



Special Notice

STATE BOARD
OF EQUALIZATION

Information on Sales Tax and Registration for Medical Marijuana Sellers

450 N Street
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California 95814

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Board website and
Member contact
Information:
www.boe.ca.gov

Taxpayers' Rights
Advocate
888-324-2798

Information Center
800-400-7115
TDD/TTY: 800-735-2929

1. What is the Board of Equalization's (BOE) policy regarding sales of medical marijuana?

The sale of medical marijuana has always been considered taxable. However, prior to October 2005, the Board did not issue seller's permits to sellers of property that may be considered illegal.

2. Is this a change of policy?

In October 2005, after meeting with taxpayers, businesses, and advocacy groups, the Board directed staff to issue seller's permits regardless of the fact that the property being sold may be illegal, or because the applicant for the permit did not indicate what products it sold. This new policy was effective immediately.

3. What does the amended BOE policy say?

BOE policy regarding the issuance of a seller's permit was amended to provide that a seller's permit shall be issued to anyone requesting a permit to sell tangible personal property, the sale of which would be subject to sales tax if sold at retail. Previously, the Board would not issue a seller's permit when sales consisted only of medical marijuana.

4. Who is expected to comply with the BOE policy by applying for a seller's permit?

Anyone selling tangible personal property in California, the sale of which would be subject to sales tax if sold at retail, is required to hold a seller's permit and report and pay the taxes due on their sales.

5. Over-the-counter medications are subject to sales tax, but prescribed medications are not. Where does medical marijuana, "recommended" by a physician, fit in?

The sale of tangible personal property in California is generally subject to tax unless the sale qualifies for a specific exemption or exclusion. Sales and Use Tax Regulation 1591, *Medicines and Medical Devices*, explains when the sale or use of property meeting the definition of "medicine" qualifies for exemption from tax.

Generally, for an item's sale or use to qualify for an exemption from tax under Regulation 1591, the item must qualify as a medicine *and* the sale or use of the item must meet specific conditions. Regulation 1591 defines a medicine, in part, as any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for that use. A medicine is also defined as any drug or any biologic, when such are approved by the U.S. Food and Drug Administration to diagnose, cure, mitigate, treat, or prevent any disease, illness, or medical condition regardless of ultimate use.

In order to be exempt, a medicine must qualify under the definition, and it must be either (1) prescribed for treatment by medical professional authorized to prescribe medicines and dispensed by a pharmacy; (2) furnished by a physician to his or her own patients; or (3) furnished by a licensed health facility on a physician's order. (There are some other specific circumstances not addressed here such as being

furnished by a state-run medical facility or a pharmaceutical company without charge for medical research.)

Generally, all of these requirements must be fulfilled in accordance with state and federal law.

6. Many medical marijuana dispensing collectives consider themselves to be health care facilities. Are they exempt from applying for a seller's permit and paying sales tax for this reason?

Regulation 1591 exempts the sale or use of medicines furnished by qualifying health care facilities. (See response to Question 5, above, regarding the requirements to qualify as an exempt medicine.) State law defines a qualifying "health facility" as either a facility licensed under state law to provide 24-hour inpatient care or a state-licensed clinic.

7. If I don't make any profit whatsoever from providing medical marijuana, do I still need to apply for a seller's permit?

Yes. Not making a profit does not relieve a seller of his or her sales tax liability. However, whether or not you make a profit, like other retailers making taxable sales, you can ask your customers to reimburse you for the sales taxes due on your sales, if you fulfill the requirements explained in Regulation 1700, *Reimbursement for Sales Tax*.

As discussed in the response to Question 10, the Board may enter into a payment plan with a seller when the seller has difficulty meeting its tax liabilities. The Board has an Offers in Compromise Program that provides a payment alternative for individuals and businesses who have closed out their accounts.

8. Is there a way to apply for a seller's permit without divulging the product being sold?

Yes. The Board will issue a seller's permit to an applicant who does not indicate the products being sold. The applicant, however, will be asked to sign a waiver acknowledging that his or her application is incomplete, which may result in the applicant not being provided with complete information regarding obligations as a holder of a seller's permit, or notified of future requirements by the Board related to the products sold. Applicants who do not wish to indicate the type of products they are selling should leave the line, "What items do you sell?" blank and discuss the issue with a Board representative regarding the incomplete application.

9. If I have been providing medical marijuana for some time, but have never applied for a seller's permit, will I owe any back taxes?

Yes. As with any other seller who has operated without a permit, or who has failed to timely file and pay the taxes due, back taxes are owed on any taxable sales made, but not reported and paid. Generally, penalty and interest will also be due.

When you apply for a seller's permit and your application is processed, Board staff will provide sales and use tax returns from prior periods for you to report your sales of medical marijuana and any other products you may have sold, but did not report. You will need to use these returns to self-report all your sales beginning with the month you first started selling taxable products.

Once you have filed all your back returns, you will receive a current return for each reporting period in which you make sales. You will continue to receive a return until such time as you stop making sales and have notified the Board of the discontinuance of your business.

The Board, however, may grant relief from penalty charges if it is determined that a person's failure to file a timely return or payment was due to reasonable cause and circumstances beyond the person's control. If a seller wishes to file for such relief, he or she must file a statement with the Board stating, under penalty of perjury, the facts that apply. Sellers may use form BOE-735, *Request for Relief from Penalty*, available on the Board's website.

A seller who cannot pay a liability in full may be eligible for an installment payment agreement. Sellers in need of this type of plan should contact their local Board office, as eligibility is determined on a case-by-case basis.

10. Is there a deadline by which I must apply for a seller's permit?

All California sellers of tangible personal property the sale of which would be subject to tax if sold at retail are required to hold seller's permits. A seller's permit should be obtained prior to making sales of tangible personal property. If you are currently making sales of medical marijuana and you do not hold a seller's permit, you should obtain one as soon as possible. Sellers have a continuing obligation to hold a seller's permit until such time they stop making sales of products that are subject to tax when sold at retail.

11. Where will the money go that is collected from sellers paying this sales tax?

Sales tax provides revenues to the state's General Fund as well as to cities, counties, and other local jurisdictions where the sale was made.

12. Are these tax revenues tied to any specific programs in the state budget?

No. The tax from the sales of medical marijuana is treated the same as the tax received from the sale of all tangible personal property.

13. Does registering for a permit make my sales of medical marijuana any more lawful than they are currently?

Registering for a seller's permit brings sellers into compliance with the Sales and Use Tax Law, but holding a seller's permit does not allow sales that are otherwise unlawful by state or federal law. The Compassionate Use Act of 1996 decriminalized the cultivation and use of marijuana by certain persons on the recommendation of a physician. California's Medical Marijuana Program Act also exempted qualifying patients and primary caregivers from criminal sanctions for certain other activities involving marijuana. Apart from any provisions of state law, the sale of marijuana remains illegal under federal law.

14. Where can I find more information?

Sellers are encouraged to use any of the resources listed below to obtain answers to their questions. They may:

- Call our Information Center at 800-400-7115.
 - Request copies of the laws and regulations that apply to their business.
 - Write to the Board for advice. Note: For a taxpayer's protection, it is best to get the advice in writing. Taxpayers may be relieved of tax, penalty, and interest charges that are due on a transaction if the Board determines that the person reasonably relied on written advice from the Board regarding the transaction. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.
 - Attend a basic class on how to report sales and use taxes. A listing of these classes is available on the Board's website at www.boe.ca.gov/sutax/tpsched.htm. This page also includes a link to an on-line tutorial for Sales and Use Tax.
 - Contact a local Board office and talk to a staff member.
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