

# 2023 CANNABIS BILL LEGISLATIVE BULLETIN



Appeals, Legal Services, and Disclosure Division  
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FINAL

The 2023 legislature passed legislation legalizing adult-use cannabis. This summary focuses on the tax article (*i.e.*, Article 2) and is divided into the two parts: 1) an overview of key components; and 2) a description of each section.

## I. OVERVIEW OF KEY COMPONENTS

- **Gross receipts tax:** A 10% gross receipts tax, modeled on the existing liquor gross receipts tax (see Minn. Stat. § 295.75), is imposed on all “taxable cannabis products.” The gross receipts tax does not apply to medical cannabis.
- **Local excise tax:** Local excise taxes imposed solely on taxable cannabis products are prohibited.
- **Sales tax:** Products subject to the gross receipts tax are also subject to state and local general sales tax. Medical cannabis continues to be exempt from state and local sales tax.
- **Income tax:** Business expenses of certain cannabis-related businesses, which are not deductible from federal taxable income under section 280E of the Internal Revenue Code, are allowed a subtraction from federal taxable income.
- **Property Tax:** Real property used for raising, cultivating, processing or storage of taxable cannabis products, cannabis flowers, and cannabis products for sale is classified as commercial and industrial property.
- **Controlled substances tax:** The controlled substances tax (see Chapter 297D) previously applied to “marijuana,” among other illegal drugs. Given legalization of adult-use cannabis, amendments were made so “illegal cannabis” is now the only type of cannabis subject to tax.

## II. DETAILED SUMMARY

### GROSS RECEIPTS TAX

**Definitions.** Minn. Stat. § 295.81, subd. 1, provides definitions for the gross receipts tax. Notable definitions are: 1) “cannabis solution product,” found at paragraph (e), which is based on the 297F definition of “nicotine solution product”; 2) “taxable cannabis product,” found at paragraph (r), which includes all products subject to tax; and 3) “taxable cannabis product retailer,” found at paragraph (s), which is broadly defined to include any retailer selling taxable cannabis products. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 1.

**Gross receipts tax imposed.** Minn. Stat. § 295.81, subd. 2, imposes a ten percent tax on the gross receipts of any taxable cannabis product retailer's sales of taxable cannabis products in Minnesota. Retailers may, but are not required, to collect the tax so long as the tax is separately stated on the receipt, invoice, bill of sale, or similar document given to the purchaser. This subdivision also provides how tax applies to bundled transactions. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 2.

**Use tax imposed.** Minn. Stat. § 295.81, subd. 3, imposes a use tax on a person that receives taxable cannabis products for use or storage in Minnesota, other than from a taxable cannabis product retailer that paid the gross receipts tax. This subdivision provides credit for taxes paid to another state or any subdivision thereof on the same transaction. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 3.

**Exemptions.** Minn. Stat. § 295.81, subd. 4, exempts certain sales and uses from tax, including nominal value amounts carried into Minnesota, sales and uses of medical cannabis, and certain tribal-related sales and uses. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 4.

**Tax collection required.** Minn. Stat. § 295.81, subd. 5, requires taxable cannabis product retailers with nexus in Minnesota, and that are not subject to tax, to collect and remit use tax, and give the purchaser a receipt for tax paid. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 5.

**Taxes paid to another state.** Minn. Stat. § 295.81, subd. 6, gives taxable cannabis product retailers a credit against tax for any gross receipts tax paid to another state or any subdivision thereof. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 6.

**Sourcing of sales.** Minn. Stat. § 295.81, subd. 7, applies the sales and use tax sourcing rules found at Minn. Stat. § 297A.668. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 7.

**Administration.** Minn. Stat. § 295.81, subd. 8, adopts various administrative provisions of Chapters 270C and 289A, as those provisions apply to Chapter 297A sales and use taxes. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 8.

**Returns and payment of tax.** Minn. Stat. § 295.81, subd. 9, requires taxable cannabis product retailers to file returns and remit tax as prescribed by the commissioner. The subdivision also addresses filing cycles, due dates, and interest paid on tax overpayments. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 9.

**Deposit of revenues.** Minn. Stat. § 295.81, subd. 10, requires that revenues from the tax be deposited into various funds. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 10.

**Personal debt.** Minn. Stat. § 295.81, subd. 11, makes the tax, and any associated interest and penalties, the personal debt of the person required to file the return. It also addresses the handling of tax debts in the context of an estate and in the case of a fiduciary. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 11.

## LOCAL EXCISE TAX

**Cannabis local tax prohibited.** Minn. Stat. § 295.82 prohibits political subdivisions of this state from imposing a tax solely on the sale of taxable cannabis products. Effective May 31, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 10.

## CONTROLLED SUBSTANCES TAX

**Replacing “marijuana” with “illegal cannabis.”** Chapter 297D, which imposes a tax on various controlled substances tax, previously applied to “marijuana. Amendments were made so the only type of cannabis now subject to tax is “illegal cannabis.” Illegal cannabis is defined as “any taxable cannabis product...held, possessed, transported, transferred, sold, or offered to be sold in violation of [the newly enacted] Chapter 342 or Minnesota criminal laws.” Effective June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 19-27.

## SALES TAX

**Sale and purchase.** Minn. Stat. § 297A.61, subd. 3, was amended by adding a paragraph (n) to provide that a “sale and purchase” includes the transfer for consideration of a taxable cannabis product. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 11.

**Food and food ingredients.** Minn. Stat. § 297A.67, subd. 2, was amended to provide that “food and food ingredients” do not include taxable cannabis products, medical cannabis flower, or medical cannabinoid products. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 12.

**Drugs; medical devices.** Minn. Stat. § 297A.67, subd. 7, was amended to provide that “drug” does not include taxable cannabis products. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 13.

**Sales to government.** Minn. Stat. § 297A.70, subd. 2, was amended to provide that the sales to government exemption does not apply to taxable cannabis products. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 15.

**Sales to nonprofit groups.** Minn. Stat. § 297A.70, subd. 4, was amended to provide that the sales to nonprofit groups exemption does not apply to taxable cannabis products. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 16.

**Nursing homes and boarding care homes.** Minn. Stat. § 297A.70, subd. 18, was amended to

provide that nursing homes and boarding care homes exemption does not apply to taxable cannabis products. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 17.

**Cancellation of permits.** Minn. Stat. § 297A.85 was amended by adding a clause (6) to authorize the commissioner to cancel a sales tax permit if the permit holder is a taxable cannabis product retailer other than a lower-potency hemp edible retailer and its license to sell a taxable cannabis product has been revoked by the Office of Cannabis Management. Effective June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 18.

## **TRIBES – GROSS RECEIPTS TAX AND SALES TAX**

**Authority to share cannabis taxes collected by tribes at off-reservation retail locations.** Minn. Stat. §270C.19 was amended to allow the commissioner to enter into an agreement with any tribal government that has entered into a cannabis compact under section 3.9228 to share state and local sales tax and gross receipts tax imposed on the sales of cannabis at retail locations owned by the tribe off the reservation. Payments are limited to an approximation of expenses borne by the tribe in regulating the production and supplying of the cannabis sold at the location and to taxes paid by tribal members at the location. The amount necessary to make payments to the tribes is appropriated from the general fund. Effective July 1, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 2.

**Gross receipts tax exemption.** Minn. Stat. § 295.81, subd. 4(d), creates an exemption from cannabis gross receipts tax for all sales made on a reservation by any cannabis business licensed by the tribe, and for related uses. Effective for gross receipts received after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 9, subd. 4(d).

**Tribal cannabis sales tax exemption.** Minn. Stat. §297A.67 was amended to provide an exemption from sales tax for sales of taxable cannabis products made on an Indian reservation by a seller of cannabis licensed by the tribe. The exemption also applies to use tax owed on taxable cannabis products purchased on the reservation from a tribally licensed seller. Effective for sales and purchases made after June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 14.

## **INCOME TAX**

**Disallowed section 280E expenses; cannabis licensees and medical cannabis businesses.** Minn. Stat. §§ 290.0132, subd. 29, and 290.0134, subd. 19, are amended to allow the following taxpayers a subtraction for the amount of expenses not allowed for federal income tax purposes under section 280E of the Internal Revenue Code:

- A medical cannabis business, as defined under section 342.01, subd. 53, related to the business of medical cannabis under sections 342.47 to 342.59; or
- A license holder under Chapter 342, related to the business of nonmedical cannabis under that chapter.

Effective for taxable years beginning after December 31, 2022. 2023 Minn. Laws, Ch. 63, Art. 2, §§ 7-8.

### **PROPERTY TAX**

**Class 3.** Minn. Stat. § 273.13, subd. 24, was amended to establish that real property used for raising, cultivating, processing, or storage of taxable cannabis plants, cannabis flowers, and cannabis products for sale is classified as commercial and industrial property. Effective beginning with assessment year 2024 and thereafter. 2023 Minn. Laws, Ch. 63, Art. 2, § 4.

**Commercial-industrial tax capacity.** Minn. Stat. § 275.05, subd. 2, was amended to ensure that real property used for raising, cultivating, processing, or storage of taxable cannabis plants, cannabis flowers, and cannabis products for sale is treated as commercial and industrial property for purposes of the state general tax levy. Effective beginning with assessment year 2024 and thereafter. 2023 Minn. Laws, Ch. 63, Art. 2, § 5.

### **PROPERTY TAX AIDS**

**Local government cannabis aid.** Minn. Stat. Ch. 477A was amended to establish an annual general purpose aid program for counties and cities. Beginning with aid payable is 2024, the total aid available statewide equals the balance in the local government cannabis aid account in the special revenue fund as of the close of the previous fiscal year. Of the aid available for distribution to counties, 20% is distributed equally to all counties, and 80% is distributed proportionally based on the number cannabis businesses in each county as compared to the number of cannabis businesses in all counties. The aid available to cities is distributed proportionally based on the number of cannabis businesses located in each city as compared to the number of cannabis businesses in all cities. Effective on July 1, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 28.

### **TAX ADMINISTRATION**

**Electronic remittance of tax.** Minn. Stat. § 289A.33 provides the commissioner of revenue the authority to waive electronic payment requirements to address the possibility that cannabis businesses will be unable to secure banking services due to cannabis still being an illegal controlled substance under federal law. Paragraph (a) requires the commissioner to waive the requirement to remit certain taxes electronically upon request if the taxpayer's failure to pay electronically is due to its engagement in cannabis-related business allowed under Minnesota law. Paragraph (b) allows the commissioner to publish a notice providing a general waiver of the same requirement if, in consultation with the commissioner of commerce, the commissioner determines the inability to find banking services is widespread and enforcement of the electronic remittance requirement will significantly impede the timely paying of tax. If the commissioner issues the general waiver, a cannabis business must file and pay tax in the form and manner prescribed by the commissioner. Effective May 31, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 6.

## DATA PRACTICES

**Office of Cannabis Management.** Minn. Stat. § 270B.12 was amended to add a new subdivision 4a, to allow the commissioner to disclose return information to the Office of Cannabis Management for the purpose of administering Minn. Stat. § 270C.726 (see immediately below). Effective June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 1.

**Posting of Tax Delinquency; Sale of Cannabis.** Minn. Stat. § 270C.726 was added and requires the commissioner to submit to the Office of Cannabis Management a list of taxpayers subject to the cannabis gross receipts tax that failed to file or pay required taxes. The Office of Cannabis Management is required to post the list on its website. Certain cannabis-related businesses are prohibited from selling or delivering any product to a listed taxpayer, and penalties are imposed for violations. This new statute is modeled on the tax delinquency posting statute for liquor and beer, which is found at Minn. Stat. § 270C.725. Effective June 30, 2023. 2023 Minn. Laws, Ch. 63, Art. 2, § 3.