

**TESTIMONY OF
ANYA TRUNDY, CHIEF OF LEGISLATIVE AND STRATEGIC OPERATIONS
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *April 26, 2023, at 1:00 P.M.*

L.D. 1384 – *“An Act to Promote Fairness in the Taxation of Adult Use Cannabis by Basing the Excise Tax on the Tier of a Cultivation Facility”*

L.D. 1392 – *“An Act to Change How the Adult Use Cannabis Excise Tax Is Calculated”*

L.D. 1405 – *“An Act to Change How Adult Use Cannabis Excise Tax Is Calculated”*

Senator Grohoski, Representative Perry, and members of the Taxation Committee – good afternoon, my name is Anya Trundy, Chief of Legislative and Strategic Operations for the Department of Administrative and Financial Services. I am providing testimony at the request of the Administration Neither For Nor Against L.D. 1384, *“An Act to Promote Fairness in the Taxation of Adult Use Cannabis by Basing the Excise Tax on the Tier of a Cultivation Facility,”* L.D. 1392, *“An Act to Change How the Adult Use Cannabis Excise Tax Is Calculated,”* and L.D. 1405, *“An Act to Change How Adult Use Cannabis Excise Tax Is Calculated.”*

The committee has three separate but related bills for today’s public hearing that adjust the cannabis excise tax. The Administration acknowledges the difficulties the cannabis excise tax is creating for the adult-use cannabis industry and suggests that LD 1392 could be a good vehicle for addressing those concerns—Maine Revenue Services and the Office of Cannabis Policy have been working collaboratively with the bill’s sponsor since the beginning of session.

As currently written, L.D. 1392 would amend the cannabis excise tax rates on all cannabis products by basing them on the “fair market value” of the product sold, beginning July 1st, 2024. This proposal would also create a separate excise tax rate for cannabis flower or trim intended “for extraction.”

The bill would result in two taxes based on value, the cannabis excise tax and the sales tax, imposed on different entities and at different times. The inherent complexity of imposing two taxes with similar tax bases and tax policy goals would be further complicated by the difficulty in determining the “fair market value” of cannabis transferred in related party transactions.

Maine Revenue Services and the Office of Cannabis Policy are currently exploring alternative models for the taxation of adult use cannabis. One option for consideration would be to shift the imposition and revenue from a cannabis excise tax to instead merge it with a unified cannabis sales tax, equalizing the revenue impact of that change by adjusting the existing sales tax rate. The Administration is currently analyzing what that commensurate rate would be and will have additional information available for the work session.

LD 1384 proposes to base the cannabis excise tax on a cultivation facility’s license tier. In order to effectively process cannabis excise tax returns by tier level, MRS would need to add a variable field in our tax software to reflect the taxpayer’s license tier and produce the appropriate tax rate for cannabis flower and cannabis trim. This tier-based classification will create administrative difficulties if a licensee changes their tier level during the middle of a tax period.

Further, the limited authorization for sales of cannabis plants and seeds to an adult-use cultivation facility by a medical-use registered caregiver or dispensary

ended on September 8, 2022. The proposed subsection 6 on page two, lines 17-23, should therefore be struck.

LD 1405 proposes to base the cannabis excise tax rates on cannabis flower and trim by basing them on the “average market rate” of those products, beginning January 1st, 2024. The “average market rate” is defined as the “median market price per pound of cannabis flower that is sold or transferred from cultivation facility licensees to other licensees in the State.” This definition does not sufficiently consider price data on transfers between vertically integrated licensees, where the value may be set by the licensee and may differ from that of an arms-length transaction between unaffiliated businesses.

Additionally, it is unclear which agency under DAFS would be responsible for determining the “average market rate,” whether the rules are to be technical or substantive, and the date when the first “average market rate[s]” would be calculated and announced prior to January 1st, 2024. While MRS is generally the rulemaking authority for taxation matters we do not currently receive the necessary pricing data to determine the rates. Further, MRS’s rules are generally “routine technical,” while OCP is required to undertake “major substantive” rulemaking for matters governed by the Cannabis Legalization Act.

The Administration looks forward to working with the Committee on the bills; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.