

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 94 - MARIJUANA AND CONTROLLED SUBSTANCES TAX

REG-94-001 SCOPE

001.01 These regulations govern the enforcement of the Nebraska Marijuana and Controlled Substances Tax, codified at Neb. Rev. Stat. Chapter 77, article 43, as amended.

(Sections 77-4301 through 77-4316, R.S.Supp., 1991. February 2, 1992.)

REG-94-002 DEFINITIONS

002.01 For the purposes of these regulations, described terms have the following meanings unless otherwise clearly intended in the context of the regulation or required by law:

002.01A "Department" or "Department of Revenue" means the Nebraska Department of Revenue.

002.01B "Commissioner" or "Tax Commissioner" means the Nebraska State Tax Commissioner or his or her designee.

002.01C "Controlled substance" means any substance described in section 28-405 Neb. Rev. Stat. (Reissue 1989) as amended, or any imitation controlled substance.

002.01D "Imitation controlled substance" shall have the meaning as provided in section 28-401 Neb. Rev. Stat. (Reissue 1989).

002.01E "Drug" or "taxable drug" means any item, plant or thing identified as a controlled substance in section 28-405 Neb. Rev. Stat., as amended, any imitation controlled substance, or marijuana.

002.01F "Like drug" means any controlled substance derived directly from the processing of another controlled substance or marijuana, which processing does not alter the chemical structure of the first substance so as to create a different, federally-defined analog controlled substance, as described in the Federal Drug Abuse Prevention Act, 21 U.S.C. section 801, et. seq.

002.01G "Marijuana" means any plant identified in section 28-401 Neb. Rev. Stat. (Reissue 1989).

002.01H "Law enforcement agent" means any individual or agency authorized by Nebraska statutes to effect the arrest of any person suspected of a law violation.

002.01I "Dealer" means any individual possessing marijuana or controlled substances in an amount sufficient to trigger the provisions of Neb. Rev. Stat. sections 77-4301, i.e., any person who acquires or

possesses six or more ounces of marijuana, seven or more grams of any controlled substance which is sold by weight, or ten or more dosage units of any controlled substance which is not sold by weight.

002.01J "Taxpayer" or "purchaser" means any person buying drug tax stamps from the Department of Revenue or any person who has had all or part of a drug tax assessment collected from him or her.

002.01K "Assessee" means any person against whom the Department has issued or is able to issue an assessment for drug taxes, penalties and interest owed to the State.

002.01L "Stamp" or "drug stamp" means an official, numerically-sequenced and dated drug stamp issued by the Nebraska Department of Revenue.

002.01M "Weight" means the weight of marijuana or any controlled substance as measured or estimated by the Department of Revenue, a law enforcement agent or other entity approved by the Department of Revenue. When possible to determine, weight shall not include the weight of the container (if any) in which the substance was found.

002.01N "Threshold amount" means the minimum amount of marijuana or a controlled substance required in order to qualify as a "dealer" as defined at Neb. Rev. Stat. section 77-4301(2).

002.01O "Container" means anything which holds or encompasses marijuana or controlled substances and which is customarily or reasonably transferred with the marijuana or controlled substance at the time of sale or delivery.

002.01P "Dosage unit" means the medically-approved minimum dosage of a controlled substance to achieve the purpose and effect of the drug. For marijuana and its derivatives, for controlled substances for which there is no medically- approved purpose, or for substances for which no medically-approved minimum dosage can be determined, dosage unit means the street dosage unit as obtained from a qualified law enforcement agent.

(Sections 28-401 and 28-405, sections 77-4301, 77-4303, 77-4305, 77-4306, 77-4307, 77-4309, and 77-4310. February 2, 1992.)

REG-94-003 DRUG TAX STAMPS

003.01 Drug tax stamps shall be sold at all Department of Revenue offices for face value in denominations authorized by the Tax Commissioner.

003.02 When required; restrictions on use.

003.02A Drug stamps must be affixed to a container holding threshold amounts of marijuana or controlled substances immediately upon possession of the drug(s) in the State of Nebraska or immediately upon

the expiration of previously issued stamps.

003.02A(1) Drug stamps may be purchased by a taxpayer in anticipation of the possession of taxable drugs, but the date of expiration for the stamps shall be calculated from the day of purchase, regardless of the day the drug(s) were actually possessed.

003.02B Drug stamps may be purchased by any person of any age and may be purchased for purposes other than for affixing to containers holding taxable drugs.

003.03 How purchased.

003.03A No person will be required to provide the Department any identifying information in connection with a purchase of drug tax stamps.

003.03A(1) The Department shall not release to any outside person or agency information concerning any purchaser or purchase. However, the Department may periodically release statistical information that informs the public or other agencies of the Drug Tax Program's progress.

003.03B Drug tax stamps may be purchased only with a money order, cashier's check, or cash. However, the Department will not accept cash payments in amounts equal to or greater than \$10,000.

003.03C Drug tax stamps may be purchased by mail using any approved method of payment except cash.

003.03C(1) If the taxpayer chooses to purchase drug tax stamps by mail, the taxpayer assumes the risk of non-delivery or tardy delivery by the postal service. Mail-order purchasers are responsible for ordering stamps sufficiently in advance of need so that the stamps will arrive at or before the time of drug possession. In determining the probable arrival time of mail-order stamps, taxpayers should allow the Department three working days following receipt of the order to process the order and deposit a response with the postal service.

003.03C(1)(a) The Department shall mail all drug tax stamps via first class mail with a certificate of mailing. Failure of the stamps to arrive attributable to postal service error shall not be a legitimate excuse for drug tax stamps not being affixed to a container of taxable drugs.

003.03C(2) If an assessee who has purchased drug tax stamps through the mail can prove that the only reason the stamps were not affixed to a container of drugs was that the Department unreasonably delayed delivering the stamps, the assessee shall be entitled to elimination of the assessment, interest and abatement of

the penalty.

003.03C(2)(a) For the purposes of this section, the Department shall be presumed to have unreasonably delayed delivery of drug stamps if it fails to send the stamps via first class mail within three working days of receiving an order. The Department may rebut this presumption by presenting evidence of the time of mailing.

003.03D Department employees will provide to any person interested in purchasing drug tax stamps a worksheet upon which the taxpayer may determine the amount of stamps he or she requires. Upon request, Department employees may explain the form and may assist the taxpayer in calculating the actual amount of tax due.

003.03E All drug tax stamps shall expire at midnight 180 days from the date of purchase.

003.03F No drug tax stamp may be reused, altered, transferred to a second container, or otherwise tampered with to avoid the purchase of another stamp.

003.04 Refunds; rate changes.

003.04A Once dated and issued, no refund will be granted on any drug tax stamp unless the refund request is based on a Department error. An error by a Department employee in assisting a taxpayer to determine the amount of tax owed shall not be cause for issuing a refund.

003.04B If the Legislature increases the tax rate for a particular drug or substance, it is the responsibility of the taxpayer to purchase additional stamps no later than the effective date of the price increase.

003.04C If the Legislature decreases the tax rate for a particular drug or substance, no refund will be issued for taxpayers who initially purchased stamps at the higher rate.

003.05 Travel or temporary residence in Nebraska; foreign stamps.

003.05A Drug stamps must be affixed to taxable drugs immediately upon crossing Nebraska state borders, without regard to the amount of time the drugs are expected to remain in the state.

003.05B Drug stamps from another state shall not be honored in Nebraska, and affixing them to a container of taxable drugs found in this State shall have no effect on the amount of tax, penalty and interest owed in Nebraska.

(Sections 77-4304(1), 77-4304(2), 77-4305, 77-4306, 77-4307, 77-4310.02(1), and 77-4315. February 2, 1992.)

REG-94-004 TAXABLE DRUGS; PRESUMPTIONS AND EXEMPTIONS

004.01 Unless evidence to the contrary is presented to the Department, drugs confiscated by law enforcement agents shall be presumed to be unlawfully possessed and subject to taxation.

004.02 Any person or entity legally in possession of marijuana or controlled substances that would otherwise be taxable under the provisions of these regulations and the Marijuana and Controlled Substances Tax Act shall be exempt from taxation.

(Section 77-4303(3). February 2, 1992.)

REG-94-005 DRUG TAX STAMPS; USE

005.01 Except as otherwise provided in this rule, drug tax stamps must be physically affixed, using their adhesive backing, to a container holding the taxable drugs. Except as herein provided, any other use or method of affixing the stamps shall render the stamps invalid for the purpose of satisfying the tax liability for confiscated, otherwise untaxed drugs. No stamp shall be considered valid for the purpose of satisfying tax liability if it is not affixed using its adhesive backing.

005.02 In the case of marijuana or other drug plant fields where physically affixing drug stamps to a container is not possible, a taxpayer may purchase an appropriate amount of stamps and affix them to a letter. The letter must be dated and contain a legible handwritten description of the field, its contents and location sufficiently detailed so as to permit agents of the Department or law enforcement agencies to determine whether sufficient taxes on the field have been paid.

005.02A Any letter used in lieu of a container for the purposes of these regulations must be produced upon the request of an agent of the Department or law enforcement agency.

005.02B Employees of the Department are not obliged to provide an estimate to a taxpayer of the probable tax liability on a particular field of plants. In the event such an estimate is provided, sole responsibility for its accuracy shall remain with the taxpayer and the Department shall neither be bound by the estimate nor precluded from assessing additional tax, penalties and interest if appropriate.

005.03 In the case of drugs not ordinarily stored or transported in containers, or for which affixing stamps is difficult or not covered by these regulations, a taxpayer may either contact the Department's Drug Tax Agent for instructions on how to affix the stamps or affix stamps to those drugs in any manner he or she deems appropriate. However, if a taxpayer elects not to contact the Department's Drug Tax Agent and a doubt subsequently exists regarding whether drug tax stamps properly were affixed, the Department shall determine whether there was any practical way in which the stamps could have been affixed permanently to a container. If the Department concludes that affixing the stamps to a container was practical but not effected, the stamps shall be invalid for the

purpose of satisfying the tax liability, and tax, penalties and interest may be assessed as if the stamps had never been purchased.

(Sections 77-4306 and 77-4307. February 2, 1992.)

REG-94-006 DRUG TAX STAMPS; AMOUNT OF TAX OWED

006.01 Any taxpayer in possession of marijuana or controlled substances in amounts equal to or greater than the minimum threshold amounts shall purchase drug tax stamps from the Department of Revenue in an amount at least equal to the amount of tax due on the drugs.

006.02 Any person in possession of the threshold amount of any single type of drug shall be considered a dealer and shall be liable for taxes on all other drugs in his or her possession, regardless of whether or not the dealer possesses the other drugs in quantities sufficient to meet minimum threshold amounts.

006.03 In the event a dealer liable for drug taxes owes an amount unequal to any possible combination of drug stamp denominations, that dealer shall be required to purchase stamps valued at the next lowest amount possible which exceeds the actual amount of tax owed on the drugs the dealer possesses.

006.04 In the event a dealer purchases drug stamps in an amount at least equal to his or her tax liability for a quantity of marijuana or controlled substances but then subdivides the original quantity of drugs into smaller quantities, an appropriate amount of drug stamps must be affixed to each new container.

006.04A The amount of stamps affixed to each container of subdivided marijuana or controlled substance must reflect at least the tax owed on the quantity of marijuana or controlled substance therein.

006.04B Each container of marijuana or controlled substance must be affixed with a sufficient amount of drug stamps, regardless of the quantity of drug therein, if the aggregate amount of the drugs in the dealer's possession meets a threshold amount.

006.05 In the event a dealer affixes drug stamps to a container of taxable drugs in an amount insufficient to meet his or her tax liability for a quantity of marijuana or controlled substances, the dealer shall be liable only for the amount of tax still owed, a penalty equal to the amount of the tax owed, and any applicable interest.

006.06 A dealer is solely responsible for determining and affixing the proper amounts of drug tax stamps to all marijuana and controlled substances in his or her possession.

(Sections 77-4301(2), 77-4302, 77-4307, and 77-4309. February 2, 1992.)

REG-94-007 AMOUNT OF DRUGS POSSESSED; METHOD OF CALCULATING

007.01 In all cases, the purity of the drug shall not be considered in calculating the amount of tax owed. All voluntary payments or assessments shall be made as if the drug were 100% pure.

007.02 When an individual possesses a drug in a form that does not lend itself accurately to measurement based upon weight, dosage unit or volume, the Department shall utilize whatever method of measurement and assessment is reasonable and appropriate in the circumstances.

007.02A In the event an assessee disputes the Department's calculation of the amount of taxable drugs in such a circumstance, the assessee may arrange with a court, at his or her own expense, to have the drugs weighed, sorted, cleaned, sifted or otherwise reevaluated, when said drugs have not been previously destroyed. The Department must receive notice of any hearing scheduled on an application to have drug quantities reevaluated and must also be notified of the time and place of any scheduled reevaluation testing.

007.02A(1) If provided with new information as a result of a reevaluation, the Department shall not be obligated to increase or decrease its assessment if it determines the reevaluation method was flawed.

007.02A(2) In the event a reevaluation is conducted without prior approval of the reevaluation method from the Department of Revenue, the Department need not alter its assessment based upon the reevaluation results but may consider the results should it determine an increase or decrease in the amount of the assessment is appropriate.

007.02A(3) The Department shall not unreasonably withhold approval of a reevaluation method, and the likelihood that a reevaluation would result in a decrease in the amount of an assessment shall not alone be cause for withholding approval of a reevaluation method.

007.02A(4) Nothing in these regulations shall be interpreted as giving an assessee the right to have drug weight or measurements reevaluated without an order of a court.

007.03 In the case of unmanicured marijuana, the Department shall not consider the weight of any attached dirt or part of the stalk in calculating the weight of the taxable marijuana unless otherwise provided by the Legislature.

007.03A For purposes of assessment, the Department shall rely upon the exact weight of the confiscated marijuana when available.

007.03B For purposes of assessment, if the exact weight of the marijuana is unavailable, the Department shall estimate the weight of the marijuana to equal one pound of marijuana per plant.

007.03B(1) For the purposes of estimating the total number of plants in a field, the Department may use any method of estimation reasonably calculated to arrive at a close approximation of the actual number. These methods may include averaging the actual number of plants in a small section and multiplying by the number of total square feet in the field or utilizing an accepted scientific determination, when such is available, of the number of marijuana plants that a given plot of land can sustain.

007.03B(1)(a) The determination of which method of estimating the number of plants in a field shall be the Department's, and nothing in these regulations shall be construed to prefer one reasonable method over another.

007.03B(1)(b) If an assessee disputes the Department's estimate of the number of plants in a field and the field has not been destroyed, the assessee may arrange with a court, at his or her own expense, to count the actual number of plants in the field. Any count undertaken pursuant to this section must be conducted in the presence of a law enforcement agent, who must certify the tally with his or her signature and forward it to the Department.

007.03B(1)(c) The Department shall increase or decrease its estimate of the number of plants according to the actual number of plants counted, as appropriate.

007.03B(1)(d) Nothing in these regulations shall be interpreted to guarantee an assessee the right to count marijuana plants in a field if those plants have been destroyed pursuant to a lawful order of a court.

007.03C In the event an assessee disputes the Department's calculation of the amount of taxable marijuana confiscated and the marijuana in question is still available for weighing, the assessee may arrange with a court to have the marijuana manicured and weighed at his or her own expense. Any weighing of the marijuana must be conducted in the presence of a law enforcement agent with scales certified as being accurate by the State Department of Agriculture.

007.03C(1) If provided with additional information resulting from the manicuring and weighing, the Department shall increase or decrease its estimate of the marijuana weight according to the actual weight, as appropriate.

007.03C(2) Nothing in these regulations shall be interpreted to guarantee an assessee the right to weigh marijuana if that

marijuana has been destroyed pursuant to a lawful order of a court.

007.04 For steroids or other liquids sold by volume, tax shall be calculated using a medically-approved dosage unit, when such a dosage unit opinion is available from a qualified health care professional or other qualified authority. When various levels of dosage units are possible, the smallest shall be used.

007.04A When a qualified medical dosage unit opinion is not reasonably available, tax shall be calculated based upon either the street dosage unit as obtained from a qualified law enforcement officer or the weight of the substance. In the event two or more possible tax liability amounts are calculated utilizing reasonable methods, the Department shall assess tax at the greatest amount.

007.04B For liquids sold by volume and not intended for ingestion by human beings, tax shall be calculated based upon a qualified medical dosage unit opinion when available, or upon the minimum street dosage unit when such a measurement can be obtained from law enforcement agents.

007.04C If no street dosage unit estimate is available, tax shall be calculated based upon the weight of the substance or upon any other manner reasonable and appropriate in the circumstances.

007.05 For substances in liquid form which are ordinarily sold either in liquid or subsequently in solid dosage units, tax shall be calculated based upon dosage unit when available or determinable, by weight of the substance, or in any other manner reasonable and appropriate in the circumstances.

007.05A No assessee may challenge the reasonability of a particular method of assessment solely on the basis that another method would result in a lower tax liability.

007.06 In the event an assessee possesses two or more like drugs which are not commonly sold in the same method of measurement (i.e., weight, dosage unit or volume), tax may be calculated utilizing whichever measurement method(s) the Department determines is appropriate, provided the method selected can be applied to each of the like drugs the Department determines should be grouped for assessment purposes. Utilization of a particular method of measuring the substances or excluding a like drug resulting in a higher tax obligation shall not be grounds for contesting the method as inappropriate.

007.06A If an individual possesses like drugs which are not commonly sold in the same method of measurement, but has paid an appropriate amount of tax on the substances as calculated using the most common method of measurement for each of the drugs, the Department shall not apply a different standard of measurement to the drugs which would result in an increase in the amount of tax owed on the drugs.

007.06B In the event an assessee possesses like drugs which are not commonly sold in the same method of measurement in quantities that would ordinarily be insufficient to meet threshold amounts, the department may aggregate the drugs and measure them in a manner appropriate to any one of the drugs even if such a process would result in taxes being owed on all the drugs.

007.07 In the event an individual possesses a drug in quantities that do not meet the minimum threshold amount when computed utilizing the most common method of measurement for that drug, the Department may utilize a method of measurement that is commonly used for a like drug even if that alternate method of measurement would result in tax being owed.

007.07A In determining whether tax is owed on a drug for which sufficient stamps have not been purchased and affixed, the Department may measure the quantity of that drug in the manner most commonly used for the sale of the drug, or it may measure the quantity of the drug in the manner most commonly used for the sale of any like drug, even if utilizing the alternate method of measurement would result in a higher tax being owed.

007.07A(1) In the event an individual has paid a sufficient amount of tax on a drug utilizing a commonly accepted method of measuring the amount of the drug, the Department shall not apply a different standard of measurement to the drugs which would result in an increase in the amount of tax owed on the drugs.

007.07A(2) Crack cocaine may be assessed according to weight or dosage unit.

007.08 For the purpose of determining the total amount of drugs possessed by an individual, the Department shall consider all the marijuana and controlled substances found in the possession or control of an individual in any single twenty-four hour period.

007.08A An individual possessing a container of taxable drugs with a sufficient amount of current drug stamps affixed to it shall not be subject to any additional tax liability for the drugs found in the container. The quantity of marijuana or controlled substance in the container may be added to and measured with the quantity of any other taxable or like drugs found in the individual's possession or control within a single twenty-four hour period for the purpose of determining whether tax, penalty and interest is owed on the additional drugs.

007.09 Except as otherwise specifically described herein, all situations involving varying, ambiguous or contradicting methods of weighing, measuring or otherwise assessing taxable drugs shall be assessed using the method that results in the greatest tax liability.

(Sections 28-401, 77-4303(2), 77-4307, 77-4310, 77-4310.02(1), 77-4310.02(3), 77-4312, 77-4314, and 77-4316. February 2, 1992.)

REG-94-008 DRUG TAX ASSESSMENT; ADJUSTMENT OF AMOUNT

008.01 In addition to weighing or measuring the quantity of drugs found in his or her possession pursuant to these regulations, an assessee shall have the right to request that the Department consider any mitigating evidence which would result in a lower tax liability if accepted.

008.02 Regardless of any other provision in these regulations, the Tax Commissioner shall have the authority to abate any penalty or reduce the amount of any assessment levied pursuant to this program.

008.02A The Tax Commissioner shall have the authority to enter into payment agreements with any assessee.

008.02B A petition to the Tax Commissioner for redetermination must be in writing. Petitions for redetermination must be filed or postmarked within ten days of either service of the assessment or mailing of the assessment to the last known address of the assessee via registered or certified mail. All petitions for redetermination must be accompanied by payment of the tax or suitable security for the payment of the tax.

(Sections 77-4307, 77-4310, 77-4310.02, and 77-4312. February 2, 1992.)

REG-94-010 DRUG TAX PROGRAM; PROTESTED ASSESSMENT OR OVERASSESSMENT

010.01 Any assessee who desires to contest the amount of an assessment levied under the provisions of this program must file a protest with the Department, utilizing normal protest procedures, within ten days of the date the assessment was served in person, or within ten days of the mailing of the assessment notice by certified or registered mail to the last known address of the assessee.

010.01A Any jeopardy assessment in effect on October 1, 1991, shall become final if no protest or request for redetermination by the Tax Commissioner has been filed or postmarked by October 10, 1991.

010.02 Any assessee who successfully protests an assessment previously paid shall be entitled to a redetermination of the tax, interest and penalty in accordance with the results of the successful protest. An overpayment shall be refunded with interest only if the claim is not refunded within ninety days.

010.03 Any assessee who is assessed and pays an amount of tax , penalty and interest greater than is proper shall be granted a refund of the excess amount.

(Sections 77-4310.02, 77-4311, and 77-4312. February 2, 1992.)

REG-94-011 DRUG TAX ASSESSMENTS; INTEREST AND PENALTIES

011.01 If any individual possesses marijuana or controlled substances in amounts greater than or equal to the threshold amount and fails to purchase drug tax stamps, he or she shall be subject to a penalty of one hundred percent of the tax that is owed.

011.02 Payment of the tax and penalty is due no later than the tenth day from the date of personal service of the assessment, or ten days from the date of mailing of the assessment via registered or certified mail to the last known address of the assessee.

011.02A Failure to pay the tax within ten days shall result in the accrual of interest from the earliest known day of possession, at such rate as the Legislature has set, and collection of the tax, interest, and penalty by any method prescribed in the Uniform State Tax Lien Registration and Enforcement Act, subject to the limitations of section 77-4312.

(Sections 77-4309, 77-4310, and 77-4312. February 2, 1992.)

REG-94-012 DRUG TAX REVENUE; DISTRIBUTION OF FUNDS

012.01 Effective October 1, 1991, all revenue originating from a county as defined by the Marijuana and Controlled Substances Tax Act and obtained by the Department through the Drug Tax Program shall be remitted to the State Treasurer for distribution in the following manner:

012.01A Five percent to the Marijuana and Controlled Substances Tax Administration Cash Fund;

012.01B Forty-seven and one half percent to the County Drug Law Enforcement and Education Fund of the county from which the proceeds originated, but no county shall be entitled to receive more than forty-seven and one half percent of the actual amount collected from it;

012.01C Forty-seven and one half percent to the Nebraska State Patrol Drug Control and Education Cash Fund.

012.02 Effective October 1, 1991, 95% of all revenue not originating from a county but obtained by the Department through the Drug Tax Program shall be remitted to the State Treasurer for distribution to the Nebraska State Patrol Drug Control and Education Cash Fund.

012.03 No revenue obtained through the Drug Tax Program shall be distributed until either the jeopardy assessment has become final or a protest has been dismissed.

(Sections 77-4307, 77-4310.01, 77-4310.01(1), 77-4310.01(2)(a), 77-4310.01(2)(b), and 77-4310.03. February 2, 1992.)

