



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Revenue

TAX DIVISION

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March 11, 2015

The Honorable Lesil McGuire
Alaska State Senator
State Capitol Room 121
Juneau AK 99801

The Honorable John Coghill
Alaska State Senator
State Capitol Room 119
Juneau, AK 99801

Dear Senators:

I am writing you in your capacity as the Judiciary Committee leadership who are carrying SB 62, the Regulation of Marijuana. I recognize that there are several marijuana bills working through the legislative process in this session, but this is the one that currently contains language in the Title 43 tax statutes. For this reason, we feel it is the most appropriate vehicle for the language changes we are suggesting.

Appropriately, the legislature is looking at a broad range of marijuana issues. Our specific interest at the Department of Revenue is that the tax regime created by the initiative and refined in the legislation be consistent, enforceable, and effective. In doing so, we are seeking many of the tools we currently have in the administration of similar wholesale excise taxes, most notably the tax on alcoholic beverages.

Where we make specific reference to SB 62, we are looking at the "E" version currently before the Senate State Affairs Committee.

#1 Administration and enforcement of tax (parallel language to AS 43.60.040)

The Department is seeking several key authorities in this section:

1. Requirement of a surety bond for licensed taxpayers (producers plus, as envisioned in SB 62, marijuana brokers), which would be a requirement for awarding a license under Title 17. Should taxes not be paid, the bond could be forfeited to the State;
2. Requirement that a processor or retailer would be "secondarily liable" for the tax. This is important in the event that marijuana product was discovered in the possession of a processor or retailer which was obtained from an unlicensed, non-taxpaying entity. In addition to any law enforcement remedies, we believe it would be good policy and a strong deterrent to make the purchaser / seller of unlicensed marijuana liable for all taxes that would have been paid had that product originated from a legitimate source;

3. Requirement that all licensees maintain their business records for three years, and empower the Department of Revenue to inspect these records for the purpose of tax enforcement;
4. In addition, the suggested language would make personal possession in excess of any statutory limits subject to the tax.

Our suggested language for this section is enclosed as **Attachment #1**. Please note that if this is accepted, additional language will also be needed in AS 17.38.100(d) (sec. 8 of SB 62) stating that the Board needs to be notified by the Tax Division that it has approved a bond prior to the Board issuing a license. Also, language will be needed in AS 17.38.360 (part of sec. 22 of SB 62) stating that a license won't be renewed if the requirements under this section aren't met.

#2 Online reporting and tax filing


In addition to these new sections, we suggest a partial rewrite to AS 43.61.020(a), currently part of Sec. 30 in SB 62. The change would mandate online tax filing. With the implementation of the Tax Revenue Management System (TRMS), the Department of Revenue will be gradually implementing an online filing requirement across our various tax types. As this is the first "new" tax, which will be collected and administered via TRMS from day 1, we feel that it would be a good precedent to set.

Also, we are suggesting that the non-taxpaying growers (the boutique and home growers) file a monthly statement to the department. We consider this an essential component of the "chain of custody" record keeping that will maximize compliance and enable effective tax admiration.

Our suggested language for this section is attached as **Attachment #2**. Please note that our structuring this requirement as a "return" rather than a "payment" reflects the current uncertainty regarding the banking status of licensed marijuana businesses. While we would certainly prefer electronic payment, we feel it would be premature to press this requirement before the banking issues are resolved.

Thank you for your consideration. Please let us know if we can provide any additional information or assistance with this important legislation.

Sincerely,



Ken Alper
Director, Tax Division
Alaska Department of Revenue

cc: The Honorable Bill Stoltze, Alaska State Senator
Commissioner Randall Hoffbeck, Department of Revenue
Cynthia Franklin, Alcoholic Beverage Control Board
Lacy Wilcox, Office of the Governor

Attachment #1: Suggested Language for Administration and Enforcement of Tax
(Largely parallels AS 43.60.040)

* **Sec. XX.** AS 43.61 is amended by adding a new section to read:

Sec. 43.61.XXX. Administration and enforcement of tax. (a) Each marijuana producer or marijuana broker is primarily liable for the payment of the excise taxes on marijuana sold, and shall furnish a cash bond payable to the department and approved by the Department of Law in an amount equal to twice the estimated average monthly tax or \$5,000, whichever is greater. If a marijuana producer or marijuana broker fails to pay the tax to the state the producer or broker forfeits the bond and their license shall be revoked.

(b) Upon receipt of the bond and its subsequent approval, the department shall notify the Alcoholic Beverage Control Board that the applicant has met the department's bond requirement. A license shall not be issued under AS 17.38 until a bond has been received and approved by the department.

(c) The marijuana processor, retailer, or buyer is secondarily liable for the taxes on marijuana sold by or to them. The marijuana processor or marijuana retailer must provide the department upon request with proof that the tax has been paid on the marijuana inventory in possession. The state has a lien upon the marijuana, and may seize, confiscate, and sell them to satisfy the payment of the taxes and the costs of the proceedings, without regard to where or in whose possession the marijuana is found. If the marijuana is not found or not identifiable, the state may seize, confiscate, and sell an equal quantity of marijuana found in the possession of the retailer or other buyer to whom the marijuana on which the taxes were not paid were sold.

(d) The department may examine the books, papers, records, or memoranda of any person growing, selling, receiving, storing, refining, or processing marijuana. All books, papers, records, or memoranda shall be preserved for three years and shall be offered for inspection upon demand by the department.

(e) Any unlicensed producer, boutique producer, processor, retailer, broker, or home grower as defined in AS 17.38.200 – AS 17.38.280 shall be taxed according to this chapter. Notwithstanding any other provision of law, quantities possessed, grown, processed, transported, or transferred exceeding the personal use limits under AS 17.38.020 shall be treated as an unlicensed home grower under AS 17.38.270.

Attachment #2: Suggested Language for Online Tax Filing and Reporting

* Sec. 30. AS 43.61.020 is amended to read:

Sec. 43.61.020. Monthly return [STATEMENT] and payments. (a) Each marijuana **producer and marijuana broker** [CULTIVATION FACILITY] shall **file an electronic return with the department on or before the last day of each calendar month. The electronic return shall be filed in a manner prescribed by the department.** [SEND A STATEMENT BY MAIL OR ELECTRONICALLY TO THE DEPARTMENT ON OR BEFORE THE LAST DAY OF EACH CALENDAR MONTH.] The **return** [STATEMENT] must contain an account of the amount of marijuana sold or transferred to [RETAIL] marijuana **retailers**, [STORES] and marijuana **processors** [PRODUCT MANUFACTURING FACILITIES] in the state during the preceding month, setting out

- (1) the total number of ounces, including fractional ounces, sold or transferred;
- (2) the names and Alaska address of each buyer and transferee; and
- (3) the weight of marijuana sold or transferred to the respective buyers or transferees.

((b) has no suggested changes)

(c) Each marijuana boutique producer and marijuana home grower shall file an electronic statement with the department on or before the last day of each calendar month. The electronic statement shall be filed in a manner prescribed by the department. The statement shall contain the amount of marijuana sold to a marijuana broker in the state during the preceding month, setting out

- (1) **The total number of ounces, including fractional ounces, sold or transferred; and**
- (2) **The names and Alaska addresses of each buyer.**