



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

450 N STREET, SACRAMENTO, CA 95814

PO BOX 942879, SACRAMENTO, CA 94279-0092

1-916-309-5397 • FAX 1-916-322-4530

www.cdtfa.ca.govGAVIN NEWSOM
GovernorYOLANDA RICHARDSON
Secretary, Government Operations AgencyNICOLAS MADUROS
Director

October 2, 2023

Dear Interested Party:

Enclosed is the Discussion Paper on Regulation 3802, *Gross Receipts from Sales of Cannabis and Cannabis Products*. We would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

October 12, 2023
10:00 a.m.
(Microsoft Teams)

You may join us on your computer or mobile app through [Microsoft Teams](#) or by calling 1-916-535-0987 and then entering the phone conference identification number 740 262 012#. You are also welcome to submit your written comments, including any proposed regulatory language, to me at the address or fax number in this letterhead or via email at BTFD-BTC.InformationRequests@cdtfa.ca.gov by October 20, 2023. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics, refer to the CDTFA webpage at (<http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>) for copies of discussion papers and calendars of current and prior issues.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Business Taxes Committee team member Sarah Smith at 1-916-309-5292, who will be leading the meeting.

Sincerely,

Aimee Olhiser, Chief
Tax Policy Bureau
Business Tax and Fee Division

AO:sps

Enclosures

cc: (all with enclosures)

Mr. Nicolas Maduros (MIC 104)
Mr. Christopher Schutz (MIC 83)
Ms. Trista Gonzalez (MIC 104)
Ms. Christine Castillo (MIC 104)
Ms. Susanne Buehler (MIC 43)
Ms. Michele Linton (MIC 105)
Mr. Jason Mallet (MIC 25)
Mr. Mike Skikos (MIC 47)
Mr. Harry Lucho (MIC 47)
Ms. Claudette Yang (MIC 70)
Mr. James Dahlen (MIC 57)
Mr. Jason Parker (MIC 49)
Mr. Steven Mercer (MIC 25)
Ms. Ester Cabrera (MIC 23)
Mr. Jeff Vest (MIC 85)
Mr. Mike Loretta (MIC 42)
Ms. Pamela Bergin (MIC 82)
Mr. Bradley Heller (MIC 82)
Ms. Dana Brown (MIC 85)
Ms. Casey Tichy (MIC 85)
Ms. Leslie Ang (MIC 82)
Ms. Elaine Chu (MIC 82)
Mr. Brian Kimsey (MIC 62)
Mr. Chris Miller (MIC 48)
Mr. LaDaughn Coilton (MIC 33)
Ms. Sandy Barrow (MIC 31)
Ms. Lynn Whitaker (MIC 50)
Mr. Greg Buehrer (MIC 44)
Mr. Gentian Droboniku (MIC 67)
Mr. Tom Trach (MIC 67)
Mr. Marc Alviso (MIC 104)
Ms. Karina Torrez (MIC 92)
Ms. Karina Magana (MIC 47)
Mr. Brian Duckett (MIC 31)
Ms. Connie Rodriguez (MIC 31)
Mr. Robert Wilke (MIC 50)
Ms. Sarah Smith (MIC 50)

DISCUSSION PAPER

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

Issue

Whether the California Department of Tax and Fee Administration (Department) should propose to adopt emergency Regulation 3802, *Gross Receipts from Sales of Cannabis and Cannabis Products*, to clarify the meaning of “gross receipts” from the sale of cannabis or cannabis products for purposes of the cannabis excise tax imposed by Revenue and Taxation Code (RTC) section 34011.2.

Background

Subdivision (a) of RTC section 34011.2 provides that on and after January 1, 2023, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state and that the rate of the cannabis excise tax applies to the gross receipts of any retail sale by a cannabis retailer. Subdivision (n) of RTC section 34010 provides that “gross receipts,” as used in RTC section 34011.2, has the same meaning as set forth in RTC section 6012 in the Sales and Use Tax Law (commencing with RTC section 6001). RTC section 6012 provides that, for sales and use tax purposes:

(a) “Gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

DISCUSSION PAPER

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

- (1) Any services that are a part of the sale.
- (2) All receipts, cash, credits and property of any kind.
- (3) Any amount for which credit is allowed by the seller to the purchaser.
- (c) “Gross receipts” do not include any of the following:
 - (1) Cash discounts allowed and taken on sales.
 - (2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.
 - (3) The price received for labor or services used in installing or applying the property sold.
 - (4) (A) The amount of any tax (not including, however, any manufacturers’ or importers’ excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers’ or importers’ excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.
 - (5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.
 - (6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.
 - (7) Separately stated charges for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not

DISCUSSION PAPER

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

exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

DISCUSSION PAPER

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

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

Sales and Use Tax Annotations (Annotations)¹ 295.0647 (10/18/96), 295.0730 (10/4/76), and 295.1675 (5/13/94) summarize the long-standing opinions of the Department's Legal Division that:

- Mandatory charges that a purchaser must pay to obtain tangible personal property are included in the gross receipts from the sale of that property under RTC section 6012; and
- Charges for optional items, such as optional warranties, that are sold with tangible personal property, are not included in the gross receipts from the sale of the tangible personal property under RTC section 6012.

Annotation 295.1187 (12/13/95) summarizes the Legal Division's long-standing opinions that local and district sales and use taxes imposed in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with RTC section 7200) or Transactions and Use Tax Law (commencing with RTC section 7251) are excluded from gross receipts under subdivisions (c)(5) and (6) of RTC section 6012. However, amounts a purchaser of tangible personal property must pay to compensate or reimburse a retailer for other taxes imposed on the retailer by a city, county, city and county, or rapid transit district, including, but not limited to, business taxes measured by a retailer's gross receipts, are not excluded from gross receipts under subdivisions (c)(5) and (6) of RTC section 6012.

In addition, Sales and Use Tax Regulation 1628, *Transportation Charges*, clarifies when separately stated charges for transportation are excluded from "gross receipts" under subdivision (c)(7) of RTC section 6012. Subdivision (a) of Regulation 1628 clarifies when charges for transportation by a carrier are excluded from gross receipts and subdivision (b) of Regulation 1628 clarifies when charges for delivery by facilities of the retailer are excluded from gross receipts. Also, Annotation 557.0640 (12/2/64) summarizes the Legal Division's long-standing opinion that

¹ "Annotations" are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law. (Reg. 35101, subd. (a)(1).)

DISCUSSION PAPER

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

transportation by a retailer's employee is transportation by facilities of the retailer for purposes of applying subdivision (b) of Regulation 1628.

Furthermore, division 10 (commencing with section 26000) of the Business and Professions Code (BPC) defines "package" to mean any container or receptacle used for holding cannabis or cannabis products (BPC section 26001, subd. (aq)) and requires cannabis or cannabis products to be labeled and placed in a tamper-evident, child-resistant package, prior to delivery or sale at a cannabis retailer. (BPC section 26120, subd. (a).) The Department of Cannabis Control (DCC) has adopted regulations that further clarify that "package" or "packaging" means any container or wrapper that may be used for enclosing or containing any cannabis or cannabis product but does not include a shipping container or outer wrapping used solely for the transport of cannabis or cannabis products in bulk quantity to a licensed premises. (DCC Regulation 15000, subd. (yy).) DCC has also adopted regulations that further clarify division 10's packaging requirements. (DCC Regulations 17401, 17411, and 17412.) Also, Annotation 295.1387 (11/15/91) summarizes the Legal Division's long-standing opinion that amounts a purchaser of tangible personal property must pay to compensate or reimburse a retailer for the cost of labor or materials used to package an item are generally included in taxable gross receipts under RTC section 6012.

Finally, the cannabis excise tax imposed by RTC section 34011 from January 1, 2018, to December 31, 2022, was also imposed on purchasers of cannabis or cannabis products sold by cannabis retailers in retail sales. However, the distributor was required to collect that tax from the cannabis retailer, often before the cannabis or cannabis products were sold at retail, and the amount of tax required to be collected from the cannabis retailer and owed by the purchaser of the cannabis or cannabis products at retail was determined based on whether the cannabis or cannabis products were sold or transferred to the cannabis retailer in an arm's length transaction. The Department adopted subdivisions (a)(2) and (i) of Regulation 3700, *Cannabis Excise and Cultivation Tax*, in 2019, pursuant to the exemption in subdivision (b) of Government Code section 15570.40. Subdivision (a)(2) defines "cannabis accessories" to mean any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body. Subdivision (i) clarifies how the cannabis excise tax imposed by RTC section 34011 from January 1, 2018, to December 31, 2022, applied when cannabis or cannabis products were sold at retail with cannabis accessories. It provides that whether accessories are taxable depends upon whether the distributor separately stated the price of the cannabis or cannabis products from the cannabis accessories when the cannabis or cannabis products were sold or transferred by the distributor to the cannabis retailer with cannabis accessories (e.g., vape cartridges) prior to January 1, 2023.

The Department has not adopted a regulation to clarify how the cannabis excise tax imposed by RTC section 34011.2 applies to other tangible personal property, including packaging, sold with cannabis or cannabis products in a retail sale.

DISCUSSION PAPER

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

Discussion

The Department understands that some cannabis retailers may be confused about whether their charges for services, taxes, transportation, or other tangible personal property, including packaging, sold with cannabis or cannabis products are included in their gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2. The Department also understands that some cannabis retailers may be confused about whether subdivision (i) of Regulation 3700 somehow applies when determining whether their charges for cannabis accessories, including packaging, are included in their gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2.

To address the potential confusion and provide more certainty for cannabis retailers and the Department, the Department is proposing to adopt emergency Regulation 3802, *Gross Receipts from Sales of Cannabis and Cannabis Products*, pursuant to the authority in subdivision (e) of RTC section 34013, to clarify the meaning of “gross receipts” for purposes of the cannabis excise tax imposed by RTC section 34011.2.

Subdivision (a) of proposed emergency Regulation 3802 incorporates the definition of “gross receipts” from RTC section 6012. It also provides that, in general, and as specifically clarified in the regulation, gross receipts for purposes of the cannabis excise tax include amounts that are included in gross receipts under RTC section 6012 for sales and use tax purposes, amounts that are not deductible from gross receipts under RTC section 6012 for sales and use taxes purposes are not deductible from gross receipts for cannabis excise tax purposes, and amounts excluded from gross receipts under RTC section 6012 for sales and use taxes purposes are excluded from gross receipts for cannabis excise tax purposes to ensure that the regulation is consistent with RTC section 6012.

Subdivision (b) of proposed emergency Regulation 3802 clarifies that the sale price charged for cannabis or cannabis products includes 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, and specifically includes any amount the purchaser is required to pay for services that are incidental to or part of the sale of the cannabis or cannabis products, taxes imposed by any city, county, city and county, or rapid transit district on the sale of the cannabis or cannabis products, except as provided in subdivision (c), transportation of the cannabis or cannabis products, except as provided in subdivision (d), and packaging and other tangible personal property sold with the cannabis or cannabis products as a unit or for a lump sum price, except as provided in subdivision (e).

Subdivision (c) of proposed emergency Regulation 3802 clarifies that the sale price charged for cannabis or cannabis products does not include local taxes imposed in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with RTC section 7200) or Transactions and Use Tax Law (commencing with RTC section 7251). However, other amounts a purchaser of cannabis or cannabis products must pay to compensate or reimburse a cannabis

DISCUSSION PAPER

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

retailer for taxes imposed on the cannabis retailer by a city, county, city and county, or rapid transit district, including, but not limited to, cannabis business taxes measured by a cannabis retailer's gross receipts, are not excluded from the sale price charged for cannabis or cannabis products to make the regulation consistent with Annotation 295.1187.

Subdivision (d) of proposed emergency Regulation 3802 clarifies that charges for transportation that are not subject to sales or use tax under Regulation 1628 are not included in the sale price of cannabis or cannabis products. It clarifies that transportation by the retailer's employee is transportation by facilities of the retailer for purposes of Regulation 1628 to make the regulation consistent with Annotation 557.0640. It clarifies that charges a purchaser of cannabis or cannabis products must pay a cannabis retailer for delivery by facilities of the retailer are taxable, unless they satisfy the requirements of subdivision (b)(2) of Regulation 1628. It also includes an example illustrating that a \$5.00 charge a purchaser of cannabis or cannabis products must pay a cannabis retailer for delivery by an employee of the cannabis retailer is generally included in the gross receipts subject to the cannabis excise tax, unless the charge satisfies all the requirements of subdivision (b)(2) of Regulation 1628.

Subdivision (e)(1) of proposed emergency Regulation 3802 clarifies that reasonable charges for optional packaging and other optional tangible personal property sold with cannabis or cannabis products as a unit or for a lump sum price are not included in the sale price of cannabis or cannabis products, regardless of whether those amounts are separately stated on the invoice, receipt, or other document provided by the cannabis retailer to the purchaser to make the regulation consistent with Annotations 295.0647, 295.0730, 295.1675 and RTC section 6012, which does not require such charges to be separately stated. Subdivisions (e)(1)(A) through (C) clarify that:

- Packaging is optional if the cannabis retailer's customer has the option to purchase the same cannabis or cannabis products from the cannabis retailer contained in other less expensive packaging that satisfies the packaging requirements in division 10 of the Business and Professions Code.
- Tangible personal property sold with cannabis or cannabis products, other than packaging, is optional if the cannabis retailer's customer has the option to purchase the same cannabis or cannabis products from the cannabis retailer without purchasing the tangible personal property. For example, a vaping device sold with a cartridge containing cannabis oil is optional if the cannabis retailer's customer can purchase the same cartridge containing cannabis oil without purchasing the vaping device.
- Cannabis is the same as other cannabis if they are the same brand, quantity, strain, and type of cannabis (e.g., flower, preroll, shake). Cannabis products are the same as other cannabis products if they are the same brand, quantity, strain, and type of cannabis products (e.g., beverage, capsule, concentrate, edible, tincture, topical, vape cartridge).

Subdivision (e)(2) of proposed emergency Regulation 3802 establishes a rebuttable presumption that packaging and other tangible personal property sold with cannabis or cannabis products as a unit or for a lump sum price are not optional. It puts the burden on the cannabis retailer to maintain

DISCUSSION PAPER

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

and make available records to establish that packaging or other tangible personal property sold with cannabis or cannabis products is optional because the cannabis retailer is in the best position to provide support for such a factual determination. It also clarifies that if the Department determines that packaging or other tangible personal property sold with cannabis or cannabis products was not optional, the entire amount charged for the packaging or other tangible personal property shall be included in the sale price for the cannabis or cannabis products pursuant to subdivision (b) of the proposed emergency regulation.

Subdivision (e)(3) clarifies that the cannabis retailer also has the burden to maintain and make available to the Department records that establish that the amount charged for optional packaging or other optional tangible personal property sold with cannabis or cannabis products was reasonable because the cannabis retailer is in the best position to provide support for such a factual determination. It also clarifies that, if the Department determines that any amount charged for optional packaging or other optional tangible personal property exceeds a reasonable charge, the excess amount shall be included in the sale price for the cannabis or cannabis products pursuant to subdivision (b) of the proposed emergency regulation. We are considering further clarification to subdivision (e), such as adding examples illustrating a reasonable charge. (Exhibit 1.)

Also, proposed emergency Regulation 3802 does not refer to cannabis accessories because that term is not used in the Cannabis Tax Law (commencing with RTC section 34010) and the application of the cannabis excise tax imposed by RTC 34011.2 is not contingent upon whether tangible personal property is a cannabis accessory as defined in Regulation 3700 or how cannabis or cannabis products are sold or transferred to a retailer for resale at retail.

Summary

The Department is considering whether to propose to adopt emergency Regulation 3802 to address the potential confusion discussed above and provide more certainty for cannabis retailers about whether the amounts they charge purchasers of cannabis and cannabis products are included in their gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2. We welcome any comments, suggestions, and input from interested parties on this issue. We also invite interested parties to participate in the October 12, 2023, interested parties meeting. The deadline for interested parties to provide their written submissions regarding this discussion paper will be October 20, 2023. The Department will decide whether to propose to adopt the emergency regulation with or without changes after considering the interested parties' comments.

Current as of October 2, 2023

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

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

(a) “Gross receipts” from the sale of cannabis or cannabis products for purposes of the cannabis excise tax imposed by Revenue and Taxation Code (RTC) section 34011.2 (cannabis excise tax) has the same meaning as “gross receipts” from the sale of tangible personal property as set forth in RTC section 6012. In general, and as specifically clarified in this regulation, this means:

(1) Gross receipts for purposes of the cannabis excise tax include amounts that are included in gross receipts under RTC section 6012 for sales and use tax purposes.

(2) Amounts that are not deductible from gross receipts under RTC section 6012 for sales and use taxes purposes are not deductible from gross receipts for cannabis excise tax purposes.

(3) Amounts excluded from gross receipts under RTC section 6012 for sales and use taxes purposes are excluded from gross receipts for cannabis excise tax purposes.

(b) For purposes of the cannabis excise tax, the “total amount of the sale price,” as used in RTC section 6012, includes any amount the purchaser is required to pay to purchase cannabis or cannabis products, regardless of how the amount is denominated or labeled on the invoice, receipt, or other document provided to the purchaser, and specifically includes any amount the purchaser is required to pay for any of the following:

(1) Services that are incidental to or part of the sale of the cannabis or cannabis products, including, but not limited to, service and convenience charges or fees.

(2) Taxes imposed by any city, county, city and county, or rapid transit district on the sale of the cannabis or cannabis products, except as provided in subdivision (c).

(3) Transportation of the cannabis or cannabis products, including, but not limited to, delivery charges or fees, except as provided in subdivision (d).

(4) Packaging, except as provided in subdivision (e).

(5) Tangible personal property, other than packaging, sold with the cannabis or cannabis products as a unit or for a lump sum price, except as provided in subdivision (e).

(c) For purposes of the cannabis excise tax, the “total amount of the sale price,” as used in RTC section 6012, does not include the amount of any tax imposed by any city, county, city and county, or rapid transit district within the state in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with RTC section 7200) or Transactions and Use Tax Law (commencing with RTC section 7251), whether the tax is imposed upon the cannabis retailer or the consumer. However, other amounts a purchaser of cannabis or cannabis products must pay to compensate or reimburse a cannabis retailer for taxes imposed on the cannabis retailer by a city, county, city and county, or rapid transit district, including, but not limited to, cannabis business taxes measured by a cannabis retailer’s gross receipts, are not excluded from the “total amount of the sale price” as used in RTC section 6012.

(d) For purposes of the cannabis excise tax, the “total amount of the sale price,” as used in RTC section 6012, does not include charges for transportation that are not subject to sales and use tax, as provided in Regulation 1628. For purposes of applying Regulation 1628:

(1) “Transportation by facilities of the retailer” includes, but is not limited to, transportation by an employee of the cannabis retailer; and

(2) Charges a purchaser of cannabis or cannabis products must pay a cannabis retailer for delivery by facilities of the retailer are taxable for purposes of the sales and use tax and cannabis excise tax, unless the charges satisfy all the requirements of subdivision (b)(2) of Regulation 1628.

For example, a \$5.00 charge a purchaser of cannabis or cannabis products must pay a cannabis retailer for delivery by an employee of the cannabis retailer is generally included in the gross receipts subject to the cannabis excise tax, unless the charge satisfies all the requirements of subdivision (b)(2) of Regulation 1628.

(e) (1) For purposes of the cannabis excise tax, the “total amount of the sale price,” as used in RTC section 6012, does not include a reasonable amount charged for optional packaging or other optional tangible personal property sold with cannabis or cannabis products as a unit or for a lump sum price in a 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.

(A) Packaging is optional if the cannabis retailer’s customer has the option to purchase the same cannabis or cannabis products from the cannabis retailer contained in other less expensive packaging that satisfies the packaging requirements in division 10 of the Business and Professions Code.

(B) Tangible personal property sold with cannabis or cannabis products, other than packaging, is optional if the cannabis retailer's customer has the option to purchase the same cannabis or cannabis products from the cannabis retailer without purchasing the tangible personal property. For example, a vaping device sold with a cartridge containing cannabis oil is optional if the cannabis retailer's customer can purchase the same cartridge containing cannabis oil without purchasing the vaping device.

(C) Cannabis is the same as other cannabis if they are the same brand, quantity, strain, and type of cannabis (e.g., flower, preroll, shake). Cannabis products are the same as other cannabis products if they are the same brand, quantity, strain, and type of cannabis products (e.g., beverage, capsule, concentrate, edible, tincture, topical, vape cartridge).

(2) There is a rebuttable presumption that packaging and other tangible personal property sold with cannabis or cannabis products as a unit or for a lump sum price are not optional. The cannabis retailer has the burden to maintain and make available to the Department records that establish that packaging or other tangible personal property sold with cannabis or cannabis products was optional to rebut the presumption. If the Department determines that packaging or other tangible personal property sold with cannabis or cannabis products was not optional, the entire amount charged for the packaging or other tangible personal property shall be included in the total amount of the sale price for the cannabis or cannabis products pursuant to subdivision (b).

(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 packaging or other optional tangible personal property sold with cannabis or cannabis products was reasonable. If the Department determines that any amount charged for optional packaging or other optional tangible personal property exceeds a reasonable charge, the excess amount shall be included in the total amount of the sale price for the cannabis or cannabis products pursuant to subdivision (b).

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 6012, 34010, 34011.2 and 55045, Revenue and Taxation Code.