

RESOLUTION 01-04-2018

DIGEST

Medical Marijuana: Tax Exemption for Retail Sales of Cannabis for Medicinal Use

Amends Revenue and Taxation Code section 34011 to create a tax exemption for retail sales of cannabis to persons who have an attending physician’s recommendation for medicinal use.

STATEMENT OF REASONS

The Problem: The advent of legal, regulated, recreational marijuana is a financial boon for California, as well as a reducing incarceration for nonviolent crimes. While a 15% sales and use tax to those purchasing marijuana for recreational purposes seems appropriate, that same tax has placed an undue financial burden for those purchasing marijuana for medicinal use. The current exception to the sales and use tax applies only to those carrying a card issued under Section 11362.71 of the Health and Safety Code. That card is regulated on a county basis and can cost upwards of \$150 a year. Essentially, a patient would have to spend out of pocket \$1000 for their card to pay for itself. The current law, disproportionately affects people of color and those of low to moderate incomes that heretofore had been able to acquire their medicinal marijuana with a prescription from a medical doctor and while paying only local sales tax.

The Solution: This resolution simply restores the ability of those with medical marijuana prescriptions to be treated as they were prior to legalization of marijuana for recreational use. By adding “an attending physician’s recommendation” patients will be exempt from the sales and use tax, without having to spend needless amounts of time and energy obtaining an ID card. This resolution does not change the requirements upon attending physicians in their issuance of medical marijuana recommendations. This resolution will reduce the financial and physical barriers to access, and returns medical marijuana patients to same position they were in prior to the passage of recreational marijuana.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 34011 to read as follows:

- 1 § 34011
- 2 (a) (1) Effective January 1, 2018, a cannabis excise tax shall be imposed upon purchasers
- 3 of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market
- 4 price of any retail sale by a cannabis retailer. A purchaser’s liability for the cannabis excise tax is
- 5 not extinguished until the cannabis excise tax has been paid to this state except that an invoice,
- 6 receipt, or other document from a cannabis retailer given to the purchaser pursuant to this
- 7 subdivision is sufficient to relieve the purchaser from further liability for the tax to which the
- 8 invoice, receipt, or other document refers.
- 9 (2) Each cannabis retailer shall provide a purchaser with an invoice, receipt, or other
- 10 document that includes a statement that reads: “The cannabis excise taxes are included in the
- 11 total amount of this invoice.”
- 12 (3) The department may prescribe other means to display the cannabis excise tax on an
- 13 invoice, receipt, or other document from a cannabis retailer given to the purchaser.

14 (b) (1) A distributor in an arm's length transaction shall collect the cannabis excise tax
15 from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis
16 product to the cannabis retailer. A distributor in a non arm's length transaction shall collect the
17 cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of
18 cannabis or cannabis product to the cannabis retailer, or at the time of retail sale by the cannabis
19 retailer, whichever is earlier. A distributor shall report and remit the cannabis excise tax to the
20 department pursuant to Section 34015. A cannabis retailer shall be responsible for collecting the
21 cannabis excise tax from the purchaser and remitting the cannabis excise tax to the distributor in
22 accordance with rules and procedures established under law and any regulations adopted by the
23 department.

24 (2) A distributor shall provide an invoice, receipt, or other similar document to the
25 cannabis retailer that identifies the licensee receiving the product, the distributor from which the
26 product originates, including the associated unique identifier, the amount of cannabis excise tax,
27 and any other information deemed necessary by the department. The department may authorize
28 other forms of documentation under this paragraph.

29 (c) The excise tax imposed by this section shall be in addition to the sales and use tax
30 imposed by the state and local governments.

31 (d) Gross receipts from the sale of cannabis or cannabis products for purposes of
32 assessing the sales and use tax under Part 1 (commencing with Section 6001) shall include the
33 tax levied pursuant to this section.

34 (e) Cannabis or cannabis products shall not be sold to a purchaser unless the excise tax
35 required by law has been paid by the purchaser at the time of sale.

36 (f) The sales and use taxes imposed by Part 1 (commencing with Section 6001) shall not
37 apply to retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal
38 cannabis products, or topical cannabis as those terms are defined in Division 10 (commencing
39 with Section 26000) of the Business and Professions Code when a qualified patient or primary
40 caregiver for a qualified patient provides an attending physician's recommendation as defined in
41 Section 11362.7 of the Health and Safety Code or his or her card issued under Section 11362.71
42 of the Health and Safety Code and a valid government-issued identification card.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR LEGISLATION

None known.

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