

CHAPTER 12 Retail Marijuana Taxes¹

¹Editor's Note: Ord. No. 8903 was passed and approved by the people of the City at an election held 11-3-15 and became effective 11-3-15.

Sec. 14-12-1. Definitions.

The following definitions shall apply to the words and phrases used in this Chapter:

- (1) *Average market rate* means the amount determined by the State of Colorado pursuant to C.R.S. 39-28.8-101(1), or such alternate amount as may be determined by the Director of Finance as the average price of unprocessed retail marijuana that is sold or transferred from a retail marijuana cultivation facility to a retail marijuana products manufacturer or retail marijuana store.
- (2) *Person* shall mean a natural person, partnership, sole-proprietorship, association, corporation, limited liability company, estate, receiver, trustee, assignee, lessee or any individual acting in a representative capacity or any other combination of individuals by whatever name known.
- (3) *Retail marijuana* means all or parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Retail marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (4) *Retail marijuana cultivation facility* has the same meaning as defined in Section 12-43.4-103(16), C.R.S.
- (5) *Retail marijuana tax* means the excise tax imposed by this Chapter.
- (6) *Sale* means any exchange or barter, in any manner or by any means whatsoever, for consideration.
- (7) *Transfer* means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any retail marijuana or retail marijuana product from one (1) licensee to another or to a consumer. A transfer includes the movement of retail marijuana or retail marijuana product from one (1) licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual transfer that is reflected on the Marijuana Inventory Tracking Solution ("MITS") system, even if no physical movement of the retail marijuana occurs.

Sec. 14-12-2. Imposition and rate of tax; taxes collected held in trust.

- (a) Excise Tax. In addition to any other tax imposed by law including the sales and use tax levied in Chapter 4 of this Title, there is levied and shall be paid and collected an excise tax of eight percent (8%) or such other rate as may be established pursuant to Section 14-12-8 of this Chapter on the average market rate of unprocessed retail marijuana that is first sold or transferred from a retail marijuana cultivation facility located within the City. The excise tax shall be levied and owed irrespective of where delivery takes place.
- (b) Each retail marijuana cultivation facility shall collect, remit and pay the excise tax on the first sale or transfer of unprocessed retail marijuana. All sums of money paid by a person as the additional excise tax on unprocessed retail marijuana imposed by this Chapter are public monies that are the property of the City. The retail marijuana cultivation facility shall hold such monies in trust for the sole use and benefit of the City until paying them to the Finance Director.

(Ord. 8903 §1, 11-3-15)

Sec. 14-12-3. Books and records to be preserved.

- (a) Every retail marijuana cultivation facility shall keep at each licensed place of business complete and accurate electronic records for that place of business, including itemized invoices of all retail marijuana grown, held, shipped, or otherwise transported or sold to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities.
- (b) The records required by Subsection (a) of this Section shall include the names and addresses of retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities to which unprocessed retail marijuana is sold or transferred, the inventory of all unprocessed retail marijuana on hand, and other pertinent papers and documents relating to the sale or transfer of unprocessed retail marijuana.
- (c) A retail marijuana cultivation facility shall keep itemized invoices of all unprocessed marijuana transferred to retail marijuana stores owned or controlled by the owners of the retail marijuana cultivation facility.

(Ord. 8903 §1, 11-3-15)

Sec. 14-12-4. Returns and remittance of tax—bond required.

- (a) Every retail marijuana cultivation facility shall file a return with the Director of Finance each month. The return, which shall be upon forms prescribed and furnished by the Director of Finance, shall contain, among other things, the total amount of unprocessed retail marijuana sold or transferred during the preceding month and the tax due thereon.
- (b) Every retail marijuana cultivation facility shall file a return with the Director of Finance by the twentieth day of the month following the month reported and with the report shall remit the amount of tax due.
- (c) A retail marijuana cultivation facility shall file with the Director of Finance evidence of a surety bond issued by a company authorized to do business in this state for the benefit of the City in an amount equal to two (2) months of the facility's anticipated liability for the tax imposed pursuant to this Chapter. The amount of the facility's anticipated tax liability shall be determined solely in the discretion of the retail marijuana cultivation facility. The Director of Finance may require a facility to file or a facility may choose to file a replacement surety bond if the amount of the facility's actual tax liability changes after the facility has filed a bond with the Director of Finance pursuant to this Subsection (c).

(Ord. 8903 §1, 11-3-15)

Sec. 14-12-5. Administration and enforcement.

The tax imposed pursuant to this Chapter shall be administered and enforced in accordance with the provisions of Chapter 4 of this Title which provisions are made applicable to this Chapter, including, without limitation, any interest and penalty for failure to make any return or to collect or pay any tax; except that, in the event of a conflict between the provisions of this Chapter and the provisions of Chapter 4 of this Title, the provisions of this Chapter shall control, including without limitation, those provisions of Chapter 4 providing for exemption from sales and use tax which are inapplicable to this Chapter. The burden of proving that any transaction is not subject to the taxes imposed by this Chapter shall be upon the person upon whom the duty to collect the tax is imposed.

Sec. 14-12-6. Rules and regulations.

The Director of Finance is hereby authorized to adopt rules and regulations not inconsistent with the provisions of this Chapter, regarding the payment, collection and remittance of retail marijuana excise taxes. A copy of all such rules and regulations shall be available for public inspection in the office of the Director of Finance. Failure or refusal to comply with any such rules or regulations shall constitute a violation of this Chapter.

Sec. 14-12-7. Criminal penalties for violation.

- (a) It is unlawful and a municipal offense for any retail marijuana cultivation facility to sell or transfer retail marijuana without a license as required by law.
- (b) It is unlawful and a municipal offense for any person to fail or refuse to make any return provided to be made in this Chapter, to make any false or fraudulent return or any false statement in any return, to fail or refuse to make payment to the Director of Finance of any taxes collected or due the City, or in any manner to evade the collection and payment of the tax of any part thereof imposed by this Chapter.
- (c) It is unlawful and a municipal offense for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this Chapter.
- (d) It is unlawful and a municipal offense for any person to violate any provision of this Chapter.
- (e) It shall be a Class 1 municipal offense for any person to violate any provision of this Chapter. Any criminal penalty for violation of the provisions of this Chapter shall be in addition to any civil remedies or penalties which may otherwise be applicable.

(Ord. 8903 §1, 11-3-15; Ord. No. 9610 §13, 11-25-19)

Sec. 14-12-8. Maximum rate for retail marijuana excise tax.

The maximum retail marijuana excise tax rate that may be imposed pursuant to this Chapter is fifteen percent (15%). At any time on or after January 1, 2016, the City may, by ordinance:

- (a) Establish another retail marijuana excise tax rate to be imposed pursuant to this Chapter that is equal to or less than the maximum fifteen percent (15%) tax rate provided in this Chapter; or
- (b) After establishing a retail marijuana excise tax rate that is lower than fifteen percent (15%), increase the tax rate to be imposed pursuant to this Section; except that, in no event shall the City increase the retail marijuana excise tax rate above fifteen percent (15%).