

[Senate Bill 643](#) (McGuire)

Date: 05/06/15

Program: Sales and Use Tax

Sponsors: Author

Uncodified Section 9

Effective January 1, 2016

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*This analysis only addresses the provisions that impact the Board of Equalization (BOE).*

**Summary:** Among other things, this bill requires the Board of Equalization (BOE) to compile a report on estimated and expected marijuana tax revenues.

**Summary of Amendments:** Since the previous analysis, the amendments that impact the BOE (1) delete provisions that specifically authorized a marijuana and marijuana products transactions and use tax; and (2) revise the BOE sales and use tax medical marijuana report to include estimated tax collected rather than actual tax collected.

**Purpose:** To create an effective statewide system for regulating and controlling medical marijuana.

**Fiscal Impact Summary:** No state revenue impact.

**Existing Law:** Except where the law specifies an exclusion or exemption, **California's Sales and Use Tax Law**<sup>1</sup> imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state. Therefore, under the law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

For patient treatment, the law<sup>2</sup> exempts from sales and use tax retail sales of medicines, as defined, when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on a prescription filled by a pharmacist,
- furnished by a licensed physician to his or her own patient,
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

**Proposed Law:** Among other things, this bill enacts Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code (BPC) to establish the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs. The bill requires the Bureau to conditionally license and regulate dispensing facilities, cultivation sites, transporters, and manufacturers of medical marijuana and medical marijuana products, subject to local ordinances.

The bill adds Government Code Section 23028 to authorize a city, county, or city and county to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana by a licensee. Any proposed tax ordinance must include the taxable activities, rate, method of apportionment, and collection method. The new section does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee related to the taxable activities.

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<sup>1</sup> Part 1, Division 2 of the Revenue and Taxation Code (commencing with Section 6001).

<sup>2</sup> Sales and Use Tax Law Section 6369.

**BOE Report.** The bill's uncodified language (Section 9) requires the BOE, on or before July 1, 2016, to compile a report on estimated medical marijuana tax collected, using the most current data available. The bill further requires the report to include expected tax revenues, under the existing tax structure, for the years 2016 to 2021 exclusive. The report shall be submitted to the Legislature and the Governor's Office pursuant to Government Code Section 9795.

### **Commentary:**

**1. Amendments.** The **May 6, 2015, amendments** deleted the provisions that authorized a county or city to levy a transactions and use tax on marijuana and marijuana products, subject to current voter approval thresholds. In addition, the amendments revise the BOE medical marijuana sales and use tax report to include estimated tax collected rather than actual tax collected on the sale of such products.

**2. Proposed local taxes do not require participation by the BOE.** The local taxes proposed by proposed Government Code (GC) Section 23028 do not reference any participation or responsibilities for the BOE.

Under existing law, RTC Section 7203.5 prohibits a local jurisdiction from imposing a sales or use tax other than those imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law.<sup>3</sup> Section 7203.5 does not prohibit, however, any other substantially different tax authorized by statute. BOE staff suggests an amendment to clearly state that a tax imposed under GC Section 23028 is a business license tax and/or that its imposition is not prohibited by RTC Section 7203.5.

**3. Medical marijuana tax report.** The bill requires the BOE, on or before July 1, 2016, to compile a report on estimated medical marijuana tax collected and expected medical marijuana tax revenues for the years 2016 to 2021. The BOE does not gather information specific to the medical marijuana sales. Taxpayers that hold a seller's permit report *total gross sales*. Sales of specific products are not identified on a taxpayer's return. Thus, the bill's requirement for the BOE to compile an **estimated** medical marijuana report is workable and not problematic for the BOE. Although the sales and use tax is the only BOE-administered tax imposed upon medical marijuana, BOE staff recommends clarifying that the report specifically relates to sales and use tax.

**4. Medical marijuana is not a prescription medicine.** RTC Section 6369 of the Sales and Use Tax Law exempts retail sales of medicines, as defined, under certain conditions, including when furnished by a health facility for patient treatment pursuant to the order of a certificated physician, or when prescribed by a certificated physician and dispensed on a prescription filled by a registered pharmacist in accordance with law. Medical marijuana dispensaries generally are not considered to be health care facilities, as provided in that section, nor, are they registered pharmacists. Consequently, sales of medical marijuana by dispensaries and primary caregivers do not qualify for the Section 6369 exemption, regardless of whether the purchasers possess a medical marijuana identification card.

**Administrative Costs:** This bill results in minor absorbable administrative costs to prepare the medical marijuana sales and use tax report.

**Revenue Impact:** This bill does not impact state revenues collected for the state by the BOE.

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<sup>3</sup> Part 1.5 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 7200.