

830 CMR 64N.00: MARIJUANA RETAIL TAXES

Section

64N.1.1: Marijuana Retail Taxes

(1) Scope of Regulation; Background; Outline of Topics; Effective Date.

(a) Scope of Regulation. 830 CMR 64N.1.1 sets forth the rules for the imposition of the marijuana retail taxes on the retail sale of marijuana.

(b) Background. Recent legislation, known as "An Act to Ensure Safe Access to Marijuana", St. 2017, c. 55, authorized the licensing of marijuana establishments, including marijuana retailers, and the retail sale of marijuana. The legislation generally provides that all retail sales of marijuana by marijuana retailers are subject to up to three taxes imposed on the total sales price of the marijuana sold. First, marijuana retailers are required to collect and remit a marijuana excise imposed on their retail sales of marijuana. Second, marijuana retailers operating in cities or towns that have accepted the marijuana local tax option must collect an additional tax imposed at a rate of no greater than 3%. *See* M.G.L. c. 64N. Third, sales of marijuana are subject to the sales tax. However, the sale of medical marijuana, as defined in 830 CMR 64N.1.1(2), is not subject to any of these taxes. 830 CMR 64N.1.1 explains the imposition of the marijuana retail taxes on retail sales of marijuana by marijuana retailers, exemptions from these taxes, and administrative provisions under M.G.L. c. 62C applicable to marijuana retailers, such as record keeping requirements and the procedures for filing returns and remitting payments.

(c) Outline of Topics. 830 CMR 64N.1.1 is organized as follows:

1. Scope of Regulation; Background; Outline of Topics; Effective Date;
2. Definitions;
3. Marijuana Retail Taxes;
4. Retail Sales of Marijuana by a Marijuana Retailer;
5. Record Keeping;
6. Other Administrative Provisions.

(d) Effective Date. 830 CMR 64N.1.1 is effective for all retail sales of marijuana by marijuana retailers occurring on or after June 1, 2018.

(2) Definitions. For the purposes of 830 CMR 64N.1.1, the following terms have the following meanings:

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Marijuana. All parts of any plant of the genus *Cannabis*, with certain exceptions, as defined in M.G.L. c. 94G, § 1. Marijuana also includes all "marijuana products" as defined in M.G.L. c. 94G, § 1 and 935 CMR 500.002: *Definitions*. Such marijuana products include edible products, beverages, topical products, ointments, oils, and tinctures.

Marijuana Establishment. A marijuana-related business licensed by the Cannabis Control Commission; provided, however, that a medical marijuana treatment center or registered marijuana dispensary shall be treated as a marijuana establishment for the purposes of 830 CMR 64N.1.1.

Marijuana Excise. The excise imposed pursuant to M.G.L. c. 64N, § 2.

Marijuana Local Tax Option. The local tax option accepted by a city or town pursuant to M.G.L. c. 64N, § 3.

Marijuana Retail Taxes. Collectively, the taxes imposed on retail sales of marijuana, including the marijuana excise, the marijuana local tax option, and the sales tax.

Marijuana Retailer. A marijuana establishment licensed by the Cannabis Control Commission to make retail sales of marijuana. A Marijuana Retailer is a "vendor" as defined in M.G.L. c. 64H, § 1 and M.G.L. c. 64I, § 1.

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Medical Marijuana. Marijuana authorized to be sold for medical use, as described in St. 2012, c. 369, and M.G.L. c. 94I. The medical marijuana program is currently administered by the Department of Public Health and is scheduled to be transferred to the Cannabis Control Commission on or before December 31, 2018.

Retail Sale. A sale of marijuana subject to the marijuana retail taxes.

Sale. Any transfer of title or possession of marijuana. Sale has the same general meaning as the terms "sale" and "selling" as defined in M.G.L. c. 64H, § 1.

Sales Price. The total amount paid by a purchaser to a marijuana retailer as consideration for a retail sale, including any amount paid for services that are a part of the sale. Generally, "sales price" has the same meaning as defined in M.G.L. c. 64H, § 1.

Sales Tax. The sales tax imposed pursuant to M.G.L. c. 64H, § 2 or the use tax imposed pursuant to M.G.L. c. 64I, § 2.

(3) Marijuana Retail Taxes. Retail sales of marijuana are subject to as many as three taxes: the marijuana excise, the marijuana local tax option, and the sales tax. 830 CMR 64N.1.1(3) explains the general applicability and rules governing the imposition of each tax.

(a) Marijuana Excise. In general, all sales of marijuana by a marijuana retailer are retail sales subject to the marijuana excise. However, the following sales of marijuana are not subject to the marijuana excise.

1. Sales to a Marijuana Establishment. The marijuana excise does not apply to the sale of marijuana by a marijuana retailer to another marijuana establishment. To qualify for this exclusion, a marijuana establishment purchasing marijuana from a marijuana retailer must present its marijuana establishment license to the marijuana retailer demonstrating that it is a marijuana establishment at the time of sale.

2. Sales of Medical Marijuana. Sales of medical marijuana are exempt from the marijuana excise. A purchaser must present his medical registration card, also known as a Medical Use of Marijuana Program ID Card, as defined in 935 CMR 500.002: *Definitions*, together with a valid government-issued identification card at the time of sale in order to qualify for the exemption. A marijuana retailer must verify at the time of sale that a purchaser is certified and registered with the applicable state agency, including the Department of Public Health, or the Cannabis Control Commission.

(b) Marijuana Local Tax Option. In general, all retail sales of marijuana by a marijuana retailer operating in a city or town that has accepted the marijuana local tax option are subject to the marijuana local tax option. The marijuana local tax option is imposed in the same manner as the marijuana excise. Thus, marijuana is not subject to the marijuana local tax option when sold to another marijuana establishment or when sold as medical marijuana as described in 830 CMR 64N.1.1(3)(a). For the purpose of determining the application of the marijuana local tax option, marijuana retailers must source all retail sales of marijuana to the marijuana retailer's host community, as defined in M.G.L. c. 94G, § 1.

(c) Sales Tax. All sales of marijuana by a marijuana establishment, regardless of whether it is a marijuana retailer, are presumed to be retail sales subject to sales tax. However, sales between marijuana establishments may qualify as sales for resale or as exempt sales not subject to tax as explained in 830 CMR 64N.1.1(3).

1. Sales for Resale. A marijuana establishment selling marijuana to another marijuana establishment bears the burden of proving that a sale is a sale for resale, unless it takes a resale certificate (Form ST-4) from the purchasing marijuana establishment in compliance with the good faith requirements outlined in M.G.L. c. 64H, § 8(b) and 830 CMR 64H.8.1: *Resale and Exempt Use Certificate*. A marijuana establishment may not accept in good faith a resale certificate presented by anyone other than a marijuana establishment.

2. Sales Exempt from Sales Tax. In general, sales of marijuana may be exempt from sales tax pursuant to M.G.L. c. 64H, § 6 only when the sale meets one of the exemptions described in 830 CMR 64N.1.1(3)(c)2.a. through c.

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- a. Medical Marijuana. Sales of medical marijuana to a qualifying patient or the patient's personal caregiver that satisfy the requirements of 830 CMR 64N.1.1(3)(a)2. are exempt from sales tax as prescription medication pursuant to M.G.L. c. 64H, § 6(l).
- b. Exempt Use. Sales of marijuana may be exempt from sales tax pursuant to M.G.L. c. 64H, § 6(r) when sold by a marijuana establishment to another marijuana establishment as materials that have a useful life of less than one year and which:
 - i. become an ingredient or component part of tangible personal property to be sold;
 - ii. are consumed directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold;
 - iii. are consumed directly and exclusively in agricultural production; or
 - iv. are consumed directly and exclusively in research and development by a manufacturing corporation or a research and development corporation within the meaning of M.G.L. c. 63, § 42B.

To substantiate these sales tax exemptions, the purchasing marijuana establishment must present an exempt use certificate (Form ST-12) and its marijuana establishment license to the selling marijuana establishment at the time of sale. The burden of proving that the sale of marijuana is exempt from tax is on the selling marijuana establishment, unless it takes an exempt use certificate in good faith in accordance with M.G.L. c. 64H, § 8(f) and 830 CMR 64H.8.1(5). A marijuana establishment may not accept in good faith an exempt use certificate presented by anyone other than a marijuana establishment.

- c. Exempt Purchaser Marijuana Establishments. Sales of marijuana to a marijuana establishment that is exempt from taxation under IRC § 501(c)(3) and that intends to use the marijuana in the conduct of its religious, charitable, educational, or scientific enterprise may be exempt from sales tax. To claim this exemption, the purchaser must present its valid Certificate of Exemption (Form ST-2), Sales Tax Exempt Purchaser Certificate (Form ST-5), and its marijuana establishment license to the selling marijuana establishment at the time of sale. The selling marijuana establishment must retain both forms in the same manner as other marijuana retail tax records in accordance with 830 CMR 62C.25.1: *Record Retention* and 830 CMR 64N.1.1(5).

Marijuana establishments must collect sales tax on all transactions except as described in 830 CMR 64N.1.1(3)(c)2. Marijuana establishments may be entitled to additional sales tax exemptions not specified in 830 CMR 64N.1.1(3)(c)2.a. through c. for purchases of non-marijuana tangible personal property that are used for one of the exempt purposes described in M.G.L. c. 64H, § 6.

(4) Separate Statement Requirements for Marijuana Retailers.

- (a) General Rule. All retail sales of marijuana by a marijuana retailer are subject to the marijuana retail taxes, unless exempt as described in 830 CMR 64N.1.1(3), all of which are imposed on the total sales price of the marijuana sold. All marijuana retailers must separately state each of the marijuana retail taxes from the total sales price of the marijuana on the receipt to the purchaser.

Marijuana retailers must also separately state the portion of the sales price attributable to sales of marijuana and to sales of other goods or services in amounts that reasonably reflect their retail value on the receipt to the purchaser. If the marijuana retailer does not follow this requirement, the marijuana retail taxes will be imposed on the total sales price of the entire transaction. The Commissioner may review transactions involving retail sales of marijuana that do not reasonably reflect the marijuana's retail value pursuant to M.G.L. c. 62C, § 3A. Marijuana retailers must separately report sales of marijuana and non-marijuana taxable tangible personal property to the Commissioner.

- (b) Example. Purchaser buys rolling papers, a t-shirt, and marijuana from marijuana retailer that operates in a city or town that has accepted the marijuana local tax option at the maximum rate of 3%. Marijuana retailer separately states the sales price for the rolling papers, the t-shirt, and the marijuana on the receipt to purchaser and reports the sales prices of the items as \$5.00, \$20.00, and \$100.00 respectively, which reasonably reflect their retail value. The t-shirt is exempt from tax as an article of clothing pursuant to M.G.L. c. 64H, § 6(k). The application of tax is as follows:

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Sales Price - Rolling Papers	\$5.00
Sales Tax (6.25%)	\$.31
Total Tax Imposed	\$.31
Total Charge - Rolling Papers	\$5.31
Sales Price - T-shirt	\$20.00
Total Tax Imposed	\$.00
Total Charge - T-shirt	\$20.00
Sales Price - Marijuana	\$100.00
Marijuana Excise (10.75%)	\$10.75
Marijuana Local Tax Option (3%)	\$3.00
Sales Tax (6.25%)	\$6.25
Total Tax Imposed	\$20.00
Total Charge - Marijuana	\$120.00
Transaction Total	\$145.31

When filing its tax returns, marijuana retailer must report the total sales price of the rolling papers on its sales and use tax return and the total sales price of the marijuana on its marijuana retail tax return.

(5) Record Keeping.

(a) Records Relating to Transactions by a Marijuana Retailer. Every marijuana retailer must maintain complete and accurate records of the gross receipts and expenditures from all purchases and sales, whether or not taxable, in accordance with 830 CMR 62C.25.1: *Record Retention*. In particular, every marijuana retailer must maintain:

1. a journal or its equivalent, which records daily all non-cash transactions affecting accounts payable;
2. a cash journal or its equivalent, which records daily all cash receipts and cash disbursements, including any check transactions;
3. a sales slip, invoice, cash register tape, or other document evidencing the original transaction, which substantiates each entry in the journal or cash journal;
4. memorandum accounts, records or lists concerning inventories, fixed assets or prepaid items, except in cases where the accounting system clearly records such information; and
5. a ledger to which totals from the journal, cash journal and other records have been periodically posted. The ledger must clearly classify the individual accounts receivable and payable and the capital account.

Marijuana retailers must provide such records to the Commissioner upon request.

(b) Records Related to Transactions Between Marijuana Establishments. All records reflecting transactions between marijuana establishments must be maintained, including any Resale certificates, Marijuana Establishment Purchaser certificates, and Exempt Use certificates.

(c) Separate Record Keeping Requirements for Sales of Tangible Personal Property. For record keeping purposes, marijuana retailers selling both marijuana and taxable non-marijuana tangible personal property must maintain records that separately account for the two types of property.

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(d) Required Use of Point-of-sale Systems. Marijuana retailers may only use point-of-sale (POS) systems approved by the Cannabis Control Commission, in consultation with the Commissioner. All POS systems utilized by a marijuana retailer must record all transactions in a manner that will allow the Commissioner to verify gross receipts from sales of marijuana and non-marijuana sales and to validate any exempt sales. The manipulation of sales data recorded in a POS system through any means is prohibited and will be subject to:

1. the tax evasion penalties of M.G.L. c. 62C, § 73, including a felony conviction;
2. a fine of not more than \$100,000 or \$500,000 in the case of a corporation; or
3. by imprisonment by not more than five years, or both, and payment of the cost of prosecution.

(e) Other Records. Marijuana retailers must retain copies of all marijuana retail tax returns, as well as supporting data indicating how the figures in such returns were calculated, in accordance with 830 CMR 62C.25.1(7).

(6) Other Administrative Provisions.

(a) Registration. Marijuana retailers must register with the Commissioner online using MassTaxConnect. As part of the registration process, marijuana retailers must provide their marijuana establishment license number. Once registered, marijuana retailers will be issued a Certificate of Registration by the Commissioner. Certificates of Registration must be displayed conspicuously in accordance with 830 CMR 62C.67.1: *Display of Certificates of Registration.*

(b) Filing Returns. Marijuana retailers are required to file a marijuana retail tax return reporting all gross receipts from the retail sale of marijuana with the Commissioner on a monthly basis using the form prescribed. All returns are due on or before the 20th day of the following calendar month and must be filed with the Commissioner electronically.

(c) Remitting Payment. Payments must be remitted to the Commissioner on or before the due date of the return.

(d) Amended Returns/Abatement. A marijuana retailer seeking to increase or decrease its previously reported tax may submit an amended return to the Commissioner in accordance with 830 CMR 62C.26.2: *Amended Returns.* A marijuana retailer seeking to obtain an abatement of a tax or penalty assessed by the Commissioner may dispute it by filing an application for abatement pursuant to 830 CMR 62C.37.1: *Abatements.*

(e) Assessments. The Commissioner may make an assessment of tax and/or penalties in accordance with 830 CMR 62C.26.1: *Assessments.* If the Commissioner determines from the verification of a return or otherwise that more than the full amount of a marijuana retail tax has been paid or assessed and paid, the Commissioner may make an overpayment determination in accordance with 830 CMR 62C.26.1(17). The Commissioner, as a matter of discretion, may apply an overpayment of a marijuana retail tax against any unpaid amounts of any other tax due from the marijuana retailer. The Commissioner may also apply an overpayment of a marijuana retail tax to prior or subsequent tax periods.

(f) Penalties. Marijuana retailers that fail to file a return, file a return timely, pay the marijuana retail taxes, or substantially understate the amount of tax due may be subject to penalties under M.G.L. c. 62C. See 830 CMR 62C.33.1: *Interest, Penalties, and Application of Payments.*

REGULATORY AUTHORITY

830 CMR 64N.1.1: M.G.L. c. 14, § 6(1); M.G.L. c. 62C, § 3.