

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the authorization) PROPOSED ADOPTION
of marijuana dispensary customer)
loyalty programs)

TO: All Concerned Persons

1. On August 16, 2022, at 12:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MARIJUANA DISPENSARY CUSTOMER LOYALTY PROGRAMS (1) A marijuana dispensary may enroll customers in its loyalty program which incentivizes customer purchases from the dispensary.

(2) A customer may not be automatically enrolled in a loyalty program using an identification scan or by any other means. To comply with 16-12-104(12), MCA, all metadata obtained from an identification scan may be used for purposes of determining a person's age only and must be permanently deleted within 180 days of purchase.

(3) A customer loyalty program may not offer or reward a customer with free marijuana or marijuana products in violation of 16-12-207(7), MCA.

(4) If loyalty points or similar customer rewards are offered consistently and are available to all customers, then the loyalty points are considered non-taxable. Loyalty points may be accumulated and applied as a discount to a dispensary's established retail price. A customer shall be charged the applicable tax rate based on the discounted retail price after redemption of any loyalty points.

(5) A dispensary that has already automatically enrolled customers in a loyalty program, as prohibited in (2), must purge all metadata for affected customers within 90 days of adoption of this rule.

AUTH: 16-12-112, MCA
IMP: 16-12-207, MCA

REASONABLE NECESSITY: Section 16-12-207, MCA, prohibits a marijuana licensee from giving away marijuana or marijuana products, but despite this restriction and despite the department's repeated reminders to dispensaries to comply, the department consistently learns of dispensaries that offer free marijuana or marijuana products to customers in exchange for customer "loyalty" to the dispensary.

The department proposes a solution - through the adoption of New Rule I - to acknowledge that loyalty programs are permissible (see proposed (1)) but reinforces in proposed (2) that a dispensary is prohibited from automatically enrolling customers and maintaining data obtained with an identification scan under 16-12-104, MCA.

Section (3) is a necessary reiteration of statutory requirements in 16-12-207, MCA, prohibiting the giving away of marijuana or marijuana products.

Section (4) proposes to notify dispensaries how to tax products subject to a loyalty discount or earned with loyalty points.

Section (5) proposes to provide a grace period for voluntary licensee compliance of the requirements set forth in the rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. August 23, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.