

Maryland  
**Tax Alert**



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## Questions and Answers for Cannabis Businesses

On May 3, 2023, Governor Wes Moore signed cannabis reform legislation, House Bill 556 (Chapter 254, 2023) and Senate Bill 516 (Chapter 255, 2023), into law. Beginning July 1, 2023, the sale of adult-use cannabis in Maryland is subject to a sales and use tax rate of 9% of the purchase price of any product containing cannabis.

This guidance contains answers to questions pertaining to cannabis businesses, including the collection and payment of sales and use tax, as well as recordkeeping and licensing requirements. Cannabis businesses must also adhere to other requirements imposed by the [Maryland Cannabis Administration](#), the Alcohol, Tobacco, and Cannabis Administration, and other state agencies.



**Note for filing the sales and use tax return Form 202:** Due to federal requirements, the sales and use tax return does not include the term “cannabis,” but instead refers to the bill number of the cannabis reform legislation. Report taxable sales of cannabis on **line 12** and taxable purchases for use on **line 23** of the return.

- Line 12 reads: “**Sales subject to the 9% rate under Senate Bill 516 of 2023.**”
- Line 23 reads: “**Taxable purchases subject to the 9% rate under Senate Bill 516 of 2023.**”

**Note on the use of the terms “cannabis” and “hemp” in this Tax Alert:** The law distinguishes cannabis from hemp based on the plant’s delta-9-tetrahydrocannabinol concentration level. “Cannabis” means the plant *Cannabis sativa L.* and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration greater than 0.3% on a dry weight basis. “Hemp” has a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

### Questions and Answers

#### Sales and Use Tax – General Information

##### **Q-1. My business sells adult-use cannabis. Do I need to collect sales and use tax?**

A-1. Yes. Dispensaries and on-site consumption establishments that make retail sales of cannabis or cannabis products must collect sales and use tax. The rate is 9% of the purchase price of the cannabis or cannabis product.

**Q-2. In addition to cannabis, my business also sells other products. What is the sales and use tax rate for these other products?**

A-2. Generally, the sale of most other products (such as glass pipes, hookahs, rolling papers, hemp products, clothing, food or edible products not containing cannabis, and souvenirs) is taxed at a rate of 6%, as follows:

- 1 cent on each sale where the taxable price is 20 cents.
- 2 cents if the taxable price is at least 21 cents but less than 34 cents.
- 3 cents if the taxable price is at least 34 cents but less than 51 cents.
- 4 cents if the taxable price is at least 51 cents but less than 67 cents.
- 5 cents if the taxable price is at least 67 cents but less than 84 cents.
- 6 cents if the taxable price is at least 84 cents.

On each sale where the taxable price exceeds \$1.00, the tax is 6 cents on each exact dollar, plus:

- 1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents.
- 2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents.
- 3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents.
- 4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents.
- 5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents.
- 6 cents if the excess over an exact dollar is at least 84 cents.

You can find an expanded 6% sales and use tax rate chart [here](#).

Other sales and use tax rates to note:

- Electronic smoking devices and tobacco pipes – 12%.
- Vaping liquid that does not contain cannabis or cannabis products:
  - containers of 5mL or less – 60%.
  - containers of more than 5mL – 12%.
- Vaping liquid containing cannabis – 9% regardless of the size of the container.

Certain rules apply if a cannabis vaping liquid cartridge is prepackaged with an electronic smoking device and sold as a single item (aka “bundled”):

- You may apportion the sales price between the cannabis and the electronic smoking device, separately stating the price of each component, and charge 9% sales and use tax on the taxable price attributable to the cannabis vaping liquid and 12% sales and use tax on the taxable price attributable to the electronic smoking device. The sale is recorded as two separate items – a sale of a cannabis product and a sale of an electronic smoking device.
- If the electronic smoking device is **reusable** (i.e., the device accepts vaping liquid refills that can be purchased separately), and the business selling the bundled products chooses not to apportion the sales price between the electronic smoking device and the cannabis vaping liquid, charge 12% sale and use tax on the taxable price of the bundled item and record the sale as a sale of an electronic smoking device.
- If the electronic smoking device is **disposable** and pre-filled with cannabis vaping liquid (i.e., unable to be refilled with vaping liquid purchased separately), charge 9% sales and use tax and record the sale as a sale of a cannabis product.

**Q-3. Does the 9% sales and use tax rate for cannabis apply to sales of edible products, such as food and beverages, infused with or otherwise containing cannabis?**

A-3. Yes. Edible products infused with or otherwise containing cannabis are considered cannabis products and are subject to the State’s 9% sales and use tax rate.

## Sales and Use Tax – Exemptions

### **Q-4. My business sells cannabis to other businesses that are licensed by the Maryland Cannabis Administration. Are these sales subject to the sales and use tax?**

A-4. No. The sales and use tax does not apply to sales of cannabis between cannabis businesses that are licensed by the Maryland Cannabis Administration. In these business-to-business transactions, the buyer must present a resale certificate to the seller. For example, if a cannabis grower is selling cannabis to a cannabis processor, the processor should present a resale certificate to the grower. The grower should retain the certificate as part of the sales record. Additional information about resale certificates can be found [here](#).

The resale certificate must include the buyer's sales and use tax license number. However, if a buyer in a business-to-business cannabis sale is not required to have a sales and use tax registration number (because it does not engage in retail sales, sales for use, or purchases for use of any goods), the buyer should instead include its Maryland Cannabis Administration license number on the resale certificate. The seller should verify the buyer's license number with the Maryland Cannabis Administration and retain the resale certificate for audit purposes.

### **Q-5. Can a nonprofit charitable, educational, or religious organization use its sales and use tax exemption certificate to make purchases of cannabis or cannabis products tax-free?**

A-5. If a purchase of cannabis or a cannabis product is made to carry on the work of the organization, then it is exempt from the State's sales and use tax. However, a purchase to be used primarily for carrying on an unrelated trade or business or for personal use is not exempt. (See [Code of Maryland Regulations 03.06.01.22B\(3\)](#).)

### **Q-6. Can a nonprofit charitable, educational, or religious organization make exempt purchases of cannabis or cannabis products to be used for raising funds?**

A-6. No. Organizations must be licensed by the Maryland Cannabis Administration to sell or distribute cannabis or cannabis products. Nonprofit organizations cannot purchase and resell cannabis to raise funds, or otherwise distribute cannabis for fundraising purposes.

### **Q-7. Does my business need to collect sales and use tax on sales of medical cannabis?**

A-7. No. The sales and use tax does not apply to sales of medical cannabis at dispensaries or on-site consumption establishments. For these sales, the buyer must present their medical identification card issued by the Maryland Cannabis Administration (or by the predecessor agency, the Maryland Medical Cannabis Commission, if the card has not expired).

Any amount of cannabis sold to a patient or caregiver that exceeds the amount certified by their provider is subject to sales and use tax.

A sale of medical cannabis is exempt from the sales and use tax. The sale of an electronic smoking device, e.g., a vape pen, is not exempt from sales and use tax, and is subject to a sales and use tax rate of 12%. If an electronic smoking device and vaping liquid are prepackaged together and sold as one product (aka "bundled"), a seller may choose to apportion the sales price between the exempt medical cannabis vaping liquid and the electronic smoking device, taxing only the portion of the sales price attributable to the electronic smoking device at 12%; the portion attributable to the medical cannabis vaping liquid is exempt.

The medical exemption does not apply to the sale of cannabis vaping liquid that is bundled with a reusable electronic smoking device when the dispensary chooses not to apportion the sales price between the two categories of products. The sale of a **reusable** electronic smoking device bundled with cannabis vaping liquid and sold as a single item is treated as a sale of the electronic smoking device and not as a sale of medical cannabis; the entire sales price is subject to a 12% sales and use tax.

However, the medical exemption does apply to the sale of cannabis vaping liquid that is bundled with a **disposable** electronic smoking device. See Q-2 above for additional information about bundled sales. Vaping liquid that contains cannabis and is sold separately (i.e., is not prepackaged with an electronic smoking device) is a cannabis product, and is therefore eligible for the medical exemption when sold to patients or caregivers possessing a medical cannabis card, up to the amount certified by their provider.

**Q-8. Does my business need to keep records of sales of medical cannabis?**

A-8. Yes. Sellers are required to keep records of these exempt sales, including the identification number of the buyer, and retain the records for a minimum of 4 years. The Maryland Cannabis Administration and the Alcohol, Tobacco, and Cannabis Commission may have separate recordkeeping and reporting requirements.

**Q-9. Are hemp and hemp products exempt from the sales and use tax?**

A-9. It depends. Sales of certain medicinal products are exempt from the sales and use tax. Just like aspirin or ibuprofen, medicinal products containing cannabidiol (CBD) oil that is derived from hemp and used for pain relief or other medicinal purposes are exempt from the sales and use tax. Sales of hemp and hemp products for non-medicinal purposes, such as hemp that has been made into textiles, are not exempt, and the 6% sales and use tax rate applies.

**Q-10. Are there any exemptions that apply to sales of farm equipment?**

A-10. Yes. The sales and use tax does not apply to sales, including rentals, to a farmer of farm equipment used to raise livestock and poultry; prepare, irrigate or tend the soil; or plant, service, harvest, store, clean, dry or transport seeds or crops. Farm equipment that is used for traditional agricultural purposes is exempt from sales and use tax even if attached to real property. For additional information, see [Business Tax Tip #11](#).

**Q-11. Are there any exemptions that apply to production activities?**

A-11. Yes. The Maryland sales and use tax does not apply to sales of tangible personal property, a digital code or a digital product used directly and predominantly in production activities, or to sales of tangible personal property for resale or incorporation as material or part of tangible personal property produced for sale. For additional information, see [Business Tax Tip #9](#).

Sales and Use Tax – Filing Returns and Remitting Payments

**Q-12. How does my business file a sales and use tax return?**

A-12. Businesses are strongly encouraged to file online using [bFile](#). After you log on to bFile, click the “File Sales and Use Tax Returns” link. If your business has not previously registered, you can also register online through the bFile application.

If online filing is not feasible, a business may request a paper return by emailing [IWantMySUTCoupons@marylandtaxes.gov](mailto:IWantMySUTCoupons@marylandtaxes.gov), or by mailing a request to Comptroller of Maryland, Revenue Administration Division, P.O. Box 1829, Annapolis, MD 21404.

**Q-13. My business operates more than one location in Maryland. Can I file a single sales and use tax return to account for all the locations?**

A-13. No. Cannabis businesses operating more than one location in Maryland must file a separate sales and use tax return for each location. Each location must report separately so that the Comptroller can distribute a portion of tax revenue to the local jurisdictions in which the sales occur under the cannabis reform legislation.

**Q-14. How frequently does my business need to file?**

A-14. Businesses need to file according to the filing frequency assigned by the Comptroller, typically either monthly or quarterly based on sales volume.

**Q-15. What is the due date to file and remit sales and use tax?**

A-15. Businesses assigned a monthly filing frequency must file by the 20th day following the end of the month. For example, businesses must file the July return by August 20.

Businesses assigned a quarterly filing frequency must file by the 20th day following the end of the quarter. For example, businesses must file the July through September return by October 20.

**Q-16. What changes have been made to the sales and use tax return to report cannabis sales and purchases?**

A-16. The sales and use tax return, Form 202, has been updated to include the following information:

- A box at the top of the form to report the business's address. The address must be the physical location from which the business makes the sales. See Instruction A on Form 202 for additional information.
- **Line 12** to report taxable sales of cannabis.
  - **Important:** Due to federal requirements, the sales and use tax return does not include the term "cannabis," but instead refers to the bill number of the cannabis reform legislation. Line 12 reads: "**Sales subject to the 9% rate under Senate Bill 516 of 2023.**"
- **Line 23** to report taxable purchases of cannabis for use.
  - **Important:** Due to federal requirements, the sales and use tax return does not include the term "cannabis," but instead refers to the bill number of the cannabis reform legislation. Line 23 reads: "**Taxable purchases subject to the 9% rate under Senate Bill 516 of 2023.**"

**Q-17. Is there a discount for timely filing?**

A-17. Yes! A vendor that files the sales and use tax return by the due date may claim a credit, referred to as the timely filing discount, against the sales and use tax payment to the Comptroller. The credit is claimed on Line 14 of the sales and use tax return. The maximum available credit per return is \$500. Additional information about the timely filing discount is available in the Form 202 instructions.

If a cannabis business operates more than one location, the business must file a separate return for each location. The business may claim the timely filing discount on each separate return.

#### **Q-18. What sales records is my business required to keep for tax purposes?**

A-18. By law, you are required to make your business records available for inspection by an auditor from the Comptroller's Office at any time during business hours. A business bears the burden of demonstrating that it collected and paid the sales and use tax correctly. Your records must adequately distinguish taxable sales and purchases from non-taxable sales and purchases. If you do not have adequate records, the Comptroller's Office may compute a liability by projection from available records, by a survey of similar businesses, or on any other reasonable basis.

#### **Q-19. How long should my business retain sales records?**

A-19. You must keep all records pertaining to sales and purchases for 4 years. You should keep the kinds of general business records that are appropriate for your type of business. These general business records might include a general ledger, subsidiary ledgers, journal entries, bank statements, check stubs, and federal and state income tax returns. An auditor must be able to follow the flow of each transaction and match up all documents pertaining to that transaction. Documents or books of records that are incomplete, missing, or illegible are not adequate records.

For a comprehensive list of the types of records you must keep, visit the Comptroller's [Sales and Use Tax webpage](#), and click the "Sales Records" menu. Cannabis businesses must also retain records of tax-exempt sales, including medical registration numbers of patients and caregivers (seed-to-sale electronic records suffice) and resale certificates.

#### Licensing and Registration

#### **Q-20. I am starting a new cannabis business in Maryland. Does my cannabis business need to register with the State to conduct business in Maryland?**

A-20. Yes. Business entities must register with the State Department of Assessments and Taxation (SDAT). SDAT is an independent agency separate from the Office of the Comptroller. Visit the [SDAT website](#) for additional information. A business must register with SDAT before applying for various licenses, including a sales and use tax license. (See below.)

#### **Q-21. Do I need a license to sell cannabis?**

A-21. Yes. In addition to the licensing requirements imposed by the Maryland Cannabis Administration, a cannabis business must comply with the general licensing requirements applicable to all businesses in the State.

A cannabis business making retail sales of cannabis and cannabis products must obtain a **Sales and Use Tax License** from the Comptroller for each business location and a **Traders License** from the Clerk of the Circuit Court of the county in which the business is located. Additionally, if a cannabis business operates more than one sales location subject to the same ownership or general management, the business must obtain a **Chain License** from the Clerk of the Circuit Court.

To open a sales and use tax account and register for other tax accounts, complete the Combined Registration Application available [here](#). If you are applying for a sales and use tax account and you already have another tax account (for example, employer withholding account), you must file a paper application.

For information on how to obtain a Traders License and a Chain License, visit the Comptroller's [Business Licenses webpage](#).

**Q-22. My business does not yet have a cannabis license. What should I do?**

A-22. Businesses that are interested in applying for a cannabis business license should visit the Maryland Cannabis Administration website for additional information. There will be three separate rounds of licensing. The first round is scheduled to be held in Fall 2023. The Maryland Cannabis Administration will conduct extensive outreach and education on the licensing process and cannabis industry. You can sign up to receive information from the Maryland Cannabis Administration by filling out the contact form [here](#). Please note, a license is required to sell cannabis in the State of Maryland.