

2019 Regular Session

HOUSE BILL NO. 485

BY REPRESENTATIVES JAMES AND JORDAN

TAX/EXCISE: Authorizes the levy of an excise tax on cannabis

1 AN ACT

2 To enact Chapter 19 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 47:1692 through 1698; relative to state excise tax on cannabis;  
4 to levy an excise tax on cannabis; to provide certain definitions; to provide for the  
5 rate of the excise tax; to provide for the application of the tax on cannabis in the  
6 inventory of certain cannabis production facilities; to authorize the promulgation of  
7 rules and regulations; to provide for the use of the avails of the excise tax; to provide  
8 for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 19 of Subtitle II of Title 47 of the Louisiana Revised Statutes of  
11 1950, to be comprised of R.S. 47:1692 through 1698 are hereby enacted to read as follows:

12 CHAPTER 19. CANNABIS TAX

13 §1692. Definitions

14 As used in this Chapter, the following terms shall have the meaning ascribed  
15 to them in this Section unless the context clearly indicates otherwise:

16 (1) "Arm's length transaction" means a transaction made between two  
17 informed and willing parties, the cannabis production facility and the cannabis  
18 retailer, in which the payment received by the cannabis production facility must  
19 reflect the fair market value of cannabis in the open market.

1           (2) "Average market rate" means the average price, as determined by the  
2           secretary on an annual basis, of all cannabis sold, transferred, or used to produce a  
3           cannabis-infused product by a cannabis production facility in this state.

4           (3) "Buds" means the flowers of the plant Genus Cannabis within the plant  
5           family Cannabaceae.

6           (4) "Cannabis" means all parts of plants of the Genus Cannabis, whether  
7           growing or not; the seeds thereof; the resin extracted from any part of the plant; and  
8           every compound, manufacture, salt, derivative, mixture, or preparation of the plant,  
9           its seeds or resin. Cannabis shall not include the mature stalks of a cannabis plant,  
10          fiber produced from the stalks, oil or cake made from the seeds of the plant, any  
11          other compound, manufacture, salt, derivative, mixture, or preparation of the mature  
12          stalks, except the resin extracted from the plant, fiber, oil, or cake, or the sterilized  
13          seed of the plant which is incapable of germination.

14          (5) "Cannabis-infused product" means any food, potable liquid, concentrate,  
15          extract, or any other product intended for human consumption or use, into which  
16          cannabis has been incorporated. A cannabis-infused product does not include  
17          useable cannabis by itself.

18          (6) "Cannabis production facility" means an entity licensed to cultivate,  
19          process, manufacture, package, and to sell cannabis and cannabis-infused products  
20          to a cannabis retailer. A cannabis production facility shall not sell cannabis or  
21          cannabis-infused products directly to a consumer.

22          (7) "Cannabis retailer" means an entity licensed to purchase cannabis and  
23          cannabis-infused products from a cannabis production facility and to sell cannabis  
24          and cannabis-infused products to a consumer.

25          (8) "Consumer" means a person twenty-one years of age or older who  
26          purchases cannabis or cannabis-infused products for personal use but not for resale  
27          to others.

28          (9) "Department" means the Department of Revenue.

1           (10) "Immature plant" means the plant Genus Cannabis within the plant  
2           family Cannabaceae that has no flowers.

3           (11) "Initial period" means the period of time where the average market rate  
4           is determined by the secretary based on the estimated price a cannabis retailer would  
5           pay to a cannabis production facility in an arm's length transaction for cannabis in  
6           the wholesale market.

7           (12) "Leaves" means the leaves of the plant Genus Cannabis within the plant  
8           family Cannabaceae.

9           (13) "Secretary" means the secretary of the Department of Revenue or his  
10          duly appointed representatives.

11          (14) "Seeds" means the seeds of the plant Genus Cannabis within the plant  
12          family Cannabaceae.

13          (15) "Taxpayer" means a cannabis production facility.

14          (16) "Test period" means the period of time used to calculate the average  
15          market rate using reported sales of each category of cannabis. The test period shall  
16          be each January 1st to the subsequent November 30th.

17          (17) "Wet whole plant" means the plant Genus Cannabis within the plant  
18          family Cannabaceae that has been harvested but is not trimmed or separated from  
19          stalk or other waste products.

20          (18) "Wholesale sale" means the first sale or transfer of cannabis by a  
21          cannabis production facility to a cannabis retailer. A wholesale sale shall include the  
22          use of cannabis by a cannabis production facility to produce a cannabis-infused  
23          product.

24          §1693. Imposition of tax

25                 A. There is hereby levied an excise tax upon each wholesale sale of cannabis  
26                 within the state of Louisiana. The tax levied in this Chapter shall be at the rate of  
27                 fifteen percent of the average market rate at wholesale of the cannabis. The excise  
28                 tax on cannabis shall be calculated based on the average market rate of each of the

1 categories of buds, leaves, immature plants, seeds, wet whole plants, and cannabis  
2 used to produce cannabis-infused products.

3 B. The excise tax is considered a tax upon the cannabis production facility,  
4 and the cannabis production facility is considered a taxpayer.

5 §1694. Exemption from tax

6 Marijuana obtained pursuant to R.S. 40:1046 is hereby exempted from the  
7 taxes levied by this Chapter, provided, nothing in this Section shall be construed to  
8 exempt the tax on cannabis.

9 §1695. Calculation of excise tax

10 A. In order to calculate the tax using the average market rate, the weight or  
11 unit of cannabis sold at wholesale sale must be multiplied by the average market rate  
12 and the result must be multiplied by fifteen percent. If multiple categories of  
13 cannabis are included in the wholesale sale, the excise tax must be calculated  
14 separately for each category of the cannabis in the wholesale sale.

15 B.(1) Buds. For the category of buds, the excise tax is calculated on the total  
16 weight of the cannabis.

17 (2) Leaves. For the category of leaves, the excise tax is calculated on the  
18 total weight of the cannabis.

19 (3) Immature plants. For the category of immature plants, the excise tax is  
20 calculated on the number of plants being sold.

21 (4) Seeds. For the category of seeds, the excise tax is calculated on the  
22 number of seeds being sold.

23 (5) Wet whole plants. For the category of wet whole plants, the excise tax  
24 is calculated on the weight of the entire plant. The wet whole plant must be weighed  
25 within two hours of the plant being harvested and the plant must not undergo any  
26 further processing prior to being weighed, and tax must be paid on the weight of the  
27 entire unprocessed plant.

28 (6) Cannabis used to produce cannabis-infused products. For the category  
29 of cannabis used to produce cannabis-infused products, the excise tax is calculated

1        based on the weight when buds, leaves, or wet whole plants are used to produce the  
2        cannabis-infused product and based on the count when immature plants or seeds are  
3        used to produce the cannabis-infused product.

4                C. Initial period. For sales beginning January 1, 2020 through December 31,  
5        2020, the secretary shall establish the average market rate based on the estimated  
6        price that a cannabis retailer would pay to a cannabis production facility in an arm's  
7        length transaction for cannabis in the wholesale market.

8                D.(1) Test periods. The secretary shall calculate the average market rate by  
9        using the reported sales of each category of cannabis during the immediately  
10       preceding test period. The test periods shall be each January 1st the subsequent  
11       November 30th.

12               (2) The secretary shall determine and publish the average market rate on an  
13       annual basis. The average market rate shall be determined and published on or  
14       before December 20th and the rate shall be effective on the subsequent January 1st  
15       of each year. The secretary shall use reported sales beginning January 1, 2020  
16       through November 30, 2020 to calculate the average market rate that will be  
17       published on December 20, 2020 and effective on January 1, 2021.

18       §1696. Enforcement

19               The secretary shall collect, supervise and enforce the collection of all taxes,  
20       penalties, interest, and other charges that may be due under the provisions of this  
21       Chapter in the same manner provided for by law under the provisions of this Subtitle.  
22       The secretary shall administer legislative mandates contained in this Subtitle. To  
23       that end the secretary is vested with all of the power and authority conferred by this  
24       Subtitle, except as conferred upon other officials.

25       §1697. Rules and regulations

26               The department may promulgate rules and regulations in accordance with the  
27       Administrative Procedure Act as are necessary to implement the provisions of this  
28       Chapter, including regulations regarding the determination of the average market  
29       rate, enforcement of the assessment and collection of all taxes, interest and penalties

1 that may be due under the provisions of this Chapter, investigations and hearings,  
2 adoption of a uniform system of providing taxpayer reporting requirements, the  
3 destruction of goods, and issuing refunds for any reason to a taxpayer.

4 §1698. Disposition of collections

5 A. Beginning January 1, 2020, subject to the exceptions contained in Article  
6 VII, Section 9(A) of the Constitution of Louisiana, all proceeds, penalties, and  
7 interest received from the tax imposed under the provisions of this Chapter shall be  
8 paid into the state treasury and, after satisfying the requirements of Article VII,  
9 Section 9(B) of the Constitution of Louisiana relative to the Bond Security and  
10 Redemption Fund, the state treasurer shall monthly deposit into the following funds  
11 an amount equal to the avails of the tax imposed under the provisions of this Chapter.  
12 All unexpended and unencumbered monies remaining in each fund at the end of any  
13 fiscal year shall remain in each fund. The monies in the funds shall be used solely  
14 for the express purposes listed and specifically as follows:

15 (1) Twenty-five percent of the monies shall be appropriated to the minimum  
16 foundation program (MFP) to be used solely for funding support of public  
17 elementary and secondary schools.

18 (2) Fifteen percent of the monies shall be appropriated to the state  
19 Department of Health to be used solely for purposes of funding the office of  
20 behavioral health.

21 (3) Fifteen percent of the monies shall be appropriated to the Department of  
22 Public Safety and Corrections and be used solely for the purposes of funding for  
23 office of state police.

24 (4) Fifteen percent of the monies shall be appropriated to the Transportation  
25 Trust Fund to be used solely for the purposes of state highway pavement and bridge  
26 sustainability projects.

27 (5) Ten percent of the monies shall be appropriated to the Louisiana Early  
28 Childhood Education Fund pursuant to R.S. 17:407.30 to be used solely for the  
29 funding of early childhood education.

1           (6) Five percent of the monies shall be appropriated to Louisiana State  
2           University and Agricultural and Mechanical College to be used by the university  
3           solely for its endowment, maintenance and support, or for the purpose of paying  
4           construction costs of buildings, the cost of equipment, furniture or fixtures, or for the  
5           repair or remodeling of present buildings.

6           (7) Five percent of the monies shall be appropriated to Southern University  
7           and Agricultural and Mechanical College to be used by the university solely for its  
8           endowment, maintenance and support, or for the purpose of paying construction  
9           costs of buildings, the cost of equipment, furniture or fixtures, or for the repair or  
10          remodeling of present buildings.

11          (8) Five percent of the monies shall be appropriated and used solely for the  
12          funding of higher education programs.

13          (9) Five percent of the monies shall be appropriated and used solely for the  
14          purpose of providing funding for the administration and operation of Drug Abuse  
15          Resistance Education (D.A.R.E.) programs.

16          B. After being disbursed as provided in this Section, the remaining avails  
17          shall be deposited by the state treasurer into the state general fund.

18          Section 2. This Act shall become effective on January 1, 2020.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 485 Engrossed

2019 Regular Session

James

**Abstract:** Authorizes the levy of an excise tax on the wholesale sale of cannabis by a cannabis production facility to a cannabis-infused product manufacturing facility or a cannabis retailer.

Proposed law authorizes an excise tax upon the wholesale sale of cannabis by a cannabis production facility to a cannabis-infused product manufacturing facility or cannabis retailer at the rate of 15%.

Proposed law provides certain definitions.

Proposed law authorizes the secretary of the Department of Revenue to collect, supervise, and enforce the collection of taxes, penalties, and interest related to the excise tax.

Proposed law establishes that the cannabis production facility is responsible for collecting the excise tax at the point of wholesale sale and remitting the collected taxes along with returns to the Department of Revenue in accordance with the law.

Proposed law establishes that the Department of Revenue may make rules and regulations in order to carry out the duties of this Chapter.

Proposed law establishes taxes collected under this Chapter are dedicated for the following uses:

1. 25% to elementary and secondary schools
2. 15% to mental health
3. 15% to state police
4. 15% to transportation
5. 10% to early childhood education
6. 5% to LSU
7. 5% to SU
8. 5% to drug and alcohol prevention
9. 5% to the state general fund

Effective January 20, 2019

(Adds R.S. 47:1692-1698)