

Michigan Office of Administrative Hearings and Rules

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REQUEST FOR RULEMAKING (RFR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate rules must electronically file a RFR with the Michigan Office of Administrative Hearings and Rules (MOAHR) before initiating any changes or additions to the rules. Submit copy to the MOAHR at o'berrvd@michigan.gov.

1. Agency Information

Agency name:	Treasury
Division/Bureau/Office:	Bureau of Tax Policy
Name, title, phone number, and e-mail of person completing this form:	Margaret Patterson, Administrative Law Specialist (517) 335-7478 Treas_Tax_Policy@michigan.gov ___

2. Rule Set Information

Title of proposed rule set:	General Sales and Use Tax Rules
Rule number(s) or range of numbers:	R 205.1 through R 205.140
Included in agency's annual regulatory plan as rule to be processed in current year?	No

3. Estimated timetable for completion, or statutory deadline, if applicable:

By October 1, 2019 or as soon as full promulgation process allows.

4. Describe the general purpose of these rules, including any problem(s) the changes are intended to address:

On November 6, 2018, Michigan voters approved a ballot initiative legalizing the recreational use and possession of marijuana for adults 21 years of age and older and enacting an excise tax on retail marijuana sales. The resulting legislation is known as the Michigan Regulation and Taxation of Marijuana Act (MRTMA), MCL 333.27951 through MCL 333.27967. The 10 percent excise tax is levied in addition to any other applicable state taxes, including the existing 6 percent sales tax, and will be administered by the Department of Treasury.

Specifically, the MRTMA provides that the excise tax is imposed "at the rate of 10% of the sales price for marijuana sold or otherwise transferred to anyone other than a marijuana establishment." MCL 333.27963(1). The MRTMA further provides that taxable marijuana "may not be bundled in a single transaction with a product or service" that is not subject to the 10 percent excise tax. MCL 333.27963(2).

The amendment to the General Sales and Use Tax Rules will clarify that retail sales of recreational and medical marijuana are not exempt from taxation under the General Sales Tax Act, and the Use Tax Act, as food or prescription drugs.

5. Cite the specific rule promulgation authority (i.e. agency director, commission, board, etc., listing all applicable statutory references. If the rule(s) are mandated by any applicable constitutional or statutory provision, please explain.

Regarding promulgation authority for the General Sales and Use Tax Rules, MCL 205.3 of the Revenue Act directs that the Department of Treasury may promulgate rules consistent with the Revenue Act in accordance with the administrative procedures act of 1969, that are "necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the

department.” MCL 333.27963(3) directs that the Department of Treasury may promulgate rules “that prescribe a method and manner for payment of the tax to ensure proper tax collection” under the MRTMA.

6. Describe the extent to which the rule(s) conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level. Include applicable public act and statutory references.

The Michigan Legislature has designated the Department of Treasury as the “agency of this state responsible for the collection of taxes.” MCL 205.1. There are no other compliance requirements at the state, regional, or federal level regulating the taxation of the retail sale of marihuana for recreational or medical use.

7. Is the subject matter of the rule(s) currently contained in any guideline, manual, handbook, instructional bulletin, form with instructions, or operational memo?

Certain of the subject matter of the proposed amendment is contained in Revenue Administrative Bulletin 2018-2 titled “Marihuana Provisioning Center Tax and Sales and Use Tax Treatment of Marihuana,” last updated on April 22, 2019, and in a notice captioned “ Notice to Taxpayers Regarding the Michigan Regulation and Taxation of Marihuana Act,” issued on January 29, 2019.

8. Explain whether the rule(s) will be promulgated under Sections 44 or 48 of the APA or the full rulemaking process:

The amendment will be promulgated under the full rulemaking process.

9. Do the rule(s) incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, explain.

The amendment does not involve an Advisory Rules Committee.

10. Is there an applicable decision record as defined in Section 3(6) and required by Section 39(2) of the APA? If so, please attach the decision record.

There is no decision record applicable to the amendment.

11. Reviewed by the following Departmental Regulatory Affairs Officer:

Margaret Patterson

↓ To be completed by the MOAHR ↓

Date RFR received: 5-21-2019

Based on the information in this RFR, the MOAHR concludes that there are sufficient policy and legal bases for approving the RFR.

MOAHR assigned rule set number:	2019-051 TY
Date of approval:	5/22/19

Based on the information in this RFR, the MOAHR is not approving the RFR at this time.

Date of disapproval:	
Explanation:	