



Recreational Cannabis and Licensed Cannabis Establishments

TB-104 – Issued December 20, 2021

Tax: Sales and Use Tax

Effective February 22, 2021, P.L. 2021, c. 16, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization (CREAMM) Act, established six classes of licenses for authorized recreational use cannabis businesses, and eliminated penalties associated with the authorized possession, manufacture, sale, and use of recreational cannabis. This bulletin provides information on the definitions under the Act, the taxes and fees imposed on applicable sales or transfers of recreational cannabis, and the exemptions from tax.

For additional information on this law, associated rules and regulations, and licensing information, please see the [Cannabis Regulatory Commission's \(CRC\) website](#).

DEFINITIONS

For the purposes of the CREAMM Act and the administration of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) and additional taxes, the following definitions apply:

"Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L.2021, c.16 (N.J.S.A. 24:6I-31 et al.) for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, P.L.2009, c.307 (N.J.S.A. 24:6I-1 et al.) and P.L.2015, c.158 (N.J.S.A. 18A:40-12.22 et al.); marijuana as defined in N.J.S. 2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L.2001, c.114 (N.J.S. 2C:35B-1 et seq.), or marihuana as defined in section 2 of P.L.1970, c.226 (N.J.S.A. 24:21-2) and applied to any offense set forth in the New Jersey Controlled Dangerous Substances Act, P.L.1970, c.226 (N.J.S.A. 24:21-1 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the New Jersey Hemp Farming Act, P.L.2019, c.238 (N.J.S.A. 4:28-6 et al.).

“Cannabis establishment” means and includes a licensed “cannabis cultivator,” “cannabis manufacturer,” “cannabis wholesaler,” or “cannabis retailer.” Please see the table below for brief descriptions of activities authorized by cannabis establishment licenses.

Recreational Use Licenses	Authorized Activity
Class 1 – Cannabis Cultivator	Grow recreational use cannabis
Class 2 – Cannabis Manufacturer	Produce recreational use cannabis
Class 3 – Cannabis Wholesaler	Store, sell, or transfer recreational use cannabis items between cannabis cultivators, wholesalers, or retailers
Class 4 – Cannabis Distributor	Transport cannabis items in bulk between cannabis cultivators, manufacturers, or retailers within the State of New Jersey
Class 5 – Cannabis Retailer	Purchase recreational use cannabis from licensed cultivators, manufacturers, or wholesalers and sell those items to consumers in a retail store
Class 6 – Cannabis Delivery	Transport a consumer’s purchases of recreational use cannabis and related supplies from the retailer to that consumer

“Cannabis item” means any usable cannabis, cannabis product, cannabis extract, and any other cannabis resin. “Cannabis item” does not include: any form of medical cannabis dispensed to registered qualifying patients pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, P.L.2009, c.307 (N.J.S.A. 24:6I-1 et al.) and P.L.2015, c.158 (N.J.S.A. 18A:40-12.22 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the New Jersey Hemp Farming Act, P.L.2019, c.238 (N.J.S.A. 4:28-6 et al.).

“State or local economic incentive” means a financial incentive, awarded by the State, any political subdivision of the State, or any agency or instrumentality of the State or political subdivision of the State, to any non-governmental person, association, for-profit or nonprofit corporation, joint venture, limited liability company, partnership, sole proprietorship, or other form of business organization or entity, or agreed to between the government and non-governmental parties, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

“Usable cannabis” means the dried leaves and flowers of the female plant *Cannabis sativa* L., and does not include the seedlings, seeds, stems, stalks, or roots of the plant.

PURCHASES OF RECREATIONAL CANNABIS

Individuals and businesses may purchase usable cannabis from licensed cannabis establishments subject to the following taxes and fees.

Sales Tax

Retail sales of recreational cannabis are subject to Sales Tax. N.J.S.A. 54:32B-3(a).

Social Equity Excise Fee

A Social Equity Excise Fee (SEEF) is imposed on receipts from the sale, or equivalent value of the transfer, of usable cannabis by a cannabis cultivator to any other cannabis establishment. The imposition of this fee also applies to the sale or transfer of usable cannabis by a medical cannabis alternative treatment center that also cultivates cannabis for the recreational use market deemed to be licensed to engage in recreational cannabis activities pursuant to N.J.S.A. 24:6I-7 and issued a Class 1 Cannabis Cultivator license by the commission pursuant to N.J.S.A. 24:6I-46.

SEEF is not imposed on a transfer by a cannabis cultivator to another cannabis cultivator. In addition, it is not imposed on a transfer by a cannabis cultivator to a licensed medical cannabis alternative treatment center for use in medical cannabis dispensing pursuant to the Jake Honig Compassionate Use Medical Cannabis Act.

SEEF is imposed at the rate set per the schedule provided by CRC. SEEF is reported on Form SF-100.

Any sale by a cannabis cultivator for which the SEEF is imposed is exempt from Sales Tax.

Local Cannabis Transfer Tax

A municipality may adopt an ordinance imposing a Local Cannabis Transfer Tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality. At the discretion of the municipality, the tax may be imposed on any or all of the following receipts from the sale of:

- cannabis by a cannabis cultivator to another cannabis cultivator;
- cannabis items from one cannabis establishment to another cannabis establishment (see definition on page 2); and
- cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older.

Each municipality will set its own rate or rates, but in no case will a rate exceed two-percent of the receipts from each sale by a cannabis cultivator, cannabis manufacturer, or cannabis retailer, or one-percent of the receipts from each sale by a cannabis wholesaler.

A Local Cannabis Transfer Tax must also include provisions for imposing a User Tax, at the equivalent transfer tax rates, on any concurrent license holder. The User Tax is imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the Local Transfer Tax, from the license holder's establishment that is located in the municipality to any of the other license holder's establishments, whether located in the municipality or another municipality.

The Division of Taxation has no involvement in or responsibility for any locally imposed transfer taxes.

EXEMPTIONS

Purchases of Production Equipment

Licensed cannabis establishments that produce recreational cannabis may purchase machinery, apparatus, or equipment that is used directly and primarily in the production of recreational cannabis without paying Sales Tax pursuant to N.J.S.A. 54:32B-8.13(a).

The exemption also includes parts with a useful life of greater than one year. The exemption does not apply to supplies or tools which are simple, hand-held, manually operated instruments used in connection with the production machinery, apparatus, or equipment. A business should issue a fully completed [Exempt Use Certificate \(Form ST-4\)](#) to its supplier to document the exemption.

Purchases of Tangible Personal Property and Services by Farming Enterprises

A farming enterprise is a facility used primarily for raising agricultural or horticultural commodities for sale, which includes property produced through the raising of plants useful to people or animals. A cannabis establishment operating as a farming enterprise which grows or cultivates recreational cannabis may claim an exemption for sales of tangible personal property and production and conservation services for use and consumption directly and primarily in the production, handling, and preservation related to the sale of recreational cannabis. N.J.S.A. 54:32B-8.16.

A licensed cannabis establishment which qualifies for this exemption may make exempt purchases of farm equipment used for tilling, planting, maintaining, or harvesting recreational cannabis. Purchases of property such as seeds, plants, liners, fertilizer, lime, pesticides, and drip irrigation are exempt when used directly at the farming enterprise for the purpose of producing and selling recreational cannabis. Production services purchased by a licensed cannabis establishment that are part of the process of planting, breeding, propagating, feeding, fertilizing, raising, or harvesting recreational cannabis at the cannabis establishment's farming enterprise for the purpose of selling recreational cannabis are also exempt. A qualifying cannabis establishment should issue a fully completed [Farmer's Exemption Certificate \(Form ST-7\)](#) to its supplier to document the exemption.

Please see [Farming and New Jersey Sales and Use Tax](#) for more information.

Purchases of Wrapping Supplies

A licensed cannabis establishment's purchase of materials used to contain, protect, wrap, and deliver recreational cannabis to customers is exempt from Sales Tax pursuant to N.J.S.A. 54:32B-8.15. The exemption applies to "wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers, reusable milk containers, and all other wrapping supplies when such use is incidental to the delivery of any personal property." An example of an item which may qualify for exemption under this section includes a bag in which the recreational cannabis is placed for delivery to purchasers. In order to document the exemption, the licensed cannabis business should issue its supplier a fully completed Exempt Use Certificate (Form ST-4).

Limits on Exemptions and State or Local Economic Incentives

A nonprofit organization which has been designated by the IRS as an IRC §501(c)(3) organization may apply to the New Jersey Division of Taxation to receive exempt status for Sales and Use Tax on certain purchases that are directly related to the organization's purposes. However, a business holding a recreational use license cannot qualify as an IRC §501(c)(3) organization based upon State and federal laws and regulations that are currently in effect. An entity that is not an IRC §501(c)(3) organization is treated in the same manner as for-profit organizations with regard to paying Sales Tax or remitting Use Tax on purchases.

If a business holding a recreational use license enumerated above is a for-profit entity or a nonprofit entity other than one organized under IRC §501(c)(3), it is required to pay Sales Tax on purchases of tangible personal property and services used in the business (unless a valid exemption under the law applies, e.g., farmer's exemption, wrapping supply exemption, etc.).

A person or entity issued a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or that employs a certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service is not eligible for a State or local economic incentive.

In no case shall a licensed cannabis cultivator operate or be located on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (N.J.S.A. 54:4-23.1 et seq.).

ADDITIONAL INFORMATION

Businesses issued a recreational use license are required to register the business with the New Jersey Division of Revenue and Enterprise Services by filing an Application for Business

Registration (Form NJ-REG). Registration information is accessible from the [Division of Revenue and Enterprise Services website](#).

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.