

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8. Cannabis Excise Tax Effective on and after January 1, 2023**

**Section 3802. Gross Receipts from Sales of Cannabis and Cannabis Products.**

(A new regulation to be added to the California Code of Regulations)

**Regulation 3802. Gross Receipts from Sales of Cannabis and Cannabis Products.**

(a) For purposes of the cannabis excise tax imposed by Revenue and Taxation Code (RTC) section 34011.2 (cannabis excise tax) “gross receipts” from the retail sale of cannabis or cannabis products include any amount the purchaser is required to pay to purchase the cannabis or cannabis products, regardless of how the amount is denominated or labeled on the invoice, receipt, or other document provided to the purchaser, unless the amount is excluded or deductible from “gross receipts” pursuant to RTC section 6012. “Gross receipts” specifically include, but are not limited to, any amount the purchaser is required to pay for:

(1) Services that are part of the sale of the cannabis or cannabis products. For example, when a cannabis retailer requires a purchaser to pay a fee to reimburse itself for the cost of processing the purchaser’s credit card payment for the purchase of cannabis, the fee is included in the gross receipts from the sale of the cannabis.

(2) Tangible personal property, including packaging, the purchaser is required to purchase as a condition of the sale of the cannabis or cannabis products. For example, if a purchaser is required to purchase a plastic bag or jar as a condition of the retail sale of the cannabis, the amount the purchaser is required to pay for the plastic bag or jar is included in the gross receipts from the sale of the cannabis. If a purchaser is required to purchase a cartridge as a condition of the retail sale of the cannabis product contained in the cartridge, the amount the purchaser is required to pay for the cartridge is included in the gross receipts from the sale of the cannabis product. Also, if a purchaser is required to purchase a cartridge and vaping device as a condition of the retail sale of the cannabis product contained in the cartridge, the amount the purchaser is required to pay for the cartridge and vaping device is included in the gross receipts from the sale of the cannabis product.

(b) (1) For purposes of the cannabis excise tax, “gross receipts” from the retail sale of cannabis or cannabis products does not include a reasonable amount charged for optional tangible personal property purchased with cannabis or cannabis products in the same retail sale regardless

of whether those amounts are separately stated on the invoice, receipt, or other document provided by the cannabis retailer to the purchaser and regardless of whether the optional tangible personal property is purchased with the cannabis or cannabis products as a unit.

(A) “Optional tangible personal property” means tangible personal property that a purchaser is not required to purchase as a condition of the sale of the cannabis or cannabis product because the purchaser could purchase that cannabis or cannabis product or the same kind of cannabis or cannabis product, as defined in subdivision (b)(1)(B), from the cannabis retailer without purchasing the tangible personal property.

(B) For purposes of subdivision (b)(1)(A), “same kind of cannabis” means cannabis that is the same brand, quantity, strain, and type (e.g., flower, pre-roll, shake) as the cannabis purchased and “same kind of cannabis product” means cannabis product that is the same brand, quantity, strain, and type (e.g., beverage, capsule, concentrate, edible, tincture, topical, cannabis oil) as the cannabis product purchased.

(C) For example, when a cannabis retailer sells seven-gram jars of XYZ brand Hawaiian Punch strain cannabis flower separately from lighters or pipes so that purchasers are not required to purchase the lighters or pipes as a condition of the sale of the cannabis, then a lighter or pipe is optional tangible personal property when a purchaser chooses to purchase one with a seven-gram jar of XYZ brand Hawaiian Punch strain cannabis flower in the same retail sale. Also, when a cannabis retailer sells one-gram cartridges of XYZ brand Hawaiian Punch strain cannabis oil separately from vaping devices so that purchasers are not required to purchase the vaping devices as a condition of the sale of the cannabis products, then a vaping device is optional tangible personal property when a purchaser chooses to purchase one with a one-gram cartridge of XYZ brand Hawaiian Punch strain cannabis oil in the same retail sale.

(2) The cannabis retailer has the burden to maintain and make available to the Department records that establish that tangible personal property purchased with cannabis or cannabis products in a retail sale was optional tangible personal property. If the Department determines that tangible personal property purchased with cannabis or cannabis products in a retail sale was not optional tangible personal property, the entire amount charged for the tangible personal property shall be included in the gross receipts from the retail sale of the cannabis or cannabis products pursuant to subdivision (a).

(3) The cannabis retailer also has the burden to maintain and make available to the Department records that establish that the amount charged for optional tangible personal property purchased with cannabis or cannabis products in a retail sale was reasonable. If the Department determines that any amount charged for optional tangible personal property exceeds a reasonable charge, the excess amount shall be included in the gross receipts from

the sale of the cannabis or cannabis products pursuant to subdivision (a). The factors the Department may consider in determining whether the amount charged for optional tangible personal property is reasonable, include, but are not limited to:

(A) The wholesale cost of optional tangible personal property.

(B) The size of the markup added to the wholesale cost of the optional tangible personal property.

(C) The amount charged for the cannabis or cannabis products sold with the optional tangible personal property in the same retail sale.

(c) For purposes of the cannabis excise tax, “gross receipts” from the retail sale of cannabis or cannabis products excludes certain transportation charges as provided in RTC section 6012 and Regulation 1628, Transportation Charges.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 6012, 34010, 34011.2, 55061 and 55302, Revenue and Taxation Code.