

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Eighty-first Session
March 23, 2021**

The Senate Committee on Revenue and Economic Development was called to order by Chair Dina Neal at 1:26 p.m. on Tuesday, March 23, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Chair
Senator Moises Denis
Senator Ben Kieckhefer
Senator Heidi Seevers Gansert

COMMITTEE MEMBERS ABSENT:

Senator Julia Ratti, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator James Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Alex Polley, Committee Secretary

OTHERS PRESENT:

Will Adler, Sierra Cannabis Coalition
Melanie Young, Executive Director, Department of Taxation
Shellie Hughes, Chief Deputy Director, Department of Taxation

CHAIR NEAL:

We will open the hearing on Senate Bill (S.B.) 278.

SENATE BILL 278: Revises provisions relating to taxation of cannabis. (BDR 32-660)

SENATOR JAMES SETTELMAYER (Senatorial District No. 17):

Nevada Revised Statutes (NRS) legalizing recreational cannabis was done through the petition process. It has been three years since the initiated statute, and it can now be amended. This bill seeks to address separate fees assessed to companies that have more than one Nevada marijuana cultivation license.

WILL ADLER (Sierra Cannabis Coalition):

Senate Bill 278 addresses some oversight in the Nevada cannabis ballot initiative. The cannabis tax structure has a cultivation, production and dispensary stage. Prior to a product leaving the cultivation stage, companies must pay a 15 percent Wholesale Marijuana Tax (WMT). Medical marijuana sales have the same rate. An additional 10 percent Excise Tax is applied in retail storefronts to nonmedical patients. This is the entirety of the cannabis tax package.

The ballot initiative did not consider that companies would have more than one cultivation facility which feed into production that then feed into retail storefronts. It was thought that companies would have only one of each component. However, multiple groups have consolidated separate companies into one, and cultivation businesses have purchased smaller companies as some have gone out of business. This has occurred since marijuana licenses have become transferable.

Any product transfer from a cultivation facility requires the excise of the 15 percent WMT. This procedure is similar to alcohol wholesale where the first step of the process pays the taxes. However, this setup does not account for companies where product is moved laterally between cultivation facilities owned by the same company during that first stage. One cultivation facility could produce most of the product or trim and ship it to its other cultivation facility where it is then rolled into joints or fully processed. Once the processing is complete, the finished product then moves vertically to the production stage.

Senate Bill 278 maintains the 15 percent WMT, but it would be applied to the last cultivation facility prior to the production stage. This bill allows products to laterally move between cultivation facilities owned by the same company and have the WMT paid at the final facility before it moves onto the next stage. This

bill clarifies if a company moves product between its own facilities prior to being transferred from the final facility, that movement is not considered a transfer to garner the WMT.

Senate Bill 278 may need revisions to close potential loopholes. The Department of Taxation and I have been working together, and the Department is developing a friendly amendment.

CHAIR NEAL:

The Department of Taxation will clarify how the WMT is administered.

MELANIE YOUNG (Executive Director, Department of Taxation):

The Wholesale Marijuana Tax is imposed on the first transfer of product. Transfer and sale are synonymous in this context. The Department is concerned subsection 8 is unclear when the WMT is applied to the subsequent transfer from the affiliate. If a transfer between cultivation facilities and the affiliate is exempt from the WMT, then the next transfer sale from the affiliate to the cannabis establishment should be taxable.

SENATOR KIECKHEFER:

Why is this bill restricted to cultivation facilities held in common? Why could there not be a product transfer between cultivation facilities owned by different companies and have the final facility that transfers it to the next stage responsible for the WMT?

MR. ADLER:

Certain products at the cultivation level can be transferred to another cultivation facility outside the company for a taxable sale. A company could sell unfinished materials to another company that could then use it in its processing. A company could sell unfinished plants to another cultivation company; this type of transfer is taxable. The Department of Taxation has a Fair Market Value at Wholesale of Marijuana sheet located online. We want for these transfers to still be taxed but not excessively to a company transferring product between its cultivation facilities during the same stage.

SENATOR KIECKHEFER:

Is a sale from one cultivating company to another taxable at the 15 percent WMT? Is another 15 percent WMT excised when a cultivator sells to a dispensary?

MR. ADLER:

The Department of Taxation issues a sheet every six months that specifies a set value based on market averages to base the WMT on. This practice prevents companies from intentionally undervaluing product to transfer it within the company to avoid the WMT. Companies pay a set amount per pound and per type of cannabis product, which is specified by the Department. Any type of product that leaves a cultivation facility is taxed at 15 percent of wholesale value. We do not want to stop taxing transfers between cultivation facilities owned by separate companies.

SENATOR KIECKHEFER:

Can the same product be taxed multiple times at the wholesale rate?

MR. ADLER:

Yes. This could happen today, and this is what we are trying to prevent.

SENATOR KIECKHEFER:

Was this the intention of the tax design? I am under the impression that a product is only taxed when it moves vertically up the chain to the next stage, not when it moves laterally within the same stage.

MS. YOUNG:

The Department determines a fair market value of cannabis transfer every six months. The WMT is assessed on the first transfer. Any subsequent transfer is not taxed.

SENATOR KIECKHEFER:

Would the bill exempt the first transfer from taxation, but upon the second transfer, a product would be taxable?

MS. YOUNG:

Yes. The bill is unclear when the WMT would be imposed on subsequent transfers after a product moves between cultivation facilities. We are working on a language that will clarify when the taxable transfer occurs.

SENATOR SEEVERS GANSERT:

We may need to consider the definition of a wholesale sale. It would not matter how many times a product is transferred; the moment a transfer is considered a wholesale sale is when the WMT should be triggered.

MR. ADLER:

The intent of S.B. 278 is to clarify this issue. Every transfer out of a cultivation facility has been considered the taxable sale. A cloned cannabis plant that is sold to another company has to be raised and harvested, which will then become the company's cultivated product. The cloned plant has an assessed tax when sold to a new company, and again taxed for the final wholesale sale. The cultivation stage sale is triggered when it leaves the facility. We are clarifying when the sale takes place. It does not happen internally within a company when transferred between its cultivation facilities. Rather, the sale should be considered when a product leaves its final cultivation facility.

SENATOR SEEVERS GANSERT:

Determining transfers between cultivation facilities would not matter with a clean definition for wholesale sale. The final wholesale entity would be responsible for the WMT. This approach addresses the question concerning transfers between cultivation facilities owned by different companies.

CHAIR NEAL:

Do companies usually own all the components of the production process? How many companies would be affected by this bill?

MR. ADLER:

Most businesses tried to become vertically integrated where cultivation, production and retail stores are owned by the same company. However, there are many standalone cultivation companies that sell externally to retail stores. There are companies that own multiple cultivation facilities that allocate one part of the cultivation process to one facility because it is most efficient. It is unclear to these companies if they can transfer product between their facilities without raising red flags. There are questions about whether a product transformed at a company's second cultivation facility is now taxable as a new product.

CHAIR NEAL:

How many companies have acquired multiple cultivation facilities?

MR. ADLER:

I am unsure. However, I work with three groups that do. I am unsure if this tax has been applied to companies that have done this practice. This is a theoretical issue we want to clarify before the practice occurs.

CHAIR NEAL:

Subsection 9, paragraph (c) of S.B. 278 is unclear as to how it will work. What are the sections the Department of Taxation needs clarification on?

SHELLIE HUGHES (Chief Deputy Director, Department of Taxation):

We want to change both subsection 8 and subsection 9, paragraph (c). Subsection 9, paragraph (c) has a broad definition of affiliate that could capture a lot of cultivation facilities, which may not be the intent of the bill. Subsection 8 does not clarify the subsequent transfer from the affiliate cannabis cultivation facility to any other cannabis establishment. We will be ensuring that the WMT will still apply in this situation.

CHAIR NEAL:

Will we see the 15 percent WMT revenue diminish?

Ms. HUGHES:

That is not our intention. We want to have a revenue-neutral change.

RUSSELL GUINDON (Principal Deputy Fiscal Analyst):

I understand the Department of Taxation interprets the word "sale" to also include transfer. The 15 percent WMT is due on transfers with vertically and laterally integrated companies. The Department administers NRS 372A.290 and *Nevada Administrative Code* 453D, which require the 15 percent WMT on the first transfer.

If cultivation facilities transfer cannabis flower to another cultivation facility to make prerolled joints, I understand that the WMT would be assessed on the cannabis flower when it is transferred and not on the prerolls when those are transferred. I am unsure what this bill is going to do if the WMT is only due on the first transfer. The bill is irrespective whether the product moves laterally to another cultivation facility or to independent cultivation facilities.

MR. ADLER:

All taxes can be assessed at the first cultivation stage. A cultivation facility could send unfinished product to another facility owned by the same company to make prerolled joints. However, the recipient facility may already have some unfinished product yet to be taxed. If unfinished product is being processed in one facility, we want to consider all unfinished product in the same state of taxability and tax it once it leaves the cultivation facility as finished product. If

an inspector visits a facility and asks the status of one product versus another, it may be complicated for the facility to have product at different taxable statuses. An easier process is for the final cultivation facility to be responsible for the tax at the end of processing. Tracking each stage a product is in at the cultivation facility would be cumbersome. Considering the product's status just before it is transferred onto the next stage for taxability would be simpler.

CHAIR NEAL:

It matters if an unfinished product transforms into a finished product; this is how the taxable status is determined. The moment a product is transformed into another product is important to deciding the tax structure.

MR. ADLER:

Medical marijuana used to have an increasing tax structure. The cultivation stage had a 2 percent medical marijuana cultivation tax, the production stage added a 2 percent rate, and the dispensary stage had a sales tax.

The ballot initiative for recreational marijuana stipulated a 15 percent wholesale tax at the cultivation stage. The stacking tax for medical marijuana was eliminated, and the 15 percent WMT was adopted to simplify tax recording. An additional 10 percent Excise Tax was added to recreational marijuana at retail stores to make it more expensive than medical marijuana.

The bill maintains the 15 percent WMT, and it is assessed before product leaves cultivation facilities for production or retail dispensaries. We want the tax imposed at the final transfer of product from a cultivation facility.

MS. YOUNG:

The Department of Taxation is neutral to S.B. 278.

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CHAIR NEAL:

We will close the hearing on S.B. 278. Seeing no public comment, I will adjourn the meeting at 2:00 p.m.

RESPECTFULLY SUBMITTED:

Alex Polley,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda