

[Senate Bill 643](#) (McGuire)

Date: 08/18/15

Program: Sales and Use Tax

Sponsors: Author

Uncodified Section 11

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 BOE to compile a report on estimated and expected marijuana tax revenues.

Summary of Amendments: The amendments since the previous analysis do not impact the BOE.

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**¹ 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 law² 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 Office of Medical Marijuana Regulation (Office) within the Business, Consumer Services, and Housing Agency. The bill requires the Office to issue licenses for commercial marijuana activity 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 (GC) Section 23028 to authorize a county to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana by a licensee. A tax imposed pursuant to GC Section 23028 is not a sales and use tax subject to Part 1.5 (commencing with Section 7200) of Division 2 of the RTC or transactions and use tax subject to Chapter 2 (commencing with Section 7285) of Part 1.7 of Division 2 of the RTC.

BOE Report. The bill's uncodified language (Section 11) 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.

¹ Part 1, Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

² Sales and Use Tax Law Section 6369.

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.

Commentary:

1. **The August 18, 2015 amendments** revise definitions, update transporter requirements for transport into the City of Los Angeles, and remove conditional licensing. The amendments do not impact the BOE. The **August 17, 2015 amendments**, among other things, revised definitions and require the Office to convene an advisory committee. The amendments do not impact the BOE. The **June 3, 2015 amendments**, among other things, concerned oversight agencies and marijuana cultivation, which do not impact the BOE. 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.³ Section 7203.5 does not, however, prohibit 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 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. However, the bill's requirement for the BOE to compile an **estimated** medical marijuana revenue 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. **Suggested amendment.** This bill requires the Office to issue licenses for all marijuana activity, including, but not limited to, cultivation and dispensing of marijuana. Although the bill conditions licensing on compliance with specified agency requirements, it does not include obtaining a seller's permit among the specified conditions. Existing Sales and Use Tax Law, RTC Section 6066, requires every person desiring to engage in or conduct business as a seller within the state to apply for a seller's permit for each place of business. In general, existing law requires a seller's permit if a person intends to sell or lease tangible personal property that would ordinarily be subject to sales tax if sold at retail. For example, existing law requires a seller's permit for a cultivator that intends to sell marijuana to a dispensary or a dispensary that intends to sell marijuana to a patient.

To promote sales and use tax compliance, BOE staff suggests amendments to: (1) require the regulatory agency to provide the BOE with licensing information on a periodic basis, or provide the BOE access to a license database; (2) require licensees to obtain a seller's permit; and (3) require the suspension or revocation of a license upon suspension, revocation, or failure to maintain a seller's permit.

5. **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, and they are not registered pharmacists.

³ Part 1.5 of Division 2 of the RTC, commencing with Section 7200.

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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.