

**INFORMATION ON THE IMPOSITION AND DISTRIBUTION OF THE
WHOLESALE AND RETAIL EXCISE TAXES ON MARIJUANA
BASED ON THE RECREATIONAL MARIJUANA BALLOT QUESTION AND
LEGISLATIVE ACTIONS FROM THE 2017 SESSION**

SUMMARY INFORMATION

The following summarizes the major elements regarding excise taxes on marijuana and the use of their proceeds in relation to K-12 education:

- 1.) All of the provisions of the recreational marijuana ballot question approved by voters at the November 2016 General Election regarding the imposition of taxes and fees and the required use of those proceeds were implemented as required in the ballot measure.
- 2.) As required by the provisions of the recreational marijuana ballot question, the proceeds from the 15% excise tax on wholesale sales by a cultivation facility and the application and license fees first fund the costs of administration by the Department of Taxation and local governments with the revenue in excess of these costs deposited in the Distributive School Account (DSA) to provide state funding for K-12 education.
- 3.) The 10% retail excise tax on recreational marijuana was not approved by voters. The 10% retail excise tax was recommended by Governor Sandoval and approved by the Legislature during the 2017 Legislative Session in Senate Bill 487.
- 4.) The proceeds from the 10% retail excise tax were dedicated to the Account to Stabilize the Operation of the State Government (Rainy Day Fund) by the Legislature. The Legislature did not dedicate the proceeds to the Distributive School Account (DSA) for K-12 education, as recommended by the Governor, due to issues during the legislative session related to complying with the provisions in the *Nevada Constitution* to approve appropriations for K-12 education before appropriations are approved for other parts of the state General Fund budget.
- 5.) The action by the Legislature to require the proceeds from the 10% retail excise tax to be deposited in the Rainy Day Fund had no impact on the amount of state funding approved by the Legislature during the 2017 Session for K-12 education. The Legislature replaced the projected amount of proceeds from the 10% retail excise tax with an identical amount of General Fund appropriations in Senate Bill 544 (the K-12 funding bill).

DETAILED INFORMATION

The following provides additional details on the 10% retail excise tax on recreational marijuana and the 15% wholesale excise tax.

10% Retail Excise Tax

There are no provisions in the recreational marijuana ballot question (Question 2), approved by voters at the November 2016 General Election, establishing an excise tax on the retail sale of recreational marijuana with the proceeds dedicated to the funding of K-12 education. There are also no provisions in the ballot question requiring the Legislature to impose an excise tax on the retail sale of recreational marijuana products with the proceeds dedicated to K-12 education. Thus, any statements made regarding the Legislature diverting the proceeds from a voter-approved retail excise tax on marijuana from K-12 education to the State Rainy Day Fund are not valid.

Governor Sandoval, in The Executive Budget submitted to the Legislature for consideration during the 2017 Legislative Session, included a recommendation to establish a 10% excise tax on the retail sale of recreational marijuana with the proceeds deposited in the State Distributive School Account (DSA), which provides state source funding for K-12 education under the Nevada Plan funding formula. There was no requirement, voter-approved or otherwise, for the Governor to make this recommendation to the Legislature. The proceeds from the 10% retail excise tax in the DSA provided additional state funding for K-12 education which reduced the amount of the General Fund appropriation required to support the recommended State supported K-12 funding level. Thus, the Governor's recommendation to establish the 10% retail excise tax on recreational marijuana provided additional funding to support the Governor's recommended General Fund budget for FY 2018 and FY 2019 submitted to the Legislature for the 2017 Session.

The Senate Committee on Finance approved the K-12 funding bill on May 31, 2017, with the proceeds from the 10% retail excise tax dedicated to the DSA as recommended by the Governor. However, the legislation to enact the 10% retail excise tax (S.B. 487), which required a 2/3's vote, had not been approved prior to the approval of the K-12 funding bill (S.B. 544) by the Senate on June 1, 2017. Before any other appropriation is enacted by the Legislature to fund a portion of the state budget, the provisions of Section 6 of Article 11 of the *Nevada Constitution* require the Legislature to enact appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money available, to fund the operation of K-12 public schools for the upcoming biennium. Without the passage of the bill establishing the 10% retail excise tax prior to the approval of the K-12 funding bill (S.B. 544) by the Legislature, the K-12 budget would not have been funded under the requirements in Article 11 of the *Nevada Constitution*. Thus, the Senate amended the K-12 funding bill (S.B. 544) to remove the amount projected for the 10% retail excise tax and replace it with an equal amount of General Fund appropriation for both FY 2018 and FY 2019. It was this amended version of SB 544 that was passed by both the Senate and the Assembly on

June 2, 2017, and approved by the Governor on June 5. Therefore, the amount of recommended spending on K-12 education from state sources was not affected by the Legislature's action to have the proceeds from the 10% retail excise tax dedicated to the Rainy Day Fund versus the DSA as a state funding source for K-12 education for FY 2018 and FY 2019.

The Legislature was able to obtain the 2/3's vote for the passage of the 10% retail excise tax in S.B. 487 on June 5, 2017 (the last day of the constitutionally required 120-day session). However, this late in the session it would have been difficult to amend the K-12 funding bill to have the proceeds deposited in the DSA as a funding source for K-12 education and still complete the Legislature's business in the constitutionally required 120 days. The Legislature decided to have the proceeds from the 10% retail excise tax deposited in the State Rainy Day Fund. The Legislature determined it was appropriate to dedicate the proceeds to the Rainy Day Fund given the uncertainty regarding the revenue estimates for this new tax and the desire to increase the balance available in the State's savings account to address future potential negative events that could affect the State General Fund budget.

15% Wholesale Excise Tax

The provisions of the recreational marijuana ballot question, approved by voters at the November 2016 General Election, did include provisions requiring the imposition of a 15% excise tax on the wholesale sales of marijuana by a marijuana cultivation facility. Additionally, the ballot question established application and license fees on the different types of marijuana establishments authorized to operate under the recreational marijuana program.

The ballot question required the proceeds from the 15% wholesale excise tax and the application and license fees to provide funding for the Department of Taxation and local governments for the costs to administer the provisions of the ballot question. Any excess proceeds above the costs to administer the recreational marijuana program are deposited in the State Distributive School Account (DSA), as required by the ballot measure. The DSA provides state source funding for K-12 education under the provisions of the Nevada Plan K-12 funding formula. Thus, along with the other state sources of funding included in the DSA, the excess proceeds from the 15% wholesale excise tax and the application and license fees after costs of administration are dedicated to K-12 education as required under the provisions of the recreational marijuana ballot question.

The Legislature also established a 15% wholesale excise tax on medical marijuana sales by a marijuana cultivation facility. The proceeds from this 15% wholesale excise tax have the same funding requirements as the 15% wholesale excise tax on recreational marijuana. The proceeds are used to cover the costs of administration by the Department of Taxation and local governments with excess proceeds dedicated to the DSA.