

## CHAPTER 406

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**TAXATION**


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## SENATE BILL 18-259

BY SENATOR(S) Smallwood, Baumgardner, Marble, Neville T., Sonnenberg, Tate, Martinez Humenik, Priola;  
also REPRESENTATIVE(S) Pabon, Gray, Melton, Pettersen, Rosenthal, Singer.

**AN ACT**

**CONCERNING THE TAXATION OF RETAIL MARIJUANA BY LOCAL GOVERNMENTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 29-2-114, **amend** (1)(a) and (2)(a); and **add** (7) and (8) as follows:

**29-2-114. Retail marijuana excise tax - county - municipality - election.**

(1) (a) In addition to any sales tax imposed pursuant to section 29-2-103 and articles 26 and 28.8 of title 39, and in addition to the excise tax imposed pursuant to article 28.8 of title 39, each county in the state is authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility authorized by the county AT A RATE OF UP TO FIVE PERCENT OF THE AVERAGE MARKET RATE, AS DETERMINED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 39-28.8-101 (1), OF THE UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES AND AT A RATE OF UP TO FIVE PERCENT OF THE CONTRACT PRICE, AS DEFINED IN SECTION 39-28.8-101 (2.5), FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES; **except that a county is not authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility pursuant to this subsection (1) within any municipality that levies such an excise tax pursuant to subsection (2) of this section AND A COUNTY WHICH, BEFORE NOVEMBER 1, 2018, OBTAINED THE APPROVAL OF THE ELIGIBLE ELECTORS OF THE COUNTY AS REQUIRED BY SUBSECTION (1)(b) OF THIS SECTION TO LEVY ONLY A COUNTY EXCISE TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY THAT IS CALCULATED BASED UPON THE AVERAGE MARKET**

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

RATE OF UNPROCESSED RETAIL MARIJUANA AND IN WHICH THE ELIGIBLE ELECTORS THEREAFTER REJECTED A PROPOSED AMENDMENT TO ALLOW THE TAX TO BE CALCULATED BASED ON THE CONTRACT PRICE FOR TRANSACTIONS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESSES MAY CONTINUE TO COLLECT THE TAX ON SUCH TRANSACTIONS BASED ON AN AVERAGE MARKET RATE CALCULATION UNTIL DECEMBER 31, 2020. ~~Such excise tax must be calculated based on the average market rate of the unprocessed retail marijuana.~~ The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility. ~~The tax rate imposed pursuant to this subsection (1)(a) may not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), of the unprocessed retail marijuana.~~

(2) (a) In addition to any sales tax imposed pursuant to section 29-2-102 and articles 26 and 28.8 of title 39, and in addition to the excise tax imposed pursuant to article 28.8 of title 39, each municipality in the state is authorized to levy, collect, and enforce a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility AT A RATE OF UP TO FIVE PERCENT OF THE AVERAGE MARKET RATE, AS DETERMINED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 39-28.8-101 (1), OF THE UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN AFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES AND AT A RATE OF UP TO FIVE PERCENT OF THE CONTRACT PRICE, AS DEFINED IN SECTION 39-28.8-101 (2.5), FOR UNPROCESSED RETAIL MARIJUANA IF THE TRANSACTION IS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESS LICENSEES; EXCEPT THAT A MUNICIPALITY WHICH, BEFORE NOVEMBER 1, 2018, OBTAINED THE APPROVAL OF THE ELIGIBLE ELECTORS OF THE MUNICIPALITY AS REQUIRED BY SUBSECTION (2)(b) OF THIS SECTION TO LEVY ONLY A MUNICIPAL EXCISE TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY THAT IS CALCULATED BASED UPON THE AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AND IN WHICH THE ELIGIBLE ELECTORS THEREAFTER REJECTED A PROPOSED AMENDMENT TO ALLOW THE TAX TO BE CALCULATED BASED ON THE CONTRACT PRICE FOR TRANSACTIONS BETWEEN UNAFFILIATED RETAIL MARIJUANA BUSINESSES MAY CONTINUE TO COLLECT THE TAX ON SUCH TRANSACTIONS BASED ON AN AVERAGE MARKET RATE CALCULATION UNTIL DECEMBER 31, 2020. ~~Such excise tax must be calculated based on the average market rate of the unprocessed retail marijuana.~~ The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility. ~~The tax rate imposed by any statutory municipality pursuant to this subsection (2)(a) may not exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), of the unprocessed retail marijuana.~~

(7) IF A RETAIL MARIJUANA CULTIVATION FACILITY USES A RETAIL MARIJUANA TRANSPORTER, AS DEFINED IN SECTION 12-43.4-103 (21.5), TO TRANSPORT UNPROCESSED RETAIL MARIJUANA BEING SOLD OR TRANSFERRED BY THE RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY, A RETAIL MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY, THE TRANSPORTATION OF THE UNPROCESSED

RETAIL MARIJUANA BY THE RETAIL MARIJUANA TRANSPORTER IS NOT A TRANSFER OF UNPROCESSED RETAIL MARIJUANA FOR THE PURPOSE OF LEVYING ANY EXCISE TAX IMPOSED PURSUANT TO THIS SECTION.

(8) (a) THE STATE LICENSING AUTHORITY, AS DEFINED IN SECTION 12-43.4-103 (24), PURSUANT TO ITS EXISTING RULE-MAKING AUTHORITY SPECIFIED IN SECTION 12-43.4-202 (3)(b)(V), SHALL COMPLETE RULE MAKING, IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, NO LATER THAN JANUARY 1, 2019, ON RULES RELATING TO FENCING AND LIGHTING REQUIREMENTS FOR OUTDOOR MARIJUANA GROWS AND GREENHOUSES.

(b) THIS SUBSECTION (8) IS REPEALED, EFFECTIVE JULY 1, 2019.

**SECTION 2.** In Colorado Revised Statutes, 39-26-729, **amend as added by Senate Bill 18-088** (1)(b) and (2) as follows:

**39-26-729. Retail sales of marijuana.** (1) (b) Any metropolitan district that levies A GENERAL UNIFORM sales tax as authorized by section 32-1-1106 (1), health assurance district that levies A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1), or health service district that levies A GENERAL UNIFORM sales tax as authorized by section 32-19-112 (1) may levy ITS GENERAL UNIFORM sales tax on retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 regardless of whether or not the district was levying ANY sales tax on such sales before July 1, 2017.

(2) The governing body of any special district or limited purpose governmental entity that was levying sales tax upon retail marijuana sales before July 1, 2017, and the governing body of any metropolitan district, health assurance district, or health service district that is authorized by subsection (1)(b) of this section to levy A GENERAL UNIFORM sales tax on retail marijuana sales shall determine whether the levying of such sales tax complies with the Colorado constitution and applicable decisions of the Colorado supreme court and Colorado court of appeals and, if the governing body of any such special district or limited purpose governmental entity determines that additional voter approval is required to levy sales tax upon retail sales of marijuana, the special district or limited purpose governmental entity shall not resume levying sales tax upon such sales until voter approval is obtained.

**SECTION 3.** In Colorado Revised Statutes, 39-28.8-302, **amend** (1)(a)(I) as follows:

**39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate.** (1) (a) (I) Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana if the transaction is between affiliated retail marijuana business licensees. Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by

a retail marijuana cultivation facility, at a rate of fifteen percent of the contract price for unprocessed retail marijuana if the transaction is between unaffiliated retail marijuana business licensees. RETAIL MARIJUANA EXCISE TAX SHALL ALSO BE CALCULATED AS FIFTEEN PERCENT OF THE CONTRACT PRICE WHEN THE FIRST TRANSFER OF RETAIL MARIJUANA THAT HAS BEEN HARVESTED FOR SALE AT A RETAIL MARIJUANA STORE OR EXTRACTION BY A RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY IS BETWEEN UNAFFILIATED RETAIL MARIJUANA CULTIVATION FACILITIES. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store.

**SECTION 4. Appropriation.** For the 2018-19 state fiscal year, \$15,840 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation for tax administration IT system (GenTax) support.

**SECTION 5. Act subject to petition - effective date.** This act takes effect January 1, 2019; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on January 1, 2019, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 6, 2018