

AMENDED IN SENATE MAY 24, 2016

AMENDED IN SENATE SEPTEMBER 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 567

Introduced by Assembly Member Gipson

February 24, 2015

An act to ~~add Section 11362.6 to the Health and Safety Code, to amend and renumber Sections 7076, 7076.1, 7076.2, 7076.3, 7076.4, 7077, and 7078 of, and to add Article 2.1 (commencing with Section 7077) to Chapter 8 of Part 1 of Division 2 of, and to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to add Division 11 (commencing with Section 18740) to the Unemployment Insurance Code, relating to medical cannabis.~~ *amend Section 19323 of the Business and Professions Code, to amend and renumber Sections 7076, 7076.1, 7076.2, 7076.3, 7076.4, 7077, and 7078 of, and to add Article 2.1 (commencing with Section 7077) to Chapter 8 of Part 1 of Division 2 of, and to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to add Division 11 (commencing with Section 18740) to the Unemployment Insurance Code, relating to medical cannabis.*

LEGISLATIVE COUNSEL'S DIGEST

AB 567, as amended, Gipson. Medical cannabis: regulation and taxation amnesty.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law, the Medical Marijuana Program, requires the State Department of Public Health to establish a voluntary program for the issuance of identification cards to qualified patients and primary caregivers under the Compassionate Use Act, and grants immunity from arrest for violation of specified provisions relating to the cultivation, possession, transportation, and sale of marijuana, if conditions of the act are met.

~~This bill would prohibit the sale, distribution, provision, or donation of medical cannabis or medical cannabis products to a qualified patient or caregiver other than at a licensed dispensing facility or through a licensed dispensing facility's delivery service, as defined; would prohibit mobile, vehicular, or technology platforms that enable qualified patients or primary caregivers to arrange for any delivery, as defined, with a third party; and would provide that a dispensary, as defined, that employs or uses the services of any person under 21 years of age for the sale or delivery of medical cannabis or medical cannabis products is subject to suspension or revocation of certain state or local licenses. By requiring local licensing authorities to suspend or revoke local licenses, this bill would impose a state-mandated local program.~~

~~(2) Existing~~

~~Existing law imposes sales and use taxes collected and administered by the State Board of Equalization, personal income and corporation taxes collected and administered by the Franchise Tax Board, Equalization and employment taxes, as defined, collected and administered by the Employment Development Department. Existing law sets forth various penalties, including penalties for the nonpayment or late payment of those taxes, and the failure to file or intentional filing of incorrect returns. Existing law established a tax amnesty program, conducted in 2005, with respect to sales and use tax penalties, and, personal income and corporation tax penalties and fees due and payable for tax reporting periods or taxable years beginning before January 1, 2003, penalties.~~

~~This bill would require the State Board of Equalization, the Franchise Tax Board, Equalization and the Employment Development Department to administer tax penalty amnesty programs during the period beginning on April 1, 2016, through September 30, 2016, or during a timeframe before December 31, 2016, July 1, 2017, through September 30, 2017, inclusive, for medical cannabis-related businesses, as provided. The bill would define a medical cannabis-related business for these purposes as a person that engages in the sale of cannabis for medical purposes to qualified patients or the primary caregivers of qualified patients pursuant to the Compassionate Use Act or the Medical Marijuana Program. The bill would require a licensing authority the Department of Consumer Affairs to revoke or refuse to issue a state or local license to a medical cannabis-related business that is eligible to, but does not participate in, those programs and meets other specified conditions. By~~

~~requiring local licensing authorities to revoke or refuse to issue local licenses, this bill would impose a state-mandated local program.~~

~~(3)~~

(2) This bill would make related findings and declarations. The bill would also make technical and conforming changes.

~~(4)~~

(3) Existing state constitutional law prohibits the Legislature from making any gift, or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation.

This bill would make certain legislative findings and declarations that amnesty programs to incentivize a specific type of business to become current with their tax obligations serve a general public purpose, and therefore are not gifts of public funds.

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The voters of the State of California enacted the
4 Compassionate Use Act of 1996, which became effective on
5 November 6, 1996, as Section 11362.5 of the Health and Safety
6 Code. The act ~~authorizes~~ *exempts* patients and their designated
7 primary caregivers ~~to who~~ possess and cultivate cannabis for
8 personal medical use upon recommendation or approval of a
9 ~~physician.~~ *physician from specified criminal laws.*

10 (b) In 2004, the Legislature and Governor refined the
11 Compassionate Use Act through SB 420, which added Sections
12 11362.7 to 11362.83, inclusive, to the Health and Safety Code,
13 allows the formation of medical cultivation collectives or
14 cooperatives, and provides for a voluntary state identification card

1 system for medical cannabis patients. SB 420 also limits the
2 amount of medical cannabis patients are allowed to possess and
3 cultivate.

4 (c) However, the sale of any cannabis still remains illegal under
5 federal law. At the federal level, marijuana remains classified as
6 a Schedule I substance under the Controlled Substances Act.
7 Schedule I substances are defined as drugs with no currently
8 accepted medical use and a high potential for abuse.

9 (d) In August 2013, the United States Department of Justice
10 issued the “Cole Memo” to federal prosecutors, which established
11 priorities for federal prosecution of cannabis-related activities
12 under the Controlled Substances Act. The memo indicated that
13 states with a strong regulatory framework for legalized recreational
14 or medical cannabis that supports those priorities would make
15 federal involvement in local jurisdictions less likely.

16 (e) In February 2014, the United States Department of the
17 Treasury’s Financial Crimes Enforcement Network (FinCEN)
18 issued guidance to financial institutions setting forth FinCEN’s
19 Bank Secrecy Act expectations for financial institutions choosing
20 to work with cannabis-related businesses.

21 (f) A federal spending bill passed in late 2014 prohibits the use
22 of United States Department of Justice funds to prevent states,
23 including California, that authorize the use, distribution, possession,
24 or cultivation of cannabis for medical use from implementing laws
25 related to these activities. At a minimum, this prohibition will
26 remain in effect for the rest of the federal fiscal year that ends
27 September 30, 2015. Various other federal legislative proposals
28 to loosen federal restrictions on the cultivation, possession, and
29 sale of cannabis in states where it is legal are also pending.

30 (g) Despite this identified federal guidance, the uncertainty
31 created by state and federal differences has left *medical*
32 cannabis-related businesses with the fear that compliance with
33 state tax laws could lead to federal prosecution. Thus, many of
34 these businesses have been noncompliant since their inception,
35 and would owe massive penalties and interest if they were to come
36 into compliance.

37 (h) It is the intent of the Legislature to further the public
38 purposes of preventing undue hardship on *medical* cannabis-related
39 businesses and providing a strong incentive, the relief of penalties,
40 for those businesses to come forward and pay the taxes and interest

1 that they owe. In furtherance of this intent, the Legislature hereby
2 enacts the Medical Cannabis Tax Amnesty Act as set forth below.

3 ~~SEC. 2. Section 11362.6 is added to the Health and Safety~~
4 ~~Code, immediately following Section 11362.5, to read:~~

5 ~~11362.6. (a) Any dispensary that employs or uses the services~~
6 ~~of any person under 21 years of age for the sale or delivery of~~
7 ~~medical cannabis or medical cannabis products shall be subject to~~
8 ~~suspension or revocation of the dispensary's state or local medical~~
9 ~~cannabis license or driver's license issued pursuant to Division 6~~
10 ~~(commencing with Section 12500) of the Vehicle Code.~~

11 ~~(b) A person shall not sell, distribute, provide, or donate medical~~
12 ~~cannabis or medical cannabis products to a qualified patient or~~
13 ~~caregiver other than at a licensed dispensing facility or through a~~
14 ~~licensed dispensing facility's delivery service.~~

15 ~~(c) All mobile, vehicular, or technology platforms that enable~~
16 ~~qualified patients or primary caregivers to arrange for any delivery~~
17 ~~with a third party are prohibited.~~

18 ~~(d) For purposes of this section, the following terms have the~~
19 ~~following meanings:~~

20 ~~(1) "Delivery" means the commercial transfer of medical~~
21 ~~cannabis or medical cannabis products from a dispensary to a~~
22 ~~primary caregiver or qualified patient.~~

23 ~~(2) "Delivery service" means a dispensary that makes a delivery.~~

24 ~~(3) "Dispensary" means a physical retail establishment that~~
25 ~~operates from a fixed location. "Dispensary" includes mobile~~
26 ~~deliveries originating from a fixed location that makes retail sales~~
27 ~~of medical cannabis or medical cannabis products.~~

28 ~~(4) "Primary caregiver" has the meaning provided in Section~~
29 ~~11362.7~~

30 ~~(5) "Qualified patient" has the meaning provided in Section~~
31 ~~11362.7.~~

32 *SEC. 2. Section 19323 of the Business and Professions Code*
33 *is amended to read:*

34 19323. (a) The licensing authority shall deny an application
35 if either the applicant or the premises for which a state license is
36 applied do not qualify for licensure under this chapter.

37 (b) The licensing authority may deny the application for
38 licensure or renewal of a state license if any of the following
39 conditions apply:

1 (1) Failure to comply with the provisions of this chapter or any
2 rule or regulation adopted pursuant to this chapter, including but
3 not limited to, any requirement imposed to protect natural
4 resources, instream flow, and water quality pursuant to subdivision
5 (a) of Section 19332.

6 (2) Conduct that constitutes grounds for denial of licensure
7 pursuant to Chapter 2 (commencing with Section 480) of Division
8 1.5.

9 (3) A local agency has notified the licensing authority that a
10 licensee or applicant within its jurisdiction is in violation of state
11 rules and regulation relating to commercial cannabis activities,
12 and the licensing authority, through an investigation, has
13 determined that the violation is grounds for termination or
14 revocation of the license. The licensing authority shall have the
15 authority to collect reasonable costs, as determined by the licensing
16 authority, for investigation from the licensee or applicant.

17 (4) The applicant has failed to provide information required by
18 the licensing authority.

19 (5) The applicant or licensee has been convicted of an offense
20 that is substantially related to the qualifications, functions, or duties
21 of the business or profession for which the application is made,
22 except that if the licensing authority determines that the applicant
23 or licensee is otherwise suitable to be issued a license and granting
24 the license would not compromise public safety, the licensing
25 authority shall conduct a thorough review of the nature of the
26 crime, conviction, circumstances, and evidence of rehabilitation
27 of the applicant, and shall evaluate the suitability of the applicant
28 or licensee to be issued a license based on the evidence found
29 through the review. In determining which offenses are substantially
30 related to the qualifications, functions, or duties of the business or
31 profession for which the application is made, the licensing authority
32 shall include, but not be limited to, the following:

33 (A) A felony conviction for the illegal possession for sale, sale,
34 manufacture, transportation, or cultivation of a controlled
35 substance.

36 (B) A violent felony conviction, as specified in subdivision (c)
37 of Section 667.5 of the Penal Code.

38 (C) A serious felony conviction, as specified in subdivision (c)
39 of Section 1192.7 of the Penal Code.

1 (D) A felony conviction involving fraud, deceit, or
2 embezzlement.

3 (6) The applicant, or any of its officers, directors, or owners, is
4 a licensed physician making patient recommendations for medical
5 cannabis pursuant to Section 11362.7 of the Health and Safety
6 Code.

7 (7) The applicant or any of its officers, directors, or owners has
8 been subject to fines or penalties for cultivation or production of
9 a controlled substance on public or private lands pursuant to
10 Section 12025 or 12025.1 of the Fish and Game Code.

11 (8) The applicant, or any of its officers, directors, or owners,
12 has been sanctioned by a licensing authority or a city, county, or
13 city and county for unlicensed commercial medical cannabis
14 activities or has had a license revoked under this chapter in the
15 three years immediately preceding the date the application is filed
16 with the licensing authority.

17 (9) Failure to obtain and maintain a valid seller's permit required
18 pursuant to Part 1 (commencing with Section 6001) of Division 2
19 of the Revenue and Taxation Code.

20 *(c) The licensing authority shall revoke or refuse to issue,*
21 *reinstate, or renew a state license pursuant to Section 7077.4 of*
22 *the Revenue and Taxation Code and Section 18744 of the*
23 *Unemployment Insurance Code.*

24 SEC. 3. Section 7076 of the Revenue and Taxation Code, as
25 added by Section 1 of Chapter 87 of the Statutes of 2003, is
26 amended and renumbered to read:

27 7079. (a) The State Board of Equalization shall determine
28 which taxpayer's accounts are eligible for the managed audit
29 program in a manner that is consistent with the efficient use of its
30 auditing resources and the maximum effectiveness of the program.

31 (b) A taxpayer is not required to participate in the managed
32 audit program.

33 SEC. 4. Section 7076.1 of the Revenue and Taxation Code is
34 amended and renumbered to read:

35 7079.1. A taxpayer's account is eligible for the managed audit
36 program only if the taxpayer meets all of the following criteria:

37 (a) The taxpayer's business involves few or no statutory
38 exemptions.

39 (b) The taxpayer's business involves a single or small number
40 of clearly defined taxability issues.

1 (c) The taxpayer is taxed pursuant to this part and agrees to
2 participate in the managed audit program.

3 (d) The taxpayer has the resources to comply with the managed
4 audit instructions provided by the board.

5 SEC. 5. Section 7076.2 of the Revenue and Taxation Code is
6 amended and renumbered to read:

7 7079.2. (a) If the board selects a taxpayer's account for a
8 managed audit, all of the following apply:

9 (1) The board shall identify all of the following:

10 (A) The audit period covered by the managed audit.

11 (B) The types of transactions covered by the managed audit.

12 (C) The specific procedures that the taxpayer is to follow in
13 determining any liability.

14 (D) The records to be reviewed by the taxpayer.

15 (E) The manner in which the types of transactions are to be
16 scheduled for review.

17 (F) The time period for completion of the managed audit.

18 (G) The time period for the payment of the liability and interest.

19 (H) Any other criteria that the board may require for completion
20 of the managed audit.

21 (2) The taxpayer shall:

22 (A) Examine its books, records, and equipment to determine if
23 it has any unreported tax liability for the audit period.

24 (B) Make available to the board for verification all computations,
25 books, records, and equipment examined pursuant to subparagraph
26 (A).

27 (b) The information provided by the taxpayer pursuant to
28 paragraph (2) of subdivision (a) is the same information that is
29 required for the completion of any other audit that the board may
30 conduct.

31 SEC. 6. Section 7076.3 of the Revenue and Taxation Code is
32 amended and renumbered to read:

33 7079.3. Nothing in this article limits the board's authority to
34 examine the books, papers, records, and equipment of a taxpayer
35 under Section 7054.

36 SEC. 7. Section 7076.4 of the Revenue and Taxation Code is
37 amended and renumbered to read:

38 7079.4. Upon completion of the managed audit and verification
39 by the board, interest on any unpaid liability shall be computed at
40 one-half the rate that would otherwise be imposed for liabilities

1 covered by the audit period. Payment of the liabilities and interest
2 shall be made within the time period specified by the board. If the
3 requirements for the managed audit are not satisfied, the board
4 may proceed to examine the records of the taxpayer in a manner
5 to be determined by the board under law.

6 SEC. 8. Section 7077 of the Revenue and Taxation Code is
7 amended and renumbered to read:

8 7076.3. The board shall adequately publicize the tax penalty
9 amnesty program so as to maximize public awareness of the
10 participation in the program. The board shall coordinate to the
11 highest degree possible its publicity efforts and other actions taken
12 in implementing this article with similar programs administered
13 by the Franchise Tax Board.

14 SEC. 9. Section 7078 of the Revenue and Taxation Code is
15 amended and renumbered to read:

16 7076.5. Subdivision (b) of Section 19736, to the extent feasible
17 and practical, shall also apply to the board.

18 SEC. 10. Article 2.1 (commencing with Section 7077) is added
19 to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
20 Code, to read:

21
22 Article 2.1. Medical Cannabis Tax Amnesty
23

24 7077. The board shall develop and administer a tax penalty
25 amnesty program for qualified taxpayers.

26 7077.05. For the purposes of this article, the following terms
27 have the following meanings:

28 (a) "Amnesty period" means the period during which the tax
29 penalty amnesty program is conducted, as described in Section
30 7077.1.

31 (b) "Medical cannabis-related business" means a person that
32 engages in the sale of cannabis for medical purposes to qualified
33 patients or the primary caregivers of qualified patients pursuant
34 to the Compassionate Use Act of 1996 (Section 11362.5 of the
35 Health and Safety Code) or Article 2.5 (commencing with Section
36 11362.7) of Chapter 6 of Division 10 of the Health and Safety
37 Code, commonly referred to as the Medical Marijuana Program.

38 (c) "Qualified taxpayer" means a seller that is a medical
39 cannabis-related business.

1 7077.1. The tax penalty amnesty program shall be conducted
2 for a six-month period beginning ~~April 1, 2016, through September~~
3 ~~30, 2016, inclusive, or during a timeframe ending no later than~~
4 ~~December 1, 2016.~~ *July 1, 2017, through September 31, 2017,*
5 *inclusive.* The program shall apply to tax liabilities due and payable
6 for tax reporting periods beginning before January 1, ~~2014.~~ 2015.

7 7077.2. (a) For any qualified taxpayer that meets the
8 requirements of Section 7077.3, all of the following shall apply:

9 (1) The board shall waive all penalties imposed by this part, for
10 the tax reporting periods for which tax penalty amnesty is
11 requested, that are owed as a result of the nonreporting or
12 underreporting of tax liabilities.

13 (2) No criminal action shall be brought against the qualified
14 taxpayer, for the tax reporting periods for which tax penalty
15 amnesty is requested, based on the nonreporting or underreporting
16 of tax liabilities.

17 (3) Paragraphs (1) and (2) do not apply to the nonpayment of
18 any taxes for which a notice of determination has previously been
19 issued.

20 (b) This section does not apply to violations of this part for
21 which, as of the first day of the amnesty period, either of the
22 following applies:

23 (1) The qualified taxpayer is on notice of a criminal investigation
24 by a complaint having been filed against the qualified taxpayer or
25 by written notice having been mailed to the qualified taxpayer that
26 the qualified taxpayer is under criminal investigation.

27 (2) A court proceeding has already been initiated.

28 (c) No refund or credit shall be granted of any penalty paid prior
29 to the time the qualified taxpayer makes a request for tax penalty
30 amnesty pursuant to Section 7077.3.

31 7077.3. (a) This article applies to any qualified taxpayer that
32 during the amnesty period files an application for tax penalty
33 amnesty and, within 60 days after the conclusion of the amnesty
34 period, does all of the following:

35 (1) Files completed tax returns reporting the nonreported or
36 underreported tax liabilities for all tax reporting periods for which
37 amnesty is being applied.

38 (2) Pays in full the taxes and interest due for each period for
39 which amnesty is requested, or applies for an installment agreement
40 under subdivision (b).

1 (b) The board may enter into an installment payment agreement
2 pursuant to paragraph (2) of subdivision (a), which shall include
3 interest on the outstanding amount due at the rate prescribed by
4 law. Failure by the qualified taxpayer to fully comply with the
5 terms of the agreement renders the waiver of penalties null and
6 void, unless the board determines that the failure was due to
7 reasonable causes, and the total amount of tax, interest, and all
8 penalties shall be immediately due and payable.

9 (c) If, subsequent to the amnesty period, the board issues a notice
10 of determination upon a return filed pursuant to subdivision (a),
11 the board may impose penalties, and criminal action may be
12 brought under this part only with respect to the difference between
13 the amount shown on that return and the correct amount of tax.
14 This action shall not invalidate any waivers granted under Section
15 7077.2.

16 (d) The application required under subdivision (a) shall be in
17 the form and manner specified by the board, but in no case shall
18 a mere payment of any taxes and interest due, in whole or in part,
19 for any period otherwise eligible for amnesty under this part, be
20 deemed to constitute an acceptable amnesty application under this
21 part. For purposes of the preceding sentence, the application of a
22 refund from one period to offset a tax liability for another period
23 otherwise eligible for amnesty shall not be allowed without the
24 filing of an amnesty application under this part.

25 7077.4. (a) (1) Notwithstanding any other law, ~~a licensing~~
26 ~~authority~~ *the Department of Consumer Affairs* shall revoke or
27 refuse to issue, reinstate, or renew a state ~~or local~~ license of a
28 qualified taxpayer that is eligible to participate in the tax penalty
29 amnesty program under this article but does not participate in the
30 amnesty program, and that does any of the following:

31 (A) Fails to register with the board.

32 (B) Has a seller's permit revoked pursuant to Section 7077.6.

33 (C) Reports a gross understatement of tax.

34 (2) Revocation or refusal to issue, reinstate, or renew a state ~~or~~
35 ~~local~~ license pursuant to paragraph (1) shall not be effective unless
36 ~~the licensing agency, Department of Consumer Affairs,~~ at least 60
37 days before the date of revocation or refusal, mails a notice to the
38 qualified taxpayer that indicates that the license will be refused or
39 revoked by that date.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Gross understatement of tax” is a deficiency that is in excess of 25 percent of the amount of tax reported on a qualified taxpayer’s return filed pursuant to Article 1 (commencing with Section 6451) of Chapter 5.

(2) “~~State or local~~ license” includes a license issued for any activity of a *medical* cannabis-related ~~business or a driver’s license issued pursuant to Division 6 (commencing with Section 12500) of the Vehicle Code.~~ *business*.

7077.6. The board shall refuse to issue a permit to any person or shall revoke a seller’s permit issued under this part for any person that is both of the following:

(a) Eligible to participate in the tax penalty amnesty program under this article but does not participate in the amnesty program.

(b) Engaged in retail sales of medical cannabis in this state that would have been eligible to participate in the tax penalty amnesty program as a medical cannabis-related business.

7077.7. The board shall issue forms and instructions and take other actions needed to implement this article.

7077.8. The board shall adequately publicize the tax penalty amnesty program for medical cannabis-related businesses so as to maximize public awareness of, and participation in, the program. The board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article with similar programs administered by the ~~Franchise Tax Board and the~~ Employment Development Department.

SEC. 11. ~~Chapter 9.2 (commencing with Section 19740) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:~~

~~CHAPTER 9.2. MEDICAL CANNABIS TAX AMNESTY~~

~~19740. The Franchise Tax Board shall develop and administer a tax penalty amnesty program for qualified taxpayers.~~

~~19740.5. For the purposes of this chapter, the following terms have the following meanings:~~

(a) ~~“Amnesty period” means the period during which the tax penalty amnesty program is conducted, as described in Section 19741.~~

1 (b) ~~“Medical cannabis-related business” means a person that~~
2 ~~engages in the sale of cannabis for medical purposes to qualified~~
3 ~~patients or the primary caregivers of qualified patients pursuant~~
4 ~~to the Compassionate Use Act of 1996 (Section 11362.5 of the~~
5 ~~Health and Safety Code) or Article 2.5 (commencing with Section~~
6 ~~11362.7) of Chapter 6 of Division 10 of the Health and Safety~~
7 ~~Code, commonly referred to as the Medical Marijuana Program.~~

8 (c) ~~“Qualified taxpayer” means a taxpayer with unreported~~
9 ~~income from a medical cannabis-related business subject to Part~~
10 ~~10 (commencing with Section 17001) or Part 11 (commencing~~
11 ~~with Section 23001).~~

12 ~~19741. The tax penalty amnesty program shall be conducted~~
13 ~~during a six-month period beginning April 1, 2016, through~~
14 ~~September 30, 2016, inclusive, or during a timeframe ending no~~
15 ~~later than December 31, 2016. The program shall apply to tax~~
16 ~~liabilities for taxable years beginning before January 1, 2014.~~

17 ~~19742. (a) For any qualified taxpayer that meets all of the~~
18 ~~requirements of Section 19743, both of the following apply:~~

19 ~~(1) The Franchise Tax Board shall waive all unpaid penalties~~
20 ~~and fees imposed by this part for each taxable year for which tax~~
21 ~~penalty amnesty is allowed, but only to the extent of the amount~~
22 ~~of any penalty or fee that is owed as a result of previous~~
23 ~~nonreporting or underreporting of tax liabilities or nonpayment of~~
24 ~~any taxes previously assessed.~~

25 ~~(2) No criminal action shall be brought against the qualified~~
26 ~~taxpayer for each taxable year for which tax penalty amnesty is~~
27 ~~allowed for the nonreporting or underreporting of tax liabilities or~~
28 ~~the nonpayment of any taxes previously assessed or proposed to~~
29 ~~be assessed.~~

30 ~~(b) This chapter does not apply to violations of this part for~~
31 ~~which, as of the first day of the amnesty period, either of the~~
32 ~~following applies:~~

33 ~~(1) The qualified taxpayer is on notice of a criminal investigation~~
34 ~~by a complaint having been filed against the qualified taxpayer or~~
35 ~~by written notice having been mailed to the qualified taxpayer that~~
36 ~~the qualified taxpayer is under criminal investigation.~~

37 ~~(2) A court proceeding has already been initiated.~~

38 ~~(c) No refund or credit shall be granted with respect to any~~
39 ~~penalty or fee paid with respect to a taxable year prior to the time~~

1 the qualified taxpayer makes a request for tax penalty amnesty
2 pursuant to Section 19743.

3 (d) ~~Notwithstanding Chapter 6 (commencing with Section~~
4 ~~19301), a qualified taxpayer shall not file a claim for refund or~~
5 ~~credit for any amounts paid in connection with the tax penalty~~
6 ~~amnesty program under this chapter.~~

7 19743. (a) This chapter applies to any qualified taxpayer that
8 during the amnesty period files an application for tax penalty
9 amnesty and, within 60 days after the conclusion of the amnesty
10 period, does all of the following:

11 (1) Files completed tax returns for all years for which the
12 qualified taxpayer has not previously filed a tax return and files
13 completed amended returns for all years for which the qualified
14 taxpayer underreported the qualified taxpayer's income.

15 (2) Pays in full any taxes and interest due for each taxable year
16 described in paragraph (1), as applicable, for which amnesty is
17 requested, or applies for an installment payment agreement under
18 subdivision (b). For qualified taxpayers that have not paid in full
19 any taxes previously proposed to be assessed, pays in full the taxes
20 and interest due for that portion of the proposed assessment for
21 each taxable year for which amnesty is requested or applies for an
22 installment payment agreement under subdivision (b).

23 (b) (1) For purposes of complying with the full payment
24 provisions of paragraph (2) of subdivision (a), the Franchise Tax
25 Board may enter into an installment payment agreement, which
26 shall include interest on the outstanding amount due at the rate
27 prescribed in Section 19521.

28 (2) Failure by the qualified taxpayer to fully comply with the
29 terms of an installment payment agreement under this subdivision
30 shall render the waiver of penalties and fees under Section 19742
31 null and void, unless the Franchise Tax Board determines that the
32 failure was due to reasonable cause and not due to willful neglect.

33 (3) In the case of any failure described under paragraph (2), the
34 total amount of tax, interest, fees, and all penalties shall become
35 immediately due and payable.

36 (e) The application required under subdivision (a) shall be in
37 the form and manner specified by the Franchise Tax Board, but in
38 no case shall a mere payment of any taxes and interest due, in
39 whole or in part, for any taxable year otherwise eligible for amnesty
40 under this part, be deemed to constitute an acceptable amnesty

1 application under this part. For purposes of the prior sentence, the
2 application of a refund from one taxable year to offset a tax liability
3 from another taxable year otherwise eligible for amnesty shall not,
4 without the filing of an amnesty application, be deemed to
5 constitute an acceptable amnesty application under this part.

6 (d) ~~The Legislature specifically intends that the Franchise Tax~~
7 ~~Board, in administering the amnesty application requirement under~~
8 ~~this part, make the amnesty application process as streamlined as~~
9 ~~possible to ensure participation in the amnesty program will be~~
10 ~~available to as many qualified taxpayers as possible without~~
11 ~~otherwise compromising the Franchise Tax Board's ability to~~
12 ~~enforce and collect the taxes imposed under Part 10 (commencing~~
13 ~~with Section 17001) and Part 11 (commencing with Section 23001).~~

14 (e) ~~Upon the conclusion of the amnesty period, the Franchise~~
15 ~~Tax Board may propose a deficiency upon any return filed pursuant~~
16 ~~to subdivision (a), impose penalties and fees, or initiate criminal~~
17 ~~action under this part with respect to the difference between the~~
18 ~~amount shown on that return and the correct amount of tax. This~~
19 ~~action shall not invalidate any waivers previously granted under~~
20 ~~Section 19742.~~

21 (f) ~~All revenues derived pursuant to subdivision (c) shall be~~
22 ~~subject to Sections 19602 and 19604.~~

23 19744. (a) (1) ~~Notwithstanding any other law, a licensing~~
24 ~~authority shall revoke or refuse to issue, reinstate, or renew a state~~
25 ~~or local license of a qualified taxpayer that is eligible to participate~~
26 ~~in the tax penalty amnesty program under this chapter but does~~
27 ~~not participate in the amnesty program, and that does either of the~~
28 ~~following:~~

29 (A) ~~Fails to file returns with the Franchise Tax Board.~~

30 (B) ~~Reports a gross understatement of tax.~~

31 (2) ~~Revocation or refusal to issue, reinstate, or renew a state or~~
32 ~~local license pursuant to paragraph (1) shall not be effective unless~~
33 ~~the licensing agency, at least 60 days before the date of revocation~~
34 ~~or refusal, mails a notice to the qualified taxpayer that indicates~~
35 ~~that the license will be refused or revoked by that date.~~

36 (b) ~~For purposes of this section, the following terms have the~~
37 ~~following meanings:~~

38 (1) ~~"Gross understatement of tax" is a deficiency that is in excess~~
39 ~~of 25 percent of the amount of tax reported on a qualified~~
40 ~~taxpayer's return filed pursuant to Section 18633 or 18633.5;~~

~~Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.~~

~~(2) “State or local license” includes a license issued for any activity of a cannabis-related business or a driver’s license issued pursuant to Division 6 (commencing with Section 12500) of the Vehicle Code.~~

~~19746. (a) The Franchise Tax Board may issue forms, instructions, notices, rules, or guidelines, and take any other necessary actions needed to implement this chapter, specifically including any forms, instructions, notices, rules, or guidelines that specify the form and manner of any acceptable form of amnesty application described in Section 19743.~~

~~(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this chapter.~~

~~19747. (a) The Franchise Tax Board shall conduct a public outreach program and adequately publicize the tax penalty amnesty program for qualified taxpayers with income from medical cannabis-related businesses so as to maximize public awareness and make qualified taxpayers aware of the program. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this chapter with similar programs administered by the State Board of Equalization and the Employment Development Department.~~

~~SEC. 12.~~

~~SEC. 11. Division 11 (commencing with Section 18740) is added to the Unemployment Insurance Code, to read:~~

DIVISION 11. MEDICAL CANNABIS TAX AMNESTY

~~18740. The department shall develop and administer a tax penalty amnesty program for qualified employers.~~

~~18740.5. For purposes of this division, the following terms have the following meanings:~~

~~(a) “Amnesty period” means the period during which the tax penalty amnesty program is conducted, as described in Section 18741.~~

1 (b) “Department” means the Employment Development
2 Department.

3 (c) “Employment taxes” or “taxes” means the unemployment
4 insurance tax and employment training tax imposed under Part 1
5 (commencing with Section 100) of Division 1, state disability
6 insurance tax imposed under Part 2 (commencing with Section
7 2601) of Division 1, and personal income tax withholding imposed
8 under Division 6 (commencing with Section 13000).

9 (d) “Medical cannabis-related business” means a person that
10 engages in the sale of cannabis for medical purposes to qualified
11 patients or the primary caregivers of qualified patients pursuant
12 to the Compassionate Use Act of 1996 (Section 11362.5 of the
13 Health and Safety Code) or Article 2.5 (commencing with Section
14 11362.7) of Chapter 6 of Division 10 of the Health and Safety
15 Code, commonly referred to as the Medical Marijuana Program.

16 (e) “Person” has the meaning set forth in Section 6005 of the
17 Revenue and Taxation Code.

18 (f) “Qualified employer” means an employer or employing unit
19 that is a medical cannabis-related business subject to Part 1
20 (commencing with Section 100) of Division 1, Part 2 (commencing
21 with Section 2601) of Division 1, or Division 6 (commencing with
22 Section 13000).

23 18741. The tax penalty amnesty program shall be conducted
24 for a six-month period beginning ~~April 1, 2016, through September~~
25 ~~30, 2016, inclusive, or during a timeframe ending no later than~~
26 ~~December 31, 2016. July 1, 2017, through September 30, 2017,~~
27 *inclusive.* The program shall apply only to amounts unpaid for the
28 periods beginning before January 1, ~~2014. 2015.~~

29 18742. (a) For any qualified employer that meets the
30 requirements of Section 18743, both of the following shall apply:

31 (1) The department shall waive all penalties imposed by this
32 code, for the tax reporting periods for which tax penalty amnesty
33 is requested, which are owed as a result of the nonpayment or
34 underpayment of employment tax liabilities or failure to file
35 reports.

36 (2) No criminal action shall be brought against the qualified
37 employer, for the tax reporting periods for which tax penalty
38 amnesty is requested, for the nonreporting or underreporting of
39 tax liabilities.

(b) This section does not apply to violations of this code for which, as of the first day of the amnesty period, either of the following applies:

(1) The qualified employer is on notice of a criminal investigation by a complaint having been filed against the qualified employer or by written notice having been mailed to the qualified employer that the qualified employer is under criminal investigation.

(2) A court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the qualified employer makes a request for tax penalty amnesty pursuant to Section 18743.

18743. (a) This division applies to any qualified employer that during the amnesty period files an application for tax penalty amnesty and, within 60 days after the conclusion of the amnesty period, does all of the following:

(1) Files quarterly contribution returns and reports reporting the nonreported or underreported wages and taxes for the calendar quarter that ended December 31, 2013, and prior calendar quarters, for which amnesty is being applied.

(2) Pays in full all amounts due for all periods for which amnesty is requested, or applies for an installment agreement under subdivision (b).

(b) The department may enter into an installment payment agreement pursuant to paragraph (2) of subdivision (a), which shall include interest on the outstanding amount due at the rate prescribed by law. Failure by the qualified employer to fully comply with the terms of the agreement renders the waiver of penalties null and void, unless the department determines that the failure was due to reasonable causes, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) If, subsequent to the amnesty period, the department issues a deficiency assessment upon a return filed pursuant to subdivision (a), the department may impose penalties and criminal action may be brought under this division only with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 18742.

(d) If the department issues a deficiency assessment under the conditions described in subdivision (c), the department may issue

1 that deficiency assessment within 10 years from the last day of the
2 calendar month following the quarterly period for which the
3 amount is proposed to be assessed.

4 (e) The application required under subdivision (a) shall be in
5 the form and manner specified by the department, but in no case
6 shall a mere payment of any taxes and interest due, in whole or in
7 part, for any period otherwise eligible for amnesty under this
8 division, be deemed to constitute an acceptable amnesty application
9 under this division. For purposes of the preceding sentence, the
10 application of a refund from one period to offset a tax liability for
11 another period otherwise eligible for amnesty shall not be allowed
12 without the filing of an amnesty application under this division.

13 18744. (a) (1) Notwithstanding any other law, ~~a licensing~~
14 ~~authority~~ *the Department of Consumer Affairs* shall revoke or
15 refuse to issue, reinstate, or renew a state ~~or local~~ license of a
16 qualified employer that is eligible to participate in the tax penalty
17 amnesty program under this division but does not participate in
18 the amnesty program, and that does either of the following:

19 (A) Fails to register with the department.

20 (B) Reports a gross understatement of tax.

21 (2) Revocation or refusal to issue, reinstate, or renew a state ~~or~~
22 ~~local~~ license pursuant to paragraph (1) shall not be effective unless
23 ~~the licensing agency, Department of Consumer Affairs,~~ at least 60
24 days before the date of revocation or refusal, mails a notice to the
25 qualified employer that indicates that the license will be refused
26 or revoked by that date.

27 (b) For purposes of this section, the following terms have the
28 following meanings:

29 (1) "Gross understatement of tax" is a deficiency that is in excess
30 of 25 percent of the amount of tax reported on a qualified
31 employer's return filed pursuant to this code.

32 (2) "State ~~or local~~ license" includes a license issued for any
33 activity of a *medical* cannabis-related ~~business or a driver's license~~
34 ~~issued pursuant to Division 6 (commencing with Section 12500)~~
35 ~~of the Vehicle Code: business.~~

36 18746. The department shall issue forms and instructions and
37 take other actions needed to implement this division.

38 18747. The department shall adequately publicize the tax
39 penalty amnesty program for medical cannabis-related businesses
40 so as to maximize public awareness of, and participation in, the

1 program. The department shall coordinate to the highest degree
2 possible its publicity efforts and other actions taken in
3 implementing this division with similar programs administered by
4 the State Board of Equalization and the Franchise Tax Board.
5 *Equalization.*

6 ~~SEC. 13.~~

7 *SEC. 12.* The Legislature finds and declares that Sections ~~10;~~
8 ~~11, and 12~~ 10 and 11 of this act, establishing *medical*
9 cannabis-related business tax penalty programs by adding Article
10 2.1 (commencing with Section 7077) to Chapter 8 of Part 1 of
11 Division 2 of, and Chapter 9.2 (commencing with Section 19740)
12 ~~to Part 10.2 of Division 2 of,~~ of the Revenue and Taxation Code,
13 *Code* and adding Division 11 (commencing with Section 18740)
14 to the Unemployment Insurance ~~Code~~ *Code*, serve a general public
15 purpose by incentivizing a specific type of business to become
16 current with its tax ~~obligations;~~ *obligations* and therefore do not
17 constitute gifts of public funds within the meaning of Section 6 of
18 Article XVI of the California Constitution.

19 ~~SEC. 14. If the Commission on State Mandates determines~~
20 ~~that this act contains costs mandated by the state, reimbursement~~
21 ~~to local agencies and school districts for those costs shall be made~~
22 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
23 ~~4 of Title 2 of the Government Code.~~