

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN SENATE JUNE 15, 2016

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 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, 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.~~ *exempts from specified criminal penalties the possession or cultivation of medical marijuana by patients and primary caregivers.* 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.

Existing law imposes sales and use taxes collected and administered by the State Board of Equalization and employment taxes, as defined, ~~collected and administered by the Employment Development Department.~~ *Equalization.* 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.

This bill would require the State Board of Equalization ~~and the Employment Development Department~~ to administer *a* tax penalty amnesty ~~programs~~ *program* during the period beginning on July 1, 2017, through ~~September 30,~~ *December 31,* 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 the Department of Consumer Affairs to ~~revoke~~ *suspend* or refuse to issue a state license to a medical cannabis-related business that is eligible to, but does not participate in, ~~those programs~~ *the program* and meets other specified conditions.

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

(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 *a tax penalty amnesty programs program* to incentivize a specific type of business to become current with ~~their~~ *its* tax obligations ~~serve~~ *serves* a general public ~~purpose,~~ *purpose* and therefore ~~are not gifts~~ *is not a gift* of public funds.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 exempts patients and their designated primary
7 caregivers who possess and cultivate cannabis for personal medical
8 use upon recommendation or approval of a physician from
9 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
15 system for medical cannabis patients. SB 420 also limits the
16 amount of medical cannabis ~~patients~~ *cardholders* are allowed to
17 possess and cultivate.

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

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

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

35 (f) A federal spending bill passed in late 2014 prohibits the use
36 of United States Department of Justice funds to prevent states,
37 including California, that authorize the use, distribution, possession,
38 or cultivation of cannabis for medical use from implementing laws

1 related to these activities. ~~At a minimum, this prohibition will~~
2 ~~remain in effect for the rest of the federal fiscal year that ends~~
3 ~~September 30, 2015.~~ Various other federal legislative proposals
4 to loosen federal restrictions on the cultivation, possession, and
5 sale of cannabis in states where it is legal are also pending.

6 (g) Despite this identified federal guidance, the uncertainty
7 created by state and federal differences has left medical
8 cannabis-related businesses with the fear that compliance with
9 state tax laws could lead to federal prosecution. Thus, many of
10 these businesses have been noncompliant since their inception,
11 and would owe massive penalties and interest if they were to come
12 into compliance.

13 (h) It is the intent of the Legislature to further the public
14 purposes of preventing undue hardship on medical cannabis-related
15 businesses and providing a strong incentive, the relief of penalties,
16 for those businesses to come forward and pay the taxes and interest
17 that they owe. In furtherance of this intent, the Legislature hereby
18 enacts the Medical Cannabis Tax Amnesty Act as set forth ~~below.~~
19 *in Section 10 of this act.*

20 ~~SEC. 2. Section 19323 of the Business and Professions Code~~
21 ~~is amended to read:~~

22 ~~19323. (a) The licensing authority shall deny an application~~
23 ~~if either the applicant or the premises for which a state license is~~
24 ~~applied do not qualify for licensure under this chapter.~~

25 ~~(b) The licensing authority may deny the application for~~
26 ~~licensure or renewal of a state license if any of the following~~
27 ~~conditions apply:~~

28 ~~(1) Failure to comply with the provisions of this chapter or any~~
29 ~~rule or regulation adopted pursuant to this chapter, including but~~
30 ~~not limited to, any requirement imposed to protect natural~~
31 ~~resources, instream flow, and water quality pursuant to subdivision~~
32 ~~(a) of Section 19332.~~

33 ~~(2) Conduct that constitutes grounds for denial of licensure~~
34 ~~pursuant to Chapter 2 (commencing with Section 480) of Division~~
35 ~~1.5.~~

36 ~~(3) A local agency has notified the licensing authority that a~~
37 ~~licensee or applicant within its jurisdiction is in violation of state~~
38 ~~rules and regulation relating to commercial cannabis activities;~~
39 ~~and the licensing authority, through an investigation, has~~
40 ~~determined that the violation is grounds for termination or~~

1 ~~revocation of the license. The licensing authority shall have the~~
2 ~~authority to collect reasonable costs, as determined by the licensing~~
3 ~~authority, for investigation from the licensee or applicant.~~

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

6 ~~(5) The applicant or licensee has been convicted of an offense~~
7 ~~that is substantially related to the qualifications, functions, or duties~~
8 ~~of the business or profession for which the application is made,~~
9 ~~except that if the licensing authority determines that the applicant~~
10 ~~or licensee is otherwise suitable to be issued a license and granting~~
11 ~~the license would not compromise public safety, the licensing~~
12 ~~authority shall conduct a thorough review of the nature of the~~
13 ~~crime, conviction, circumstances, and evidence of rehabilitation~~
14 ~~of the applicant, and shall evaluate the suitability of the applicant~~
15 ~~or licensee to be issued a license based on the evidence found~~
16 ~~through the review. In determining which offenses are substantially~~
17 ~~related to the qualifications, functions, or duties of the business or~~
18 ~~profession for which the application is made, the licensing authority~~
19 ~~shall include, but not be limited to, the following:~~

20 ~~(A) A felony conviction for the illegal possession for sale, sale,~~
21 ~~manufacture, transportation, or cultivation of a controlled~~
22 ~~substance.~~

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

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

27 ~~(D) A felony conviction involving fraud, deceit, or~~
28 ~~embezzlement.~~

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

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

37 ~~(8) The applicant, or any of its officers, directors, or owners,~~
38 ~~has been sanctioned by a licensing authority or a city, county, or~~
39 ~~city and county for unlicensed commercial medical cannabis~~
40 ~~activities or has had a license revoked under this chapter in the~~

1 three years immediately preceding the date the application is filed
2 with the licensing authority.

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

6 (e) ~~The licensing authority shall revoke or refuse to issue,~~
7 ~~reinstate, or renew a state license pursuant to Section 7077.4 of~~
8 ~~the Revenue and Taxation Code and Section 18744 of the~~
9 ~~Unemployment Insurance Code.~~

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

12 19323. (a) A licensing authority shall deny an application if
13 the applicant or the premises for which a state license is applied
14 does not qualify for licensure under this chapter or the rules and
15 regulations for the state license.

16 (b) A licensing authority may deny an application for licensure
17 or renewal of a state license, or issue a conditional license, if any
18 of the following conditions apply:

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

24 (2) Conduct that constitutes grounds for denial of licensure
25 pursuant to Chapter 2 (commencing with Section 480) of Division
26 1.5.

27 (3) The applicant has failed to provide information required by
28 the licensing authority.

29 (4) The applicant or licensee has been convicted of an offense
30 that is substantially related to the qualifications, functions, or duties
31 of the business or profession for which the application is made,
32 except that if the licensing authority determines that the applicant
33 or licensee is otherwise suitable to be issued a license and granting
34 the license would not compromise public safety, the licensing
35 authority shall conduct a thorough review of the nature of the
36 crime, conviction, circumstances, and evidence of rehabilitation
37 of the applicant, and shall evaluate the suitability of the applicant
38 or licensee to be issued a license based on the evidence found
39 through the review. In determining which offenses are substantially
40 related to the qualifications, functions, or duties of the business or

profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

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

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

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

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

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

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

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

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

(9) The applicant or any of its officers, directors, owners, employees, or authorized agents have failed to comply with any operating procedure required pursuant to subdivision (b) of Section 19322.

(10) Conduct that constitutes grounds for disciplinary action pursuant to this chapter.

(c) The licensing authority shall suspend or refuse to issue, reinstate, or renew a state license pursuant to Section 7077.4 of the Revenue and Taxation Code.

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

1 7079. (a) The State Board of Equalization shall determine
2 which taxpayer's accounts are eligible for the managed audit
3 program in a manner that is consistent with the efficient use of its
4 auditing resources and the maximum effectiveness of the program.

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

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

9 7079.1. A taxpayer's account is eligible for the managed audit
10 program only if the taxpayer meets all of the following criteria:

11 (a) The taxpayer's business involves few or no statutory
12 exemptions.

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

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

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

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

21 7079.2. (a) If the board selects a taxpayer's account for a
22 managed audit, all of the following apply:

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

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

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

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

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

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

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

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

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

35 (2) The taxpayer shall:

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

38 (B) Make available to the board for verification all computations,
39 books, records, and equipment examined pursuant to subparagraph

40 (A).

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

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

7 7079.3. Nothing in this article limits the board's authority to
8 examine the books, papers, records, and equipment of a taxpayer
9 under Section 7054.

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

12 7079.4. Upon completion of the managed audit and verification
13 by the board, interest on any unpaid liability shall be computed at
14 one-half the rate that would otherwise be imposed for liabilities
15 covered by the audit period. Payment of the liabilities and interest
16 shall be made within the time period specified by the board. If the
17 requirements for the managed audit are not satisfied, the board
18 may proceed to examine the records of the taxpayer in a manner
19 to be determined by the board under law.

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

22 7076.3. The board shall adequately publicize the tax penalty
23 amnesty program so as to maximize public awareness of the
24 participation in the program. The board shall coordinate to the
25 highest degree possible its publicity efforts and other actions taken
26 in implementing this article with similar programs administered
27 by the Franchise Tax Board.

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

30 7076.5. Subdivision (b) of Section 19736, to the extent feasible
31 and practical, shall also apply to the board.

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

35
36 Article 2.1. Medical Cannabis Tax Amnesty

37
38 7077. The board shall develop and administer a tax penalty
39 amnesty program for qualified taxpayers.

1 7077.05. For the purposes of this article, the following terms
2 have the following meanings:

3 (a) “Amnesty period” means the period during which the tax
4 penalty amnesty program is conducted, as described in Section
5 7077.1.

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

13 (c) “Qualified taxpayer” means a seller that is a medical
14 cannabis-related business.

15 7077.1. The tax penalty amnesty program shall be conducted
16 for a ~~three-month~~ *six-month* period beginning July 1, 2017, through
17 ~~September 30~~, *December 31*, 2017, inclusive. The program shall
18 apply to tax liabilities due and payable for tax reporting periods
19 beginning before January 1, 2015.

20 7077.2. (a) For any qualified taxpayer that meets the
21 requirements of Section 7077.3, all of the following shall apply:

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

26 (2) No criminal action shall be brought against the qualified
27 taxpayer, for the tax reporting periods for which tax penalty
28 amnesty is requested, based on the nonreporting or underreporting
29 of tax liabilities.

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

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

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

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

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

4 7077.3. (a) This article applies to any qualified taxpayer that
5 during the amnesty period files an application for tax penalty
6 amnesty and, within 60 days after the conclusion of the amnesty
7 period, does all of the following:

8 (1) Files completed tax returns reporting the nonreported or
9 underreported tax liabilities for all tax reporting periods for which
10 amnesty is being applied.

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

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

22 (c) If, subsequent to the amnesty period, the board issues a notice
23 of determination upon a return filed pursuant to subdivision (a),
24 *or upon any other nonreporting or underreporting of tax liability*
25 *by any person who could have otherwise been eligible for amnesty,*
26 *the board may impose penalties, penalties at a rate that is double*
27 *the rate of penalties described in law* and criminal action may be
28 brought under this part only with respect to the difference between
29 the amount shown on that return and the correct amount of tax.
30 This action shall not invalidate any waivers granted under Section
31 7077.2.

32 (d) The application required under subdivision (a) shall be in
33 the form and manner specified by the board, but in no case shall
34 a mere payment of any taxes and interest due, in whole or in part,
35 for any period otherwise eligible for amnesty under this part, be
36 deemed to constitute an acceptable amnesty application under this
37 part. For purposes of the preceding sentence, the application of a
38 refund from one period to offset a tax liability for another period
39 otherwise eligible for amnesty shall not be allowed without the
40 filing of an amnesty application under this part.

1 7077.4. (a) (1) Notwithstanding any other law, the Department
2 of Consumer Affairs shall ~~revoke~~ *suspend* or refuse to issue,
3 reinstate, or renew a state license of a qualified taxpayer that is
4 eligible to participate in the tax penalty amnesty program under
5 this article but does not participate in the amnesty program, and
6 that does any of the following:

7 (A) Fails to register with the board.

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

9 (C) *Does both of the following:*

10 ~~(C)~~

11 (i) Reports a gross understatement of tax.

12 (ii) *Fails to pay in full the taxes and interest due for each period*
13 *for which amnesty is requested or fails to fully comply with the*
14 *terms of an installment payment agreement entered into by the*
15 *board pursuant to Section 7077.3.*

16 (2) *Notwithstanding any other law, the Department of Consumer*
17 *Affairs shall suspend or refuse to issue, reinstate, or renew a state*
18 *license of a qualified taxpayer if the board issues a deficiency*
19 *determination upon a return filed pursuant to subdivision (a) of*
20 *Section 7077.3 and the qualified taxpayer does both of the*
21 *following:*

22 (A) Reports a gross understatement of tax.

23 (B) *Fails to pay in full the taxes and interest due for each period*
24 *for which amnesty is requested or fails to fully comply with the*
25 *terms of an installment payment agreement entered into by the*
26 *board pursuant to Section 7077.3.*

27 ~~(2) Revocation~~

28 (3) *Suspension* or refusal to issue, reinstate, or renew a state
29 license pursuant to paragraph (1) shall not be effective unless the
30 Department of Consumer Affairs, at least 60 days before the date
31 of ~~revocation~~ *suspension* or refusal, mails a notice to the qualified
32 taxpayer that indicates that the license will be *suspended* or refused
33 ~~or revoked~~ by that date.

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

36 (1) "Gross understatement of tax" is a deficiency that is in excess
37 of 25 percent of the amount of tax reported on a qualified
38 taxpayer's return filed pursuant to Article 1 (commencing with
39 Section 6451) of Chapter 5.

(2) “State license” includes a license issued for any activity of a medical cannabis-related business.

7077.6. The board ~~shall~~ *may* refuse to issue a permit to any ~~person~~ *person, pursuant to the provisions applicable to the refusal to issue a permit as set forth in Section 6070.5, or shall may* 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 Employment Development Department.~~

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.~~

(b) ~~“Department” means the Employment Development Department.~~

(c) ~~“Employment taxes” or “taxes” means the unemployment insurance tax and employment training tax imposed under Part 1 (commencing with Section 100) of Division 1, state disability insurance tax imposed under Part 2 (commencing with Section~~

2601) of Division 1, and personal income tax withholding imposed under Division 6 (commencing with Section 13000).

(d) “Medical cannabis-related business” means 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 of 1996 (Section 11362.5 of the Health and Safety Code) or Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, commonly referred to as the Medical Marijuana Program.

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

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

18741. The tax penalty amnesty program shall be conducted for a three-month period beginning July 1, 2017, through September 30, 2017, inclusive. The program shall apply only to amounts unpaid for the periods beginning before January 1, 2015.

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

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

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

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

4 ~~18743. (a) This division applies to any qualified employer that~~
5 ~~during the amnesty period files an application for tax penalty~~
6 ~~amnesty and, within 60 days after the conclusion of the amnesty~~
7 ~~period, does all of the following:~~

8 ~~(1) Files quarterly contribution returns and reports reporting the~~
9 ~~nonreported or underreported wages and taxes for the calendar~~
10 ~~quarter that ended December 31, 2014, and prior calendar quarters,~~
11 ~~for which amnesty is being applied.~~

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

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

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

30 ~~(d) If the department issues a deficiency assessment under the~~
31 ~~conditions described in subdivision (c), the department may issue~~
32 ~~that deficiency assessment within 10 years from the last day of the~~
33 ~~calendar month following the quarterly period for which the~~
34 ~~amount is proposed to be assessed.~~

35 ~~(e) The application required under subdivision (a) shall be in~~
36 ~~the form and manner specified by the department, but in no case~~
37 ~~shall a mere payment of any taxes and interest due, in whole or in~~
38 ~~part, for any period otherwise eligible for amnesty under this~~
39 ~~division, be deemed to constitute an acceptable amnesty application~~
40 ~~under this division. For purposes of the preceding sentence, the~~

1 application of a refund from one period to offset a tax liability for
2 another period otherwise eligible for amnesty shall not be allowed
3 without the filing of an amnesty application under this division.

4 18744. (a) (1) Notwithstanding any other law, the Department
5 of Consumer Affairs shall revoke or refuse to issue, reinstate, or
6 renew a state license of a qualified employer that is eligible to
7 participate in the tax penalty amnesty program under this division
8 but does not participate in the amnesty program, and that does
9 either of the following:

10 (A) Fails to register with the department.

11 (B) Reports a gross understatement of tax.

12 (2) Revocation or refusal to issue, reinstate, or renew a state
13 license pursuant to paragraph (1) shall not be effective unless the
14 Department of Consumer Affairs, at least 60 days before the date
15 of revocation or refusal, mails a notice to the qualified employer
16 that indicates that the license will be refused or revoked by that
17 date.

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

20 (1) “Gross understatement of tax” is a deficiency that is in excess
21 of 25 percent of the amount of tax reported on a qualified
22 employer’s return filed pursuant to this code.

23 (2) “State license” includes a license issued for any activity of
24 a medical cannabis-related business.

25 18746. The department shall issue forms and instructions and
26 take other actions needed to implement this division.

27 18747. The department shall adequately publicize the tax
28 penalty amnesty program for medical cannabis-related businesses
29 so as to maximize public awareness of, and participation in, the
30 program. The department shall coordinate to the highest degree
31 possible its publicity efforts and other actions taken in
32 implementing this division with similar programs administered by
33 the State Board of Equalization.

34 SEC. 12.

35 SEC. 11. The Legislature finds and declares that Sections 10
36 and 11 Section 10 of this act, establishing the medical
37 cannabis-related business *cannabis* tax penalty programs amnesty
38 program by adding Article 2.1 (commencing with Section 7077)
39 to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
40 Code and adding Division 11 (commencing with Section 18740)

1 ~~to the Unemployment Insurance Code, serve~~ *Code, serves* a general
2 public purpose by incentivizing a specific type of business to
3 become current with its tax obligations and therefore ~~do~~ *does* not
4 constitute ~~gifts~~ *a gift* of public funds within the meaning of Section
5 6 of Article XVI of the California Constitution.

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