

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3157

Introduced by Assembly Member ~~Lackey~~ Members *Lackey, Bonta, Cooley, Jones-Sawyer, and Wood*

February 16, 2018

~~An act to amend Section 6002 of the Revenue and Taxation Code, relating to sales and use taxes. An act to amend Sections 34011 and 34012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 3157, as amended, Lackey. ~~Sales and use taxes. Taxation: cannabis.~~

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, and additionally amended by statute, imposes an excise tax commencing January 1, 2018, on the purchase of cannabis and cannabis products, as defined, at the rate of 15% of the average market price of any retail sale by a cannabis retailer. Commencing January 1, 2018, AUMA also imposes a cultivation tax upon all cultivators on all harvested cannabis that enters the commercial market, at specified rates per dry-weight ounce of cannabis flowers and leaves. Existing law requires the revenues from those taxes to be deposited into the California Cannabis Tax Fund and to be continuously appropriated for specified purposes pursuant to a specified schedule. AUMA authorizes the Legislature to amend its provisions with a ²/₃ vote of both houses to further its purposes and intent.

This bill would reduce that excise tax rate to 11% on and after the effective date of this bill until June 1, 2021, at which time the excise tax rate would revert back to 15%. This bill would suspend the imposition of the cultivation tax on and after the effective date of this bill until June 1, 2021.

This bill would make specified findings and declare that its provisions further the purposes and intent of the AUMA.

This bill would take effect immediately as a tax levy.

~~Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or 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. The Sales and Use Tax Law defines various terms for these purposes:~~

~~This bill would make a nonsubstantive change with respect to the definitions that govern the construction of the Sales and Use Tax Law.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{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) In 2016, California voters approved Proposition 64, the*
 4 *Control, Regulate and Tax Adult Use of Marijuana Act (AUMA).*
 5 *In its statement of purpose and intent, AUMA calls for regulating*
 6 *marijuana in a way to “prevent illegal production or distribution*
 7 *of marijuana,” “reduce barriers to entry into the legal, regulated*
 8 *market,” and “tax the growth and sale of marijuana in a way that*
 9 *drives out the illicit market for marijuana and discourages use by*
 10 *minors and abuse.”*

11 *(b) In 2017, the Legislature and the Governor passed Senate*
 12 *Bill 94 to merge the AUMA regulatory system with the state’s*
 13 *medical marijuana regulatory system known as the Medical*
 14 *Cannabis Regulation and Safety Act. Currently, taxes on legal*
 15 *cannabis product include a sales tax, a 15-percent excise tax, and*
 16 *a cultivation tax of \$9.25 per ounce of flowers or \$2.75 per ounce*
 17 *of leaves. The cumulative tax rate imposed by existing law is*
 18 *substantial and undermines the legal regulatory system if high*

1 *taxes cause prices to far exceed that what is found on the black*
2 *market.*

3 *(c) It is the intent of the Legislature that this act suspend the*
4 *cultivation tax rate for the first three years of that market as*
5 *marijuana businesses come into that market.*

6 *SEC. 2. Section 34011 of the Revenue and Taxation Code is*
7 *amended to read:*

8 34011. (a) (1) ~~Effective January 1, 2018,~~ *On and after the*
9 *effective date of the act amending this section, and before June 1,*
10 *2021, a cannabis excise tax shall be imposed upon purchasers of*
11 *cannabis or cannabis products sold in this state at the rate of 15*
12 *percent of the average market price of any retail sale by a*
13 ~~*cannabis retailer.*~~ *retailer, and at a rate of 15 percent on and after*
14 *June 1, 2021. A purchaser's liability for the cannabis excise tax*
15 *is not extinguished until the cannabis excise tax has been paid to*
16 *this state except that an invoice, receipt, or other document from*
17 *a cannabis retailer given to the purchaser pursuant to this*
18 *subdivision is sufficient to relieve the purchaser from further*
19 *liability for the tax to which the invoice, receipt, or other document*
20 *refers.*

21 (2) Each cannabis retailer shall provide a purchaser with an
22 invoice, receipt, or other document that includes a statement that
23 reads: "The cannabis excise taxes are included in the total amount
24 of this invoice."

25 (3) The department may prescribe other means to display the
26 cannabis excise tax on an invoice, receipt, or other document from
27 a cannabis retailer given to the purchaser.

28 (b) (1) A distributor in an arm's length transaction shall collect
29 the cannabis excise tax from the cannabis retailer on or before 90
30 days after the sale or transfer of cannabis or cannabis product to
31 the cannabis retailer. A distributor in a nonarm's length transaction
32 shall collect the cannabis excise tax from the cannabis retailer on
33 or before 90 days after the sale or transfer of cannabis or cannabis
34 product to the cannabis retailer, or at the time of retail sale by the
35 cannabis retailer, whichever is earlier. A distributor shall report
36 and remit the cannabis excise tax to the department pursuant to
37 Section 34015. A cannabis retailer shall be responsible for
38 collecting the cannabis excise tax from the purchaser and remitting
39 the cannabis excise tax to the distributor in accordance with rules

1 and procedures established under law and any regulations adopted
2 by the department.

3 (2) A distributor shall provide an invoice, receipt, or other
4 similar document to the cannabis retailer that identifies the licensee
5 receiving the product, the distributor from which the product
6 originates, including the associated unique identifier, the amount
7 of cannabis excise tax, and any other information deemed necessary
8 by the department. The department may authorize other forms of
9 documentation under this paragraph.

10 (c) The excise tax imposed by this section shall be in addition
11 to the sales and use tax imposed by the state and local governments.

12 (d) Gross receipts from the sale of cannabis or cannabis products
13 for purposes of assessing the sales and use tax under Part 1
14 (commencing with Section 6001) shall include the tax levied
15 pursuant to this section.

16 (e) Cannabis or cannabis products shall not be sold to a
17 purchaser unless the excise tax required by law has been paid by
18 the purchaser at the time of sale.

19 (f) The sales and use taxes imposed by Part 1 (commencing
20 with Section 6001) shall not apply to retail sales of medicinal
21 cannabis, medicinal cannabis concentrate, edible medicinal
22 cannabis products, or topical cannabis as those terms are defined
23 in Division 10 (commencing with Section 26000) of the Business
24 and Professions Code when a qualified patient or primary caregiver
25 for a qualified patient provides his or her card issued under Section
26 11362.71 of the Health and Safety Code and a valid
27 government-issued identification card.

28 *SEC. 3. Section 34012 of the Revenue and Taxation Code is*
29 *amended to read:*

30 34012. (a) ~~Effective~~ *(1) On and after January 1, 2018, and*
31 *before the effective date of the act amending this section, and on*
32 *and after June 1, 2021, there is hereby imposed a cultivation tax*
33 *on all harvested cannabis that enters the commercial market upon*
34 *all cultivators. The tax shall be due after the cannabis is harvested*
35 *and enters the commercial market. The amounts specified in*
36 *paragraph (2) shall be adjusted as specified in subdivision (k),*
37 *including during the period on and after January 1, 2020, and*
38 *before June 1, 2021.*

39 (†)

1 (2) (A) The tax for cannabis flowers shall be nine dollars and
2 twenty-five cents (\$9.25) per dry-weight ounce.

3 ~~(2)~~

4 (B) The tax for cannabis leaves shall be set at two dollars and
5 seventy-five cents (\$2.75) per dry-weight ounce.

6 (b) The department may adjust the tax rate for cannabis leaves
7 annually to reflect fluctuations in the relative price of cannabis
8 flowers to cannabis leaves.

9 (c) The department may from time to time establish other
10 categories of harvested cannabis, categories for unprocessed or
11 frozen cannabis or immature plants, or cannabis that is shipped
12 directly to manufacturers. These categories shall be taxed at their
13 relative value compared with cannabis flowers.

14 (d) The department may prescribe by regulation a method and
15 manner for payment of the cultivation tax that utilizes tax stamps
16 or state-issued product bags that indicate that all required tax has
17 been paid on the product to which the tax stamp is affixed or in
18 which the cannabis is packaged.

19 (e) The tax stamps and product bags shall be of the designs,
20 specifications, and denominations as may be prescribed by the
21 department and may be purchased by any licensee under Division
22 10 (commencing with Section 26000) of the Business and
23 Professions Code.

24 (f) Subsequent to the establishment of a tax stamp program, the
25 department may by regulation provide that cannabis shall not be
26 removed from a licensed cultivation facility or transported on a
27 public highway unless in a state-issued product bag bearing a tax
28 stamp in the proper denomination.

29 (g) The tax stamps and product bags shall be capable of being
30 read by a scanning or similar device and must be traceable utilizing
31 the track and trace system pursuant to Section 26068 of the
32 Business and Professions Code.

33 (h) Cultivators shall be responsible for payment of the tax
34 pursuant to regulations adopted by the department. A cultivator's
35 liability for the tax is not extinguished until the tax has been paid
36 to this state except that an invoice, receipt, or other document from
37 a distributor or manufacturer given to the cultivator pursuant to
38 paragraph (3) is sufficient to relieve the cultivator from further
39 liability for the tax to which the invoice, receipt, or other document

1 refers. Cannabis shall not be sold unless the tax has been paid as
2 provided in this part.

3 (1) A distributor shall collect the cultivation tax from a cultivator
4 on all harvested cannabis that enters the commercial market. This
5 paragraph shall not apply where a cultivator is not required to send,
6 and does not send, the harvested cannabis to a distributor.

7 (2) (A) A manufacturer shall collect the cultivation tax from a
8 cultivator on the first sale or transfer of unprocessed cannabis by
9 a cultivator to a manufacturer. The manufacturer shall remit the
10 cultivation tax collected on the cannabis product sold or transferred
11 to a distributor for quality assurance, inspection, and testing, as
12 described in Section 26110 of the Business and Professions Code.
13 This paragraph shall not apply where a distributor collects the
14 cultivation tax from a cultivator pursuant to paragraph (1).

15 (B) Notwithstanding subparagraph (A), the department may
16 prescribe a substitute method and manner for collection and
17 remittance of the cultivation tax under this paragraph, including a
18 method and manner for collection of the cultivation tax by a
19 distributor.

20 (3) A distributor or manufacturer shall provide to the cultivator,
21 and a distributor that collects the cultivation tax from a
22 manufacturer pursuant to paragraph (2) shall provide to the
23 manufacturer, an invoice, receipt, or other similar document that
24 identifies the licensee receiving the product, the cultivator from
25 which the product originates, including the associated unique
26 identifier, the amount of cultivation tax, and any other information
27 deemed necessary by the department. The department may
28 authorize other forms of documentation under this paragraph.

29 (4) The department may adopt regulations prescribing
30 procedures for the refund of cultivation tax collected on cannabis
31 or cannabis product that fails quality assurance, inspection, and
32 testing as described in Section 26110 of the Business and
33 Professions Code.

34 (i) All cannabis removed from a cultivator's premises, except
35 for plant waste, shall be presumed to be sold and thereby taxable
36 under this section.

37 (j) The tax imposed by this section shall be imposed on all
38 cannabis cultivated in the state pursuant to rules and regulations
39 promulgated by the department, but shall not apply to cannabis
40 cultivated for personal use under Section 11362.1 of the Health

1 and Safety Code or cultivated by a qualified patient or primary
2 caregiver in accordance with the Compassionate Use Act of 1996
3 (Section 11362.5 of the Health and Safety Code).

4 (k) Beginning January 1, 2020, the rates set forth in subdivisions
5 (a), (b), and (c) shall be adjusted by the department annually
6 thereafter for inflation.

7 (l) The Department of Food and Agriculture is not responsible
8 for enforcing any provisions of the cultivation tax.

9 *SEC. 4. The Legislature finds and declares that this act furthers*
10 *the purposes and intent of the Control, Regulate and Tax Adult*
11 *Use of Marijuana Act.*

12 *SEC. 5. This act provides for a tax levy within the meaning of*
13 *Article IV of the California Constitution and shall go into*
14 *immediate effect.*

15 ~~SECTION 1. Section 6002 of the Revenue and Taxation Code~~
16 ~~is amended to read:~~

17 ~~6002. Except where the context otherwise requires, the~~
18 ~~definitions in this chapter govern the construction of this part.~~