

Sales tax on medicinal marijuana: dispensary or clinic?

The Board recently reaffirmed that marijuana is not an exempt medicine for sales tax purposes.

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Editor

Although the sale and use of medical marijuana is legal in California, the Board of Equalization has consistently held that sales of medical marijuana are subject to California sales tax. In a recent case, the Board denied a taxpayer's appeal on this issue, and found that they owed approximately \$6.5 million in taxes, penalties, and interest.¹

The Board had previously held that sales tax applied because medical marijuana dispensaries are not licensed pharmacies.² However, the question in this case was whether the marijuana dispensaries qualify as health facilities for purposes of the exemption under R&TC §6369(a)(3).

Exempt sales

Sales of medicines are exempt from sales tax if:

- Prescribed by a licensed physician and dispensed by a licensed pharmacist; or

- Furnished by a health facility pursuant to the order of a licensed physician.³

The Board and the taxpayer agreed that medical marijuana is a medicine for purposes of R&TC §6369, and that a physician's recommendation for medical marijuana meets the definition of a prescription if it meets the requirements of 18 Cal. Code Regs. §1591(a)(7). However, the Board did not agree that the dispensary qualified as a clinic for purposes of the health facility exemption.

The Board stated that Health and Safety Code requires a clinic to be licensed as

a clinic, and the dispensary in this case was not licensed as a clinic. As a result, the Board found that the taxpayer did not qualify for a sales tax exemption. ☹

¹ *Appeal of Berkeley Patients' Group, Inc.* (February 16, 2011) Cal. St. Bd. of Equal. Case No. 426761

² BOE Special Notice, February 2007. Available at: <http://www.boe.ca.gov/news/pdf/medseller2007.pdf>

³ R&TC §6369

⁴ <http://www.boe.ca.gov/news/2011/32-11-H.pdf>

BOE takes strong position on medical marijuana

After the decision was issued in the Berkeley case, Jerome E. Horton, Chairman of the California Board of Equalization, issued a statement that the Board's decision reaffirmed the BOE's position on the taxability of medical marijuana.⁴

The statement reminds taxpayers that sellers of marijuana are required to hold a seller's permit and are required to file and pay sales tax. Additionally, taxpayers who make sales without a seller's permit are also generally subject to an eight-year look-back period for taxes, penalties, and interest.

Horton is also proposing legislation to regulate the distribution of marijuana from the growers to the retailers as a way of controlling illegal sales and assessing tax when properly due. Under the proposed legislation, the BOE would administer a statewide license program for every marijuana grower, importer, wholesaler, and retailer in order to regulate marijuana sales in the state.

A tax would be imposed on the distribution of medicinal marijuana at a rate equivalent to that imposed upon tobacco products. Any marijuana or marijuana products distributed by any unlicensed person would be subject to seizure. In addition, the unlicensed person would be subject to a fine of up to \$5,000 or imprisonment not to exceed one year in county jail, or both.