Compliance Alert -

Proper Taxation of Cannabis Concentrates by Illinois Dispensaries

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

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Compliance Problem

The Illinois Department of Revenue (IDOR) is aware that some cannabis dispensaries are incorrectly classifying cannabis concentrates as "cannabis-infused products" and taxing them as such. This Compliance Alert is issued to ensure that all Illinois dispensaries know and understand the proper taxation of cannabis concentrates and cannabis-infused products.

Background

Public Act (P.A.) 101-0027 (as further amended by P.A. 101-0363 and P.A. 101-0593) created the Cannabis Regulation and Tax Act. The Act provides for the controlled legalization of Adult-Use Cannabis and sets forth rules and provisions for the taxation of adult-use cannabis in the state of Illinois (410 ILCS 705/60-1 et seq.; 410 ILCS 705/65-1 et seq.; 55 ILCS 5/5-1006.8; 65 ILCS 5/8-11-23).

Dispensaries began selling adult-use cannabis to purchasers on January 1, 2020.

A **cannabis concentrate** is defined as a "product derived from cannabis that is produced by extracting cannabinoids, including tetrahydrocannabinol (THC), from the plant ... and with the intended use of smoking or making a cannabis-infused product" (410 ILCS 705/1-10).

A **cannabis-infused product** is defined as a "beverage, food, oil, ointment, tincture, topical formulation, or another product containing cannabis that is not intended to be smoked" (410 ILCS 705/65-5).

Solution

IDOR has made changes to 86 Ill. Adm. Code 423.105 to clarify how cannabis concentrates should be taxed. The changes added a statement to the definition of "cannabis-infused products" to clarify the definition does not include cannabis concentrates. Cannabis concentrates shall not be taxed as cannabis-infused products at the rate of 20% of the purchase price for cannabis-infused products. Instead the tax is based on the adjusted THC level* of the cannabis concentrate. (Cannabis with an adjusted THC level above 35% is taxed at a rate of 25% of the purchase price; cannabis with an adjusted THC level at or below 35% is taxed at a rate of 10% of the purchase price.)

To provide further clarification, definitions for "smoked" and "smoking" were added to 86 Ill. Adm. Code 423.105. "Smoked" or "smoking" is defined as "changing cannabis from a hard, soft, or liquid form by combustion, heat, electricity, or batteries into a form that can be inhaled by the user." This definition clarifies vape products containing cannabis should not be taxed at the rate of 20% for cannabis-infused products but should be taxed based on the percentage of THC in the solution in the device.

Cannabis dispensaries should review their point-of-sale systems and make any necessary corrections immediately to ensure the appropriate tax rates are being applied.

* Per 410 ILCS 705/65-10, any cannabis subject to Cannabis Purchaser Excise Tax (with the exception of cannabis infused products) is taxed using the "adjusted" THC content. The adjusted THC content is calculated by adding the percentage of delta-9-tetrahydrocannabinol plus .877 multiplied by the percentage of tetrahydrocannabinolic acid (410 ILCS 705/65-5).

Questions

For further information, see the updated definitions in the regulations at:
https://www.ilga.gov/commission/jcar/admincode/086/086004230001050R.html

If you have additional questions, call IDOR's Sales Tax Processing Division at (217) 782-5906.

The content of this Compliance Alert is informational only and does not take the place of statutes, rules and regulations, and court decisions.

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