



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-6

For the meeting of: April 18, 2017

Date: April 13, 2017
To: Board of Supervisors
From: Supervisor Rex Bohn
Subject: AB 1410 (Wood and Co-author McGuire): Cannabis Cultivation Tax Collection Letter of Support as Amended on April 4, 2017

RECOMMENDATION(S): That the Board of Supervisors authorize the Chair to sign the letter of support.

SOURCE OF FUNDING: N/A

DISCUSSION: Beginning January 1, 2018, all licensed cultivators in California are required to remit tax on their harvested cannabis. The licensed cultivator is required to remit the cultivation tax obligation to the California Board of Equalization (BOE) after marijuana is harvested.

AB 1410 provides an option for licensed cannabis cultivators to remit the tax obligation on the harvested cannabis through a licensed distributor, licensed under the Medical Cannabis Regulation Safety Act or licensed under the Adult Use of Marijuana Act, after the product completes the quality assurance, inspection and testing of that product. By allowing a cultivator to remit their tax obligation through a distributor, the bill allows for maximum flexibility to the cultivator.

The Board of Supervisors voted on March 21, 2017 to send a letter to Assemblymember Wood and Senator McGuire in support of AB 1410. However, since that time, several minor amendments to AB 1410 have been introduced at the request of RCRC to preserve and ensure the integrity of the tax collection process outlined in the bill. The Board is being asked to once again support AB 1410 as amended on April 4, 2017.

FINANCIAL IMPACT: N/A

Prepared by Kathy Hayes

Signature 

REVIEW:

Auditor _____ County Counsel _____ Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

Consent
 Departmental
 Public Hearing
 Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Sundberg Seconded by Supervisor Fennell

Ayes Sundberg, Fennell, Bass, Bohn


Nays

Abstain

Absent Wilson

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Apr. 18, 2017

By: 
Kathy Hayes, Clerk of the Board

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS: Text of Amended AB 1410 and Letter of Support.



BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT
825 5TH STREET, ROOM 111
EUREKA, CALIFORNIA 95501 PHONE: (707) 445-7266

April 18, 2017

Assemblymember Jim Wood
State Capitol, Room 6005
Sacramento, CA 95814

Senator Mike McGuire
State Capitol, Room 5061
Sacramento, CA 95814

**RE: AB 1410 (Wood & principal co-author McGuire) Cannabis Cultivation
Tax Collection – SUPPORT as Amended April 4, 2017**

Dear Assemblymember Wood and Senator McGuire:

I am writing on behalf of the Humboldt County Board of Supervisors to indicate our strong support for AB 1410 which would provide much needed clarity and flexibility with regard to the imposition of a tax payment at the time of harvest.

AB 1410 would allow a licensed cannabis cultivator to remit the tax obligation on the harvested product through a licensed distributor after the product completes the quality assurance, inspection and testing of that product. By allowing a cultivator to remit their tax obligation through a distributor, the bill would require a licensed distributor to file the tax return and remit the tax payment on behalf of the licensed cultivator.

AB 1410's provisions are optional. If enacted, a cultivator – and any partnering distributor – can choose to remit their tax obligations to the Board of Equalization (BOE) through the distributor. The bill provides for maximum flexibility to the cultivator. If a cultivator chose to remit their tax cultivation obligations directly to the BOE, the cultivator could do so. AB 1410 provides for a second option – giving cultivators the ability to allowing a licensed distributor to remit those tax obligations on their behalf.

We thank the author and principal co-author for their leadership of this important bill and encourage your support for assisting California's cultivators with transitioning into a fully regulated marketplace.

Sincerely,

Virginia Bass, Chair
Humboldt County Board of Supervisors

VB:kh

AMENDED IN ASSEMBLY APRIL 4, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1410

Introduced by Assembly Member Wood
(Principal coauthor: Senator McGuire)

February 17, 2017

An act to amend Sections 34012, 34014, and 34015 of, and to add Section 34012.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, as amended, Wood. Taxation: marijuana cultivation tax.

The Control, Regulate and Tax Adult Use of Marijuana Act, an initiative ~~measure~~, *measure approved as Proposition 64 at the November 8, 2016, statewide general election*, on and after January 1, 2018, imposes a cultivation tax, which the State Board of Equalization administers and collects pursuant to the Fee Collection Procedures Law, on all harvested marijuana that enters the commercial market upon all persons required to be licensed to cultivate marijuana pursuant to that act and the Medical Cannabis Regulation and Safety Act. The Control, Regulate and Tax Adult Use of Marijuana Act requires, on or before the last day of the month following each quarterly period, a tax return for the cultivation tax for the preceding quarterly period to be filed with the State Board of Equalization by each person required to be licensed for cultivation under that act and the Medical Cannabis Regulation and Safety Act. *Under existing law, a violation of provisions relating to the cultivation tax is a crime unless otherwise specified.*

~~This bill would;~~ *bill, at the time that any payment or consideration is tendered to the taxpayer, or at the time of completion of all quality assurance, inspection, and testing or when that quality assurance,*

inspection, and testing should have been completed, *whichever is earlier, would instead require authorize, if requested by the taxpayer*, a person required to be licensed as a distributor under the act and the Medical Cannabis Regulation and Safety Act to collect the cultivation tax from the taxpayer and give to the taxpayer a receipt in the manner and form prescribed by the board, except as specified. 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. This bill would provide that the tax ~~required to be collected by the~~ *that the* person required to be licensed as a distributor, *distributor collected*, and any amount unreturned to the taxpayer which is not a tax but was collected from the taxpayer under the representation by the person required to be licensed as a distributor that it was tax, constitute debts owed to the state by the person required to be licensed as a distributor.

This bill would require the person required to be licensed as a distributor *who collects the tax pursuant to these provisions* to file the tax return instead of the person required to be licensed for cultivation, except as specified. The bill would also require all persons required to be licensed as a distributors who are ~~required~~ *authorized* to collect the tax to obtain a separate permit at no charge. The bill would provide that any person required to obtain this permit who engages in business as a distributor without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor. By creating a new crime, 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.

The Control, Regulate and Tax Adult Use of Marijuana Act authorizes the Legislature to amend the act to further the purposes and intent of the act with a ~~2/3~~ $\frac{2}{3}$ vote of the membership of both houses of the Legislature, except as provided.

This bill would declare that its provisions further specified purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

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. Section 34012 of the Revenue and Taxation Code
2 is amended to read:

3 34012. (a) Effective January 1, 2018, there is hereby imposed
4 a cultivation tax on all harvested marijuana that enters the
5 commercial market upon all persons required to be licensed to
6 cultivate marijuana pursuant to Chapter 3.5 (commencing with
7 Section 19300) of Division 8 of the Business and Professions Code
8 or Division 10 (commencing with Section 26000) of the Business
9 and Professions Code. The tax shall be due after the marijuana is
10 harvested.

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

13 (2) The tax for marijuana leaves shall be set at two dollars and
14 seventy-five cents (\$2.75) per dry-weight ounce.

15 (b) The board may adjust the tax rate for marijuana leaves
16 annually to reflect fluctuations in the relative price of marijuana
17 flowers to marijuana leaves.

18 (c) The board may from time to time establish other categories
19 of harvested marijuana, categories for unprocessed or frozen
20 marijuana or immature plants, or marijuana that is shipped directly
21 to manufacturers. These categories shall be taxed at their relative
22 value compared with marijuana flowers.

23 (d) The board may prescribe by regulation a method and manner
24 for payment of the cultivation tax that utilizes tax stamps or
25 state-issued product bags that indicate that all required tax has
26 been paid on the product to which the tax stamp is affixed or in
27 which the marijuana is packaged.

28 (e) The tax stamps and product bags shall be of the designs,
29 ~~specifications~~ *specifications*, and denominations as may be
30 prescribed by the board, and may be purchased by any licensee
31 under Chapter 3.5 (commencing with Section 19300) of Division
32 8 of the Business and Professions Code or under Division 10
33 (commencing with Section 26000) of the Business and Professions
34 Code.

35 (f) Subsequent to the establishment of a tax stamp program, the
36 board may by regulation provide that no marijuana may be removed
37 from a licensed cultivation facility or transported on a public

1 highway unless in a state-issued product bag bearing a tax stamp
2 in the proper denomination.

3 (g) The tax stamps and product bags shall be capable of being
4 read by a scanning or similar device and must be traceable utilizing
5 the track and trace system pursuant to Section 26170 of the
6 Business and Professions Code.

7 (h) A person required to be licensed to cultivate marijuana
8 pursuant to Chapter 3.5 (commencing with Section 19300) of
9 Division 8 of the Business and Professions Code or Division 10
10 (commencing with Section 26000) of the Business and Professions
11 Code shall be responsible for payment of the tax pursuant to
12 regulations adopted by the board. The liability to pay the tax
13 imposed by this section is not extinguished until the tax has been
14 paid to this state, except that a receipt from a person required to
15 be licensed as a distributor pursuant to Chapter 3.5 (commencing
16 with Section 19300) of Division 8 of the Business and Professions
17 Code or Division 10 (commencing with Section 26000) of the
18 Business and Professions Code given to the taxpayer pursuant to
19 Section 34012.5 is sufficient to relieve the taxpayer from further
20 liability for the tax to which the receipt refers. No marijuana may
21 be sold unless the tax has been paid as provided in this part.

22 (i) All marijuana removed from a cultivator's premises, except
23 for plant waste, shall be presumed to be sold and thereby taxable
24 under this section.

25 (j) The tax imposed by this section shall be imposed on all
26 marijuana cultivated in the state pursuant to rules and regulations
27 promulgated by the board, but shall not apply to marijuana
28 cultivated for personal use under Section 11362.1 of the Health
29 and Safety Code or cultivated by a qualified patient or primary
30 caregiver in accordance with the Compassionate Use Act.

31 (k) Beginning January 1, 2020, the rates set forth in subdivisions
32 (a), (b), and (c) shall be adjusted by the board annually thereafter
33 for inflation.

34 SEC. 2. Section 34012.5 is added to the Revenue and Taxation
35 Code, to read:

36 34012.5. (a) *At the time that any payment or consideration is*
37 *tendered to the taxpayer, or at the time of completion of all quality*
38 *assurance, inspection, and testing as described in Section 19326*
39 *or 26110 of the Business and Professions Code or when that quality*
40 *assurance, inspection, and testing should have been completed,*

1 *whichever is earlier*, a person required to be licensed as a
2 distributor ~~shall may, if requested by the taxpayer~~, collect the tax
3 imposed by Section 34012 from the taxpayer and give to the
4 taxpayer a receipt, in the manner and form prescribed by the board.
5 This subdivision shall not apply where a taxpayer is not required
6 to *and does not* send the harvested marijuana to a person required
7 to be licensed as a distributor. *This subdivision does not affect the*
8 *authority of a taxpayer to remit the tax imposed by Section 34012*
9 *to the board by filing a return pursuant to Section 34015. This*
10 *subdivision does not require a person required to be licensed as*
11 *a distributor to collect tax under this section.*

12 (b) ~~The tax required to be collected by the~~ *that* a person required
13 to be licensed as a distributor *collected pursuant to subdivision*
14 *(a)* and any amount unreturned to the taxpayer which is not a tax
15 but was collected from the taxpayer under the representation by
16 the person required to be licensed as a distributor that it was a tax
17 constitutes debts owed by the person required to be licensed as a
18 distributor to this state. This section does not impose any obligation
19 upon a person required to be licensed as a distributor to take any
20 legal action to enforce the collection of the tax imposed by Section
21 34012.

22 (c) ~~The tax required to be collected by the~~ *a* person required to
23 be licensed as a distributor from the taxpayer *pursuant to this*
24 *section* shall be displayed separately from the price or value of the
25 harvested marijuana or other price or value displayed on any proof
26 of sales or documentation of a transaction.

27 (d) For purposes of this section, “a person required to be licensed
28 as a distributor” means a person required to be licensed as a
29 distributor pursuant to Chapter 3.5 (commencing with Section
30 19300) of Division 8 of the Business and Professions Code or
31 Division 10 (commencing with Section 26000) of the Business
32 and Professions Code.

33 SEC. 3. Section 34014 of the Revenue and Taxation Code is
34 amended to read:

35 34014. (a) (1) All persons required to be licensed involved
36 in the cultivation and retail sale of marijuana or marijuana products
37 must obtain a separate permit from the board pursuant to
38 regulations adopted by the board. No fee shall be charged to any
39 person for issuance of the permit. Any person required to obtain
40 a permit who engages in business as a cultivator, dispensary,

1 retailer, ~~microbusiness~~ *microbusiness*, or nonprofit pursuant to
2 Chapter 3.5 (commencing with Section 19300) of Division 8 of
3 the Business and Professions Code or Division 10 (commencing
4 with Section 26000) of the Business and Professions Code without
5 a permit or after a permit has been canceled, suspended, or revoked,
6 and each officer of any corporation which so engages in business,
7 is guilty of a misdemeanor.

8 (2) All persons required to be licensed as distributors pursuant
9 to Chapter 3.5 (commencing with Section 19300) of Division 8 of
10 the Business and Professions Code or Division 10 (commencing
11 with Section 26000) of the Business and Professions Code and
12 who are ~~required~~ *authorized* by Section 34012.5 to collect the tax
13 imposed by Section 34012 shall obtain a separate permit from the
14 board pursuant to regulations adopted by the board. No fee shall
15 be charged to any person for issuance of the permit required
16 pursuant to this paragraph. Any person required to obtain a permit
17 pursuant to this paragraph who engages in business as a distributor
18 required to be licensed pursuant to Chapter 3.5 (commencing with
19 Section 19300) of Division 8 of the Business and Professions Code
20 or Division 10 (commencing with Section 26000) of the Business
21 and Professions Code without a permit or after a permit has been
22 canceled, suspended, or revoked, and each officer of any
23 corporation that so engages in business, is guilty of a misdemeanor.

24 (b) The board may require every licensed dispensary, cultivator,
25 microbusiness, nonprofit, or other person required to be licensed,
26 to provide security to cover the liability for taxes imposed by state
27 law on marijuana produced or received by the cultivator,
28 microbusiness, nonprofit, or other person required to be licensed
29 in accordance with procedures to be established by the board.
30 Notwithstanding anything herein to the contrary, the board may
31 waive any security requirement it imposes for good cause, as
32 determined by the board. "Good cause" includes, but is not limited
33 to, the inability of a cultivator, microbusiness, nonprofit, or other
34 person required to be licensed to obtain security due to a lack of
35 service providers or the policies of service providers that prohibit
36 service to a marijuana business. A person may not commence or
37 continue any business or operation relating to marijuana cultivation
38 until any surety required by the board with respect to the business
39 or operation has been properly prepared, ~~executed~~ *executed*, and
40 submitted under this part.

1 (c) In fixing the amount of any security required by the board,
2 the board shall give consideration to the financial hardship that
3 may be imposed on licensees as a result of any shortage of available
4 surety providers.

5 SEC. 4. Section 34015 of the Revenue and Taxation Code is
6 amended to read:

7 34015. (a) (1) The marijuana excise tax and cultivation tax
8 imposed by this part is due and payable to the board quarterly on
9 or before the last day of the month following each quarterly period
10 of three months. On or before the last day of the month following
11 each quarterly period, a return for the preceding quarterly period
12 shall be filed with the board by each person required to be licensed
13 for cultivation or retail sale under Chapter 3.5 (commencing with
14 Section 19300) of Division 8 of the Business and Professions Code
15 or Division 10 (commencing with Section 26000) of the Business
16 and Professions Code using electronic media. Returns shall be
17 authenticated in a form or pursuant to methods as may be
18 prescribed by the board. If the cultivation tax is paid by stamp
19 pursuant to subdivision (d) of Section 34012 the board may by
20 regulation determine when and how the tax shall be paid.

21 (2) Notwithstanding paragraph (1), a person required to be
22 licensed for cultivation under Chapter 3.5 (commencing with
23 Section 19300) of Division 8 of the Business and Professions Code
24 or Division 10 (commencing with Section 26000) of the Business
25 and Professions Code shall not be required to file the return
26 described in paragraph (1) if the cultivation tax imposed by Section
27 34012 has been collected by a person required to be licensed as a
28 distributor pursuant to Chapter 3.5 (commencing with Section
29 19300) of Division 8 of the Business and Professions Code or
30 Division 10 (commencing with Section 26000) of the Business
31 and Professions Code pursuant to Section 34012.5. In that case,
32 the person required to be licensed as a distributor pursuant to
33 Chapter 3.5 (commencing with Section 19300) of Division 8 of
34 the Business and Professions Code or Division 10 (commencing
35 with Section 26000) of the Business and Professions Code who
36 has collected the tax pursuant to Section 34012.5 shall file the
37 return described in paragraph (1). The board shall authenticate the
38 return in a form or pursuant to methods as may be prescribed by
39 the board.

1 (b) The board may require every person engaged in the
2 cultivation, distribution, or retail sale of marijuana and marijuana
3 products required to be licensed pursuant to Chapter 3.5
4 (commencing with Section 19300) of Division 8 of the Business
5 and Professions Code or Division 10 (commencing with Section
6 26000) of the Business and Professions Code to file, on or before
7 the 25th day of each month, a report using electronic media
8 respecting the person's inventory, purchases, and sales during the
9 preceding month and any other information as the board may
10 require to carry out the purposes of this part. Reports shall be
11 authenticated in a form or pursuant to methods as may be
12 prescribed by the board.

13 SEC. 5. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SEC. 6. The Legislature finds and declares that this act furthers
23 the purposes and intent of the Control, Regulate and Tax Adult
24 Use of Marijuana Act by enhancing the efficiency of the
25 administration and collection of the cultivation tax imposed by
26 Section 34012 of the Revenue and Taxation Code.