously adjudicated as violating paragraph A commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

4. Surrender, revocation and suspension. A registration pursuant to this section is nontransferable. The assessor may revoke or suspend the registration of any registered cultivation facility licensee for failure to comply with any provision of this chapter or if the person no longer cultivates adult use marijuana. A person aggrieved by a revocation or suspension may request reconsideration as provided in section 151.

5. Notification. A cultivation facility licensee that has its registration under this section suspended or revoked shall, within 10 business days of the suspension or revocation, inform in writing all its accounts in this State that it no longer holds a valid registration. The assessor may publish the name of a cultivation facility licensee that has had its registration suspended or revoked.

§4923. Excise tax imposed

Beginning on the first day of the calendar month in which adult use marijuana may be sold in the State by a cultivation facility under Title 28-B, chapter 1, an excise tax on adult use marijuana is imposed in accordance with this chapter.

1. Excise tax on marijuana flower and mature marijuana plants. A cultivation facility licensee shall pay an excise tax of \$335 per pound or fraction thereof of marijuana flower or mature marijuana plants sold to other licensees in the State.

2. Excise tax on marijuana trim. A cultivation facility licensee shall pay an excise tax of \$94 per pound or fraction thereof of marijuana trim sold to other licensees in the State.

3. Excise tax on immature marijuana plants and seedlings. A cultivation facility licensee shall pay an excise tax of \$1.50 per immature marijuana plant or seedling sold to other licensees in the State.

4. Excise tax on marijuana seeds. A cultivation facility licensee shall pay an excise tax of 30¢ per marijuana seed sold to other licensees in the State.

5. Excise tax on purchases from registered caregivers and registered dispensaries. A cultivation facility licensee authorized pursuant to Title 28-B, section 501, subsection 6, paragraph A to purchase marijuana plants and marijuana seeds from registered caregivers and registered dispensaries that transacts such a purchase shall pay to the assessor the excise taxes that would have been imposed under subsections 1 to 4 on the sale of the marijuana plants and marijuana seeds if the marijuana plants and marijuana seeds had been sold by a cultivation facility licensee to another licensee.

6. Multiple licenses. When a cultivation facility licensee also holds a license to operate another marijuana establishment, the taxes imposed by subsections 1 to 4 apply to any transfer of marijuana from the cultivation facility to the other marijuana establishment or, if no such transfer is made, to any activity undertaken pursuant to Title 28-B, section 501, subsection 2 or 4 with regard to marijuana cultivated by the cultivation facility.

§4924. Returns; payment of excise tax

On or before the 15th day of each month, a cultivation facility licensee shall file a return, as required by the assessor, and pay to the assessor all excise taxes due under this chapter for the preceding calendar month.

§4925. Application of excise tax revenue

All excise tax revenue collected by the assessor pursuant to this chapter on the sale of adult use marijuana must be deposited into the General Fund, except that, on or before the last day of each month, the assessor shall transfer 12% of the excise tax revenue received during the preceding month pursuant to this chapter to the Adult Use Marijuana Public Health and Safety Fund established in Title 28-B, section 1101.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.