

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Cannabis Purchaser Excise Tax
- 2) Code Citation: 86 Ill. Adm. Code 423
- 3) 

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
423.100	New Section
423.105	New Section
423.110	New Section
423.115	New Section
423.120	New Section
423.125	New Section
423.130	New Section
423.135	New Section
423.140	New Section
423.145	New Section
423.150	New Section
423.155	New Section
423.160	New Section
423.165	New Section
423.170	New Section
423.175	New Section
- 4) Statutory Authority: 410 ILCS 705/65-50
- 5) Effective Date of Emergency Rules:
- 6) If the Emergency Rules are to expire before the end of the 150-day period, please specify the date on which they are to expire: The Emergency Rules expires 180 days after the effective date. Pursuant to Section 900-5 of P.A. 101-0027, Section 5-45 of the Illinois Administrative Procedure Act is amended to provide that the Department of Revenue may adopt emergency rules to implement the Cannabis Regulation and Tax Act (which includes the Cannabis Purchaser Excise Tax), and the rules are effective for 180 days. 5 ILCS 100/5-45(gg).
- 7) Date filed with the Index Department:
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: P.A. 101-0027 enacted the Cannabis Regulation and Tax Act. 410 ILCS 705/. The Act permits the sale of adult cannabis to purchasers beginning January 1, 2020. The sale of adult cannabis by dispensaries is subject to the Cannabis Purchaser Excise Tax. 410 ILCS 705/65-10. The Emergency Amendments implement the Cannabis Purchaser Excise Tax. In order to provide for the expeditious and timely implementation of the Cannabis Regulation and Tax Act and P.A. 101-0027 (including the Cannabis Purchaser Excise Tax), the Department of Revenue is authorized to adopt emergency rules. The adoption of emergency

rules authorized by P.A. 101-0027 is deemed to be necessary for the public interest, safety, and welfare. See Section 900-5 of P.A. 101-0027 and 5 ILCS 100/5-45(gg).

- 10) A Complete Description of the Subjects and Issues Involved: The rulemaking implements P.A. 101-0027, codified at 410 ILCS 705/. Beginning January 1, 2020, a tax is imposed upon purchasers for the privilege of using cannabis at the following rates: 1) any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level at or below 35% shall be taxed at a rate of 10% of the purchase price; 2) any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level above 35% shall be taxed at a rate of 25% of the purchase price; and 3) a cannabis-infused product shall be taxed at a rate of 20% of the purchase price.
- 11) Are there any proposed rules to this Part pending? No
- 12) Statement of Statewide Policy Objectives: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding the Emergency Rules shall be directed to:

Richard S. Wolters  
Illinois Department of Revenue  
101 West Jefferson  
Springfield, Illinois 62794

(217) 782-2844

The full text of the Emergency Rules begins on the next page:

### **Section 423.100 Nature of the Tax EMERGENCY**

- a) Beginning January 1, 2020, the Cannabis Purchaser Excise Tax Law imposes a tax on the privilege of using cannabis in this State based on the purchase price of cannabis sold by a dispensary to a purchaser for use and consumption. [410 ILCS 705/65-10(a)]. The tax imposed by the Law is collected from the purchaser by the cannabis retailer. The tax imposed by the Law shall be stated on the invoice as a distinct item separate and apart from the purchase price of the cannabis.
- b) *The tax imposed under the Law is in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof [410 ILCS 705/65-10(d)].*

### **Section 423.105 Definitions EMERGENCY**

“Act” means the Cannabis Regulation and Tax Act (410 ILCS 705/).

*“Adjusted delta-9-tetrahydrocannabinol level” means, for a delta-9-tetrahydrocannabinol dominant product, the sum of the percentage of delta-9-tetrahydrocannabinol plus .877 multiplied by the percentage of tetrahydrocannabinolic acid [410 ILCS 705/65-5].*

*“Automated sales suppression device” or “zapper” means a software program that falsifies the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an Internet link to the software program [410 ILCS 705/65-38].*

*“Cannabis” means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction; however, “cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from it), fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. “Cannabis” does not include industrial hemp as defined and authorized under the Industrial Hemp Act and cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Program Act. “Cannabis” also means cannabis flower, concentrate, and cannabis-infused products [410 ILCS 705/1-10].*

*“Cannabis business establishment” means a cultivation center, craft grower, infuser organization, processing organization, dispensing organization, or transporting organization [410 ILCS 705/1-10].*

*“Cannabis concentrate” means a product derived from cannabis that is produced by extracting cannabinoids, including tetrahydrocannabinol (THC), from the plant through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats; water, ice, or dry ice; or butane, propane, CO2, ethanol, or isopropanol and with the intended use of smoking or making a cannabis-infused product [410 ILCS 705/1-10].*

*“Cannabis flower” means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis; including raw kief leaves, and buds, but not resin that has been extracted from any part of such plant; nor any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin [410 ILCS 705/1-10].*

*“Cannabis-infused product” means beverage food, oils, ointments, tincture, topical formulation, or another product containing cannabis that is not intended to be smoked [410 ILCS 705/65-5].*

*“Craft grower” means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization. A craft grower may contain up to 5,000 square feet of canopy space on its premises for plants in the flowering state. The Department of Agriculture may authorize an increase or decrease of flowering stage cultivation space in increments of 3,000 square feet by rule based on market need, craft grower capacity, and the licensee’s history of compliance or noncompliance, with a maximum space of 14,000 square feet for cultivating plants in the flowering stage, which must be cultivated in all stages of growth in an enclosed and secure area. A craft grower may share premises with a processing organization or a dispensing organization, or both, provided each licensee stores currency and cannabis or cannabis-infused products in a*

*separate secured vault to which the other licensee does not have access or all licensees sharing a vault share more than 50% of the same ownership [410 ILCS 705/1-10].*

*“Cannabis retailer” means a dispensing organization that sells cannabis for use and not for resale [410 ILCS 705/65-5].*

*“Department” means the Department of Revenue [410 ILCS 705/65-5].*

*“Dispensary” means a facility operated by a dispensing organization at which activities licensed by the Act may occur. [410 ILCS 705/1-10]*

*“Dispensing organization” means a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, infuser, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under the Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in the Act, dispensing organization includes a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License [410 ILCS 705/1-10].*

*“Electronic cash register” means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner [410 ILCS 705/65-38].*

*“Infuser organization” or “infuser” means a facility operated by an organization or business that is licensed by the Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product [410 ILCS 705/65-5].*

*“Law” means the Cannabis Purchaser Excise Tax Law (410 ILCS 705/65-1 through 65-50).*

*“Person” means a natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court. [410 ILCS 705/65-5]*

*“Phantom-ware” means a hidden programming option embedded in the operating system of an electronic cash register or hardwired into an electronic cash register that can be used to create a second set of records or that can eliminate or manipulate transaction records in an electronic cash register [410 ILCS 705/65-38].*

*“Purchase price” means the consideration paid for a purchase of cannabis, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. However, “purchase price” does not include consideration paid for:*

- 1) *any charge for a payment that is not honored by a financial institution;*

- 2) *any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment; and*
- 3) *any amounts added to a purchaser's bill because of charges made under the tax imposed by the Law, the Municipal Cannabis Retailers' Occupation Tax Law, the County Cannabis Retailers' Occupation Tax Law, the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, or any locally imposed occupation or use tax. [410 ILCS 705/65-5]*

*"Purchaser" means a person who acquires cannabis for a valuable consideration.*

*"Taxpayer" means a cannabis retailer who is required to collect the tax imposed under the Law. [410 ILCS 705/65-5]*

*"Transaction data" includes: items purchased by a purchaser; the price of each item; a taxability determination for each item; a segregated tax amount for each taxed item; the amount of cash or credit tendered; the net amount returned to the customer in change; the date and time of the purchase; the name, address, and identification number of the vendor; and the receipt or invoice number of the transaction [410 ILCS 705/65-38].*

*"Transaction report" means a report that documents, without limitation, the sales, taxes, or fees collected, media totals, and discount voids at an electronic cash register and that is printed on a cash register tape at the end of a day or shift, or a report that documents every action at an electronic cash register and is stored electronically [410 ILCS 705/65-38].*

## **Section 423.110 Tax Imposed EMERGENCY**

- a) *Beginning January 1, 2020, a tax is imposed upon purchasers for the privilege of using cannabis at the following rates:*
  - 1) *Any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level at or below 35% shall be taxed at a rate of 10% of the purchase price;*
  - 2) *Any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level above 35% shall be taxed at a rate of 25% of the purchase price; and*
  - 3) *A cannabis-infused product shall be taxed at a rate of 20% of the purchase price.*
- b) *The purchase of any product that contains any amount of cannabis or any derivative thereof is subject to the tax under subsection (a) of this Section on the full purchase price of the product.*

**EXAMPLE:** A dispensary sells a cannabis-infused product that contains 1/8<sup>th</sup> ounce of cannabis for \$80. One-eighth of an ounce of cannabis normally sells for \$30. The dispensary must collect \$16 in privilege tax on the sales price of the infused product ( $\$80 \times .2 = \$16$ ).

- c) *The tax imposed under this Section is not imposed on cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Program Act.*

- d) *The tax imposed by this Section is not imposed with respect to any transaction in interstate commerce, to the extent the transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.*
- e) *The tax imposed under the Law shall not be imposed on any purchase by a purchaser if the cannabis retailer is prohibited by federal or State Constitution, treaty, convention, statute, or court decision from collecting the tax from the purchaser. [410 ILCS 705/65-10]*

**Section 423.115 Bundling of Taxable and Nontaxable Items; Prohibition; Taxation  
EMERGENCY**

- a) *The Act prohibits dispensing organizations from selling cannabis, cannabis-infused products and concentrates in combination or bundled with each other or any other items for one price. (410 ILCS 705/15-70(n)(17)) If a cannabis retailer sells cannabis, concentrate, or cannabis-infused products in combination or bundled with items that are not subject to tax under the Law for one price in violation of the prohibition on this activity under Section 15-70 of the Act, then the tax under the Law is imposed on the purchase price of the entire bundled product [410 ILCS 705/65-11].*

EXAMPLE: A dispensary makes gift baskets that contain a quarter ounce of cannabis with less than 35% THC that normally sells for \$60, a pipe that normally sells for \$20, 4 cannabis-infused pods that normally sell for \$40, and an electronic device the pods can be used with that normally sells for \$45. The dispensary offers the basket for \$135. The tax under the Law is imposed at the rate of 20% on the purchase price of \$135.

- b) *Each item of cannabis, concentrate and cannabis-infused product must be separately identified by quantity and price on the receipt [410 ILCS 705/15-70(n)(17)].*

**Section 423.120. Collection of Tax  
EMERGENCY**

- a) *The tax imposed by the Law shall be collected from the purchaser by the cannabis retailer at the rate stated in Section 423.110 with respect to cannabis sold by the cannabis retailer to the purchaser, and shall be remitted to the Department as provided in Section 423.130. All sales to a purchaser who is not a cardholder under the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/) are presumed subject to tax collection. Cannabis retailers shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser for selling cannabis to the purchaser.*
- b) *When a cannabis retailer collects the tax from the purchaser, the cannabis retailer shall give the purchaser a receipt. The receipt must show the name and address of the cannabis retailer, the date of the purchase, a brief description of the property sold, the amount of the purchase price on which the tax is based, and the amount of tax collected stated as a distinct item separate and apart from the purchase price of the property sold.*
- c) *If a cannabis retailer collects Cannabis Purchaser Excise Tax measured by a purchase price that is not subject to Cannabis Purchaser Excise Tax, or if a cannabis retailer, in collecting Cannabis Purchaser Excise Tax measured by a purchase price that is subject to tax under the Law, collects more from the purchaser than the required amount of the Cannabis Purchaser Excise Tax on the transaction, the purchaser shall have a legal right*

*to claim a refund of that amount from the cannabis retailer. If, however, that amount is not refunded to the purchaser for any reason, the cannabis retailer is liable to pay that amount to the Department.*

- d) *Any person purchasing cannabis subject to tax under the Law as to which there has been no charge made to him or her of the tax imposed by Section 423.110 shall make payment of the tax imposed by Section 423.110 in the form and manner provided by the Department not later than the 20th day of the month following the month of purchase of the cannabis. [410 ILCS 65-15]*

**Section 423.125 Tax Collected as Debt Owed the State  
EMERGENCY**

*Any cannabis retailer required to collect the tax imposed by the Law shall be liable to the Department for the tax, whether or not the tax has been collected by the cannabis retailer, and any such tax shall constitute a debt owed by the cannabis retailer to this State. To the extent that a cannabis retailer required to collect the tax imposed by the Law has actually collected that tax, the tax is held in trust for the benefit of the Department [410 ILCS 705/65-25].*

**Section 423.130 Return and Payment of Tax by Cannabis Retailer  
EMERGENCY**

- a) *Each cannabis retailer that is required or authorized to collect the tax imposed by the Law shall make a return to the Department, by electronic means, on or before the 20th day of each month for the preceding calendar month stating the following:*
- 1) *the cannabis retailer's name;*
  - 2) *the address of the cannabis retailer's principal place of business and the address of the principal place of business (if that is a different address) from which the cannabis retailer engaged in the business of selling cannabis subject to tax under the Law;*
  - 3) *the total purchase price received by the cannabis retailer for cannabis subject to tax under the Law;*
  - 4) *the amount of tax due at each rate;*
  - 5) *the signature of the cannabis retailer; and*
  - 6) *any other information as the Department may reasonably require.*
- b) *All returns required to be filed and payments required to be made under the Law shall be by electronic means. Cannabis retailers who demonstrate hardship in paying electronically may petition the Department to waive the electronic payment requirement. Taxpayers may not petition the Department for a waiver of the requirement to file all returns by electronic means.*
- c) *Any amount that is required to be shown or reported on any return or other document under the Law shall, if the amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount if the fractional part of a dollar is \$0.50 or more and decreased to the nearest whole-dollar amount if the fractional part of a dollar is less than*

*\$0.50. If a total amount of less than \$1 is payable, refundable, or creditable, the amount shall be disregarded if it is less than \$0.50 and shall be increased to \$1 if it is \$0.50 or more.*

- d) *The cannabis retailer making the return provided for in this Section shall also pay to the Department, in accordance with this Section, the amount of tax imposed by the Law, less a discount of 1.75%, but not to exceed \$1,000 per return period, which is allowed to reimburse the cannabis retailer for the expenses incurred in keeping records, collecting tax, preparing and filing returns, remitting the tax, and supplying data to the Department upon request. No discount may be claimed by a cannabis retailer on returns not timely filed and for taxes not timely remitted. No discount may be claimed by a taxpayer for any return that is not filed electronically. No discount may be claimed by a taxpayer for any payment that is not made electronically, unless a waiver has been granted under this Section.*
- e) *Notwithstanding any other provision of the Law concerning the time within which a cannabis retailer may file a return, any such cannabis retailer who ceases to engage in the kind of business that makes the person responsible for filing returns under the Law shall file a final return under the Law with the Department within one month after discontinuing the business.*
- f) *Each cannabis retailer shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which tax liability to the Department is incurred. The payments shall be in an amount not less than the lower of either 22.5% of the cannabis retailer's actual tax liability for the month or 25% of the cannabis retailer's actual tax liability for the same calendar month of the preceding year. The amount of the quarter-monthly payments shall be credited against the final tax liability of the cannabis retailer's return for that month. If any such quarter-monthly payment is not paid at the time or in the amount required by this Section, then the cannabis retailer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of the quarter-monthly payment actually and timely paid, except insofar as the cannabis retailer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section.*
- g) *If any payment provided for in this Section exceeds the taxpayer's liabilities under the Law, as shown on an original monthly return, the Department shall, if requested by the taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by the credit memorandum may be assigned by the taxpayer to a similar taxpayer under the Law, in accordance with reasonable rules to be prescribed by the Department. If no such request is made, the taxpayer may credit the excess payment against tax liability subsequently to be remitted to the Department under the Law, in accordance with reasonable rules prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's discount shall be reduced, if necessary, to reflect the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on the difference. If a cannabis retailer fails to sign a return within 30 days after the proper notice and demand for signature by the Department is received by the cannabis retailer, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed. [410 ILCS 705/65-30]*

## Section 423.135 Registration of Cannabis Retailers

### EMERGENCY

- a) It shall be unlawful for any cannabis retailer to engage in the business of selling cannabis at retail in this State without a certificate of registration from the Department. *Every cannabis retailer subject to the tax under the Law shall apply to the Department for a certificate of registration under the Law. All applications for registration under the Law shall be made by electronic means.* [410 ILCS 705/65-20]
- b) Each application shall be signed and verified and shall state:
  - 1) the name and social security number of the applicant;
  - 2) the address of the cannabis retailer's principal place of business;
  - 3) the address of the place of business from which the cannabis retailer engages in the business of selling cannabis at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which the cannabis retailer engages in the business of selling cannabis at retail in this State;
  - 4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under the Law (See 35 ILCS 735/3-7);
  - 5) in the case of a publicly traded corporation, the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under the Law; and, in the case of all other corporations, the name, title and, social security number of each corporate officer;
  - 6) in the case of a limited liability company, the name, social security number, and FEIN of each manager and member; and
  - 7) any other information as the Department may reasonably require.
- c) Upon completion of the application for certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration that shall permit the person to whom it is issued to engage in the business as a retailer of cannabis in this State. If an applicant engages in the business of selling cannabis at retail at another location in this State, the Department shall furnish him or her with a sub-certificate of registration for that place of business, and the applicant shall display the appropriate sub-certificate of registration at that place of business. The sub-certificate of registration shall bear the same registration number as that appearing upon the certificate of registration to which the sub-certificate relates. *No certificate of registration shall be issued under the Law unless the applicant has obtained a license from the Department Financial and Professional Regulation under the Act* [35 ILCS 705/65-20].
- d) A certificate of registration shall automatically be renewed, subject to revocation as provided by the Law, for an additional 1 year from the date of its expiration, unless otherwise notified by the Department as provided by this Section.
- e) The Department may require an applicant for a certificate of registration to furnish a bond at the time of filing the application. The certificate of registration will not be issued by the

Department until the applicant provides the Department with satisfactory security, if required.

- f) *The Department may refuse to issue, reissue, or renew a certificate of registration authorized to be issued by the Department if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the certificate of registration is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration of a person that is in default for moneys due under the Law or any other tax or fee Act administered by the Department. For purposes of this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 20 years prior to the date of the Department's notice of refusal to issue or reissue the certificate of registration, permit, or license [20 ILCS 2505/2505-380(b)].*
- g) When a taxpayer to whom a certificate of registration is issued under the Law is in default to the State of Illinois for delinquent returns or for moneys due under the Law or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 60 days before the expiration of the certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full.
- h) The Department may, in its discretion, approve renewal by a taxpayer who is in default if, at the time of renewal, the taxpayer files all of the delinquent returns or pays to the Department the percentage of the defaulted amount as may be determined by the Department and agrees in writing to a payment plan for paying the balance of the defaulted amount.
- i) Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. After receipt of the request for a hearing, the Department shall give notice to the person of the time and place fixed for the hearing, shall hold a hearing, and shall issue its final administrative decision in the matter to the person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- j) The Department shall notify the Department of Financial and Professional Regulation upon a decision not to issue, reissue or renew a certificate of registration to a cannabis retailer under the Law.

#### **Section 423.140 Revocation of Certificate of Registration EMERGENCY**

- a) *The Department has the power, after notice and an opportunity for a hearing, to revoke a certificate of registration issued by the Department if the holder of the certificate of registration fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the*

*Law or any other tax or fee Act administered by the Department [20 ILCS 2505/2505-380(a)].*

- b) The Department, after notice and hearing, shall revoke the certificate of registration (including all sub-certificates of registration, if any, issued hereunder) of any cannabis retailer who violates any of the provisions of the Law. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the cannabis retailer notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90- day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- c) The Department shall notify the Department of Financial and Professional Regulation upon revocation of a certificate of registration issued to a cannabis retailer.

### **Section 423.145 Books and Records**

#### **EMERGENCY**

- a) *Every retailer of cannabis, whether or not the retailer has obtained a certificate of registration under Section 423.135, shall keep complete and accurate records of cannabis held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns, and other pertinent papers and documents relating to the purchase, sale, or disposition of cannabis. Such records need not be maintained on the licensed premises but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cannabis must be retained on the licensed premises for a period of 90 days after such purchase, unless the Department has granted a waiver in response to a written request in cases where records are kept at a central business location within the State of Illinois [410 ILCS 705/65-36(a)]. If a waiver is granted, the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at a location within Illinois for the purpose of inspection or audit as the Department may deem necessary.*
- b) The Department will grant a written waiver under subsection (a) when the cannabis retailer submits a letter to the Department containing:
  - 1) the cannabis retailer's license number and FEIN;
  - 2) the address or addresses of the licensed premises where records are currently maintained;
  - 3) the address of the central location where the cannabis retailer intends to maintain the records; and
  - 4) an acknowledgement by the cannabis retailer that the Department, upon 30 days written notice, may revoke the waiver of the cannabis retailer for one or more licensed premises if the retailer:
    - A) fails to make records available in accordance with the requirements of this Section and the written waiver; or
    - B) transfers or sells the licensed premises to another person.

- c) *Books, records, papers, and documents that are required by the Law to be kept, shall be kept in the English language and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [410 ILCS 705/65-36(b)].*
- d) All books and records kept by a cannabis retailer pursuant to rules adopted by the Department of Financial and Professional Regulation to implement the Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department shall also have access to the cannabis retailer's automated data processing and/or point of sale system.

**Section 423.150 Arrest; Search and Seizure Without a Warrant  
EMERGENCY**

*Any duly authorized employee of the Department: (i) may arrest without warrant any person committing in his or her presence a violation of any of the provisions of the Law; (ii) may without a search warrant inspect all cannabis located in any place of business; (iii) may seize any cannabis in the possession of the cannabis retailer in violation of the Act or the Law; and (iv) may seize any cannabis on which the tax imposed by Section 423.110 this Section has not been paid. The cannabis so seized is subject to confiscation and forfeiture as provided in Sections 423.155 and 423.160. [410 ILCS 705/65-41]*

**Section 423.155 Seizure and Forfeiture  
EMERGENCY**

- a) *After seizing any cannabis as provided in Section 423.150, the Department must hold a hearing and determine whether the retailer was properly registered to sell the cannabis at the time of its seizure by the Department. The Department shall give not less than 20 days' notice of the time and place of the hearing to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in possession of the cannabis is known, the Department must cause publication of the time and place of the hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.*
- b) *If, as the result of the hearing, the Department determines that the retailer was not properly registered at the time the cannabis was seized, the Department must enter an order declaring the cannabis confiscated and forfeited to the State, to be held by the Department for disposal by it as provided in Section 423.160. The Department must give notice of the order to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in possession of the cannabis is known, the Department must cause publication of the order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held. [410 ILCS 705/65-42]*

**Section 423.160. Search Warrant; Issuance and Return; Process; Confiscation of Cannabis;  
Forfeitures  
EMERGENCY**

- a) *If a peace officer of this State or any duly authorized officer or employee of the Department has reason to believe that any violation of the Law or this Part has occurred and that the person violating the law or this Part has in that person's possession any cannabis in violation of the Law or this Part, that peace officer or officer or employee of the Department may file or cause to be filed his or her complaint in writing, verified by affidavit, with any court within whose jurisdiction the premises to be searched are situated, stating the facts upon which the belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute that warrant.*
- b) *Upon the execution of the search warrant, the peace officer, or officer or employee of the Department executing the search warrant shall make due return of the warrant to the court issuing the warrant, together with an inventory of the property taken under the warrant. The court must then issue process against the owner of the property if the owner is known; otherwise, process must be issued against the person in whose possession the property is found, if that person is known. In case of inability to serve process upon the owner or the person in possession of the property at the time of its seizure, notice of the proceedings before the court must be given in the same manner as required by the law governing cases of attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as appropriate, the court or jury, if a jury is demanded, shall proceed to determine whether the property so seized was held or possessed in violation of the Law or this Part. If a violation is found, judgment shall be entered confiscating the property and forfeiting it to the State and ordering its delivery to the Department. In addition, the court may tax and assess the costs of the proceedings.*
- c) *When any cannabis has been declared forfeited to the State by the Department, as provided in Section 423.155 and this Section, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy or maintain and use such cannabis in an undercover capacity.*
- d) *The Department may, before any destruction of cannabis, permit the true holder of trademark rights in the cannabis to inspect such cannabis in order to assist the Department in any investigation regarding such cannabis. [410 ILCS 705/65-43]*

#### **Section 423.165. Violations and Penalties; Interest**

##### **EMERGENCY**

- a) *When the amount due is under \$300, any retailer of cannabis who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Law, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of selling cannabis to purchasers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Law is guilty of a Class 4 felony.*
- b) *When the amount due is \$300 or more, any retailer of cannabis who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of selling cannabis to purchasers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Article is guilty of a Class 3 felony.*

- c) *Any person who violates any provision of Section 423.135, fails to keep books and records as required under the Law and this Part, or willfully violates this Part is guilty of a Class 4 felony. A person commits a separate offense on each day that he or she engages in business in violation of Section 423.135. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Law and this Part. A person who is unable to rebut this presumption is in violation of the Article and this Part and is subject to the penalties provided in this Section.*
- d) *Any person who violates any provision of Section 423.135, fails to keep books and records as required under the Law, or willfully violates a rule of the Department for the administration and enforcement of the Law, is guilty of a business offense and may be fined up to \$5,000. If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Law and this Part. A person who is unable to rebut this presumption is in violation of the Law and this Part and is subject to the penalties provided in this Section. A person commits a separate offense on each day that he or she engages in business in violation of Section 423.135.*
- e) *Any taxpayer or agent of a taxpayer who with the intent to defraud purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.*
- f) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 423.145, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Section 423.145, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Section 423.145.*
- g) *Any person who knowingly acts as a retailer of cannabis in this State without first having obtained a certificate of registration to do so in compliance with Section 423.135 shall be guilty of a Class 4 felony*
- h) *A person commits the offense of tax evasion under the Law when he or she knowingly attempts in any manner to evade or defeat the tax imposed on him or her or on any other person, or the payment thereof, and he or she commits an affirmative act in furtherance of the evasion. As used in this Section, "affirmative act in furtherance of the evasion" means an act designed in whole or in part to (i) conceal, misrepresent, falsify, or manipulate any material fact or (ii) tamper with or destroy documents or materials related to a person's tax liability under the Law. Two or more acts of tax evasion may be charged as a single count in any indictment, information, or complaint and the amount of tax deficiency may be aggregated for purposes of determining the amount of tax that is attempted to be or is evaded and the period between the first and last acts may be alleged as the date of the offense.*
  - 1) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is less than \$500, a person is guilty of a Class 4 felony.*

- 2) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$500 or more but less than \$10,000, a person is guilty of a Class 3 felony.*
- 3) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$10,000 or more but less than \$100,000, a person is guilty of a Class 2 felony.*
- 4) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$100,000 or more, a person is guilty of a Class 1 felony.*
- i) *Any person who knowingly sells, purchases, installs, transfers, possesses, uses, or accesses any automated sales suppression device, zapper, or phantom-ware in this State is guilty of a Class 3 felony*
- j) *A prosecution for any act in violation of subsection (h) may be commenced at any time within 5 years of the commission of that act.*
- k) *Any person whose principal place of business is in this State and who is charged with a violation under this Section shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue.*
- l) *Except as otherwise provided in subsection (h), a prosecution for a violation described in this Section may be commenced within 3 years after the commission of the act constituting the violation. [410 ILCS 705/65-38]*
- m) *All provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Law shall apply.*

**Section 423.170 Cannabis Retailers; Purchase and Possession of Cannabis  
EMERGENCY**

*Cannabis retailers shall purchase cannabis for resale only from cannabis business establishments [410 ILCS 705/65-45].*

**Section 423.175 Administration and Enforcement; Incorporation by Reference  
EMERGENCY**

- a) *The Department shall have full power to administer and enforce the Law, to collect all taxes and penalties due hereunder, to dispose of taxes and penalties so collected in the manner hereinafter provided, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty hereunder.*
- b) *In the administration of, and compliance with, the Law, the Department and persons who are subject to the Law shall have the same rights, remedies, privileges, immunities, powers, and duties, and be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 2, 3-55, 3a, 4, 5, 7, 10a, 11, 12a, 12b, 14, 15, 19, 20, 21, and 22 of the Use Tax Act and Sections 1, 2-12, 2b, 4 (except that the time limitation provisions shall run from the date when the tax is due rather than from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuance of notices of tax liability shall run from the date when the tax is due rather than from the date when*

*gross receipts are received and except that in the case of a failure to file a return required by this Act, no notice of tax liability shall be issued on and after each July 1 and January 1 covering tax due with that return during any month or period more than 6 years before that July 1 or January 1, respectively), 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5j, 6d, 7, 8, 9, 10, 11, and 12 of the Retailers' Occupation Tax Act and all of the provisions of the Uniform Penalty and Interest Act, which are not inconsistent with the Law, as fully as if those provisions were set forth herein. References in the incorporated Sections of the Retailers' Occupation Tax Act and the Use Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean cannabis retailers when used in the Law. References in the incorporated Sections to sales of tangible personal property mean sales of cannabis subject to tax under the Law when used in the Law. [410 ILCS 705/65-40]*

- c) To avoid needless repetition, the substance and provisions of all Use Tax Regulations (86 Ill. Adm. Code 150) and all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) which are not incompatible with the Cannabis Purchaser Excise Tax Law or any special rules that may be promulgated by the Department under the Law, are incorporated herein by reference and made a part hereof