



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	05/01/13	Bill No:	Senate Bill 809
Tax Program:	CURES Tax	Author:	DeSaulnier & Steinberg
Sponsor:	Author	Code Sections:	Part 21 (commencing with Section 42001)
Related Bills:		Effective Date:	Upon Enactment

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

BILL SUMMARY

This bill requires the BOE to assess and collect the Controlled Substances Utilization Review and Evaluation System (CURES) tax imposed on qualified manufacturers on behalf of the Department of Justice (DOJ).

ANALYSIS

CURRENT LAW

Sales and Use Tax Law. Current law¹ imposes sales tax on the retail sale of tangible personal property (TPP) in this state. Current law² also imposes use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The sales or use tax is computed on the retailer’s gross receipts or purchase price unless the law provides a specific exemption or exclusion. For example, Revenue and Taxation Code (RTC) Section 6369 provides an exemption for prescription medicines sold or furnished under specified conditions.

The total combined sales and use tax rates in California jurisdictions range from 7.50% to 10%, depending on the merchandise sales location. The statewide sales and use tax rate totals 7.50% and is comprised of state and local taxes. Rates may be higher than 7.50% in some areas depending on district taxes that apply. No other BOE-administered program imposes a tax or fee on nonprescription drugs.

Uniform Controlled Substances Act (Act).³ Among other things, the Act classifies controlled substances into five schedules (I, II, III, IV, or V). These schedules classify controlled substances in accordance with their danger and potential for abuse. Schedule I represents the greatest restrictions and penalties.

The Act also requires the Department of Justice (DOJ) to maintain the Controlled Substance Utilization Review and Evaluation System (CURES), contingent upon the availability of adequate funds. CURES electronically monitors the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

¹ Article 2 (commencing with Section 6051.2) of Chapter 2 of Division 1 of Part 2 of the Revenue and Taxation Code (RTC).

² Article 1 (commencing with Section 6201) of Chapter 3 of Division 1 of Part 2 of the RTC.

³ Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).

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

Among other things, this bill enacts Part 21 (commencing with Section 42001) of Division 2 of the RTC, titled the CURES Tax Law.

The bill imposes an annual tax on all qualified manufacturers at an amount determined by the DOJ for the privilege of doing business in this state. The bill defines a “qualified manufacturer” to mean:

A manufacturer of a controlled substance, but does not mean a wholesaler or nonresident wholesaler of dangerous drugs, regulated pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code, a veterinary food-animal drug retailer, regulated pursuant to Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, or an individual regulated by the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, or the California Board of Podiatric Medicine.

For the purpose of the CURES tax, “controlled substances” means a drug, substance, or immediate precursor listed in Schedule II, III, or IV, as provided.

Administration. This bill requires the BOE to assess and collect the CURES tax pursuant to the Fee Collection Procedures Law (FCPL).⁴ For purposes of the tax, the bill clarifies that, under the FCPL:

- “Fee” includes the CURES tax; and
- “Feepayer” includes a person that must pay the CURES tax.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

Notwithstanding the FCPL, the bill prohibits the BOE from accepting or considering a petition for redetermination or claim for refund, and requires the BOE to forward to the DOJ, any petition for redetermination or claim for refund that asserts:

- The DOJ incorrectly determined that a qualified manufacturer is subject to tax; or
- The DOJ improperly or erroneously calculated the amount of tax.

Registration, Reporting, and Payment. The bill requires the DOJ to determine the annual tax by a specified formula. The DOJ will provide to the BOE for collection the tax amount, along with the name, address, and due date of each liable qualified manufacturer.

Disposition of Proceeds. This bill requires that all taxes, interest, penalties, and other amounts collected, less refunds and administrative costs, be deposited into the CURES Fund, which this bill establishes in the State Treasury.

Effective Date. This bill becomes effective immediately as an urgency measure.

⁴ RTC Part 30 (commencing with Section 55001).

COMMENTS

1. **Sponsor and Purpose.** The measure is sponsored by California Attorney General Kamala Harris, in part, to establish and support enforcement capability necessary to prevent controlled substance diversion and prescription narcotics abuse.
2. **Administrative start-up cost funding is essential.** This bill proposes a new CURES tax to be effective immediately upon enactment. As a result, the BOE must begin to implement the bill in fiscal year 2013-14. However, the BOE's 2013-14 budget does not include funding for implementation. Consequently, the BOE requires an adequate appropriation to cover administrative implementation costs.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, this bill creates the CURES Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund or other eligible fund to the Fund. The loan would be repaid from taxes collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed CURES tax program. Without an appropriation, it may be necessary for the BOE to divert General Fund (GF) dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

3. **Controlled substances.** The CURES tax applies only to Schedule II, III, and IV controlled substance manufacturers, as the DOJ determines. Consequently, this measure excludes Schedule I and V controlled substances.

[Schedule I](#) controlled substances have a high potential for abuse and no generally accepted medical use. Schedule I controlled substances include, in part, opiates, opium derivatives, hallucinogenic substances (such as marijuana), and depressants.

[Schedule V](#) drugs have a low potential for abuse, a currently accepted medical use and are available over the counter. Schedule V drugs include narcotic drugs containing nonnarcotic active medicinal ingredients in specified portions.

4. **Similar to Water Rights Fee.** This measure requires the BOE to assess and collect the CURES tax as determined by the DOJ, similar to the BOE's annual water rights fee program that is collected on behalf of the State Water Resources Control Board. The BOE's implementation and collection responsibility will not be problematic provided it has: (1) a six month implementation time prior to the first assessment, (2) a minimum 30-day deadline for payment after the BOE mails a CURES tax determination to a taxpayer, and (3) administrative start-up cost funding.
5. **Technical correction.** BOE staff suggests a technical, non-substantive correction to page 10, line 19, and page 12, line 10 of the May 1, 2013, version of the bill to read, respectively:

42003. (a) For the privilege of doing business in this state, an annual tax is hereby imposed on all qualified manufacturers in an amount determined pursuant to Section 42005–42007 for the purpose of establishing and maintaining enforcement

42007. . . . (c) All annual taxes referred to the board for collection pursuant to Section 42005 ~~this section~~ shall be paid to the board.

COST ESTIMATE

BOE administrative costs related to this bill are substantial. These costs include: computer programming; payment processing; collection tasks; staff training; and public inquiry responses.

A detailed cost estimate is pending.

REVENUE ESTIMATE

This measure does not specify a tax rate. However, the bill requires the DOJ to determine the annual tax amount based on the funding necessary to establish and maintain enforcement of CURES, specified as \$4,200,000 for the 2014 calendar year, divided by the number of qualified manufacturers. Beginning with the 2015 calendar year, the bill requires the DOJ to annually adjust the rate to reflect the prior year's increases or decreases in the cost of living, as measured by the California Consumer Price Index.

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