

[Assembly Bill 2149](#) (Bonilla)

Date: 03/17/16

Programs: Medical Marijuana State Payment Collection

Sponsor: Author

Part 13.5 (commencing with Section 31001) to Division 2 of the Revenue and Taxation Code

Effective: January 1, 2017

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Summary: Authorizes the Board of Equalization (BOE) to enter into agreements with specified state agencies to collect cash payments from medical marijuana-related businesses.

Purpose: To provide medical marijuana-related businesses an opportunity to make cash payments for state fees and taxes owed to a state agency that does not have the necessary infrastructure to handle large quantities of cash.

Fiscal Impact Summary: No impact to state revenue.

Existing Law: California's Sales and Use Tax Law.¹ Under existing law, California's sales tax is paid by retailers engaged in business in the state and applies to all retail transactions involving sales of tangible personal property, except those the law specifically exempts or excludes. Retail sales of marijuana are subject to tax to the same extent as any the retail sale of tangible personal property in this state.

BOE-Collection Programs. Currently, the BOE does not collect payments (cashier function) on behalf of other state agencies. However, the BOE administers tax and fee programs that simply require the BOE to assess (bill) and collect a tax or fee based on information received from another state agency. These programs include the water rights fee, the fire prevention fee, and the hazardous substances taxes.

BOE Payment Collection for Use Tax. When a California consumer or business purchases tangible items for their own use from an out-of-state retailer that is not registered with the BOE to collect the California use tax, the purchaser must remit the use tax to the BOE. As an alternative to reporting the use tax directly to the BOE, existing law² allows purchasers that aren't otherwise required to register with the BOE to report their use tax liability on their state personal income tax returns or their state corporation franchise or income tax returns filed with the FTB.

Additionally, when a private party (non-dealer) sells a vehicle, mobilehome, or undocumented vessel required to be registered under the Vehicle Code, the law³ requires the purchaser to pay the use tax to the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD), as applicable. The BOE contracts with the DMV and HCD to collect use tax payments from these purchasers on behalf of the BOE. The DMV and HCD have no other administrative responsibilities except to report and transmit use tax collections to the BOE.

Medical Marijuana Regulation and Safety Act (MMRSA).⁴ Under existing law, 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 California Department of Public Health and the California Department of Food and Agriculture. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale. The MMRSA requires each licensing authority to establish a scale of application, licensing, and renewal fees, based upon MMRSA enforcement costs. These fees have not yet been set.

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

² RTC Section 6452.1.

³ RTC Sections 6292 and 6294.

⁴ Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

Proposed Law: This bill enacts the Medical Marijuana State Payment Collection Law (Collection Law)⁵ to authorize the BOE to enter into an agreement with a state agency to collect cash payments. Cash payments include payments for any fee, fine, penalty, or other charge payable to the state agency by a person that is a medical marijuana-related business. “State agency” includes, but is not limited to:

- Department of Consumer Affairs.
- Department of Food and Agriculture.
- Department of Public Health.
- Employment Development Department.
- State Water Resources Control Board.
- Franchise Tax Board.

Administration. The Collection Law requires the BOE to administer and collect the payments pursuant to the Fee Collection Procedures Law (FCPL),⁶ except that the provisions that require payments by electronic funds transfer do not apply.⁷ For purposes of the Collection Law, FCPL references to “fee” include any fee, fine, penalty, or other charge required to be paid by a person who is a medical marijuana-related business. References to “feepayer” include a person required to pay those fees.

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.

Agreements. The Collection Law requires the BOE to collect fees, fines, penalties, and other charges if the BOE enters into an agreement with a state agency to collect on the agency’s behalf. The agreement shall include the following provisions:

- The BOE is to be reimbursed for the administrative costs of the collection from the fund for which cash payments are collected, upon appropriation of the Legislature.
- The BOE must transmit the collected moneys to the Treasurer to be deposited in the State Treasury to the credit of the fund for which collection was authorized.
- A description of the administrative costs the BOE will incur in carrying out the collection and administration, which costs shall not exceed ten percent of the moneys collected.
- A savings clause that provides the BOE the authority to collect and to make refunds after the sunset date if applicable.
- Specification of the due date for payment of the fee, fine, penalty, or other charge and return by the feepayer.

Operative Date. The bill becomes operative January 1, 2017.

In General. 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.⁸ 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.

Because of this conflict between state and federal law, most banks do not allow marijuana-related businesses to hold accounts.

⁵ Part 13.5 (commencing with Section 31001) to Division 2 of the RTC.

⁶ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

⁷ Article 1.1 (commencing with Section 55050) of Chapter 3.

⁸ [Senate Bill 420](#) (Ch. 875, Stats. 2003, Vasconcellos).

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. **“No Cash” policy.** Since early 2014, all BOE field offices stopped accepting cash from taxpayers attempting to pay their sales or use tax liabilities. This “No Cash Policy” allows BOE to reduce costs and ensure safety to its employees. The BOE allows an exception when taxpayers can document that they are unable to obtain a bank account or that paying in cash is necessary to avoid significant hardship.
2. **Public and BOE staff safety.** The BOE administers and collects California’s sales and use tax, which applies to retail sales of marijuana, including medical marijuana. Many medical marijuana retailers report and pay sales and use tax on retail sales of medical marijuana and other tangible personal property. The BOE grants exemptions from the “No Cash Policy” to medical marijuana-related businesses that are unable to establish a bank account or pay by cashier’s check or money order. As a result, the BOE district offices receive hundreds of thousands of dollars in sales and use tax payments from medical marijuana-related businesses. Accepting such large cash payments creates a huge safety concern for the public and BOE staff. Allowing the BOE to contract with state agencies to collect cash payments from medical marijuana-related businesses only magnifies the risk to the public and BOE.
3. **Practical issues.** In addition to safety issues, this measure compounds the BOE’s administrative challenges with accepting cash payments. The BOE’s district offices already are unequipped to handle large sums of cash for sales and use tax payments. Collecting medical marijuana cash payments for other state agencies, as proposed by this bill, will require additional modifications and upgrades to BOE district office security systems and cash storage, as well as the BOE’s computer system and cash payment procedures.
4. **BOE’s role is unclear.** BOE staff assumes the bill intends to only allow the BOE to collect and deposit medical marijuana cash payments. Thus, the BOE would have no other administrative responsibilities such as those typically required for other BOE-administered tax and fee programs. BOE would not handle appeals, overpayments and refunds, or pursue delinquent payments. If this is the author’s intent, the bill should be amended to remove references to the FCPL. This more limited collection role is similar to the BOE’s contract with the DMV for use tax collection.

However, if the bill intends for the BOE to collect and administer specific state agency programs, such as income tax, employment taxes, and medical marijuana business license fees, further amendments are required. Even with these amendments, how would the BOE collect and administer a partial program for another state agency that relates to a specific category of businesses? Would medical marijuana-related businesses that make cash payments register with BOE? Would the same state agency program have different administrative provisions? For example, would employment taxes paid to the BOE be collected and administered pursuant to the FCPL while employment taxes paid to the Employment Development Department would be collected under that agency’s administrative provisions?

5. **BOE’s mission and tasks.** The BOE’s mission “is to serve the public through fair, effective, and efficient tax administration.” Arguably, facilitating cash payments for taxpayers who have barriers to banking would create efficiencies for those taxpayers. However, this bill’s authorization for the BOE to collect cash payments from medical marijuana-related businesses on behalf of other state agencies departs from the BOE’s traditional “tax collection and enforcement” functions. In general, the BOE does not collect cash payments on behalf of other state agencies when it has no role in administering the revenue-generating tax or fee, nor does it collect and administer partial tax and fee programs that relate to a specified category of tax and fee payers.
6. **Cost cap may be problematic.** The bill requires an agreement to include a provision “that describes the administrative costs the BOE will incur in carrying out the collection and administration, which costs shall not exceed ten percent of the moneys collected.” Without an exact agreement specifying the scope of work, the BOE is unable to determine administrative costs. Consequently, it is unclear whether the BOE’s administrative costs would exceed the 10% cap contained in the bill.

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.

7. **Agreement requirements.** The bill does not specify other provisions necessary for a collection agreement between the BOE and another state agency. These include the scope of work, BOE reimbursement, and other terms and conditions necessary for such an agreement. Although the bill does not bar additional provisions, the author may wish to include them for the sake of clarity.

Administrative Costs: This bill does not increase administrative costs to the BOE because it only authorizes the BOE to contract with state agencies for cash payment collection of fees, fines, penalties or other charges from medical marijuana-related businesses. However, every BOE contract with a state agency to collect these payments would require total reimbursement of BOE administrative costs, including implementation costs.

Revenue Impact: This bill has no direct impact on state revenues.