

Michigan Office of Administrative Hearings and Rules
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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Michigan Office of Administrative Hearings and Rules (MOAHR) at MOAHR-Rules@michigan.gov no less than 28 days before the public hearing.

1. Agency Information:

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| 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 | |
| Name of Departmental Regulatory Affairs Officer reviewing this form: | Margaret Patterson | |

2. Rule Set Information:

| | |
|---------------------------------|---------------------------------|
| MOAHR assigned rule set number: | 2019-051 TY |
| Title of proposed rule set: | General Sales and Use Tax Rules |

PART 2: KEY SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

MCL 24.232 (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
- (a) 0-9 full-time employees.
 - (b) 10-49 full-time employees.
 - (c) 50-249 full-time employees.
- (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
- (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards set by a state or national licensing agency regulating the taxation of marihuana for recreational or medical use.

A. Are these rule(s) required by state law or federal mandate?

Regarding promulgation authority for the General Sales and Use Tax Rules, MCL 205.3 of the Revenue Act directs that the Department of Treasury (Treasury) may promulgate rules consistent with the Revenue Act in accordance with the Administrative Procedures Act of 1969, that are “[n]ecessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department.” The Michigan Regulation and Taxation of Marihuana Act (MRTMA) directs that Treasury may promulgate rules “[t]hat prescribe a method and manner for payment of the tax [on retail marihuana sales] to ensure proper tax collection” under the MRTMA. MCL 333.27963(3).

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There is no federal standard regulating the taxation of marihuana for recreational or medical use.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

No such comparison to standards in similarly situated states is warranted. The proposed rule implements the express statutory mandates in the MRTMA that “*In addition to all other taxes*, an excise tax is imposed on each marihuana retailer and on each marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.” See MCL 333.27963(1). (Emphasis provided.)

The addition of R 205.141 to the General Sales and Use Tax Rules will clarify that the excise tax is levied in addition to the existing 6 percent sales tax. The new rule will also confirm that retail sales of recreational and medical marihuana are not exempt from taxation under the General Sales Tax Act, MCL 205.51 to 205.78, and the Use Tax Act, MCL 205.91 to 205.111, as food or prescription drugs.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

No such comparison to standards in similarly situated states is warranted. The proposed rule implements the express statutory mandates in the MRTMA that “*In addition to all other taxes*, an excise tax is imposed on each marihuana retailer and on each marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.” See MCL 333.27963(1). (Emphasis provided.)

The addition of R 205.141 to the General Sales and Use Tax Rules will clarify that the excise tax is levied in addition to the existing 6 percent sales tax. The new rule will also confirm that retail sales of recreational and medical marihuana are not exempt from taxation under the General Sales Tax Act, MCL 205.51 to 205.78, and the Use Tax Act, MCL 205.91 to 205.111, as food or prescription drugs.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

No other laws, rules, or other legal requirements duplicate, overlap, or conflict with the proposed rule.

A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1. No other federal, state, or local laws apply to the same activity of regulating the taxation of marihuana for recreational or medical use.

4. If MCL 24.232(8) applies and the proposed rule(s) is more stringent than the applicable federally mandated standard, **a statement of specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

No applicable federally mandated standard exists regulating the taxation of marihuana for recreational or medical use.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific**

facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard is required below:

MCL 24.232(9) does not apply to the proposed rule.

Purpose and Objectives of the Rule(s):

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

The proposed rule is not designed to alter any behavior. On November 6, 2018, Michigan voters approved a ballot initiative legalizing the recreational use and possession of marihuana for adults 21 years of age and older and enacting an excise tax on retail marihuana sales. The resulting legislation is the MRTMA. The 10% excise tax is levied in addition to any other applicable state taxes, including the existing 6% sales tax and, will be administered by Treasury.

Specifically, the MRTMA provides that the excise tax is imposed “[a]t the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.” The MRTMA further directs that taxable marihuana “[m]ay not be bundled in a single transaction with a product or service” that is not subject to the 10% excise tax.

The new rule, R 205.141, confirms that “[T]he taxable ‘sales price’ of marihuana includes the 10% excise tax levied under section 13(1) of the [MRTMA] . . .” The new rule provides an example illustrating that a marihuana retailer who sells marihuana to a customer for \$100.00 is liable for \$10.00 of marihuana excise tax. The example further explains that the marihuana retailer is also liable for sales tax on this transaction. The amount of sales tax due is 6% of \$110.00 or \$6.60.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

The proposed rule is not designed to alter any behavior.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed rule is not designed to alter any behavior.

C. What is the desired outcome?

The desired outcome is that the proposed rule provides clarification to taxpayers responsible for paying the excise tax and sales or use tax on retail sales of marihuana that: (1) all sales of marihuana are subject to the General Sales Tax Act based on the “sales price” of the property as defined by section 1(1)(d) of the General Sales Tax Act; (2) the taxable “sales price” of marihuana includes the 10% excise tax levied under the MRTMA; (3) the use, storage, or consumption of marihuana in Michigan is subject to the Use Tax Act; and (4) for purposes of the General Sales Tax Act and the Use Tax Act, marihuana, in any form, does not constitute the exempt sale, use, storage, or consumption of food or prescription drugs under those acts.

7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The proposed rule is not designed to alter a behavior.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

No rules currently exist regulating the taxation of marihuana for recreational or medical use.

8. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rule, as described in the MRTMA, “[p]rescribe[s] a method and manner for payment of the tax to ensure proper tax collection under this act.” See MCL 333.27963(3).

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

No rules currently exist regulating the taxation of marihuana for recreational or medical use.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

The proposed rule does not result in an increase or decrease in expenditures from the current level of expenditures.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

As the proposed rule does not have a fiscal impact on Treasury no agency appropriation was necessary.

12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rule does not place any burdens on individuals but rather assists taxpayers responsible for paying the excise tax and sales or use tax on retail sales of marihuana by clarifying how those sales are handled pursuant to the General Sales Tax Act and the Use Tax Act.

A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The proposed rule does not place any burdens on individuals.

Impact on Other State or Local Governmental Units:

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rule will not result in any increase or decrease in revenues, or any increases or reductions in costs to other state or local governmental units.

A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rule will not result in any increases or reductions in costs to other state or local governmental units.

14. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

Governmental units do not need to take any actions to be in compliance with the proposed rule.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

The proposed rule does not require any additional expenditures by state or local governmental units, so an appropriation is not necessary.

Rural Impact:

16. In general, what impact will the rule(s) have on rural areas?

The proposed rule will not have a specific impact on rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed rule will not affect public or private interests in rural areas.

Environmental Impact:

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The proposed rule will not have any impact on the environment.

Small Business Impact Statement:

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

Treasury did not consider exempting small businesses from R 205.141, which regulates how retail sales of marihuana are handled pursuant to the General Sales Tax Act and the Use Tax Act. The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1. In fulfilling that statutory duty, the Michigan Legislature directs that Treasury is responsible for “[S]pecialized service for tax enforcement, through establishment and maintenance of uniformity in definition, regulation, return, and payment.” MCL 205.1(b). Tax laws must be uniformly applied unless a law creates a specific exemption. MCL 205.28(1)(e) expressly mandates that “[E]xcept as otherwise provided in sections 21(2)(e), 23(a), and 30c, the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state . . .”

19. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rule does not have a disproportionate impact on small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

It is impossible at this time to identify or estimate the number of small businesses affected by the proposed rule as the Department of Licensing and Regulatory Affairs is in the process of accepting the first license applications for marihuana retailer and marihuana microbusiness. See MCL 333.27959(6).

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rule does not result in any required reporting, record-keeping, or other administrative costs to any business.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rule does not result in any reporting requirements for any business.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The proposed rule does not impose design or operation standards on any business.

20. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rule does not have a disproportionate impact on small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The proposed rule does not result in any reporting requirements for any business.

22. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rule does not result in compliance costs for any business.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The proposed rule does not result in compliance costs for any business.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The proposed rule does not result in compliance costs for any business.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Treasury did not consider exempting small businesses from R 205.141. Tax laws must be uniformly applied unless a law creates a specific exemption. MCL 205.28(1)(e) expressly mandates that “[E]xcept as otherwise provided in sections 21(2)(e), 23(a), and 30c, the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state . . .”

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Treasury did not consider exempting small businesses from R 205.141. Tax laws must be uniformly applied unless a law creates a specific exemption. MCL 205.28(1)(e) expressly mandates that “[E]xcept as otherwise provided in sections 21(2)(e), 23(a), and 30c, the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state . . .”

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

It is impossible at this time to identify the small businesses affected by the proposed rule as the Department of Licensing and Regulatory Affairs is in the process of accepting the first license applications for marijuana retailer and marijuana microbusiness. See MCL 333.27959(6).

A. If small businesses were involved in the development of the rule(s), please identify the business(es).

It is impossible at this time to identify the small businesses affected by the proposed rule as the Department of Licensing and Regulatory Affairs is in the process of accepting the first license applications for marihuana retailer and marihuana microbusiness. See MCL 333.27959(6).

Cost-Benefit Analysis of Rules (independent of statutory impact):

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The proposed rule does not result in any compliance costs on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

The proposed rule benefits marihuana retailers and marihuana microbusinesses, who are the taxpayers responsible for paying the excise tax and sales or use tax on retail sales of marihuana. The proposed rule helps the taxpayers by clarifying how those sales are handled pursuant to the General Sales Tax Act and the Use Tax Act.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rule does not impose any costs on businesses or any other groups.

29. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rule applies to marihuana retailers and marihuana microbusinesses and does not regulate individuals or the public.

A. How many and what category of individuals will be affected by the rules?

The proposed rule applies to marihuana retailers and marihuana microbusinesses and does not regulate individuals.

B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The proposed rule applies to marihuana retailers and marihuana microbusinesses and does not regulate individuals.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

The proposed rule does not result in any cost reductions to businesses, individuals, groups of individuals, or governmental units.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

The proposed rule benefits marihuana retailers and marihuana microbusinesses, who are the taxpayers responsible for paying the excise tax and sales or use tax on retail sales of marihuana. The proposed rule helps the taxpayers by clarifying how those sales are handled pursuant to the General Sales Tax Act and the Use Tax Act.

32. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

R 205.141 will not have a measurable impact on business growth or job creation in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rule does not disproportionately affect any individuals or businesses.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

In compiling the Regulatory Impact Statement Treasury relied upon the expertise of staff qualified by training and experience in the administration and enforcement of tax laws.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

In compiling the Regulatory Impact Statement of R 205.141 Treasury did not make any estimates or assumptions.

Alternatives to Regulation:

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

No alternative to promulgated administrative rules exists to regulate the taxation of marihuana for recreational or medical use. The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1.

A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

No alternative to promulgated administrative rules exists to regulate the taxation of marihuana for recreational or medical use. The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

No alternative to promulgated administrative rules, including private market-based mechanisms, is feasible to regulate the taxation of marihuana for recreational or medical use. The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No alternatives were considered during development of R 205.141. The Michigan Legislature has designated Treasury as the “[a]gency of this state responsible for the collection of taxes.” MCL 205.1.

Additional Information:

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

The proposed rule does not involve instructions.

↓ To be completed by MOAHR ↓

PART 4: REVIEW BY MOAHR

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| Date RIS received: | 8-12-2019 |
| Date RIS approved: | 8/20/19 |
| Date of RIS disapproval: | |
| Explanation: | |