

[Assembly Bill 821](#) (Gibson)

Program: Sales and Use

Sponsor: BOE Member Horton

Revenue and Taxation Code 6479.3

Effective: January 1, 2017

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Summary: Until January 1, 2022, allows medical cannabis dispensaries to remit sales and use taxes by means other than an electronic funds transfer (EFT).

Purpose: To encourage compliance in the medical cannabis industry by enabling dispensaries to pay their tax liability using cash without incurring a mandatory penalty.

Fiscal Impact Summary: No material impact to state or local revenues.

Existing Law: Under existing law,¹ 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 the tax to the same extent as any other retail sale of tangible personal property in this state.

Under the law,² certain reporting requirements are imposed on retailers that have substantial sales and use tax liabilities. Specifically, taxpayers with monthly tax liabilities that average \$10,000 or more must remit their tax payments via an EFT under BOE-prescribed procedures. Failure to remit the funds under those procedures subjects taxpayers to specified penalties: 10% for their quarterly remittance; and 6% for prepayments (required twice during the quarter). The law³ provides penalty relief when the person's failure is due to reasonable cause and circumstances beyond his or her control. However, taxpayers must file a request for relief after the mandatory penalty is billed and the request must be signed under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

Proposed Law: Until January 1, 2022, this bill allows a person issued a seller's permit for a place of business that is a dispensary, as defined, to remit amounts due by other than an EFT.

The bill defines a "dispensary" by reference to Business and Professions Code Section 19300.5 (n).⁴

In General. 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 employee safety. A large cash deposit by one taxpayer alone can take staff hours to count, and the potential danger with large sums requires added security. Although the BOE allows an exception when a taxpayer can document the inability to obtain a bank account for the smaller accounts, for taxpayers whose estimated monthly tax liabilities meet the EFT threshold of \$10,000 or more, the law requires remittances by an appropriate EFT, whether or not the taxpayer has the ability to so remit the tax. 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.⁵ 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 cannabis dispensaries currently do business in California, medical cannabis sales are illegal under federal law.

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

² RTC Section 6479.3.

³ RTC Section 6592.

⁴ As added by [AB 266](#) (Ch. 689, Stats. 2015).

⁵ [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.

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

Commentary:

- 1. Effect of the bill.** This bill allows the larger medical cannabis dispensaries to pay their sales and use tax liabilities with cash, check, credit card or any other means.
- 2. Amendments would also allow payment by check or credit card.** The bill's purpose is to enable cannabis retailers to pay their liabilities with cash, when they are unable to obtain a bank account. As amended, this bill enables cannabis dispensaries to pay by any means, whether or not they have a bank account, and whether or not the non-EFT payment would facilitate collection. We suggest additional language be added back in the bill that allows the BOE to determine whether a non-EFT payment would facilitate tax collection prior to allowing the alternative payment.
- 3. If the bill were limited to cash payments, this bill would not affect revenues.** Under existing law, the BOE has been granting penalty relief to a dispensary when a dispensary requests relief, and when the dispensary's only way to make a sales or use tax payment is by using cash. Therefore, no penalty revenue loss would occur as a result of this bill. However, under this bill, if a dispensary holds a bank account, and remits payment by check, some interest loss related to the check's float time could occur.

Costs: The BOE's administrative cost impact would be absorbable.

Revenue Impact: Other than the potential for some interest loss, this bill would not significantly affect state or local revenues, since the BOE has provided penalty relief to dispensaries that are unable to hold a bank account.