

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 429
MEDICAL CANNABIS CULTIVATION PRIVILEGE TAX LAW

Section	
<u>429.105</u>	<u>Definitions</u>
<u>429.110</u>	<u>Nature and Rate of the Tax</u>
<u>429.115</u>	<u>Registration</u>
<u>429.120</u>	<u>Revocation of Certificate of Registration</u>
<u>429.125</u>	<u>Returns</u>
<u>429.130</u>	<u>Claims and Credit Memoranda</u>
<u>429.135</u>	<u>Books and Records</u>
<u>429.140</u>	<u>Penalties and Interest</u>
<u>429.145</u>	<u>Department's Authority to Administer the Law; Incorporation by Reference</u>

AUTHORITY: Implementing the Medical Cannabis Cultivation Privilege Tax Law and authorized by Section 215 of the Medical Cannabis Cultivation Privilege Tax Law [410 ILCS 130/215].

SOURCE: Proposed at 38 Ill. Reg. _____, effective _____.

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: (1) is at least 21 years of age; (2) has agreed to assist with a patient's medical use of cannabis; (3) has not been convicted of an excluded offense; and (4) assists no more than one registered qualifying patient with his or her medical use of cannabis [410 ILCS 130/10(i)].

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

"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 130/190-130/215].

"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 topical 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)].

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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 which 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.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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.

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

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 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 with a sub-certificate of registration for such place of business, and the applicant shall display the appropriate sub-certificate of registration at such place of business. The sub-certificate of registration shall bear the same registration number as that*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

appearing upon the certificate of registration to which such sub-certificate relates. See 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) of this Section. 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 such 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 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 number 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 this Act, along with the last 4 digits of each of their social security numbers; and, in the case of all other corporations, the FEIN number 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 number 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 such 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. [35 ILCS 120/2a]

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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 such applicant a certificate of registration which 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 such 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 such applicant a certificate of registration under the Law which 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 such 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 such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

Section 429.120 Revocation of Certificate of Registration

- a) The Department may, after notice and a hearing as provided herein, 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 such 90

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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) of this Part 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 person's certificate of registration issued pursuant to the Retailers' Occupation Tax Act 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.

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

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 2505/2505-310.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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].

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

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 [35 ILCS 120/6, 6a and 6b].

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

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. See Section 7 of the Retailers' Occupation Tax Act [35 ILCS 120/7].
- b) All books and records and other papers and documents which 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. 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 such period unless the Department, in writing, shall authorize their destruction or disposal prior to such expiration [35 ILCS 120/7]. However, if the Department allows a cultivation center to destroy books and records prior to the expiration of such period, the cultivation center is not relieved of any obligation to maintain

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

books and records under any rule or regulation adopted by another State agency to implement the Act.

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

Section 429.140 Penalties and Interest

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

(Source: Proposed at 38 Ill. Reg. _____, effective _____)

Section 429.145 Department's Authority to Administer the Law; Incorporation by Reference

- 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 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 [410 ILCS 130/205(b)].

(Source: Proposed at 38 Ill. Reg. _____, effective _____)