

ILLINOIS REGISTER

ILLINOIS DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Cannabis Cultivation Privilege Tax
- 2) Code Citation: 86 Ill. Adm. Code 422
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
422.100	Amendment
422.120	Amendment
- 4) Statutory Authority: Implementing the Cannabis Cultivation Privilege Tax Law [410 ILCS 705/Art. 60] and authorized by Section 60-45 of the Cannabis Cultivation Privilege Tax Law.
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Sections 422.110 and 422.120 of Part 422, Cannabis Cultivation Privilege Tax. The rulemaking amends Section 422.110 to address the tax treatment of cannabis and cannabis concentrate transferred from cannabis cultivators to cannabis infusers to be processed into cannabis-infused products on behalf of cannabis cultivators. This rulemaking amends Section 422.120 to provide for additional record keeping requirements for infuser organizations that process cannabis and cannabis-infused products on behalf of cannabis cultivators.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: The amendments address certain types of transactions between licensed cannabis cultivators and licensed cannabis infusers.
 - B) Reporting, bookkeeping or other procedures required for compliance: Simple bookkeeping and computer skills.
 - C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
 - 11 Agriculture, Forestry, Fishing and Hunting
 - 42 Wholesale Trade
 - 54 Professional, Scientific, and Technical Services
 - B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii. regulatory requirements;
 - viii. record keeping;
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2023

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The full text of the Proposed Amendments begins on the next page:

Section 422.110 Tax Imposed

- a) *Beginning September 1, 2019, the Tax is imposed upon the privilege of cultivating cannabis at the rate of 7% of the gross receipts from the first sale of cannabis by a cultivator. [410 ILCS 705/60-10(a)]* For purposes of this Section, “first sale” does not include a transfer of cannabis or cannabis concentrate by a cultivator to an infuser pursuant to an agreement that provides that the cultivator will retain title to the cannabis or cannabis concentrate and the infuser will create cannabis-infused products on behalf of the cultivator for an agreed-upon fee or rate.

EXAMPLE 1: A cultivator grows cannabis and sells the grown cannabis to an infuser for \$200. The cultivator owes \$14 in Tax on the cannabis sold to the infuser.

EXAMPLE 2: A craft grower grows cannabis and sells 100 quarter ounces of the grown cannabis to a cultivator for \$5000. The craft grower is liable for Tax in the amount of \$350. The cultivator subsequently sells 50 quarter ounces of this cannabis to a dispensary for \$55 per quarter ounce. The cultivator has no Tax liability on the sale of cannabis to the dispensary.

EXAMPLE 3: A cultivator sells cannabis and cannabis concentrate to an infuser for \$1,000. The infuser makes cannabis-infused products from the cannabis and cannabis concentrate. The infuser sells all the cannabis-infused products created from the cannabis and cannabis concentrate to the cultivator for \$1,500. The cultivator owes \$70 tax on the transfer of the cannabis and cannabis concentrate to the infuser. The infuser owes no tax on the sale of the cannabis-infused products to the cultivator.

EXAMPLE 4: A cultivator contracts with an infuser to provide the infuser with cannabis and cannabis concentrate and for the infuser to create cannabis-infused products on behalf of the cultivator for an agreed-upon fee or rate. The cultivator transfers to the infuser cannabis and cannabis concentrate with a fair market value of \$750, and the cultivator retains title to the cannabis and cannabis concentrate. The infuser makes the cannabis-infused products, transfers to the cultivator all cannabis-infused products created from the cannabis and cannabis concentrate, returns any remaining cannabis and cannabis concentrate, and charges the cultivator

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the agreed-upon fee or rate for its services. The cultivator does not owe tax on the fair market value of the cannabis and cannabis concentrate transferred to the infuser. The cultivator subsequently sells the cannabis-infused products to a dispensary and owes tax on the gross receipts received from the sale to the dispensary.

- b) *The sale of any product by a cultivator that contains any amount of cannabis or any derivative thereof is subject to the Tax on the full selling price of the product. [410 ILCS 705/60-10(a)]*

EXAMPLE 1: A cultivator grows cannabis and sells the cannabis for \$200 to an infuser. The cultivator has \$14 in Tax liability on the sale of the cannabis to the infuser. The infuser creates cannabis-infused products and sells the products to a dispensary. The infuser has no Tax liability.

EXAMPLE 2: A cultivator grows cannabis, processes a pound of cannabis into cannabis-infused products, and sells the cannabis-infused products to a dispensary for \$500. It normally sells the cannabis at wholesale for \$200 an ounce. The cultivator has \$35 ($\$500 \times .07$) in Tax liability on the sale of the cannabis-infused products to the dispensary.

- c) It shall be presumed that all sales of cannabis are subject to Tax until the contrary is established, and the burden of proving that a transaction is not taxable shall be upon the cultivator.
- d) In computing Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, incoming freight or transportation costs, overhead costs, processing charges, salesmen's commissions, interest paid by the taxpayer, or any other expenses whatsoever. Costs of doing business are an element of the cultivator's gross receipts and are subject to the Tax even if separately stated on the bill to the customer. (See 86 Ill. Adm. Code 130.415 for rules regarding the treatment of transportation and the delivery charges.)

EXAMPLE: A cultivation center sells 500 ounces of cannabis to a dispensing organization for \$100,000, plus a delivery charge of \$250 and a fuel surcharge of \$50. The fuel surcharge is a cost of doing business and is part of the selling price. The cultivation center delivers the cannabis to the dispensing organization. The cultivation center does not provide the

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dispensing organization with the option to pick up the cannabis. As a result, the cost of the delivery service is part of the selling price of the cannabis. The selling price for purposes of determining the Tax is \$100,300.

- e) The Tax is computed on the selling price of the cannabis after the application of any applicable discounts.

EXAMPLE: A cultivation center sells 500 ounces of cannabis to a dispensing organization for \$200 an ounce. The cultivation center provides a nondiscriminatory 10% discount for sales over 300 ounces. The total price with the discount is \$90,000. The Tax is computed on the gross receipts of \$90,000.

- f) *The Department may determine the selling price of the cannabis when the seller and purchaser are affiliated persons, when the sale and purchase of cannabis is not an arm's length transaction, or when cannabis is transferred by a cultivator to the cultivator's dispensing organization or infuser and a value is not established for the cannabis. The value determined by the Department shall be commensurate with the actual price received for products of like quality, character, and use in the area. If there are no sales of cannabis of like quality, character, and use in the same area, then the Department shall establish a reasonable value based on sales of products of like quality, character, and use in other areas of the State, taking into consideration any other relevant factors. [410 ILCS 705/60-10(a)]*
- g) *The Tax is solely the responsibility of the cultivator who makes the first sale and is not the responsibility of a subsequent purchaser, a dispensing organization, or an infuser. Cultivators subject to the Tax may, however, reimburse themselves for their Tax liability under this Part by separately stating reimbursement for their Tax liability as an additional charge. [410 ILCS 705/60-10(b)] The charge for reimbursement may not be identified on the invoice as a tax.*
- h) *A cultivator may not either directly or indirectly discriminate in price between different cannabis business establishments that are purchasing a like grade, strain, brand, and quality of cannabis or cannabis-infused product. Nothing in this subsection (h) prevents a cultivator from pricing cannabis differently based on differences in the cost of manufacturing or*

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processing, the quantities sold, such as volume discounts, or the way the products are delivered. [410 ILCS 705/20-30(e) and 30-30(f)]

- i) *The Tax shall be in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any unit of local government.* [410 ILCS 705/60-10(c)]

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 422.120 Infuser Information Returns and Books and Records

- a) Upon request of the Department, an infuser shall file an information return with the Department, no later than the 20th day of the month for the preceding month, by electronic means and in a format prescribed by the Department, showing the names of the suppliers of cannabis and cannabis concentrates, the suppliers' license numbers issued by the Department of Agriculture, the quantities purchased from suppliers, the amounts paid for cannabis and cannabis concentrate during the preceding month, and such other information as is reasonably required by the Department.
- b) Upon request of the Department, an infuser shall file an information return with the Department, no later than the 20th day of the month for the preceding month, by electronic means, showing the total amount of cannabis-infused products sold to dispensaries; the gross receipts from the sale of cannabis-infused products sold to dispensaries during the preceding month; the identities of the dispensaries to whom it was sold; the dispensaries' license numbers issued by the Department of Financial and Professional Regulation; and such other information reasonably required by the Department.
- c) Every infuser shall keep books and records of all purchases of cannabis and cannabis concentrate, all sales of cannabis-infused products, together with invoices, bills of lading, sales records, copies of bills of sale, monthly inventories, inventories prepared as of December 31 of each year, and other pertinent papers and documents. Every infuser shall keep books and records of all cannabis and cannabis concentrate received from cultivators for the purpose of creating cannabis-infused products on behalf of the cultivator and all cannabis-infused products and any remaining

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cannabis or cannabis concentrate returned to the cultivator pursuant to any contract. See Section 422.110(a) and EXAMPLE 4.

- d) All books and records and other papers and documents that are required to be maintained by this Section shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

(Source: Amended at 48 Ill. Reg. _____, effective _____)