

Title 17 Marijuana Excise Tax

ARTICLE 1. DEFINITIONS

1.1 “Average Market Rate” will have the same meaning as defined in C.R.S. §39-28.8-101(1), as amended.

1.2 “District” means Pueblo West Metropolitan District, a Colorado special district.

1.3 “Cultivation Facility” means a Retail Marijuana Cultivation Facility as defined in Section 5.12.040(26) of the Pueblo County Code located in the boundaries of the District.

1.4 “Deficiency Notice” means a notice sent from District by certified mail to a Taxpayer notifying the Taxpayer that the Taxpayer is in default of a monthly Excise Tax payment.

1.5 “Designated Agent” means the employee or official of Pueblo West Metropolitan District designated to facilitate the collection of the excise tax.

1.6 “Excise Tax” means the Districtwide excise tax on the first transfer of unprocessed retail marijuana from a licensed retail marijuana cultivation facility to any other facility as described more fully in Resolution No. 15-203.

1.7 “Final Assessment” means the District’s final assessment of the money owed to the District by the Taxpayer and includes the amount unpaid tax owed, interest accrued as of the date the assessment is issued, the cost of an audit, if applicable, and any penalties that may be owed in connection to the nonpayment of the Excise Tax. A Final Assessment shall clearly state that the total amount listed represents a debt owed by the Taxpayer to the District.

1.8 “Response” means a Taxpayer’s response to a Deficiency Notice, sent by certified mail to the Designated Agent, noting (1) the Taxpayer’s reason for nonpayment, (2) the Taxpayer’s reason for disputing the amount assessed, and (3) what the Taxpayer believes is a correct total of the Tax due.

1.9 “Taxpayer” means a Retail Marijuana Cultivation Facility as defined in Section 5.12.040(26) of the Pueblo County Code, as amended.

1.10 “Unprocessed Retail Marijuana” has the same meaning as defined in C.R.S. § 39-28.8-101(15), as amended.

1.11 “Colorado Retail Marijuana Code” means Section 16 of Article XVIII of the Colorado Constitution and Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended and any rules promulgated pursuant thereto.

1.12 “Local Licensing Authority” means the Pueblo County Liquor and Marijuana Licensing Board, as established pursuant to Chapter 5.16 of the Pueblo County Code, as amended.

1.13 “Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, or officer thereof; except that “Person” does not include any governmental organization.

1.14 “Retail Marijuana” means marijuana that is grown, tested, manufactured, and/or sold pursuant to the provisions of these regulations, the Colorado Retail Marijuana Code and Section 16 of Article XVIII of the Colorado Constitution, as amended.

1.15 “Retail Marijuana Cultivation Facility” means a “Person” authorized by the “Local Licensing Authority”.

1.16 “Retail Marijuana Establishment” means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana product manufacturing facility, storage warehouse, or a retail marijuana testing facility as set forth in Section 16 of Article XVIII of the Colorado Constitution and as may be more fully defined in the Colorado Retail Marijuana Code, as amended.

1.17 “Retail Marijuana Store” means a “Person” authorized by the “Local Licensing Authority”.

ARTICLE 2. INTENT

2.1. The District intends that an excise tax be imposed on the first sale or transfer of recreational marijuana by a retail cultivation facility within the boundaries of the District. The excise tax shall be levied, paid, and collected at a rate of one percent for calendar year 2016; two percent for calendar year 2017; and three percent for calendar year 2018 and beyond on the average market rate, as determined by the Colorado department of revenue pursuant to §39-28.8-101(1), C.R.S., as may be amended, on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

ARTICLE 3. COLLECTION AND ADMINISTRATION.

3.1. Designated Agent. The Pueblo West Metropolitan District Director of Finance shall administer the collection of the Excise Tax and shall be the Designated Agent to communicate with Taxpayers on behalf of the District and to facilitate the collection of the Excise Tax. The Designated Agent shall collect monthly payments from all Taxpayers and deposit all revenue generated from those payments into an account held in the District’s name in an eligible PDPA institution. Revenue will be recorded in line item 01-300-4008.

3.2 Collection from Taxpayer. On a monthly basis, the Taxpayer shall calculate and record the total amount of unprocessed retail marijuana, by category and pound at the time when the Taxpayer first sells or transfers unprocessed retail marijuana from the Taxpayer to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility. The Taxpayer shall determine the amount of Excise Tax it owes the District by applying the Average Market Rate, pursuant to §39-28.8-101(1), C.R.S., as amended, to the total amount of Unprocessed Retail Marijuana the Taxpayer has transferred in the preceding month.

3.3 Remittance. Taxpayer shall ensure the District receives each payment no later than 3:00 p.m. of the 20th day of the month following the month for which the Excise Tax is collected. In the event that the 20th is a weekend or District holiday, payment will be due on the first business day after the 20th. Payment for the Excise Tax must be accompanied by a return form provided by the Designated Agent and prepared by the Taxpayer.

3.4 Event of Non-transfer. In the event that the Taxpayer does not make any transfers, the Taxpayer shall submit a return prepared by the Taxpayer on the form provided by the Designated Agent indicating no Excise Tax is due for the preceding month.

3.5 Remittance Discrepancy. If the Average Market Rate of a specific form of Unprocessed Retail Marijuana is unclear, the Taxpayer shall promptly report the issue to the Designated Agent who may delay payment until the Designated Agent can determine the Average Market Rate.

3.6 Taxpayer to Maintain Records. It shall be the duty of every Taxpayer to keep and preserve suitable records, including returns for the Excise Tax, logs from the statewide tracking system, and returns for any county or state excise taxes on retail marijuana, of all transfers made by the Taxpayer and such other books or accounts as may be required by the Designated Agent in order to determine the amount of the tax for the collection or payment of which the Taxpayer is liable under this Title.

3.7 Audits. The District shall have the right to audit all Taxpayers to ensure compliance with this Title. In the event of an audit, all books, invoices, accounts, returns for any state taxes on retail marijuana, and other records shall be made available and be open at any time during regular business hours for examination by the Designated Agent or the Designated Agent's appointed agent. The District may conduct an audit at any time and for any reason; evidence or allegations of nonpayment or evasion of the Excise Tax is not required. If a Taxpayer has refused to allow an audit under this Title for ten (10) days or more, the Designated Agent may issue a report of the same and seek from the Local Licensing Authority revocation or other sanctions related to the Taxpayer's Retail Marijuana Establishment license.

ARTICLE 4. ENFORCEMENT.

4.1 Failure to Pay Tax. A Taxpayer who fails to submit all or a portion of the monthly payment due to the District, as well as all members, partners, shareholders, or other owners who comprise the Taxpayer, shall be personally liable for the amount of the Excise Tax and interest outstanding. Interest shall be determined pursuant to C.R.S. §39-21-110.5(2), as amended, and shall begin accruing the day after the payment is due.

4.2 Late Fee. Payment of the excise tax shall be made no later than the date set forth in paragraph 3.3. If Taxpayer does not remit payment by the date set forth in paragraph 3.3, a late fee of ten percent (10%) of the unpaid Excise Tax shall be added to the amount due if the Designated Agent determines that a deficient or late payment is due to any reason other than fraudulent intent. If the Designated Agent determines that any part of the late or deficient payment is due to fraud with the intent to evade the Excise Tax, there shall be a penalty of fifty percent (50%) of the unpaid excise tax added to the deficient monthly assessment. The Designated Agent will provide the Taxpayer with notice of the penalty in the Deficiency Notice or at such later point if the Designated Agent determines that a fraudulent intent penalty applies.

4.3 Deficiency Notice. The Designated Agent shall send a Deficiency Notice to any Taxpayer who has failed to submit a payment by the date specified in Section 3.3. The Taxpayer shall arrange payment to the satisfaction of the Designated Agent or file a Response within ten (10) days of the mailing of the Deficiency Notice.

4.4 Proceedings after Response Filed. Within five (5) days of the Taxpayer filing a timely Response, the Designated Agent shall either (i) issue a Final Assessment consistent with the amount listed in the Response or (ii) notify the Taxpayer that the District will require an audit or additional information from the Taxpayer before issuing a Final Assessment. If the District requests additional information and receives no further communication from the Taxpayer within five (5) days, the Final Assessment shall be calculated and issued pursuant to Section 4.2. If the District requests additional information and receives communication from the Taxpayer within five (5) days, the Designated Agent shall inspect the requested information and issue a Final Assessment.

4.5 Default Proceedings. If a Taxpayer fails to respond as provided in Article 4, the Designated Agent shall issue a notice of default to the Taxpayer and conduct a mandatory audit at the Taxpayer's expense. After determining the amount of taxes owed, the Designated Agent shall issue a Final Assessment consistent with the audit. The Final Assessment may include penalties under Section 4.2, if such penalties were either included in the Deficiency Notice or added as a result of the audit.

4.6 Action on Debt. If the Taxpayer refuses to pay the debt listed in the Final Assessment, the District may file a request with the Local Licensing Authority to revoke Taxpayer's license to conduct business within the District. Additionally, the District may institute an action in court seeking to recover the amount owed to District. The District may also seek to recover reasonable attorney fees and costs. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, as the case may be, and in any such proceeding no bond shall be required of the District, nor shall any sheriff require of the District an indemnifying bond for execution of the writ of attachment or writ of execution upon any judgment entered in such proceedings. The

District may prosecute appeals in such cases without the necessity of providing a bond. It shall be the duty of the District's General Counsel, when requested by the District's Board of Directors, to commence action under this Section.

4.7 Refunds. Refunds of taxes paid under this title shall be at the approval of the Designated Agent. In order to qualify for a refund, the Taxpayer must file an amended excise tax return and request in writing a refund on excess taxes remitted. All refunds will be processed according to the deadlines for all vendor payments.

4.7.1 In lieu of requesting a refund, the Taxpayer may take a credit on the following month's Excise Tax Return. Supporting documentation must be attached.

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