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DEPARTMENT OF TREASURY
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NOTICE TO TAXPAYERS REGARDING THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT

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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 known as the Michigan Regulation and Taxation of Marihuana Act (MRTMA). MRTMA does not replace either the Medical Marihuana Facilities Licensing Act (Marihuana Facilities Act) or the Michigan Medical Marihuana Act. Marihuana sold under MRTMA is referred to as “recreational” or “adult-use” marihuana.

Regulatory Aspects of MRTMA

MRTMA establishes a comprehensive regulatory system for the issuance of licenses for the cultivation, processing, testing, transportation and retail sales of marihuana for use by Michigan adults 21 years of age and older. All regulatory aspects of MRTMA, including specific requirements and standards for marihuana cultivation, processing, testing, packaging, labeling, and transportation, as well as for the licensing of marihuana establishments, will be administered through the Michigan Department of Licensing and Regulatory Affairs (LARA).

The legislation provides for a “ramping up” period for the state to put necessary regulations and procedures into place. Therefore, although MRTMA became effective on December 6, 2018, commercial sales of marihuana will not begin immediately. Under MRTMA, LARA must begin accepting applications for licenses within 12 months of the effective date of the legislation.

Excise Tax on Marihuana Sales

MRTMA imposes a 10 percent excise tax on marihuana sales at the retail level, which will be administered by the Department of Treasury (Treasury). The 10 percent excise tax is levied in addition to any other applicable state taxes, including the existing 6 percent sales tax. Specifically, the legislation provides that the excise tax is imposed “at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.” The term “sales price” is not defined in the legislation.

MRTMA further provides that taxable marihuana “may not be bundled in a single transaction with a product or service” that is not subject to the 10 percent excise tax. This provision prohibits marihuana from being sold in single-mixed or bundled transactions. Consequently, the “incidental to service” test established by the Michigan Supreme Court in *Catalina Mktg Sales*

Corp v. Dept of Treasury, 470 Mich 13 (2005), with which many retailers may be familiar, is not applicable to sales of recreational marihuana.

In the coming months, Treasury expects to issue taxpayer guidance establishing the definition of “sales price” and clarifying the tax result of retail marihuana sales made in violation of the no-bundling provision.

Sales Tax on Marihuana Sales

As noted, in addition to the new 10 percent excise tax, marihuana sales under MRTMA will also be subject to Michigan’s 6 percent sales tax. Marihuana constitutes “tangible personal property” under the General Sales Tax Act; therefore, absent a valid claim of exemption, the retail sale of marihuana is subject to sales tax. Importantly, marihuana sales are subject to sales tax whether the marihuana is sold legally or illegally. See NOTICE REGARDING MICHIGAN TAXES ON ILLEGAL ACTIVITIES, available on Treasury’s website, for additional information.

Medical Marihuana

MRTMA does not replace either the Marihuana Facilities Act or the Michigan Medical Marihuana Act; all three statutes are currently effective. The Marihuana Facilities Act imposes a 3 percent excise tax on the gross retail receipts of medical marihuana “provisioning centers” (sometimes informally known as dispensaries). However, the Marihuana Facilities Act also provides that the 3 percent excise tax is repealed by operation of law beginning 90 days after the effective date of a law “authorizing the recreational or nonmedical use of marihuana in this state.” Accordingly, due to the passage of MRTMA, the 3 percent excise tax on medical marihuana provisioning centers will *not be applicable* beginning on March 6, 2019 (90 days from December 6, 2018).