

Proposed Changes to the Model City Tax Code

The Unified Audit Committee (“UAC”) proposes the following changes to the Model City Tax Code (“MCTC”) for consideration by the Municipal Tax Code Commission. The proposed changes clarify the taxability of medical marijuana and related medical marijuana infused products under the MCTC. Such sales have been deemed taxable by the Department of Revenue under State statute, but the language in the MCTC is slightly different, leading to the need for the proposed changes. The full code section that includes these changes is provided in a separate file. The UAC is proposing a uniform effective date of June 1, 2011.

There are two changes to existing definitions in MCTC Section 100, along with one new definition to be added in that section.

“Food”

Section 100: Clarifying that the definition of the term “Food” does not include edible products infused with medical marijuana. This change in the “food” definition follows the similar exclusion of alcohol and tobacco products. It is intended to preclude an alternative interpretation that, even though medical marijuana does not qualify for exemption from the tax as a “prosthetic”, edible items infused with medical marijuana could be considered food and exempted as food for home consumption.

“Food” means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall “food” include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. UNDER NO CIRCUMSTANCES SHALL “FOOD” INCLUDE AN EDIBLE PRODUCT, BEVERAGE, OR INGREDIENT INFUSED, MIXED, OR IN ANY WAY COMBINED WITH MEDICAL MARIJUANA OR AN ACTIVE INGREDIENT OF MEDICAL MARIJUANA.

“Prosthetic”

Section 100: Clarifying that the definition of the term “Prosthetic” does not include medical marijuana. Unlike the State’s statutory definition which is limited to items that are “prescribed”, the MCTC definition also applies to items that are merely “recommended”. This change eliminates any controversy over the interpretation of “recommended” versus “written certification” and whether or not medical marijuana is a “drug or medicine”, by clearly excluding medical marijuana from the MCTC definition, thus rendering such sales taxable.

“Prosthetic” means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

...

(4) drugs or medicine, including oxygen.

...

(7) UNDER NO CIRCUMSTANCES SHALL “PROSTHETIC” INCLUDE MEDICAL MARIJUANA REGARDLESS OF WHETHER IT IS SOLD OR DISPENSED PURSUANT TO A PRESCRIPTION, RECOMMENDATION, OR WRITTEN CERTIFICATION BY ANY AUTHORIZED PERSON.

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“Medical marijuana”

Section 100: Creating a new definition for the phrase “medical marijuana” referring to the existing definitions of “marijuana” and “medical use” in the relevant State statute. A new definition of the phrase “medical marijuana” is added for clarity. Since this phrase is not specifically defined in the related State statute (Title 36, Public Health and Safety, Chapter 28.1, Arizona Medical Marijuana Act), we have defined the phrase by referring to both the definition of “marijuana” and the definition of “medical use” defined in A.R.S. 36-2801. Those definitions are:

A.R.S. 36-2801. Definitions

...

8. "Marijuana" means all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.

9. "Medical use" means the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

...

The new definition added to the MCTC is:

“MEDICAL MARIJUANA” MEANS “MARIJUANA” USED FOR A “MEDICAL USE” AS THOSE TERMS ARE DEFINED IN A.R.S. SECTION 36-2801.