

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 821

Introduced by Assembly Member Gipson

February 26, 2015

~~An act to add Section 6369.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~ *An act to amend Section 6479.3 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 821, as amended, Gipson. ~~Sales and use taxes: exemption: medical marijuana: terminally ill patient.~~ *Sales and use taxes: administration: payments.*

The Sales and Use Tax Law, which is administered by the State Board of Equalization, requires any person whose estimated tax liability averages \$10,000 or more per month to remit amounts due by electronic funds transfer, as provided.

This bill would authorize the board to allow persons to remit amounts due by other than an electronic funds transfer if the board deems it necessary to facilitate collection of amounts due.

~~Existing sales and use tax laws impose taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state and provides various exemptions from those taxes. Existing law relieves the seller from liability for the sales tax if an exemption certificate is taken in good faith, and imposes liability for sales tax on the purchaser if the tangible personal property~~

~~purchased is used in a manner or for a purpose not qualifying for the exemption, as provided.~~

~~This bill would exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption of, medical marijuana for consumption by a terminally ill patient, and would require the purchaser to provide an exemption certificate as provided.~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.~~

~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.~~

~~This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.~~

~~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. Section 6479.3 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6479.3. (a) ~~Any~~ Except as provided in subdivision (k), any
- 4 person whose estimated tax liability under this part averages ten
- 5 thousand dollars (\$10,000) or more per month, as determined by
- 6 the board pursuant to methods of calculation prescribed by the
- 7 board, shall remit amounts due by an electronic funds transfer
- 8 under procedures prescribed by the board. Any person who collects
- 9 use tax on a voluntary basis is not required to remit amounts due
- 10 by electronic funds transfer.
- 11 (b) Any person whose estimated tax liability under this part
- 12 averages less than ten thousand dollars (\$10,000) per month or
- 13 any person who voluntarily collects use tax may elect to remit

1 amounts due by electronic funds transfer with the approval of the
2 board.

3 (c) Any person remitting amounts due pursuant to subdivision
4 (a) or (b) shall perform electronic funds transfer in compliance
5 with the due dates set forth in Article 1 (commencing with Section
6 6451) and Article 1.1 (commencing with Section 6470). Payment
7 is deemed complete on the date the electronic funds transfer is
8 initiated, if settlement to the state's demand account occurs on or
9 before the banking day following the date the transfer is initiated.
10 If settlement to the state's demand account does not occur on or
11 before the banking day following the date the transfer is initiated,
12 payment is deemed to occur on the date settlement occurs.

13 (d) Any person remitting taxes by electronic funds transfer shall,
14 on or before the due date of the remittance, file a return for the
15 preceding reporting period in the form and manner prescribed by
16 the board. Any person who fails to timely file the required return
17 shall pay a penalty of 10 percent of the amount of taxes, exclusive
18 of prepayments, with respect to the period for which the return is
19 required.

20 (e) (1) Except as provided in paragraph (2), any person required
21 to remit taxes pursuant to this article who remits those taxes by
22 means other than appropriate electronic funds transfer shall pay a
23 penalty of 10 percent of the taxes incorrectly remitted.

24 (2) A person required to remit prepayments pursuant to this
25 article who remits a prepayment by means other than an appropriate
26 electronic funds transfer shall pay a penalty of 6 percent of the
27 prepayment amount incorrectly remitted.

28 (f) Except as provided in Sections 6476 and 6477, any person
29 who fails to pay any tax to the state or any amount of tax required
30 to be collected and paid to the state, except amounts of
31 determinations made by the board under Article 2 (commencing
32 with Section 6481) or Article 3 (commencing with Section 6511),
33 within the time required shall pay a penalty of 10 percent of the
34 tax or amount of tax, in addition to the tax or amount of tax, plus
35 interest at the modified adjusted rate per month, or fraction thereof,
36 established pursuant to Section 6591.5, from the date on which
37 the tax or the amount of tax required to be collected became due
38 and payable to the state until the date of payment.

39 (g) In determining whether a person's estimated tax liability
40 averages ten thousand dollars (\$10,000) or more per month, the

1 board may consider tax returns filed pursuant to this part and any
 2 other information in the board’s possession.

3 (h) Except as provided in subdivision (i), the penalties imposed
 4 by subdivisions (d), (e), and (f) shall be limited to a maximum of
 5 10 percent of the taxes due, exclusive of prepayments, for any one
 6 return. Any person remitting taxes by electronic funds transfer
 7 shall be subject to the penalties under this section and not Section
 8 6591.

9 (i) The penalties imposed with respect to paragraph (2) of
 10 subdivision (e) and Sections 6476 and 6477 shall be limited to a
 11 maximum of 6 percent of the prepayment amount.

12 (j) The board shall promulgate regulations pursuant to Chapter
 13 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
 14 Title 2 of the Government Code for purposes of implementing this
 15 section.

16 (k) ~~This section shall be operative on January 1, 2006. If the~~
 17 ~~board deems it necessary to facilitate collection of amounts due,~~
 18 ~~the board may allow persons to remit amounts due by other than~~
 19 ~~an electronic funds transfer.~~

20 ~~SECTION 1. Section 6369.6 is added to the Revenue and~~
 21 ~~Taxation Code, to read:~~

22 ~~6369.6. (a) There are exempted from the taxes imposed by~~
 23 ~~this part the gross receipts from the sale of, and the storage, use,~~
 24 ~~or other consumption in this state of, medical marijuana for~~
 25 ~~consumption by a terminally ill patient.~~

26 ~~(b) (1) No exemption shall be allowed under this section unless~~
 27 ~~the purchaser furnishes the retailer with a medical marijuana~~
 28 ~~exemption certificate, completed in accordance with any~~
 29 ~~instructions or regulations as the board may prescribe, and the~~
 30 ~~retailer retains the exemption certificate in its records. The medical~~
 31 ~~marijuana exemption certificate shall contain the cost of the~~
 32 ~~medical marijuana that is exempt pursuant to subdivision (a),~~
 33 ~~identification card serial number, and any other information~~
 34 ~~deemed necessary by the board.~~

35 ~~(2) The board shall establish and maintain a program for the~~
 36 ~~issuance of a medical marijuana exemption certificate. A medical~~
 37 ~~marijuana exemption certificate shall be issued to a person or his~~
 38 ~~or her primary caregiver upon satisfactory proof of terminal illness,~~
 39 ~~and shall be valid for the same period as the identification card~~
 40 ~~issued to the terminally ill patient pursuant to Article 2.5~~

1 ~~(commencing with Section 11362.7) of Chapter 6 of Division 10~~
2 ~~of the Health and Safety Code and may be renewed once, unless~~
3 ~~otherwise authorized by the board under regulations adopted~~
4 ~~pursuant to this section.~~

5 ~~(e) A person who seeks a medical marijuana exemption~~
6 ~~certificate shall provide all of the following to the board, in a~~
7 ~~manner as determined by the board:~~

8 ~~(1) The name of the terminally ill patient.~~

9 ~~(2) Written documentation by the patient's attending physician~~
10 ~~that certifies the patient is terminally ill based on the circumstances~~
11 ~~and information available to the physician at the time of diagnosis.~~

12 ~~(3) The name, office address, office telephone number, and~~
13 ~~California medical license number of the patient's attending~~
14 ~~physician.~~

15 ~~(4) The name and the duties of the primary caregiver.~~

16 ~~(5) A government-issued photo identification card of the person~~
17 ~~and of the designated primary caregiver, if any.~~

18 ~~(6) The identification card issued by the Department of Public~~
19 ~~Health.~~

20 ~~(7) Any other information deemed necessary by the board.~~

21 ~~(d) For purposes of this section:~~

22 ~~(1) "Attending physician" has the same meaning as that term~~
23 ~~is defined in Section 11362.7 of the Health and Safety Code.~~

24 ~~(2) "Marijuana" has the same meaning as that term is defined~~
25 ~~in Section 11018 of the Health and Safety Code.~~

26 ~~(3) "Medical marijuana" means marijuana used for medical~~
27 ~~purposes in accordance with Sections 11362.5 and 11362.7 of the~~
28 ~~Health and Safety Code.~~

29 ~~(4) "Primary caregiver" has the same meaning as that term is~~
30 ~~defined in Section 11362.7 of the Health and Safety Code.~~

31 ~~(5) "Terminally ill" has the same meaning as that term is defined~~
32 ~~in subdivision (c) of Section 11159.2 of the Health and Safety~~
33 ~~Code.~~

34 ~~(6) "Written documentation" means certification by the attending~~
35 ~~physician that the patient is terminally ill.~~

36 ~~(e) Any person that uses a medical marijuana exemption~~
37 ~~certificate in a manner contrary to the requirements of this section~~
38 ~~shall be liable for payment of sales tax as if the purchaser were a~~
39 ~~retailer making a retail sale of the property at the time of that use~~

1 and the cost of the marijuana to the purchaser shall be deemed the
2 gross receipts from the retail sale.

3 ~~SEC. 2. Notwithstanding Section 2230 of the Revenue and~~
4 ~~Taxation Code, no appropriation is made by this act and the state~~
5 ~~shall not reimburse any local agency for any sales and use tax~~
6 ~~revenues lost by it under this act.~~

7 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
8 ~~Article IV of the Constitution and shall go into immediate effect.~~
9 ~~However, the provisions of this act shall become operative on the~~
10 ~~first day of the first calendar quarter commencing more than 90~~
11 ~~days after the effective date of this act.~~