

**Introduced by Senator McGuire**February 10, 2016

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An act to add Part 17 (commencing with Section 37001) to Division 2 of the Revenue and Taxation Code, relating to medical marijuana.

## LEGISLATIVE COUNSEL'S DIGEST

SB 987, as introduced, McGuire. Taxation: medical marijuana: Marijuana Value Tax Act.

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, allows the use of marijuana for medical purposes. The Medical Marijuana Regulation and Safety Act, operative beginning on January 1, 2016, provides for the licensure and regulation of commercial medical marijuana activity, as specified. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill, on and after January 1, 2018, would impose an excise tax on the consumption or other use in this state of medical marijuana purchased from any retailer for the consumption or other use in this state at the rate of 15% of the sales price of the medical marijuana. This bill would provide that a purchaser is liable for that tax and would require every retailer engaged in business in this state and making sales of medical marijuana to a purchaser for the consumption or other use in this state to separately state and collect the tax from a purchaser, as specified. This bill would also make specific violations of this bill a crime, thereby imposing a state-mandated local program.

This bill would require the State Board of Equalization to administer and collect the tax in accordance with the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures

Law, the violation of which is a crime, this bill would impose a state-mandated local program. The bill would require a retailer to register for a permit with the board, to prepare and file with the board returns, and to remit the tax quarterly. The bill would require that all revenues, less refunds, be remitted to the State Board of Equalization and deposited in the Marijuana Value Tax Fund, which the bill would establish.

This bill would require moneys in the Marijuana Value Tax Fund to be allocated by the Controller in specified percentages to the General Fund and, upon appropriation by the Legislature, to the Bureau of Medical Marijuana Regulation for the administration of a grant program to distribute grants to local agencies that oversee the regulation of cultivating, processing, manufacturing, distributing, and selling of medical marijuana; the Department of Parks and Recreation for base operations of state parks; to county and city human service departments for drug and alcohol treatment programs; to the California Natural Resources Agency for restoration and remediation of public and private lands and watersheds damaged by medical marijuana cultivation and for allocation as grants for those purposes.

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  $\frac{2}{3}$  of the membership of each house of the Legislature.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares that edible  
2 cannabis products, as defined in Section 19300.5 of the Business  
3 and Professions Code and as applicable to Section 2 of this act,  
4 are not considered a food product for purposes of Section 34 of  
5 Article XIII of the California Constitution.

6 SEC. 2. Part 17 (commencing with Section 37001) is added to  
7 Division 2 of the Revenue and Taxation Code, to read:

1           PART 17. MARIJUANA VALUE TAX ACT

2  
3       37001. This part is known, and may be cited, as the “Marijuana  
4 Value Tax Act.”

5       37002. For purposes of this part, the following definitions shall  
6 apply:

7       (a) “Medical marijuana” means medical cannabis as defined in  
8 Section 19300.5 of the Business and Professions Code.

9       (b) “Person” means person as defined in Section 55002.

10       (c) “Purchaser” means a person that purchases medical  
11 marijuana for consumption or other use in this state.

12       (d) “Retail sale” or “sale at retail” means a sale for any purpose  
13 other than resale in the regular course of business in the form of  
14 medical marijuana.

15       (e) (1) “Retailer” includes every person that makes any retail  
16 sale or sales of medical marijuana. “Retailer” also includes a person  
17 holding a dispensary license issued pursuant to the Medical  
18 Marijuana Regulation and Safety Act (Chapter 3.5 (commencing  
19 with Section 19300) of Division 8 of the Business and Professions  
20 Code).

21       (2) Every person making more than two retail sales of medical  
22 marijuana during any 12-month period shall be considered a retailer  
23 within the provisions of this part.

24       (f) “Retailer engaged in business in this state” means any retailer  
25 that has substantial nexus with this state for purposes of the  
26 commerce clause of the United States Constitution and any retailer  
27 upon whom federal law permits this state to impose a tax collection  
28 duty.

29       (g) “Sale” or “purchase” means and includes any transfer of  
30 title or possession, exchange, or barter, conditional or otherwise,  
31 in any manner or by any means whatsoever, of medical marijuana  
32 for a consideration. “Transfer of possession” includes only  
33 transactions found by the board to be in lieu of a transfer of title,  
34 exchange, or barter.

35       (h) “Sales price” means the total amount for which medical  
36 marijuana is sold, valued in money, whether paid in money or  
37 otherwise, without any deduction on account of the cost of any  
38 expenses.

39       (i) “Use” includes the exercise of any right or power over  
40 medical marijuana incident to the ownership of that medical

1 marijuana, except that it does not include the sale of that medical  
2 marijuana in the regular course of business.

3 37003. On and after January 1, 2018, there is hereby imposed  
4 an excise tax on the consumption or other use in this state of  
5 medical marijuana purchased from any retailer for the consumption  
6 or other use in this state at the rate of 15 percent of the sales price  
7 of the medical marijuana.

8 37004. (a) Every purchaser consuming or otherwise using in  
9 this state medical marijuana that the purchaser purchased from a  
10 retailer for consumption or other use in this state is liable for the  
11 tax imposed by Section 37003. That purchaser’s liability is not  
12 extinguished until the tax has been paid to this state except that a  
13 receipt from a retailer engaged in business in this state given to a  
14 purchaser pursuant to paragraph (2) of subdivision (b) is sufficient  
15 to relieve the purchaser from further liability for the tax to which  
16 the receipt refers.

17 (b) (1) Every retailer engaged in business in this state and  
18 making sales of medical marijuana to a purchaser shall, at the time  
19 of making such a sale, collect the tax as a charge separate from,  
20 and not included in, any other fee, charge, or other amount paid  
21 by the purchaser.

22 (2) Every retailer engaged in business in this state shall collect  
23 the tax from the purchaser and give to the purchaser a receipt  
24 therefor in the manner and form prescribed by the board.

25 (c) The board shall administer and collect the tax imposed by  
26 this part pursuant to the Fee Collection Procedures Law (Part 30  
27 (commencing with Section 55001)), except that Article 1.1  
28 (commencing with Section 55050) of Chapter 3 of that part shall  
29 not apply. For purposes of this part, the references in the Fee  
30 Collection Procedures Law to “fee” shall include the tax imposed  
31 by this part, and references to “feepayer” shall include a person  
32 required to pay the tax imposed by this part.

33 (d) (1) The tax required to be collected by the retailer engaged  
34 in business in this state, any tax collected from a purchaser that  
35 has not been remitted to the board, and any amount unreturned to  
36 a purchaser which is not tax but was collected from the purchaser  
37 under the representation by the retailer that it was tax constitutes  
38 debts owed by the retailer to this state.

39 (2) A retailer is relieved from liability to collect tax that became  
40 due and payable, insofar as the measure of the tax is represented

1 by accounts that have been found to be worthless and charged off  
2 by the retailer in accordance with generally accepted accounting  
3 principles. A retailer that has previously paid the amount of the  
4 tax may, under rules and regulations prescribed by the board, take  
5 as a deduction on its return the amount found worthless and  
6 charged off by the retailer. If these accounts are thereafter in whole  
7 or in part collected by the retailer, the amount collected shall be  
8 included in the first return filed after the collection and the amount  
9 of the tax shall be paid with the return.

10 (3) The board may by regulation promulgate such other rules  
11 with respect to uncollected or worthless accounts as it shall deem  
12 necessary to the fair and efficient administration of this part.

13 (e) It is unlawful for any retailer to advertise or hold out or state  
14 to the public or to any purchaser, directly or indirectly, that the tax  
15 or any part thereof will be assumed or absorbed by the retailer or  
16 that it will not be added to the selling price of the medical  
17 marijuana sold or that if added it or any part thereof will be  
18 refunded. Any person violating this subdivision is guilty of a  
19 misdemeanor.

20 (f) The tax required to be collected by the retailer engaged in  
21 business in this state from the purchaser shall be displayed  
22 separately from the list price, the price advertised in the premises,  
23 the marked price, or other price on the sales check or other proof  
24 of sales. Any person violating this subdivision is guilty of a  
25 misdemeanor.

26 (g) (1) The board may prescribe, adopt, and enforce regulations  
27 relating to the administration and enforcement of this part.

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

38 (h) (1) The tax imposed by this part is due and payable to the  
39 board quarterly on or before the last day of the month next  
40 succeeding each quarterly period.

1 (2) On or before the last day of the month following each  
2 quarterly period, a return for the preceding quarterly period shall  
3 be filed using electronic media with the board. Returns shall be  
4 authenticated in a form or pursuant to methods as may be  
5 prescribed by the board.

6 37005. (a) A retailer required to collect the tax imposed under  
7 this part shall register for a permit with the board. Every application  
8 for registration shall be made in a form prescribed by the board  
9 and shall set forth the name under which the applicant transacts  
10 or intends to transact business, the location of the retailer's place  
11 or places of business, and any other information that the board  
12 may require. An application for registration shall be authenticated  
13 in a form or pursuant to methods as may be prescribed by the  
14 board.

15 (b) The board shall grant and issue to each applicant that  
16 complies with subdivision (a) a separate permit for each place of  
17 business within the state.

18 (c) A permit issued pursuant to this section is not assignable  
19 and is valid only for the person in whose name it is issued and for  
20 the transaction of business at the place designated therein. It shall  
21 at all times be conspicuously displayed at the place for which it is  
22 issued.

23 37005.3. Whenever any retailer fails to comply with any  
24 provision of this part or any rules or regulations of the board  
25 prescribed and adopted under this part, the board upon hearing,  
26 after giving the retailer at least 10 days' notice in writing specifying  
27 the time and place of the hearing and requiring the retailer to show  
28 cause why the permit should not be revoked, may revoke or  
29 suspend the permit held by the retailer. The board shall give to the  
30 retailer written notice of the suspension or revocation of any of  
31 the retailer's permits. The notices herein required may be served  
32 personally or by mail in the manner prescribed for service of notice  
33 of a deficiency determination. The board shall not issue a new  
34 permit after the revocation of a permit unless it is satisfied that the  
35 former holder of the permit will comply with the provisions of this  
36 part and the regulations of the board prescribed and adopted under  
37 this part.

38 37005.5. (a) The board may refuse to issue a permit to any  
39 person submitting an application for a permit as required in Section  
40 37005 if the person desiring to engage in or conduct business as

1 a retailer within this state has an outstanding final liability with  
2 the board for any amount due under this part.

3 (b) The board may also refuse to issue a permit if the person  
4 desiring to engage in or conduct business as a retailer within this  
5 state is not a natural person or individual and any person controlling  
6 the person desiring to engage in or conduct business as a seller  
7 within this state has an outstanding final liability with the board  
8 as provided in subdivision (a). For the purposes of this section,  
9 “controlling” has the same meaning as defined in Section 22971  
10 of the Business and Professions Code.

11 (c) For purposes of this section, a liability will not be deemed  
12 to be outstanding if the person has entered into an installment  
13 payment agreement pursuant to Section 55209 for any liability  
14 and is in full compliance with the terms of the installment payment  
15 agreement.

16 (d) If the person submitting an application for a permit pursuant  
17 to Section 37005 has entered into an installment payment  
18 agreement as provided in subdivision (c) and fails to comply with  
19 the terms of the installment payment agreement, the board may  
20 seek revocation of the person’s permit pursuant to this section.

21 (e) (1) Whenever any person desiring to engage in or conduct  
22 business as a retailer within this state is denied a permit pursuant  
23 to this section, the board shall give to the person written notice of  
24 the denial. The notice of the denial may be served personally, by  
25 mail, or by other means deemed appropriate by the board. If served  
26 by mail, the notice shall be placed in a sealed envelope, with  
27 postage paid, addressed to the person at the address as it appears  
28 in the records of the board. The giving of notice shall be deemed  
29 complete at the time of deposit of the notice at the United States  
30 Postal Service, or a mailbox, subpost office, substation or mail  
31 chute, or other facility regularly maintained or provided by the  
32 United States Postal Service, without extension of time for any  
33 reason. In lieu of mailing, a notice may be served personally by  
34 delivering to the person to be served and service shall be deemed  
35 complete at the time of the delivery. Delivery of notice by other  
36 means deemed appropriate by the board may include, but is not  
37 limited to, electronic transmission. Personal service or delivery by  
38 other means deemed appropriate by the board to a corporation may  
39 be made by delivery of a notice to any person listed on the  
40 application as an officer.

1 (2) Any person that is denied a permit pursuant to this section  
2 may request reconsideration of the board's denial of the permit.  
3 This request shall be submitted in writing within 30 days of the  
4 date of the notice of denial. Timely submission of a written request  
5 for reconsideration shall afford the person a hearing in a manner  
6 that is consistent with a hearing provided for by Section 37005.3.  
7 If a request for reconsideration is not filed within the 30-day period,  
8 the denial becomes final at the end of the 30-day period.

9 (f) The board shall consider offers in compromise when  
10 determining whether to issue a permit.

11 37006. (a) The Marijuana Value Tax Fund is hereby  
12 established in the State Treasury. All revenues, less refunds,  
13 collected pursuant to this part shall be made in remittances to the  
14 board and shall be deposited in the Marijuana Value Tax Fund.

15 (b) Moneys in the Marijuana Value Tax Fund shall be allocated  
16 by the Controller as follows:

17 (1) Thirty percent to the General Fund.

18 (2) Thirty percent to the Bureau of Medical Marijuana  
19 Regulation for the administration of a grant program to distribute  
20 grants to local agencies that oversee the regulation of cultivating,  
21 processing, manufacturing, distributing, and selling of medical  
22 marijuana upon appropriation by the Legislature. All local agencies  
23 shall be eligible for the grants, including, but not limited to, law  
24 enforcement and zoning enforcement. The grants shall be made  
25 available beginning on or before July 1, 2018. No more than 5  
26 percent of any funds allocated may be used for administrative costs  
27 of the grant program by the bureau or for any administrative costs  
28 of the local agency awarded the grant.

29 (3) Twenty percent to the Department of Parks and Recreation  
30 for base operations of state parks, upon appropriation by the  
31 Legislature.

32 (4) Ten percent to county and city human service departments  
33 for drug and alcohol treatment programs, distributed based on  
34 population, upon appropriation by the Legislature. Any funds  
35 appropriated shall be used for drug and alcohol treatment and  
36 recovery and case management services.

37 (5) Ten percent to the California Natural Resources Agency for  
38 restoration and remediation of public and private lands and  
39 watersheds damaged by medical marijuana cultivation, including  
40 lands affected by medical marijuana cultivation before the operative

1 date of this section, upon appropriation by the Legislature. Fifty  
2 percent of any funds appropriated shall be made available as a  
3 grant to state and local government agencies and organizations  
4 that are exempt from federal income tax as an organization  
5 described in Section 501(c)(3) of the Internal Revenue Code for  
6 the purpose of restoration and remediation of affected lands. The  
7 grants shall be made available beginning on or before July 1, 2018.  
8 No more than 5 percent of any funds awarded as grants may be  
9 used for the administration of the grant program.

10 SEC. 3. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.