

Illinois Department of Revenue
Regulations

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SOURCE: Adopted at 38 Ill. Reg. 17060, effective July 25, 2014.

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Title 86 Part 429 Section 429.105 Definitions

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Section 429.105 Definitions

"Act" means the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

"Cannabis" has the meaning given that term in Section 3 of the Medical Cannabis Control Act [720 ILCS 550/3(a)] [410 ILCS 130/10(b)].

"Cultivation center" means a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis [410 ILCS 130/10(e)].

"Department" means the Department of Revenue [410 ILCS 130/195].

"Designated caregiver" means a person who:

is at least 21 years of age;

has agreed to assist with a patient's medical use of cannabis;

has not been convicted of an excluded offense; and

assists no more than one registered qualifying patient with his or her medical use of cannabis [410 ILCS 130/10(l)].

"Dispensing organization" means a facility operated by an organization or business that is registered by the Department of Financial and Professional Regulation to acquire medical cannabis from a registered cultivation center for the purpose of dispensing cannabis, paraphernalia, or related supplies and educational materials to registered qualifying patients [410 ILCS 130/10(o)].

"Law" means the Medical Cannabis Cultivation Privilege Tax Law [410 ILCS 130/190 through 215].

"Medical cannabis" means cannabis and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD), used as an herbal remedy or therapy to treat disease or alleviate symptoms. Medical cannabis can be administered by a variety of routes, including, but not limited to: vaporizing or smoking dried buds; administering tinctures or tonics; applying topicals such as ointments or balms; consuming infused food products, such as soda or teas; or taking capsules.

"Medical cannabis container" means a sealed, traceable, food compliant, tamper resistant, tamper evident container, or package used for the purpose of containment of medical cannabis from a cultivation center to a dispensing organization [410 ILCS 130/10(n)].

"Medical cannabis infused product" means food, oils, ointments, or other products containing usable cannabis that are not smoked [410 ILCS 130/10(q)].

"Ounce" means 28.35 grams.

"Person" means an individual, partnership, corporation, or public or private organization [410 ILCS 130/195].

"Qualifying patient" means a qualifying patient registered under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130/195].

"Sales price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, and services, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever.

"Usable cannabis" means the seeds, leaves, buds, and flowers of the cannabis plant and any mixture or preparation thereof, but does not include the stalks, and roots of the plant. It does not include the weight of any non-cannabis ingredients combined with cannabis, such as ingredients added to prepare a topical administration, food, or drink [410 ILCS 130/10(w)].

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Title 86 Part 426 Section 426.110 Nature and Rate of Tax

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Section 429.110 Nature and Rate of Tax

- a) *Beginning January 1, 2014, a tax is imposed upon the privilege of cultivating medical cannabis at a rate of 7% of the sales price per ounce. The tax is paid by a cultivation center and is not the responsibility of a dispensing organization, qualifying patient or designated caregiver [410 ILCS 130/200(a)].*
- b) *The tax imposed under this Law shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof [410 ILCS 130/200(b)].*
- c) The cultivation center may seek reimbursement of the tax. The charge for reimbursement may not be identified on the invoice as a tax.
- d) Tax Base
 - 1) The tax is calculated based on the sales price of the number of ounces or partial ounces of usable medical cannabis sold by a cultivation center. For example, a cultivation center sells 500 ounces of medical cannabis to a dispensing organization for \$100,000. The tax is 7% of \$100,000, or \$7,000.
 - 2) The sales price is determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. See 86 Ill. Adm. Code 130.415 for rules regarding the treatment of transportation and delivery charges. For example, a cultivation center sells 500 ounces of medical cannabis to a dispensing organization for \$100,000 plus a delivery charge of \$250 and a fuel surcharge of \$50. The cultivation center delivers the medical cannabis to the dispensing organization. The cultivation center and the dispensing organization do not agree upon the delivery charges separately from the sales price of the medical cannabis that is sold. As a result, the cost of the delivery service is part of the "sales price" of the medical cannabis. The sales price for purposes of determining the tax is \$100,300.
 - 3) The tax is computed on the sales price of the medical cannabis sold after the application of any applicable discounts. For example, a cultivation center sells 500 ounces of medical 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 sales price of \$90,000.

- 4) There is no tax on free samples of medical cannabis given to a dispensing organization by a cultivation center. However, the cultivation center will incur Use Tax liability on the cost price of the free samples of medical cannabis given to the dispensing organization. (See 86 Ill. Adm. Code 150.305(c).)
- 5) The tax on a package or unit of medical cannabis infused product shall be based on the weight in ounces of usable cannabis as shown on the label required by 8 Ill. Adm. Code 1000.420.
- e) A cultivation center may not either directly or indirectly discriminate in price between different dispensing organizations that are purchasing a like grade, strain, brand, and quality of cannabis or cannabis-infused product. Nothing in this Part prevents cultivation centers from pricing medical cannabis differently based on differences in the cost of manufacture, the quantities sold, such as volume discounts, or the way the products are delivered.
- f) The Law does not exempt any sales of medical cannabis cultivated by a cultivation center. All sales of medical cannabis are taxable.

Index 86 Part 429 Section 429.115 Registration

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Section 429.115 Registration

- a) It is unlawful for any person to engage in the business of cultivating medical cannabis in this State without a certificate of registration from the Department.
- b) *Every person subject to the tax under the Law shall apply to the Department (upon a form prescribed and furnished by the Department) for a certificate of registration under this Law. Application for a certificate of registration shall be made to the Department upon forms furnished by the Department. [410 ILCS 130/205(a)]*
- c) *The certificate of registration which is issued by the Department to a retailer under the Retailers' Occupation Tax Act [35 ILCS 120] shall permit a person to engage in a business of cultivating medical cannabis under the Law without registering separately with the Department [410 ILCS 130/205(a)]. If a retailer holding a certificate of registration under the Retailers' Occupation Tax Act engages in the business of cultivating medical cannabis 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. [35 ILCS 120/2a] A certificate of registration or sub-certificate of registration issued under the Retailers' Occupation Tax Act waives the registration requirements process under subsection (d). However, the Department may require the retailer to provide such other information as the Department may reasonably require to administer and enforce the provisions of the Law. A retailer may not engage in the business of cultivating medical cannabis until he or she is issued a certificate of registration under subsection (f).*
- d) Each application shall be signed and verified and shall state:

- 1) the name and social security number of the applicant;
 - 2) the address of his or her principal place of business;
 - 3) the address of the place of business from which he or she engages in the business of cultivating medical cannabis 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 he or she engages in the business of cultivating medical cannabis 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;
 - 5) in the case of a publicly traded corporation, the FEIN of the corporation, and 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, along with the last 4 digits of each of their social security numbers; and, in the case of all other corporations, the FEIN of the corporation, and 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) such other information as the Department may reasonably require.
- e) The Department may, in accordance with Section 2a of the Retailers' Occupation Tax Act, require an applicant for a certificate of registration under subsection (d), at the time of filing the application, to furnish a bond. No certificate of registration under the Law will be issued by the Department until the applicant provides the Department with satisfactory security, if required.
- f) Upon receipt of the application for certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, if required, the Department will issue to the applicant a certificate of registration that shall permit the person to whom it is issued to engage in the business of cultivating medical cannabis in this State at the location identified on the certificate, and the certificate of registration shall be conspicuously displayed at the location. No certificate of registration issued to an applicant shall be valid after the expiration of 5 years from the date of its issuance or last renewal. For retailers possessing a certificate of registration under the Retailers' Occupation Tax Act, after review of the certificate of registration issued under the Retailers' Occupation Tax Act, the

issuance of a sub-certificate of registration, if necessary, and receipt of any additional information the Department may reasonably require, the Department will issue to the applicant a certificate of registration under the Law that shall permit the person to whom it is issued to engage in the business of cultivating medical cannabis in this State at the location identified on the certificate, and the certificate of registration shall be conspicuously displayed at that location. A certificate of registration issued to a retailer shall be valid until the expiration of the certificate of registration issued to the retailer under the Retailers' Occupation Tax Act. A cultivation center must also possess a Cultivation Center License issued by the Illinois Department of Agriculture for the location prior to commencement of any activities. (See 8 Ill. Adm. Code 1000.100.)

- g) 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.

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Title 86 Part 429 Section 429.120 Revocation of Certificate of Registration

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Section 429.120 Revocation of Certificate of Registration

- a) The Department may, after notice and a hearing, revoke the certificate of registration of any person 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 person so accused 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 the 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- b) A person permitted by Section 429.115(c) to operate a cultivation center under a certificate of registration issued pursuant to the Retailers' Occupation Tax Act must cease selling medical cannabis if the certificate of registration is revoked unless and until the person obtains a certificate of registration issued pursuant to the Retailers' Occupation Tax Act or obtains a separate certificate of registration under the Law.

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Title 86 Part 429 Section 429.125 Returns

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Section 429.125 Returns

a) *On or before the 20th day of each calendar month, every person subject to the tax imposed under the Law during the preceding calendar month shall file a return with the Department stating:*

- 1) *The name and address of the taxpayer;*
 - 2) *The taxpayer's registration number;*
 - 3) *The number of ounces of medical cannabis sold to dispensary organizations during the preceding calendar month;*
 - 4) *The total consideration received from the sale of medical cannabis;*
 - 5) *The amount of any credits;*
 - 6) *The amount of tax due;*
 - 7) *The signature of the taxpayer, and*
 - 8) *Such other reasonable information as the Department may require. [410 ILCS 130/210]*
- b) *The taxpayer shall remit the amount of the tax due to the Department at the time the taxpayer files his or her return [410 ILCS 130/210]. Taxpayers may be required to use electronic funds transfer to pay their tax liability. (See 20 ILCS 2505/2505-210.)*
- c) *If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed [410 ILCS 130/210].*

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Title 86 Part 429 Section 429.130 Claims and Credit Memoranda

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Section 429.130 Claims and Credit Memoranda

Persons operating cultivation centers may file claims in accordance with Sections 6, 6a and 6b of the Retailers' Occupation Tax Act.

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Title 86 Part 429 Section 429.135 Books and Records

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Section 429.135 Books and Records

- a) Every cultivation center shall keep books and records of all sales of medical cannabis, 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. [35 ILCS 120/7]
- b) All books and records and other papers and documents that are required by this Section and the Law to be kept 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. [35 ILCS 120/7] Records shall be maintained at the physical location of the cultivation center. All books and records kept by a cultivation center pursuant to rules adopted by the Illinois Department of Agriculture 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 cultivation center's automated data processing and/or point of sale system.
- c) Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability shall, for purposes of this Part, be preserved until the expiration of that period unless the Department, in writing, authorizes their destruction or disposal prior to that expiration. [35 ILCS 120/7] However, if the Department allows a cultivation center to destroy books and records prior to the expiration of the preservation period, the cultivation center is not relieved of any obligation to maintain books and records under any rule or regulation adopted by another State agency to implement the Act.

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Title 86 Part 429 Section 429.140 Penalties and Interest

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Section 429.140 Penalties and Interest

- a) All provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act shall apply.
- b) The criminal penalties contained in Section 13 of the Retailers' Occupation Tax Act that are not inconsistent with the Law shall apply.

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Title 86 Part 429 Section 429.145 Department's Authority to Administer the Law

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Section 429.145 Department's Authority to Administer the Law

- a) *The Department shall have full power to administer and enforce this Law, to collect all taxes and penalties due under the Law, to dispose of taxes and penalties so collected in the manner provided in the Law and this Part, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty [410 ILCS 130/205(b)].*
- 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 1, 1a, 2 through 2-65 (in respect to all provisions therein other than the State rate of tax), 2a, 2b, 2c, 3 (except provisions relating to transaction returns and quarter monthly payments, and except for provisions that are inconsistent with this Law), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12 and 13 of the Retailers' Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act as fully as if those provisions were set forth herein in the Law [410 ILCS 130/205(b)].*