

[Assembly Bill 821](#) (Gipson)

Date: Introduced

Program: Sales and Use Tax

Sponsor: BOE Member Horton

Revenue and Taxation Code 6369.6

Effective immediately, but operative 90 days following 1st calendar quarter

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

Summary: Exempts from sales and use tax medical marijuana sold to terminally ill patients who possess a BOE-issued medical marijuana exemption certificate.

Purpose: To create equitable tax exemption treatment for all medicines.

Fiscal Impact Summary: Annual state and local revenue loss of \$2.5 million.

Existing Law: Except where the law specifies an exclusion or exemption, California's Sales and Use Tax Law¹ 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: This bill exempts from sales and use tax sales of medical marijuana to terminally ill patients that possess a BOE-issued medical marijuana exemption certificate.

This bill requires the BOE to create an exemption certificate with a unique license number. Upon satisfactory proof of a terminal illness by the patient's attending physician, the bill requires the BOE to issue the certificate to a terminally ill patient. The certificate remains valid for the same period as the patient's California Department of Public Health's Medical Marijuana Program's identification card.

Any person that uses the exemption certificate contrary to specified requirements is liable for the applicable sales tax.

As a tax levy, this bill becomes effective immediately upon enactment. However, the provisions become operative on the first day of the first calendar quarter commencing more than 90 days after the bill's effective date.

Commentary:

1. **Why is the sale of medicinal marijuana not an exempt sale of a prescription medicine?** Generally, caregivers and medical marijuana dispensaries are not registered pharmacists or licensed health facilities. Accordingly, their medical marijuana sales do not qualify for the current medicine exemption in law, despite the purchasers' possession of a medical marijuana identification card. Accordingly, under existing law, tax generally applies to sales of medical marijuana.

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

² Sales and Use Tax Law Section 6369.

2. **Compassionate Use Act.** When a physician recommends medical marijuana, existing state law³ allows patients or primary caregivers to cultivate or possess marijuana for the patient's medical use, as specified.

Although numerous medical marijuana dispensaries conduct business in California today, medical marijuana sales continue to be illegal under federal law. State law,⁴ however, allows legal sales of medical marijuana under established statewide guidelines for Proposition 215 enforcement. In particular, state law specifies that, in certain cases, nonprofit distribution is allowed for patient cultivation cooperatives, small-scale caregiver gardeners, and dispensing collectives.

On December 16, 2014, Public Law 113-235⁵ became operative which prohibits the United States Department of Justice from using funds to prevent specified states, including California, from implementing state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Administrative Costs: The bill results in BOE administrative costs to conduct outreach activities, develop forms and publications, program computers, and to respond to taxpayer, media, and public inquiries. A detailed cost estimate is pending.

Revenue Impact:

Background, Methodology, and Assumptions. BOE staff currently estimates total sales of medicinal marijuana to range from \$700 million to \$1.3 billion. This estimate is from December 2009 based on 2007 receipts from businesses that were identified as dispensaries in BOE records, extrapolated to the possible dispensaries operating in the state. BOE staff reviewed more recent data and determined that this range of revenues continues to be the most accurate set of estimates given the information available. BOE does not have actual numbers for medical marijuana sales because dispensaries are not required to identify their business type when registering for a permit and can report total taxable sales without categorizing the specific product sold.

No data are available to indicate what percentage of these sales are to terminally ill patients. However, data tabulated for Colorado and Oregon suggest that the percentage of medical marijuana sales made to terminally ill patients is negligible. Data from both of these states suggest that less than five percent of patients report life-threatening conditions such as cancer or HIV as their primary medical condition.⁶ For purposes of this revenue estimate, we will assume three percent of all sales are made to terminally ill patients. Assuming three percent of the midpoint (total sales of medicinal marijuana, which range from \$700 million to \$1.3 billion) our medical marijuana estimates implies that sales made to terminally ill patients are about \$30 million per year (\$1 billion X 3%).

Revenue Summary. The full-year revenue loss related to \$30 million of medicinal marijuana sales to terminally ill patients is estimated to be approximately \$2.5 million, to the following funds:

³ Compassionate Use Act of 1996 (Proposition 215 of 1996).

⁴ [Senate Bill 420](#) (Stats. 2003, Ch.875, Vasconcellos).

⁵ [H.R. 83](#) / Public Law 113-235, Consolidated and Further Continuing Appropriations Act, 2015, (Dec. 16, 2014; 128 Stat. 2130; 701 pages)

⁶ Sources: https://www.colorado.gov/pacific/sites/default/files/CHED-MMJ_1_2015_MMR_REPORT.pdf, <http://public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Pages/data.aspx>

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.

	<i>Revenues (Dollars)</i>	
	Fiscal Year	
	2015-16	2016-17
	(Half-Year)	
State General Fund 3.6875%	\$553,125	\$1,106,250
State General Fund 0.25%	37,500	75,000
State Education Protection 0.25%	37,500	75,000
Local Revenue Fund 2011 1.0625%	159,375	318,750
State (Local Revenue Fund) 0.50%	75,000	150,000
State (Local Public Safety Fund) 0.50%	75,000	150,000
Local (City/County) 1.25%	187,500	375,000
Special District Tax 0.92%	138,000	276,000
Total SUT Impact (8.42%)	\$1,263,000	\$2,526,000

Qualifying Remarks. Revenues associated with medical marijuana sales made to terminally ill patients are highly uncertain, as data necessary to make accurate estimates are not available. Total medical marijuana sales to, and expenditures made specifically by, terminally ill patients are unknown.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.