

Taxation Division  
PO Box 3380  
Jefferson City, MO 65105-3380



Phone: (573) 751-4876 Fax: (573) 522-1160  
Email: [localgov@dor.mo.gov](mailto:localgov@dor.mo.gov)

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February 2023

Dear Missouri Municipal League,

The Department understands there may be some confusion regarding the additional tax on recreational marijuana, routinely referenced as adult use tax.

After further review, the Department is clarifying that based on the constitutional language, a city and a county cannot "stack" the additional up to 3% local tax on recreational marijuana sales. A city and a county may both present ballot language for vote, an amount not to exceed 3% local tax on recreational marijuana. However, the tax collected from a customer is limited to the percentage passed and is based on the location of the recreational marijuana business (facility) and depends on if that facility is in an incorporated or unincorporated area.

Here are some scenarios for added clarification. If a facility is in an incorporated area, only the city, town or village can impose any (up to 3%) adult use tax. The county can only impose any adult use tax (up to 3%) on facilities located in an unincorporated area. Therefore, if a city imposes 3% and the county imposes 2%, then businesses in the city will charge only 3% on each sale (not the combined) and the distribution is to the city only. Businesses outside an incorporated area in that county will charge 2% but the distribution is to the county only.

If the county imposed 2% and the city does NOT impose any adult use tax, any facility located within the incorporated area will not charge any adult use tax, but if the facility is outside the incorporated area, it will charge 2% and that will be distributed to the county only.

This does not apply to any sales tax imposed on the sale of tangible personal property, only the additional local tax on adult use/recreational marijuana.

The adult use tax (up to 3%) imposed by the city or county is in addition to the 6% recreational marijuana tax and all other applicable sales tax currently in place for the political subdivision where the dispensary is located.

If you have additional questions, please contact the Local Tax Unit at the above telephone number, email address, fax number, or mailing address.

Sincerely,

Taxation Division

February 2023

Dear Political Subdivision,

This letter updates prior Department communications on adult use marijuana taxation. On February 1, 2023, the Taxation Division sent a letter to the Missouri Municipal League and the Missouri Association of Counties informing them that “a city and a county cannot ‘stack’ the additional up to 3% local tax on recreational marijuana sales.” Now, the Department rescinds that guidance after engaging in public and private stakeholder feedback. Going forward, the Department will not advise municipalities or counties regarding the possibility of stacking based on the language in Article XIV of the Missouri Constitution. Article XIV is ambiguous and this letter outlines the two interpretations of the stacking discussion.

First, one may argue that stacking is improper due to the definition of “local government” in Article XIV, Section 2.2(12). There, “[l]ocal government’ means, in the case of an incorporated area, a village, town, or city and, in the case of an unincorporated area, a county.” Because this provision distinguishes between incorporated and unincorporated areas, a local government cannot be both; so, there can be only one taxing entity. This position is reinforced by Article XIV, Section 2.5(3) that states, “The only local government ordinances and regulations that are binding on a marijuana facility are those of *the* local government where the marijuana facility is located.” (Emphasis added.) This provision reads that there is a single local government—municipality *or* county. It follows that the 3% local tax cannot stack because only one local government’s ordinances apply.

Second, there is an argument that the taxes can stack because the taxation portion of Article XIV does not have single-entity restrictions. Section 2.6(5) states in part, “[T]he governing body of *any* local government is authorized to impose, by ordinance or order, an *additional* sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in such *political division*.” (Emphasis added.) This provision offers three points. One, any local government can impose the tax. Two, the sales tax imposed by any local government is in addition to another sales tax. Three, the additional sales tax imposed by a local government exists within a political subdivision. Article XIV does not provide a definition of political subdivision, but one must assume it has a distinct meaning from “local government” and gives a broad construction for interpretation to constitutional language. In other words, both municipal and county governments can exist within the same political subdivision. The distinction between local government and political subdivision is important as voters in the entire county will authorize the additional tax, not just voters in the unincorporated area. And practically, counties do not otherwise limit the applicability of their sales taxes based on geography. So both municipalities and counties can impose up to a 3% sales tax on adult use sales.

At the moment, neither interpretation is absolute; however, the taxation portion of Article XIV does require that tax authorizations be submitted in a proposal “to the voters of the political subdivision, at a municipal, county or state general, primary or special election[.]” Like the existence of adult use marijuana itself, the people decide if they want sales taxes on adult use marijuana sales. If necessary, courts are tasked with interpreting constitutional language. The Department will not supersede the decisions of the people on sales tax for adult marijuana nor the meaning of constitutional verbiage when there is not a definitive answer. Municipalities and counties may put the additional tax on the ballot, but Missourians will ultimately decide what they support.

If you have additional questions, please contact the Local Tax Unit at (573)751-4876 or [localgov@dor.mo.gov](mailto:localgov@dor.mo.gov).

Sincerely,

Taxation Division