

ASSEMBLY BILL

No. 2243

Introduced by Assembly Member Wood
(Coauthor: Senator Runner)

February 18, 2016

An act to add Part 13.5 (commencing with Section 31001) to Division 2 of the Revenue and Taxation Code, relating to medical cannabis, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2243, as introduced, Wood. Medical cannabis: taxation: cannabis production and environment mitigation.

The Medical Marijuana Regulation and Safety Act, administered by the director of the Bureau of Medical Marijuana Regulation, provides for the licensure of persons engaged in specified activities relating to medical cannabis, including cultivation and distribution.

The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax in specified amounts on the distribution in this state by a licensed cultivator, as defined, of medical cannabis flowers, medical cannabis leaves, and immature medical cannabis plants to a licensed distributor, as specified, and would require the licensed distributor to collect the tax from the cultivator and remit it to the State Board of Equalization. The bill would require the State Board of Equalization to administer and collect the tax pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require all moneys, less refunds and costs of administration, to be deposited into the Cannabis Production and Environment Mitigation Fund, which this bill would establish in the State Treasury.

This bill would continuously appropriate the moneys in that fund in specified percentages to fund competitive grants for local law enforcement-related activities pertaining to illegal cannabis cultivation; to fund a competitive grant program for environmental cleanup restoration and protection of public and private lands that have been damaged by illegal cannabis cultivation; to address the environmental impacts of cannabis cultivation on public and private lands in California and fund other state enforcement-related activities pertaining to illegal cannabis cultivation; and to fund ongoing studies and reports of areas that may create challenges to compliance of the Medical Marijuana Regulation Safety Act. This bill would require the bureau or other state agencies and departments to submit reports to the Legislature on the results of those studies funded by this tax by January 1, 2020, and every 2 years thereafter.

By expanding the application of the Fee Collection Procedures Law, which imposes criminal penalties for various acts, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Part 13.5 (commencing with Section 31001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

3

4 PART 13.5. MEDICAL CANNABIS TAX LAW

5

6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7

8 31001. This part shall be known and may be cited as the
9 Medical Cannabis Tax Law.

1 31002. As used in this part, the following terms have the
2 following definitions:

3 (a) “Board” means the State Board of Equalization.

4 (b) “Cannabis” has the same meaning as that term is defined in
5 Section 19300.5 of the Business and Professions Code.

6 (c) “Distribution” has the same meaning as that term is defined
7 in Section 19300.5 of the Business and Professions Code.

8 (d) “Immature medical cannabis plant” means a plant described
9 in subdivision (b) with no observable flowers or buds, that is
10 intended to be sold for use by medical cannabis patients in
11 California pursuant to the Compassionate Use Act of 1996
12 (Proposition 215), found in Section 11362.5 of the Health and
13 Safety Code.

14 (e) “Licensed cultivator” means a person that is licensed as a
15 cultivator under the Medical Marijuana Regulation and Safety Act
16 (Chapter 3.5 (commencing with Section 19300) of Division 8 of
17 the Business and Professions Code).

18 (f) “Licensed distributor” means “distributor” as defined in
19 Section 19300.5 of the Business and Professions Code.

20 (g) “Medical cannabis flowers” means the flowers of a plant
21 described in subdivision (b), which excludes the leaves and stems,
22 that are intended to be sold for use by medical cannabis patients
23 in California pursuant to the Compassionate Use Act of 1996
24 (Proposition 215), found in Section 11362.5 of the Health and
25 Safety Code.

26 (h) “Medical cannabis leaves” means all parts of a plant
27 described in subdivision (b), other than cannabis flowers, that are
28 intended to be sold for use by medical cannabis patients in
29 California pursuant to the Compassionate Use Act of 1996
30 (Proposition 215), found in Section 11362.5 of the Health and
31 Safety Code.

32 (i) “Sale” means the transfer of title or possession for
33 consideration in any manner or by any means whatever.

34 (j) “Qualified nonprofit organization” means an organization
35 exempt from tax as an organization described in Section 501(c)(3)
36 of the Internal Revenue Code .

CHAPTER 2. IMPOSITION OF TAX

1
2
3 31005. (a) On and after the operative date set forth in Section
4 31030, for the privilege of distributing medical cannabis flowers,
5 medical cannabis leaves, and immature medical cannabis plants,
6 a tax is hereby imposed upon all licensed cultivators at a rate of
7 nine dollars and twenty-five cents (\$9.25) per ounce of medical
8 cannabis flowers, two dollars and seventy-five cents (\$2.75) per
9 ounce of medical cannabis leaves, and one dollar and twenty-five
10 cents (\$1.25) per immature medical cannabis plant from the sale
11 of all medical cannabis flowers, medical cannabis leaves, and
12 immature medical cannabis plants distributed to a licensed
13 distributor in this state.

14 (b) The licensed distributor shall collect the tax from the licensed
15 cultivator and shall separately state the amount of the tax imposed
16 under this part on the purchase order, which shall be given by the
17 licensed distributor to the licensed cultivator at the time of sale.

18 (c) There are exempted from the taxes imposed by this part,
19 sales by a licensed cultivator that the state is prohibited from taxing
20 under the Constitution or laws of the United States or the
21 Constitution of this state. Any claim for exemption from the tax
22 imposed by this part shall be made to the board in the manner
23 prescribed by the board.

24 31006. The Legislative Analyst’s Office shall regularly review
25 the tax levels established under this part, at a minimum of every
26 other year, beginning in 2018, and make recommendations to the
27 Legislature, as appropriate, regarding adjustments that would
28 further the goal of addressing public safety and the environmental
29 impacts caused by the proliferation of cannabis cultivation.

CHAPTER 3. ADMINISTRATION

30
31
32
33 31010. (a) The board shall administer and collect the tax
34 imposed by this part pursuant to the Fee Collection Procedures
35 Law (Part 30 (commencing with Section 55001) of Division 2 of
36 the Revenue and Taxation Code) with those changes as may be
37 necessary to conform to this section. For purposes of this part, the
38 references in the Fee Collection Procedures Law to “fee” shall
39 include the tax imposed by this part, and references to “feepayer”
40 shall include a person required to pay the tax imposed by this part.

1 (b) The tax that is required to be collected by the licensed
2 distributor and any amount unreturned to the licensed cultivator
3 that is not owed as part of the tax, but was collected from the
4 licensed cultivator under the representation by the licensed
5 distributor that it was owed as a tax, constitutes debts owed by the
6 licensed distributor to the state.

7 (c) A licensed cultivator is liable for the tax until it has been
8 paid to the state, except that payment to the licensed distributor
9 relieves the licensed cultivator from further liability for the tax.
10 Any tax collected from a licensed cultivator that has not been
11 remitted to the board shall be a debt owed to the state by the
12 licensed distributor required to collect and remit the tax. This part
13 does not impose any obligation upon the licensed distributor to
14 take any legal action to enforce the collection of the tax imposed
15 by this part.

16 31011. (a) The board may prescribe, adopt, and enforce
17 regulations relating to the implementation, administration, and
18 enforcement of this part, including, but not limited to, applicant
19 requirements, collections, reporting, refunds, and appeals.

20 (b) The board may prescribe, adopt, and enforce any emergency
21 regulations as necessary to implement this part. Any emergency
22 regulation prescribed, adopted, or enforced pursuant to this section
23 shall be adopted in accordance with Chapter 3.5 (commencing
24 with Section 11340) of Part 1 of Division 3 of Title 2 of the
25 Government Code, and, for purposes of that chapter, including
26 Section 11349.6 of the Government Code, the adoption of the
27 regulation is an emergency and shall be considered by the Office
28 of Administrative Law as necessary for the immediate preservation
29 of the public peace, health and safety, and general welfare.

30 31012. (a) The tax is due and payable to the board quarterly
31 on or before the last day of the month following each calendar
32 quarter.

33 (b) On or before the last day of the month following each
34 calendar quarter, a return for the preceding calendar quarter shall
35 be filed with the board.

36 (c) Returns shall be authenticated in a form or pursuant to
37 methods as may be prescribed by the board.

38 31013. (a) The Cannabis Production and Environment
39 Mitigation Fund is hereby created in the State Treasury. All taxes,
40 interest, penalties, and other amounts collected and paid to the

1 board pursuant to this part, less payments of refunds and costs of
2 administration, shall be deposited in the fund.

3 (b) Notwithstanding Section 13340 of the Government Code,
4 all moneys deposited in the Cannabis Production and Environment
5 Mitigation Fund are hereby continuously appropriated, without
6 regard to fiscal years, in the following manner:

7 (1) Thirty percent to the _____ for disbursement for local law
8 enforcement-related activities pertaining to illegal cannabis
9 cultivation. Funds allocated pursuant to this paragraph shall be
10 allocated on a competitive grant application process administered
11 by the _____. Applicants may include local entities that support
12 enforcement activities related to unpermitted activity. The _____
13 shall promulgate guidelines for the grant process as soon as
14 administratively possible.

15 (2) Thirty percent to the Natural Resources Agency to fund a
16 competitive grant program for environmental cleanup restoration
17 and protection of public and private lands that have been damaged
18 by illegal cannabis cultivation. Where appropriate, the agency may
19 administer funds using programs established pursuant to Chapter
20 3.8 (commencing with Section 5750) of Division 5 of the Public
21 Resources Code and described in subdivision (a) and paragraph
22 (1) of subdivision (l) of Section 75050 of the Public Resources
23 Code. Funds allocated pursuant to this paragraph shall be
24 prioritized to restoration and cleanup projects, on public or private
25 lands, based on the level of damages that have occurred. Not less
26 than 35 percent of the funds shall be used for these purposes related
27 to public lands, including, but not limited to, parks managed by
28 the California Department of Parks and Recreation, and not less
29 than 20 percent of the funds shall be used for these purposes related
30 to private lands. The agency shall consult and partner with counties,
31 cities, or cities and counties and may partner with qualified
32 nonprofit organizations, other appropriate state agencies, and the
33 appropriate federal entities, including, but not limited to, the United
34 States Department of Agriculture and the United States Department
35 of the Interior, for the purposes of awarding grants to state or local
36 government entities and qualified nonprofit organizations that
37 engage in environmental cleanup and restoration. The agency shall
38 promulgate guidelines for the grant process as soon as
39 administratively possible.

1 (3) Thirty percent to the multiagency task force, the Department
2 of Fish and Wildlife and State Water Resources Control Board, to
3 address the environmental impacts of cannabis cultivation on public
4 and private lands in California and fund other state
5 enforcement-related activities pertaining to illegal cannabis
6 cultivation.

7 (4) Ten percent to the Bureau of Medical Marijuana Regulations,
8 and other state agencies or departments that the bureau determines
9 is appropriate, to conduct ongoing studies of areas that may create
10 challenges to compliance of the Medical Marijuana Regulation
11 Safety Act (Chapter 3.5 (commencing with Section 19300) of
12 Division 8 of the Business and Professions Code), including, but
13 not limited to, financial transactions, allowable tax deductions,
14 and the public safety implications of a cash industry. The bureau
15 or other state agencies or departments shall prepare reports on the
16 results of those studies and submit those report to the Legislature,
17 in compliance with Section 9795 of the Government Code, on or
18 before January 1, 2020, and on or before January 1, every two
19 years thereafter.

20
21 CHAPTER 4. REPORT TO THE LEGISLATURE

22
23 31020. (a) The board shall submit a report to the Legislature
24 on the total amount of revenue that was collected for the two-year
25 period commencing on the operative date of this part. The report
26 is due to the Legislature on or before the last day of the month
27 commencing 180 days after the two-year period commencing on
28 the operative date of this part.

29 (b) The report required by this section shall be submitted in
30 compliance with Section 9795 of the Government Code.

31
32 CHAPTER 5. OPERATIVE DATE AND FUNDING

33
34 31030. This part shall become operative on or after the first
35 day of the first calendar quarter commencing more than 270 days
36 after adequate funding has been received by the board to implement
37 and administer this part. The board shall post a notice on its Internet
38 Web site when this condition has been satisfied.

39 31031. Funds for the establishment and support of the activities
40 required pursuant to this part shall be advanced as a General Fund

1 or special fund loan, and shall be repaid by the board from the
2 initial proceeds from taxes collected pursuant to this part, no later
3 than six months after the operative date specified in Section 31030.

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.