Summary: Among other things, this budget trailer bill:

- Revises the cannabis excise tax to be imposed upon purchasers at a rate of 15% of the average market price, instead of the gross receipts of the retail sale, to be collected by a distributor from a cannabis retailer (Revenue and Taxation Code (RTC) Sections 34010, 34011, 34012.5);
- Requires a distributor or a manufacturer to collect the cultivation tax from a cultivator, and a manufacturer to remit any cultivation tax collected from a cultivator to a distributor, for distributor remittance of those taxes to the BOE (RTC Sections 34010, 34012, 34012.5);
- Makes other corrections and other conforming changes to the Marijuana Tax Law (MTL) (RTC 34010, 34013, 34014, 34015, 34016, 34018, 34019, and 34021.5).

Purpose: To ease and streamline cannabis tax collection, and remittance to the BOE.

Fiscal Impact Summary: Undetermined, but negligible impact on cannabis excise taxes associated with arm’s-length transactions of cannabis and cannabis products from a distributor to a cannabis retailer.

Existing Law: Marijuana Tax Law (MTL). Effective January 1, 2018, the MTL imposes a marijuana excise tax. Specifically, the MTL imposes a 15% marijuana excise tax on purchasers of marijuana or marijuana products sold in this state based on the gross receipts of any retail sale of marijuana or marijuana product. The marijuana excise tax applies to the full price, if non-itemized, of any transaction involving both marijuana and marijuana products, unless otherwise provided. A dispensary or other retail licensee is required to collect the tax and remit it to the BOE.

The BOE will administer and collect the marijuana excise tax pursuant to the Fee Collection Procedures Law (FCPL). The FCPL generally provides for the BOE’s administration of tax and fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, and criminal penalties for violations.

Medical Cannabis Regulation and Safety Act (MCRSA) and Marijuana Regulation and Safety (MRS). The Bureau of Marijuana Control (Bureau) within the California Department of Consumer Affairs (CDCA), in collaboration with the California Department of Public Health (CDPH) and the California Department of Food and Agriculture (CDFA), oversee and enforce the state’s medical cannabis and marijuana regulations.

The MCRSA and MRS (Adult Use Marijuana Act’s licensing provisions) require all commercial cannabis/marijuana activity be conducted between licensees. General license classifications include cultivation, manufacturing, testing, dispensing, distributing, and transporting. The MCRSA prescribes the medical cannabis distribution chain by requiring all cultivators, manufacturers, and producing dispensary licensees to send all medical cannabis and medical cannabis products to a distributor for presale quality
assurance and inspection, and batch testing by a testing laboratory.\textsuperscript{4} A cultivator may be exempt from that requirement if the medical cannabis is to be used, sold, or otherwise distributed by a manufacturer. MRS provisions require all marijuana and marijuana products to undergo quality assurance, inspection, and testing in the same manner as medical cannabis,\textsuperscript{5} except as otherwise provided.

**Proposed Law:** This bill repeals the MCRSA and adds certain provisions into MRS, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

**Marijuana Tax Law.** This bill renames the MTL to the Cannabis Tax Law (CTL), and replaces the term “marijuana” with “cannabis” throughout.

**Cannabis Excise Tax.** The CTL imposes the cannabis excise tax upon purchasers of cannabis or cannabis products at a rate of 15% of the “average market price” of any retail sale by a cannabis retailer.

The CTL requires a distributor in an arm’s length transaction to collect the cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer.

A distributor in a non-arm’s length transaction must collect the cannabis excise tax from the cannabis retailer either on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer, or at the time of retail sale by the cannabis retailer, whichever is earlier.

The CTL defines the following:

- “Arm’s length transaction” to mean a sale entered into in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.
- “Average market price” to mean:
  - In an arm’s length transaction, the average market price means the average retail price determined by the wholesale cost of the cannabis or cannabis products sold or transferred to a cannabis retailer, plus a mark-up, as determined by the board on a biannual basis in six-month intervals.
  - In a non-arm’s length transaction, the average market price means the cannabis retailer’s gross receipts from the retail sale of the cannabis or cannabis products.

A distributor shall provide an invoice, receipt, or other similar document to the cannabis retailer that identifies:

- The licensee receiving the product;
- The distributor from which the product originates, including the associated unique identifier;
- The amount of cannabis excise tax; and
- Any other information deemed necessary by the BOE.

The BOE may also authorize other forms of documentation for an invoice, receipt, or other similar document.

The CTL makes a cannabis retailer responsible for collecting the cannabis excise tax from the purchaser and remitting the cannabis excise tax to the distributor in accordance with rules and procedures established under law and any BOE regulations.

\textsuperscript{4} BPC Section 19326
\textsuperscript{5} BPC Section 26110

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.
The CTL does not extinguish a purchaser’s liability for the cannabis excise tax until that tax has been paid to this state. An invoice, receipt, or other document from a cannabis retailer given to the purchaser sufficiently relieves the purchaser from further liability for the tax to which the invoice, receipt, or other document refers. Each cannabis retailer shall provide a purchaser with an invoice, receipt, or other document that displays the cannabis excise tax separately from the list price, the price advertised in the premises, the marked price, or other price and includes a statement that reads: “The cannabis cultivation and excise taxes are included in the total amount of this invoice.”

**Distributor Liability.** The cannabis excise tax required to be collected by the distributor and any amount unreturned to the cannabis retailer that is not tax but was collected from the cannabis retailer under the representation by the distributor that it was tax constitute debts owed by the distributor to this state.

A distributor that has collected any amount of tax in excess of the amount of tax actually due from a cannabis retailer may refund such amount to the cannabis retailer, even though such tax amount has already been paid to the BOE and no corresponding credit or refund has yet been secured. The distributor may claim credit for that overpayment against the amount of tax imposed that is due upon any other quarterly return, providing that credit is claimed in a return dated no later than three years from the date of overpayment.

Any tax collected from a cannabis retailer not remitted to the BOE shall be deemed a debt owed to the State of California by the person required to collect and remit the tax.

**Operative Date.** These provisions take immediate effect upon enactment.

**Background:** In 1996, California voters approved Proposition 215, also known as the Compassionate Use Act of 1996, which allows patients and their primary caregivers to cultivate or possess marijuana for personal medical treatment with a physician’s recommendation, as specified.

In 2003, legislation was enacted to establish statewide guidelines for Proposition 215 enforcement. In particular, the legislation clarified that nonprofit distribution is allowed in certain cases for patient cultivation cooperatives, small-scale caregiver gardeners, and dispensing collectives. However, despite the fact that numerous medical marijuana dispensaries currently do business in California, medical cannabis sales are illegal under federal law.

In 2015, the Legislature enacted the MMRSA, a package of legislation that establishes a comprehensive licensing and regulatory framework for medical marijuana, including cultivation, manufacturing, transportation, distribution, sale, and product. The MMRSA consists of three bills: SB 643 (Ch. 719, McGuire), AB 243 (Ch. 688, Wood), and AB 266 (Ch. 689, Bonta).

Among its provisions, the MMRSA establishes the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs to oversee and enforce the state’s medical marijuana regulations, in collaboration with the CDPH and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

In 2016, SB 837 (Ch. 32, Committee on Budget and Fiscal Review) revised the Act’s name from the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act and clarified the medical cannabis distribution chain.

In 2016, the voters approved Proposition 64, which legalizes marijuana for adults 21 and older, regulates nonmedical marijuana, and imposes a marijuana excise tax and a marijuana cultivation tax. Proposition 64 also added a sales and use tax exemption which became effective November 9, 2016, for medical cannabis sales under certain prescribed conditions.

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6 [Senate Bill 420](Ch. 875, Stats. 2003, Vasconcellos).
7 RTC Section 34011.

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Commentary:

1. **Regulatory authority.** This measure makes significant changes to the CTL with respect to cannabis excise tax collection and remittance. With a January 1, 2018 operative date for the cultivation tax and cannabis excise tax, the BOE is in the process of implementing the marijuana tax provisions enacted pursuant to Proposition 64. Although this measure specifies the method and manner of cultivation tax and cannabis excise tax collection and remittance, it also provides the BOE the authority to adopt regulations to make necessary changes to the tax collection and remittance based on its experience and industry operations.

2. **Track and trace.** As required under existing law, the proposed MAUCRSA requires the CDFA, in consultation with the Bureau, to establish a track and trace program for reporting the movement of cannabis throughout the distribution chain. In addition, MAUCRSA requires the CDFA, in consultation with the Bureau and the BOE, to ensure the track and trace program can also “track and trace” the amount of cultivation tax due.

On February 24, 2017, the California Department of Technology, Statewide Technology Procurement, released a Cannabis Activity Tracking (CAT) solution on behalf of the CDFA to solicit proposals from qualified bidders. The solicitation event ended May 31st and is currently under evaluation. Among other things, an identified business need includes:

- **Input/Upload Cannabis Distribution Chain Information.** The licensee needs the ability to determine the amount of tax owed, mark cannabis to identify the amount of tax due, and subsequently mark cannabis when it changes possession, composition, packaging or size and retain the cultivation tax history.

- **Review Cannabis Distribution Chain Information:** Other Governmental Entity users need the ability to determine that a licensee is in possession of cannabis that originated from a licensed cultivator and the amount of cultivation tax that was due by the cultivator on that cannabis.

The CAT solution solicitation does not include business requirements associated with the cannabis excise tax. Accordingly, the CAT solution may require a modification to allow for the input/download of the average market price and tax owed, as well as a mark to identify the amount of tax due, similar to the cultivation tax requirements.

| Cultivation Tax: Collection and Remittance
| RTC Sections 34010 and 34012 |

**Existing Law:** Effective January 1, 2018, the MTL imposes a **cultivation tax.**

The cultivation tax applies to all harvested marijuana that enters the commercial market. The MTL makes persons who must be licensed to cultivate marijuana responsible for payment of the tax. The tax is due after the marijuana is harvested, at the following rates:

- Marijuana flowers: Nine dollars and twenty five cents ($9.25) per dry-weight ounce.
- Marijuana leaves: Two dollars and seventy five cents ($2.75) per dry-weight ounce.

The MTL authorizes the BOE to annually adjust the tax rate for marijuana leaves to reflect fluctuations in the relative price of marijuana flowers to marijuana leaves. The BOE may also establish other harvested marijuana categories for unprocessed or frozen marijuana or immature plants, or marijuana that is shipped directly to manufacturers. Beginning January 1, 2020, the MTL requires the BOE to adjust the cultivation tax rates for inflation.

The BOE will administer and collect the cultivation tax pursuant to the FCPL.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.
Proposed Law: Again, the MTL is changed to the CTL by this bill. The CTL clarifies that the cultivation tax is due after the cannabis is harvested and enters the commercial market.

The bill defines “enters the commercial market” to mean cannabis or cannabis product that has completed and complies with all quality assurance, inspection, and testing, as described in the MAUCRSA.

The CTL requires the cultivation tax to be collected as follows:

- A distributor must collect the cultivation tax from a cultivator upon entry into the commercial market.
- Where the MAUCRSA does not require a cultivator to send, and the cultivator does not send, the harvested cannabis to a distributor, a manufacturer must collect the cultivation tax from a cultivator on the first sale or transfer unprocessed cannabis by a cultivator to a manufacturer. The CTL requires the manufacturer to remit that cultivation tax collected on the cannabis product sold or transferred to a distributor for quality assurance, inspection, and testing. The CTL requires all cultivation tax applicable to a unique identifier to be collected and remitted upon the first sale or transfer of product with an associated unique identifier.

The CTL authorizes the BOE to prescribe a substitute method and manner for cultivation tax collection and remittance, including a method and manner for cultivation tax collection by a distributor.

A distributor or manufacturer shall provide to the cultivator, and a distributor that collects the cultivation tax from a manufacturer shall provide to the manufacturer, an invoice, receipt, or other similar document that identifies:

- The licensee receiving the product;
- The cultivator from which the product originates, including the associated unique identifier;
- The amount of cultivation tax; and
- Any other information deemed necessary by the BOE.

The CTL authorizes the BOE to accept other forms of documentation in place of an invoice, receipt, or other similar document.

Also, the CTL authorizes the BOE to adopt regulations prescribing procedures for the refund of cultivation tax collected on cannabis or cannabis product that fails quality assurance, inspection, and testing.

Distributor Liability. This bill includes identical distributor liability provisions as those for the cannabis excise tax.

Operative Date. These provisions take immediate effect upon enactment.

Commentary:

1. Distributor Collection and Remittance. Beginning January 1, 2018, the MTL imposes the cultivation tax upon all persons required to be licensed to cultivate marijuana.

BOE staff generally recommends that excise taxes and fees be imposed as high in the distribution chain as possible, since there are fewer taxpayers and therefore less potential for tax evasion. This concern is magnified with respect to the cannabis industry, as historically it has been unregulated with a low rate of tax compliance. The highest point in the marijuana distribution chain is the cultivator.

Industry informed BOE staff 25,000 to 35,000 cultivators will be regulated under MCRSA and MRS. The BOE will also register these 25,000 to 35,000 cultivators to remit the cultivation tax, making the marijuana cultivation tax program one of the largest BOE administers. Estimates also indicate considerably fewer distributors, manufacturers, and retailers.

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The distribution level is likely to have the fewest number of taxpayers. Although MAUCRSA, as
proposed by this bill, allows a distributor to hold a license in more than one commercial cannabis
activity\(^8\) it is likely that the number of distributor taxpayers would be less than cultivator taxpayers.
As such, the cultivation tax collection at the distributor level may be more appropriate.

2. **Regulatory authority.** This measure makes significant changes to the MTL with respect to
cultivation tax collection and remittance. Similar to the marijuana excise tax, this bill provides the
BOE flexibility to collect the cultivation tax in a method and manner determined by the BOE based
on its experience and industry operations. Also, the CTL authorizes the BOE to prescribed
regulations to refund cultivation tax collected on cannabis or cannabis product that fails quality
assurance, inspection, and testing.

3. **Track and trace.** As previously discussed, the proposed MAUCRSA requires the CDFA, in
consultation with the Bureau and the BOE, to ensure the track and trace program can also “track
and trace” the amount of cultivation tax due. The CAT solution solicitation includes business needs
to allow licensees to input/download the cultivation tax owed, mark cannabis to identify the tax
due, and obtain retail cultivation tax history as the cannabis changes possession, composition,
packaging, or size.

Although it appears the CAT solution solicitation includes the necessary business requirements for
the BOE to administer and collect the cultivation tax, modifications may be necessary due to this bill.

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<th>Miscellaneous Tax Provisions</th>
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<td>RTC Sections 34010, 34013, 34014, 34015, 34016, 34018, 34019, and 34021.5</td>
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**Existing Law:** Marijuana Tax Law (MTL). Effective January 1, 2018, the MTL imposes a marijuana
excise tax and a cultivation tax.

As previously mentioned, the MTL imposes a 15% marijuana excise tax on purchasers of marijuana or
marijuana products sold in this state based on the gross receipts of any retail sale of marijuana or
marijuana product.

The cultivation tax applies to all harvested marijuana that enters the commercial market. The MTL
makes persons who must be licensed to cultivate marijuana responsible for payment of the tax. The tax
is due after the marijuana is harvested, at the following rates:

- Marijuana flowers: Nine dollars and twenty five cents (\$9.25) per dry-weight ounce.
- Marijuana leaves: Two dollars and seventy five cents (\$2.75) per dry-weight ounce.

**Proposed Law:** This bill makes other corrections and other conforming changes to the proposed
CTL.

**Registration, Report, Remittance and Examination.** The CTL requires all distributors to obtain a
separate permit from the BOE, at no charge. Any distributor required to obtain a permit that engages in
business without a permit, or after a permit has been canceled, suspended, or revoked, and each officer
of any corporation which so engages in business, is guilty of a misdemeanor.

The CTL requires each distributor to remit the cultivation tax and excise tax to the BOE quarterly on or
before the last day of the month following each quarterly period\(^9\) along with a return using electronic
media. With respect to cannabis excise taxes collected by a distributor in an arm’s length transaction,
the CTL authorizes the BOE the authority to prescribe regulations to prescribe the due date for returns and remittances.

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\(^8\) A testing laboratory may not hold a license for any other commercial cannabis activity.

\(^9\) RTC Section 55041.1 authorizes the payment of the amount due and the filing of returns for periods other than the
period or periods specified in the tax and fee laws administered under the FCPL.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not
to be construed to reflect or suggest the BOE’s formal position.
The CTL allows the BOE to examine the books and records of any licensed person, or required to be licensed, as deemed necessary in carrying out the CTL.

**Definitions.** The CTL adds additional definitions for key terms:

- “Cannabis retailer” means a person required to be licensed as a retailer, microbusiness, or nonprofit pursuant MAUCRSA.
- “Cultivator” shall mean all persons required to be licensed to cultivate cannabis pursuant to MAUCRSA.
- “Distributor” shall mean a person required to be licensed as a distributor pursuant to MAUCRSA.
- “Sale” and “purchase” shall mean any change of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.
- “Transfer” shall mean to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration.
- “Unprocessed cannabis” shall include cannabis flowers, cannabis leaves, or other categories of harvested cannabis, categories for unprocessed or frozen cannabis or immature plants, or cannabis that is shipped directly to manufacturers.

**Emergency Regulations.** The CTL limits, until January 1, 2019, the BOE’s authority to prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties.

**Commentary:**

1. **Sales tax exemption placement.** On November 8, 2016, Proposition 64 was approved by voters to make a number of changes to California’s laws concerning marijuana legalization. Among its provisions, the proposition added a sales and use tax exemption for medical cannabis sales under certain prescribed conditions. This exemption is incorporated into the MTL, but should have been placed in the Sales and Use Tax Law. Incorporating sales and use tax provisions outside of the SUTL adds unnecessary confusion for taxpayers and persons researching the exemption. BOE staff suggests correctly placing the medical cannabis sales tax exemption within the SUTL.

2. **Related legislation.** This bill is identical to AB 110 (Committee on Budget).

### Miscellaneous Licensing Provisions: BOE Tax Administration and Collection Support

**BPC Sections 26110 and 267180.5**

**Existing Law:** The Bureau within the CDCA, in collaboration with the CDPH and the CDFA, oversee and enforce the state’s medical cannabis and marijuana regulations.

The MCRSA and MRS (Adult Use Marijuana Act’s licensing provisions) require all commercial cannabis/marijuana activity be conducted between licensees. General license classifications include cultivation, manufacturing, testing, dispensing, distributing, and transporting. The MCRSA prescribes the medical cannabis distribution chain by requiring all cultivators, manufacturers, and producing dispensary licensees to send all medical cannabis and medical cannabis products to a distributor for presale quality assurance and inspection, and batch testing by a testing laboratory. A cultivator may be exempt from that requirement if the medical cannabis is to be used, sold, or otherwise distributed by a manufacturer. MRS provisions require all marijuana and marijuana products to undergo quality assurance, inspection, and testing in the same manner as medical cannabis, except as otherwise provided.

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10 Part 1 (commencing with Section 6001) of Division 2 of the RTC.
11 BPC Section 19326
12 BPC Section 26110

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.
Proposed Law: This bill repeals the MCRSA and adds certain provisions into MRS, known as the MAUCRSA. The MAUCRSA adds provisions that assist the BOE with its administration and collection of the cultivation tax and cannabis excise tax. Specifically:

- BPC Section 26110 requires the Bureau to employ, or to contract for, a quality assurance compliance (QAC) monitor. The bill prohibits the QAC monitor from holding a MAUCRSA license or to own or have an ownership interest in a licensee or a licensee’s premises. Among other things, the bill requires the QAC monitor to verify the accuracy of cultivation tax and cannabis excise taxes collected and paid. Also, the QAC monitor shall have access to the inputs and assumptions in the track and trace system and shall be able to verify the accuracy thereof and that they correspond with the tax payments.

- BPC Section 26180.5 requires, no later than January 1, 2018, the Secretary of Business, Consumer Services, and Housing to initiate work with the Legislature, CDCA, CDFA, CDPH, and any other related departments “to ensure that there is a safe and viable way to collect cash payments for taxes and fees related to the regulation of cannabis activity throughout the state.”

- BPC Section 26210.5 requires, by July 1, 2018, the Bureau, in coordination with the Department of General Services, to establish an office to collect fees in either Humboldt, Trinity, or Mendocino County to ensure safe cash payment and collection in those counties.

Costs: The CTL provisions of this bill could be covered under the BOE’s current Budget Change Proposal, or result in additional costs due to programming. BOE staff is unable to determine which would be applicable until a detailed cost estimate is complete.

Revenue Impact: Undetermined, but a possible negligible impact on cannabis excise taxes associated with arm’s-length transactions of cannabis and cannabis products from a distributor to a cannabis retailer. The BOE has no reliable way to measure the impact this bill may have, and therefore, cannot provide an estimate at this time.