

Proposition 19

“The Regulate, Control and Tax Cannabis Act of 2010” November 2, 2010 General Election Ballot

STATE BOARD OF EQUALIZATION (BOE) LEGISLATIVE AND RESEARCH DIVISION

PROPOSITION SUMMARY

This measure would make lawful specified personal marijuana activities, authorize local governments to regulate and control specified commercial activities, and allow for local governments to impose appropriate marijuana fees or taxes.

ANALYSIS

CURRENT LAW

Under existing law, the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) prohibits, except as authorized by law, the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana. Existing law authorizes, under The Compassionate Use Act of 1996 (Proposition 215 of 1996), a patient or the patient's primary caregiver to cultivate or possess marijuana for the patient's medical use when recommended by a physician, as specified. (Health and Safety Code Section 11362.5)

Health and Safety Code Section 11361 subjects every person 18 years of age or older who hires, employs, or uses a minor in certain cannabis-related sales activities, who unlawfully sells marijuana to a minor, or who induces a minor to use marijuana, to state imprisonment for three, five, or seven years. Every person over 18 years of age who furnishes, administers, or gives, or offers to furnish, administer or give, any marijuana to a person 14 years of age or older is subject to imprisonment for three, four, or five years.

Under existing Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state, except where specifically exempted by statute. Tangible personal property is defined in law to mean any personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. Therefore, under the law, retail sales of marijuana and any other illegal drugs or property are subject to sales or use tax to the same extent as is any lawful retail sale of tangible personal property.

Under existing law, there is no state excise tax or fee imposed on the possession, sale, transport, or cultivation of marijuana or derivatives of marijuana.

PROPOSED LAW

This measure would add Article 5 (commencing with Section 11300) to Chapter 5 of Division 10 of the Health and Safety Code to enact the **Regulate, Control and Tax Cannabis Act of 2010** (Act), which would make lawful certain personal and commercial marijuana-related activities, authorize local governments to adopt ordinances to regulate, control, and impose appropriate taxes or fees on those commercial activities, and prohibit the furnishing of marijuana to minors.

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 Board's formal position.

Lawful Activities: Personal Regulation and Controls. This measure would make it lawful for any person 21 years of age or older to (1) personally possess, process, share, or transport not more than one ounce of cannabis for personal consumption; (2) cultivate cannabis plants for personal consumption only in an area of not more than twenty-five square feet per private residence or parcel, as specified; (3) possess on the premises where grown the living and harvested plants and results of any harvest and processing of plants lawfully cultivated for personal consumption; and (4) possess objects, items, tools, equipment, products, and materials associated with permitted activities.

This measure would define “personal consumption” to include, but not be limited to, possession and consumption, in any form, of cannabis in a residence or other non-public place including licensed premises open to the public and authorized to permit on-premises consumption, as specified. “Personal consumption” would not include possession for sale, consumption in public or public places, consumption by the operator of any vehicle, boat, or aircraft while being operated, or that impairs the operator, and smoking cannabis in the presence of a minor.

Lawful Activities: Commercial Regulation and Controls. Under this measure, a local government would be authorized to adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

- Cultivation, processing, distribution, the safe and secure transportation, sale, and possession for sale of cannabis, but only by persons in amounts lawfully authorized;
- Retail sale of not more than one ounce per transaction, in licensed premises, to persons 21 years or older, for personal consumption and not for resale;
- Appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;
- Age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such licensed premises are 21 or older;
- Consumption of cannabis within licensed premises;
- Safe and secure transportation of cannabis from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption of cannabis;
- Prohibit and punish through civil fines or other remedies the possession, sale, possession for sale, cultivation, processing, or transportation of cannabis that was not obtained lawfully from a person, as specified;
- Appropriate controls on licensed premises for sale, cultivation, processing, or sale and on-premises consumption, of cannabis, including limits on zoning on land use, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;
- Appropriate environmental and public health controls to ensure that any licensed premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;
- Appropriate controls to restrict public displays, or public consumption of cannabis;
- Appropriate taxes or fees;

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- Larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under Section 11300(a) for personal possession and cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons authorized to do so under this section;
- Any other appropriate controls necessary for protection of the public health and welfare.

Imposition and Collection of Taxes and Fees. A local government could impose appropriate general, special or excise, or transfer or transaction taxes, benefit assessments, or fees on any authorized cannabis-related activity in order to raise revenue or to recoup any direct or indirect costs associated with the authorized activity. In addition, a local government could impose a permitting or licensing scheme, including, without limitation: administration; applications and issuance of licenses or permits; inspection of licensed premises; and other enforcement or ordinances, including enforcement against unauthorized activities.

The measure specifically states that any licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties or other financial responsibility imposed on all or similarly situated businesses, facilities or premises, including without limitation income taxes, business taxes, license fees, and property taxes, without regard to or identification of the business or items or services sold.

Seizure. This measure states that no state or local law enforcement agency or official shall attempt to, threaten to, or in fact seize or destroy any cannabis plant, cannabis seeds or cannabis that is lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used in compliance with this Act or any local government ordinance, law or regulation adopted pursuant to this Act.

Effect of Act and Definitions. Nothing in the Act shall be construed to permit interstate or international transportation of cannabis.

This measure would define the following terms:

- “Marijuana” and “cannabis” are interchangeable terms that mean all parts of the plant Genus Cannabis, whether growing or not; the resin extracted from any part of the plant; concentrated cannabis; edible products containing same; and every active compound, manufacture, derivative, or preparation of the plant, or resin.
- “One ounce” means 28.5 grams.
- “Cannabis plant” means all parts of a living Cannabis plant.
- “Local government” means a city, county, or city and county.
- “Licensed premises” is any commercial business, facility, building, land or area that has a license, permit or is otherwise authorized to cultivate, process, transport, sell, or permit on-premises consumption of cannabis pursuant to any ordinance or regulation adopted by a local government, or any subsequently enacted state statute or regulation.

Prohibition on Furnishing Marijuana to Minors. Under this measure, persons age 21 or older who knowingly furnish, administer, or give, or offer to furnish, administer or give, any marijuana to a person 18 years or older, but under 21 years of age would be punished by imprisonment in the county jail for a period of up to six months and fined up to \$1,000 for each offense.

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Further, any person licensed or permitted, or authorized to perform commercial activities that negligently furnishes, administers, gives or sells, or offers to furnish, administer, give or sell, any marijuana to a person under 21 years of age would not be permitted to own, operate, or be employed by any licensed premises for a period of one year.

Future Amendments. The Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide election, or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act. Such permitted amendments include, but are not limited to, statutes and authorized regulations that further the purposes of the Act to establish a statewide regulatory system for a commercial cannabis industry that addresses some or all of the items for which a local government may adopt ordinances, regulations, or other acts having the force of law, including the imposition and collection of taxes and fees.

BACKGROUND

Medical Marijuana Sellers – Sales Tax. As previously stated, in 1996 California voters passed 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 the recommendation of a physician, as specified.

In 2003, SB 420 (Ch. 875, Vasconcellos, Stats. 2003) was enacted to establish statewide guidelines for Proposition 215 enforcement. In particular, SB 420 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 are currently in business in California, the sale of medical cannabis continues to be illegal under federal law.

Up until late 2005, the BOE's longstanding policy was to not issue a seller's permit to a person whose sole selling activity was the sale of unlawful tangible personal property, so as not to confer permissive authority or condone an illegal activity. However, although it was BOE policy not to issue seller's permits, the sale of medical marijuana has always been considered taxable.

In October 2005, the BOE changed its policy after hearing a case that came before the Members of the BOE involving medical marijuana sales. The BOE recognized the difficulty in reconciling its authority to issue assessments for taxes due from a seller's marijuana sales while, at the same time, not issuing seller's permits to such sellers, and also took into account the legality under state law of some sales of marijuana as authorized in SB 420. Now the BOE issues seller's permits to those medical marijuana sellers that apply and will issue seller's permits to any other sellers making unlawful sales.

As part of the BOE's education outreach efforts, a special notice was mailed to California sellers of medical marijuana to clarify the application of tax to sales of medical marijuana and the requirement that they must hold a seller's permit.

Marijuana Taxes, Fees, and Regulation. In 2009, Assembly Member Ammiano introduced AB 390, a measure that would have imposed a fee of fifty dollars (\$50) per ounce on the retail sale of marijuana in this state. The BOE would have administered and collected the fee, with the revenues dedicated to drug education, awareness, and rehabilitation programs. That bill would have also required the Department of Alcoholic Beverage Control (ABC) to license both commercial cultivators of marijuana and

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wholesalers of marijuana, who would be allowed to package and prepare marijuana for sale and would be authorized to sell marijuana to licensed sales outlets. That bill died in the Assembly Committee on Health without being heard.

In 2010, Assembly Member Ammiano introduced AB 2254, which was very similar to AB 390. That bill was never heard in the Assembly Committee on Public Safety. Also in 2010, Senator Calderon introduced SBx6 16, which would have imposed a tax upon the distribution of cannabis at a rate equal to the tobacco products rate. Although SBx6 16 was referred to the Senate Committee on Revenue and Taxation, it was never heard. Senator Calderon also introduced SB x6 17 as a companion measure to SBx6 16, which would have enacted a cannabis licensing program similar to the Cigarette and Tobacco Products Licensing Act of 2003¹ (Licensing Act). That bill was never referred to a policy committee for hearing. Senator Calderon later authored SB 1131 (2010), which would have enacted the Sales Tax Enforcement Act of 2010, with the intent to better assist the BOE in collecting the sales tax generated by marijuana sales. That bill died in Assembly Rules without referral to a policy committee.

COMMENTS

1. **Purpose.** This measure is intended to limit the application and enforcement of state and local laws relating to possession, transportation, cultivation, consumption and sale of cannabis; however, it is not intended to affect the application or enforcement of laws relating to public health and safety or protection of children and others, as specified.
2. **Federal vs. state law.** As previously stated, California law prohibits the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana, except as authorized under the Compassionate Use Act of 1996. Federal law, however, prohibits the manufacture, possession, sale, or distribution of marijuana as a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. § 801 et seq.)

This measure would have no impact upon the federal marijuana prohibition or any applicable punishment for violations. It is therefore unclear how legalizing marijuana in California would affect a federal prohibition on possession of marijuana.

3. **Prescription medicine exemption.** 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.

¹ Division 8.6 (commencing with Section 22970) of the Business and Professions Code

In order to be exempt, a medicine must qualify under the definition, and it must be either (1) prescribed for treatment by a 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 several other specific circumstances not addressed here, such as a medicine furnished without charge by a pharmaceutical company to a state-run health facility for medical research.)

Medical marijuana dispensaries do not meet the definition of "health facility" provided in Regulation 1591; therefore, sales of medical marijuana by dispensaries and primary caregivers are subject to tax. In addition, sales by caregivers and medical marijuana dispensaries are also subject to tax because they are generally not registered pharmacists.

If this measure is successfully passed by voters, medical marijuana sold by dispensaries would remain subject to tax.

- 4. Statewide effect.** The Act states in its purpose that it is to, in part, "tax and regulate cannabis to generate billions of dollars for our state and local governments" and "allow the Legislature to adopt a statewide regulatory system for a commercial cannabis industry." The Act itself, however, does not establish a statewide regulatory framework, nor does it impose an additional statewide tax on cannabis.

California already imposes a sales and use tax on the retail sale of marijuana. Whether or not the voters approve this measure in November, the retail sale of marijuana will continue to be subject to sales and use tax in California to the same extent as any other tangible personal property, and the BOE will continue to issue seller's permits to any marijuana seller requesting such a permit. If successful, this measure may result in additional sellers requesting a seller's permit, thereby increasing the sales and use tax collected and remitted to the state, but there will be those who will not come forward for fear of self-incrimination resulting in punitive measures from the federal government (see Comment 2).

In addition to the problems associated with conflicting state and federal laws, this analysis will also discuss various other issues associated with implementing the Act, with the intent of providing local governments with information pertaining to areas in which the BOE specializes: tax and fee administration, and administration and enforcement of the Licensing Act.

- 5. Regulatory program.** During this last Legislative Session, two different types of statewide marijuana regulatory models were introduced, in AB 390/AB 2254 and in SBx6 17/SB 1131.

The AB 390/AB 2254 model proposed to regulate marijuana similar to the regulation of alcoholic beverages under the state's alcoholic beverage control laws (ABC Act), which are designed to protect the public's health and safety. The ABC has exclusive authority to administer the provisions of the ABC Act in accordance with laws enacted by the Legislature, which involves licensing individuals and businesses associated with the manufacture, importation, and sale of alcoholic beverages in this state and the collection of license fees or occupation taxes for this purpose. The ABC also has the power for good cause to deny, suspend or revoke any specific alcoholic beverage license.

The administration of the alcoholic beverage tax is with the BOE pursuant to Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code.

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The second model, proposed in SBx6 17/SB 1131, would have regulated marijuana in a manner similar to how cigarettes and tobacco products are regulated under the Licensing Act, which was enacted to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. The BOE administers and enforces the Licensing Act, which requires the licensure of manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. The BOE is authorized to deny, suspend or revoke a license, as provided. Although the Licensing Act contains provisions requiring the BOE to take action upon a licensee for violations of state law relating to tobacco sales to minors upon notice of such violations, its primary purpose is to enforce the Cigarette and Tobacco Products Tax Law. With respect to health-related regulation, the authority to enforce the statewide program to take regulating action against businesses that illegally sell tobacco to minors was delegated to the California Department of Public Health pursuant to the Stop Tobacco Access to Kids Enforcement (STAKE) Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code).

The administration of the cigarette and tobacco products taxes is with the BOE pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

As discussed previously, the Act does not establish a statewide regulatory scheme but, instead, allows local governments to adopt ordinances, regulations, or other acts having the force of law to license or regulate, in part, the cultivation, processing, distribution, transportation, on-premise consumption, and sale of marijuana, including age limits and controls to prevent under age access, to limit zoning and land use, and to restrict public displays or public consumption.

6. **Taxation of cannabis.** This measure does not impose any additional statewide tax or fee beyond existing law, which currently includes a sales and use tax mechanism. In addition to the statewide regulatory mechanisms proposed by AB 390/AB 2254 and SBx6 17/SB 1131, different methods of tax and fee imposition models were also introduced.

Both AB 390 and AB 2254 would have imposed a fifty dollar (\$50) per ounce fee on the retail sale of marijuana in this state. Under the provisions of these bills, a retailer was required to apply to the ABC to obtain a license to sell marijuana at retail and was liable for the fee on its sales of marijuana in this state. In addition to the proposed fee, a licensed marijuana retailer would have been required to apply for a seller's permit, file returns, and pay sales tax to the BOE. It appears that the primary purpose of this measure was to establish a regulatory scheme that was, in part, supported by the fifty dollar per ounce fee.

Senate Bill x6 16 would have imposed a tax upon the distribution of marijuana at a rate equal to the tobacco products rate. Similar to the imposition of tax under the Cigarette and Tobacco Products Tax Law² (Tax Law), that bill would have imposed the tax upon the distributor which is generally higher in the distribution chain than the retailer, and was accompanied by a companion tax enforcement mechanism (SBx6 17) utilizing a licensing program (Cannabis Licensing Act) that paralleled the Licensing Act.

Crafting legislation to impose an excise tax on marijuana similar to cigarettes and tobacco products comes with many unique challenges and issues. Such a tax

² Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code

program cannot simply be patterned after the Tax Law since the culture of marijuana is very different from that of cigarettes and tobacco products. Among other things, marijuana is sold in different forms, strengths, and in various packaging, which makes an excise tax challenging no matter where in the distribution chain the tax is imposed. If a local tax or fee is considered, BOE staff makes the following suggestions:

- **Point of taxation.** BOE staff typically recommends that excise taxes or fees be imposed as high in the distribution chain as possible since there are fewer taxpayers and less potential for evasion. With respect to marijuana, the highest point in the distribution chain would be the grower. However, growers normally sell in bulk volume, which would not be conducive to a unit-based tax. These bulk volume sales are usually repackaged by a distributor/processor for retail sale making the distributor level an appropriate, and BOE staff recommended, point of taxation. Distributors are high in the sales chain, which minimizes the number of taxpayers, and imposition at this level would allow for the use of tax stamps.
- **Basis of tax.** Under the existing Tax Law, the cigarette tax is imposed on a “per stick” basis, while the tobacco products tax is imposed at a rate equivalent to the cigarette tax, which is applied to the wholesale cost. AB 390 and AB 2254 both proposed imposing the cannabis tax based on a “per ounce” basis and SBx6 16, although silent on the basis of the tax, appeared to be modeled after the tobacco products tax. Administratively, imposing a uniform unit-based marijuana tax, rather than a price-based tax, would be conducive to the use of a tax stamp. A unit-based tax would also avoid varying tax amounts depending on where in the distribution chain the tax is imposed and eliminate confusion over the appropriate tax base to which the rate would be applied. To implement a unit-based tax, a unit would have to be defined (e.g. grams, half grams, quarter grams, and ounces). A statewide definition for the term would allow for uniformity from locality to locality and also make for a more cost effective use of a unit-based tax stamp since that stamp could be use be used in multiple jurisdictions.
- **Evidence of tax payment.** If imposing the tax above the retail level, using a stamping mechanism similar to the BOE’s high-tech, encrypted stamp is recommended. The BOE has found that use of the encrypted cigarette tax stamp, along with the Licensing Act, has served as a successful deterrent to evasion, thereby significantly reducing the amount of unregulated product in the distribution chain and the amount of illegal/untaxed product in the market place. A similar tax stamp scheme is recommended for a cannabis tax program where a value-based excise tax stamp would be affixed at the distributor level to predetermined increment/weight packaging.

An excise tax stamp also controls evasion by allowing for the use of track-and-trace technology. The lack of authentic fiscal markings, such as a tax stamp, would create an illicit market. The BOE’s implementation of a rigorous licensing and enforcement regime, with both overt and covert security features, has resulted in a significant reduction in illegal stamps and augmented staff’s ability to inspect products and lay charges where necessary. Thus, a licensing and stamping requirement would appear to have high potential for addressing concerns about illegal sales within the marijuana distribution network.

- **Licensing.** If a local government is considering imposing a marijuana tax or fee above the retail level, enacting a marijuana licensing program similar to the Licensing Act would be beneficial to stem the tide of tax evasion and smuggling, and would also allow for tracking sales, controlling the market, and creating a traceable distribution chain. Similar to the Licensing Act, a successful marijuana licensing program would have to include: sales and purchase prohibitions; specific provisions to address non-sanctioned sales or transfers (such as seizure authority and penalties and/or fines), to address potential issues of smuggling and/or tax evasion, and to encourage voluntary compliance; inspection and seizure authority; and use of a high-tech, encrypted unit-based tax stamp. Additionally, a local government adopting such a program should also consider the following:
 - **Additional licensees.** A licensing scheme that follows from bottom to top: grower, distributor/processor, transporter, and retailer. A license should be held for each location where marijuana is grown, processed, held, or sold, and for each transport vehicle. Documentation would have to be maintained by each licensee showing, in part, that marijuana is being sold to, and purchased from, licensed persons. For grower purposes, documentation would also support any regulation limiting production or importation of marijuana. Similar to the Licensing Act, documentation should be maintained for a four-year period, including one year on-site from the date of purchase or sale. Licensing and proper documentation would establish an effective mechanism to monitor and track marijuana from introduction into the distribution chain to the sale to consumer.
 - **License Fee.** An annual licensing fee that would fully fund the administration of the licensing program.
 - **Multi-agency cooperation.** Cooperation between local and state agencies, clear administrative roles, and information sharing. Such cooperation would assist with enforcing Section 11302(b), which provides that any licensed premises shall be responsible for paying all federal, state, and local taxes, fees, fines, penalties, or other financial responsibility imposed on all or similarly situated businesses, facilities, or premises.
7. **Local laws.** This measure authorizes local governments to adopt ordinances and regulations to control, license, regulate, permit, or otherwise approve certain marijuana activities, including cultivation and distribution, possession, and consumption, and to impose taxes/fees. Such authorization could potentially result in the adoption of hundreds of different tax, fee and licensing schemes by many cities and counties in the state, which could make administration, collection and enforcement complex and challenging. Local governments may want to consider a uniform method of taxation or fee imposition, which would also be conducive to collection and administration by the BOE of those taxes or fees, if a statewide tax or fee is pursued. The Revenue and Taxation Code includes statutory provisions that allow the BOE to collect locally-imposed taxes in a uniform manner consistent with the statewide sales and use and fuel taxes administered and collected by the BOE.

The BOE administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law (local taxes) and the Transactions and Use Tax Law and Additional Local Taxes Law (district taxes), Part 1.3 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing

with Section 7285), respectively, of Division 2 of the Revenue and Taxation Code. Cities and counties are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the local and the district taxes.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes cities and counties to impose these local taxes. The law requires that the rate of tax be fixed at one percent of the sales price of tangible personal property sold at retail in the local jurisdiction or purchased outside the jurisdiction for use within the jurisdiction. Of the one percent, cities and counties use 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes. All local jurisdictions impose these local taxes at the uniform rate of 1 percent.

The Transactions and Use Tax Law and Additional Local Taxes Law authorize cities and counties to impose district taxes under specified conditions. In general, all district taxes levied under these provisions are levied based on a percentage (ranging from 0.10% to 1.00%) of the sales price of the tangible personal property sold or used within the district levying the tax. Under these laws, the combined rate of these district taxes imposed in any local jurisdiction cannot exceed 2.00% (with one exception in Los Angeles County).

A county may also impose a local motor vehicle fuel tax on a countywide basis in accordance with Part 4, commencing with Section 9501, of Division 2 of the Revenue and Taxation Code. This law requires that the tax be imposed in increments of one cent (\$0.01) per gallon or, in the case of compressed natural gas, one cent (\$0.01) per 100 cubic feet as measured at standard pressure and temperature. Any ordinance adopted must include provisions identical to those contained in the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, and Diesel Fuel Tax Law, except as provided. Similar to local taxes and district taxes, the county is required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the local motor vehicle fuel tax. No county has ever levied this tax.

For each of the local tax programs discussed previously, localities levying such taxes are required to contract with the BOE to administer the tax so that they may levy a tax at a low rate in order to take advantage of the functions already performed by the BOE in administering the sales and use tax or motor vehicle fuel tax systems as a whole. If a locality were to levy a local tax and then elect to administer the tax themselves, the locality would not have access to taxpayer information necessary for it to administer the proposed tax. It is likely that the costs to the locality to acquire the information for itself would exceed the potential revenue the proposed tax may generate.

However, there is currently no statewide excise tax or fee imposed upon marijuana, under Proposition 19 or otherwise. If the Legislature considers imposing a statewide excise tax, it is suggested that local tax and fee provisions similar to the local district, transaction, and fuel tax laws to allow a local government to adopt an ordinance imposing a local marijuana tax or fee using the same mechanism proposed for the statewide tax.

The BOE is available to assist with developing model legislation for a BOE-administered local or statewide marijuana tax or fee program, which would have to consider the following:

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- **Administrative provisions.** If the BOE were required to collect and administer a local cannabis tax or fee, any implementing legislation would need to include language requiring the BOE to administer and collect the proposed tax pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

- **Tax stamps and licensing.** Successful enforcement of the state cigarette excise tax law is due to utilization of the high-tech, encrypted tax stamp, implementation of statewide licensure, and increased enforcement. Uniform local tax or fee and licensing would allow for streamlined collection and use of a statewide track-and-trace system through appropriate documentation and a value-based tax stamp, similar to the statewide tax and licensing mechanism for cigarettes.
- **Implementation timeline.** The BOE would need a *minimum* of 8 months to implement a new marijuana tax or fee program, and a *minimum* of two years to implement a new marijuana tax or fee program requiring the application of a tax stamp. The delayed operative date should also commence on the first day of the first calendar month.

COST ESTIMATE

Additional administrative costs may be incurred depending on the number of new sellers that may result due to passage of Proposition 19. As the number of new sellers that may result due to passage of this measure is unknown, we are unable to determine specific administrative costs at this time.

REVENUE ESTIMATE

This measure does not contain any new responsibility, rule, or law applicable on a statewide level or required of the BOE, so it is not possible to estimate the potential revenue gain.

The BOE's statewide estimate of marijuana consumption for AB 390 was based on numerous assumptions because actual data are not available. The legalization policy proposed by this measure complicates the revenue estimation task considerably over that for AB 390 (which proposed statewide legalization, licensing fees and a uniform excise tax across all jurisdictions). Specifically, Proposition 19, should it pass, presents the following challenges with respect to producing a revenue estimate:

- BOE staff does not know which local jurisdictions will choose to authorize the sale of marijuana products and which will not; nor can staff estimate the number of locations that will be authorized within a jurisdiction.

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- Proposition 19 does not contain specific provisions at the state level governing taxation or retail sale. Local jurisdictions are free to choose to impose licensing fees or implement differing tax schemes or rates.
- BOE staff is not able to create estimates of marijuana consumption and price at the local level.
- BOE staff is not able to estimate the impact that legalization, local regulation, and taxation will have on the consumption and price for those jurisdictions that choose to authorize sales.

Analysis prepared by:	Cindy Wilson	916-445-6036	09/20/10
Revenue prepared by:	Robert Ingenito	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	

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