

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Geoffrey E. Lyle, Supervisor, Business Taxes Committee and Training Section at (916) 322-0849.

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

JLM: ca

Enclosures

cc: (all with enclosures)

Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Member, First District
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel (MIC 73)
Mr. Chris Schutz, Board Member's Office, Fourth District (MIC 72)
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)
Ms. Judi Apfel, Board Member's Office, First District (via e-mail)
Ms. Sabina Crocette, Board Member's Office, First District
Mr. Kenneth Topper, Board Member's Office, First District (MIC 71)
Mr. Steve Kamp, Board Member's Office, First District (MIC 71)
Mr. Ramon J. Hirsig (MIC 73)
Ms. Kristine Cazadd (MIC 83)
Ms. Randie L. Henry (MIC 43)
Ms. Selvi Stanislaus (MIC 82)
Mr. Randy Ferris (MIC 82)
Ms. Carla Caruso (MIC 82)
Ms. Sharon Jarvis (MIC 82)

Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Mr. Todd Gilman (MIC 70)
Mr. Dave Hayes (MIC 67)
Mr. Joseph Young (via e-mail)
Mr. Vic Anderson (MIC 44 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Ms. Susanne Buehler (MIC 40)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Mr. Charles E. Arana Jr. (MIC 50)
Ms. Cecilia Watkins (MIC 50)

SECOND DISCUSSION PAPER

Proposed revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 2, *Registration*, to clarify whether the Board should issue a seller's permit to a person requesting a seller's permit for the sale of tangible personal property, regardless of whether the sale of such property is lawful in this state

I. Issue

Should Compliance Policy and Procedures Manual (CPPM) Chapter 2, *Registration*, be revised to clarify whether the Board should issue a seller's permit to a person requesting a seller's permit for the sale of tangible personal property, regardless of whether the sale of such property is lawful in this state.

II. Staff Recommendation

Staff recommends that the Board revise its current policy and begin issuing seller's permits to persons requesting permits for the sale of tangible personal property, regardless of whether the sale of such property is lawful in this state. Since this issue concerns an administrative policy rather than a change in the application of tax, staff recommends that an additional statement be incorporated in CPPM chapter 2, section 210.010 (Exhibit 1). This chapter provides taxable activity registration policy and procedures for sales and use tax permits. Staff recommends addition of the following:

“A permit shall be issued to any person who requests one for the sale of tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of sales tax, whether or not the sales or the property sold are unlawful in this state. The person requesting the permit must complete a seller's permit application and provide the information necessary for the Board to administer the state's sales and use tax laws. When the Board has knowledge of unlawful sales, the permit holder will be notified that any sale of tangible personal property is taxable in this state unless exempted or excluded by law, and that the seller's permit is issued to allow the permit holder to report and pay the taxes due. The permit holder will be further informed that issuance of the permit must not be construed as authorizing the permit holder to engage in any business contrary to laws regulating that business or to possess or operate any illegal device, or illegal tangible personal property.”

III. Other Interested Parties' Proposals

Proposal 1 (Exhibit 2)

Acting Board Member Betty Yee proposes to amend Regulation 1699, *Permits*, as follows:

“The Board of Equalization shall issue a permit to any person engaged in the business of selling [or leasing under a lease defined as a sale in Revenue & Taxation Code Section 6006(g)] tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of sales tax, who otherwise qualifies under any provision of this Regulation, and will not inquire or take action on information regarding any aspects of tangible personal property proposed to be sold (or leased) by a seller's permit applicant, other than information or aspects related to the Sales and Use Tax Law.”

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In addition, this proposal calls for the withdrawal of all annotations and any staff-issued opinions that are inconsistent with the proposed amendments.

In support of this proposal, Ms. Yee explains: “Since the sale of medicinal marijuana is indisputably a taxable transaction, it makes no sense for the Board to refuse to grant the seller’s permit that Regulation 1699 requires of anyone proposing to sell tangible personal property.”

Proposal 2 (Exhibit 2)

As an alternative to her first proposal, Ms. Yee proposes to amend Regulation 1699 to provide:

“When a person informs the Board in an application for a seller’s permit that it plans to sell ‘medicinal’ marijuana or ‘medical’ cannabis, or any other illegal tangible personal property the sale of which is illegal under California or federal law, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board will inform the applicant in writing that although a seller’s permit will be issued for the sale of legal tangible personal property, the permit does not allow for the sale of ‘medical’ marijuana or other illegal merchandise. The Board will also inform the permitholder in writing, expressly pursuant to Revenue & Taxation Code Section 6596 and Regulation 1705, that the Board will not include in the permitholder’s taxable gross receipts or other measure of tax any receipts from sales of products which the Board has advised the permitholder in writing are not permitted to be sold under the permit.”

This alternative also calls for the withdrawal of all annotations and any staff-issued opinions that are inconsistent with the proposed amendments.

In support of this proposal Ms. Yee explains “However, since the Board is refusing to issue seller’s permits to sellers of medicinal marijuana and other “illegal merchandise,” even though Revenue & Taxation Code Section 6066 and Regulation 1699 requires all sellers of tangible personal property to obtain permits, it makes no sense to state that tax applies even though a permit will not be issued.”

Proposal 3 (Exhibit 3)

In his submission on July 19, 2005, Mr. Nathan Sands of The Compassionate Coalition recommends that the Board (1) eliminate any policies or guidelines which state that sales of “medical” marijuana are illegal, and (2) apply current tax law to the distribution of “medical” marijuana. He believes the following statement should be part of Board policy:

“Primary caregiver sales of medical marijuana, in accordance with Health & Safety Code 11362.5 and 11362.7, are subject to standard sales tax and exemptions. Primary caregiver services, such as health services, plant maintenance, etc., are exempt from taxation.”

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Proposal 4 (Exhibit 4)

In his July 1, 2005, submission, Mr. Chris Conrad relies on Health and Safety Code sections 11362.5 and 11362.7 to suggest that “medical” marijuana is as close to a prescription drug as a state can make it in the face of federal prohibition. He believes that circumstance provides a rational argument for exempting “medical” marijuana sales.

Mr. Conrad also raises the issue of the right against self-incrimination to propose that persons selling miscellaneous items in addition to marijuana be required to pay the taxes due without having to report the source of the income and without filling out any forms that could be used against the person in federal court.

Mr. Conrad states that, in the event that sales of “medical” marijuana are held to be taxable, there must be an amnesty for any taxes considered due on past sales of cannabis (1) because of what Mr. Conrad views as the inherent confusion of conflicting policies without a clear policy that sellers of “medical” marijuana could have followed and (2) to ensure future compliance.

IV. Background

At a Board hearing on February 8, 2005, the Board heard a case involving the sale of marijuana and directed staff to initiate the Business Taxes Committee (BTC) process to review its policy regarding issuance of seller’s permits to sellers requesting a permit for unlawful sales of tangible personal property, “medical” marijuana in this instance. The Board is seeking to provide clear guidance to sellers of “medical” marijuana regarding the application of tax to their sales, their liability to pay the tax to the Board, and the mechanism available to report the tax.

Statutory and Regulatory Authorities

A. Taxable sales:

Revenue and Taxation Code (RTC) section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state, except as specifically exempted (or excluded) by statute. Section 6091 provides that it “shall be presumed that all gross receipts are subject to the tax until the contrary is established....” Nothing in the Sales and Use Tax Law specifically excludes from taxation the gross receipts from the sale of contraband or illegal substances. Therefore, sales of “medical” marijuana¹ are subject to tax and a person making sales of “medical” marijuana owes sales tax whether or not that person has a seller’s permit.

¹ Although the cultivation and use of marijuana by certain persons upon recommendation of a physician was decriminalized by California state law in 1996, we believe that the *sale* or possession for sale of marijuana remains illegal under California state law. (Health & Safety Code, sections 11362.5, 11360(a), and 11359.)

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B. Permit Requirements and Tax Reporting

RTC section 6066 and Regulation 1699, *Permits*, provide that every person desiring to conduct business as a seller of tangible personal property within this state shall file with the Board an application for a permit for each place of business. Section 6067 generally provides that the Board shall grant and issue to each applicant a separate permit for each place of business in the state. Section 6071 provides that a person who engages in business as a seller in this state without a permit is guilty of a misdemeanor punishable as provided in the law.

A seller's permit issued by the Board is the mechanism by which sellers periodically report their sales of tangible personal property and the tax due on those sales to the Board. Sellers of tangible personal property who are required to hold, and do hold, seller's permits are instructed by the Board to file periodic sales and use tax returns to report the gross receipts from sales of tangible personal property, to deduct from that amount the gross receipts from those sales to which an exemption or exclusion applies, and to remit tax to the Board based upon the adjusted gross receipts. (RTC, sections 6452, 6453, and 6455.)

We note that on October 12, 2003, the Governor signed into law Senate Bill 420, which added Article 2.5, titled "Medical Marijuana Program," to Chapter 6 of Division 10 of the Health and Safety Code (section 11362.7, et seq.). The Medical Marijuana Program in part creates a voluntary system for qualified patients and caregivers to obtain an identification card that will insulate them from arrest for violations of state law relating to marijuana. (Health & Safety Code, sections 11362.765 and 11362.775.)

Health and Safety Code section 11362.765, enacted as part of the Medical Marijuana Program, provides:

"(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570 [of the Health and Safety Code]. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

"(b) Subdivision (a) shall apply to all of the following:

- (1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.
- (2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.
- (3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

"(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment of out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360."

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C. Records

RTC sections 7054, 7055, and Regulation 1698, *Records*, require every seller and retailer selling tangible personal property in this state to keep records. They also authorize the Board to examine the books and records in order to verify the accuracy of returns or to ascertain the amount of sales or use tax required to be paid.

D. Current Board policy regarding issuance of permits

Generally, when a person applies for a seller's permit to sell tangible personal property in this state, the Board issues a seller's permit to that person. The permit includes a warning indicating it is not a permit to sell unlawful tangible personal property. Specifically, the permit states: "This permit does not authorize the holder to engage in any business contrary to laws regulating that business or to possess or operate any illegal device." If the person sells tangible personal property the sale of which is lawful, such as T-shirts, pipes, vitamins, or medical supplies, the person must hold, and will be issued, a seller's permit for the sale of these items. However, if the person also sells tangible personal property the sale of which is unlawful, the person is required to report and pay the tax on the gross receipts from the sale of all tangible personal property, including property the sale of which is unlawful.

The Board's longstanding policy precludes issuance of a seller's permit to a person whose only selling activity is the unlawful sale of tangible personal property. This policy is explained in Sales and Use Tax Annotation 410.0202, *Refusal to Issue a Seller's Permit* (9/30/85; 7/15/96) (Exhibit 5). That annotation states that a party to an illegal enterprise cannot require the Board to issue, or to continue in good standing, a seller's permit which specifically grants the privilege of engaging in the illegal enterprise. The annotation concludes, "The Board's staff discretion must be exercised so as not to confer permissive authority on a person to embark on, or to continue, an illegal activity." (*Ibid.*)

Some 10 years after issuance of this annotation, the Compassionate Use Act of 1996 ("Act") decriminalized the cultivation and use of marijuana by certain persons on the recommendation of a physician (Health & Safety Code, section 11362.5). However, the sale or possession for sale of marijuana remains illegal (Health & Safety Code, sections 11362.5, 11360(a), and 11359²; but

² The sale of marijuana, and the possession for sale of marijuana, are also illegal under federal law. The Controlled Substances Act ("CSA") provides that, "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally...to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." (21 U.S.C., section 841(a)(1).) Provisions of the CSA establish various exceptions. For marijuana (and other drugs that have been classified as "schedule I" controlled substances), only one exception is available, and that is for federal government-approved research projects. (21 U.S.C., section 823(f); *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 489-490.) In *United States v. Oakland Cannabis Buyers' Cooperative*, *supra*, 532 U.S. 483, 494, the United States Supreme Court held that a defense of medical necessity was unavailable to the CSA's prohibition of the manufacture and distribution of

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see Health & Safety Code section 11362.765³). Consistent with the Board policy in place before the Act, the Board continued its policy not to issue seller's permits for the unlawful sale of tangible personal property. Thus, no seller's permits are issued for the sale of marijuana. However, notwithstanding this policy, the Board has the authority to assess tax on sales of marijuana or other unlawful substances when it becomes aware of such sales. With regard to "medical" marijuana and the Act, the Board's policy is reflected in Sales and Use Tax Annotation 410.0178, *Medical Marijuana* (12/9/02). (Exhibit 6). That annotation explains, in part, that when a person informs the Board in an application for a seller's permit that he or she plans to sell "medical" marijuana, that person will be informed that (1) a seller's permit will be issued for the sale of legal tangible personal property, (2) the seller's permit does not allow for the sale of "medical" marijuana or other illegal merchandise, and (3) if "medical" marijuana is sold, its sale is subject to tax.

An interested parties meeting was held on June 28, 2005, to discuss whether current Board policy regarding issuance or denial of a seller's permit to a person who requests such a permit for the sale of unlawful substances should change. At the meeting, three interested parties submissions had been received and were discussed, see attached Exhibits 2, 7, and 8. This topic is scheduled for discussion at the October 25, 2005, Business Taxes Committee meeting.

V. Discussion

Current law does not exempt or exclude from taxation unlawful sales or sales of unlawful substances, and such sales are subject to tax. Current law also requires every person desiring to conduct business as a seller of tangible personal property to file an application for a permit. Staff has reconsidered the policy of denying a seller's permit to a person requesting a permit for the sale of "medical" marijuana or other unlawful sales since the tax is due on these sales and the permit is the standard mechanisms by which sellers report sales and pay the tax. Staff recommends that the Board issue a seller's permit to any person requesting a permit, regardless

marijuana. The Court also noted that a medical necessity defense was likewise unavailable to any other prohibition of the CSA. (*Id.* at 494, fn. 7.)

The federal CSA applies to "intrastate incidents of the traffic in controlled substances," as well as to interstate traffic in controlled substances. (21 U.S.C., section 801(6), emphasis added.) Accordingly, the manufacture and distribution of marijuana in intrastate traffic in California is prohibited by federal law. (*United States v. Tisor* (9th Cir. 1996) 96 F. 3d 370, 372-375.)

We note that on June 6, 2005, the United States Supreme Court issued its opinion in *Gonzales, et al. v. Raich, et al.* (June 6, 2005, No. 03-1454 __U.S. __ [2005 U.S. LEXIS 4656]), holding that Congress' Commerce Clause authority includes the power to prohibit the cultivation and consumption of marijuana, including locally cultivated and domestically used marijuana. The Supreme Court held that the CSA, a federal statute validly enacted under the Commerce Clause, prohibits intrastate cultivation and use of marijuana in compliance with state law, that is, the Compassionate Use Act of 1996 (Health & Safety Code, section 11362.5). (*Ibid.*)

³ See footnote 1, *supra*.

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of the nature of the sale, so long as the gross receipts from such sales are required to be reported under the Sales and Use Tax Law.

Staff's recommendation is consistent in part with Interested Parties' Proposals 1, 3, and 4 above in that it allows a seller of "medical" marijuana to request and obtain a seller's permit to report and pay the tax. However, the following discussion highlights the differences between the staff recommendation and Proposals 1 through 4.

- Information furnished to Board – Self-incrimination issue

The staff recommendation presumes that a person applying for a seller's permit, whether engaged in legal or unlawful sales, or selling "medical" marijuana, must complete the information requested on an application for permit (Form BOE-400-SPA, *California Seller's Permit Application*, can be obtained at any field office or on the Board's website at <http://www.boe.ca.gov/pdf/boe400spa.pdf>) and on the sales and use tax return forms. Information requested on an application includes owner and business names, address, type of business, start date, list of vendors, banking information, and social security number(s). In addition, the seller's permit application specifically asks what items will be sold. This information is deemed necessary for the issuance of a seller's permit and to properly code the account for the proper administration of the sales and use tax program in a uniform and fair manner. Among other things, it is used to determine the taxpayer's reporting basis (quarterly, yearly); send notices, tax returns, and billings; correspond with taxpayers; distribute local and transit taxes to appropriate jurisdictions; and develop statistical data. In addition, the staff recommendation does not discriminate among taxpayers and provides that all of the returns on which the self-assessments are made are subject to verification by audit. (CPPM 505.020).

On the other hand, Proposal 1 specifies that the Board will not inquire or take action on information regarding merchandise proposed to be sold by a taxpayer, other than information related to the Sales and Use Tax Law. Staff believes the information collected by the Board relates solely to the Sales and Use Tax Law and its administration. Specifically, obtaining information such as items that will be sold is needed to determine if other permits or fee programs are required of the seller's permit applicant.

In addition, Proposal 4 suggests that taxpayers who engage in unlawful sales be required to pay tax without having to report the source of the income and without filling out any forms that could be used against the person in federal court.

As set forth in the privacy notice the Board furnishes all applicants, the Board has entered into information-sharing agreements with various federal, state, and local government agencies, and may disclose information to the proper officials of these agencies. In addition, an existing Governor's Order authorizes disclosure of information to local law enforcement and the United States Attorney. Moreover, this agency may be compelled to produce information or documents in court proceedings by means of a subpoena or subpoena duces tecum. (See, e.g., Code of Civil Procedure section 1985, et seq.) While staff recommends revising Board policy to issue seller's

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permits to sellers engaged in unlawful sales, staff believes it does not have the authority to protect a group of taxpayers from disclosure, pursuant to information-sharing agreements, Governor's Order, and statute, of available information, or the authority to override the statutory requirements to maintain records and collect the information necessary to administer the sales and use tax program. (See, e.g., *California v. Byers* (1971) 402 U.S. 424, holding that the privilege against self-incrimination was not infringed by the hit-and-run statute (requiring the driver of a motor vehicle involved in an accident resulting in damage to any property to stop at the scene and give name and address), since a substantial risk of self-incrimination did not result from complying with the statute, which was essentially regulatory, and which was directed at the public at large, rather than a highly selective group inherently suspect of criminal activities.)

Statutory and regulatory authority

Proposal 2 recommends that the Board consider the gross receipts from the sale of "medical" marijuana not taxable. Staff believes without a statutory amendment, there is no basis to exclude such gross receipts from the application of tax since the Sales and Use Tax Law provides that all sales of tangible personal property are subject to tax unless exempted or excluded by law. There is currently no statutory exemption or exclusion from tax for the sale or use of "medical" marijuana.

Proposal 3 requests that the Board eliminate statements regarding unlawful sales of "medical" marijuana. While staff disagrees with Mr. Sands regarding the legality of "medical" marijuana sales, the staff proposal to issue seller's permits to sellers of "medical" marijuana is consistent with Mr. Sands' proposal to apply current law to the distribution of "medical" marijuana. With respect to his suggested language regarding tax exemptions for primary caregiver and health care services, staff believes his proposal as well as Proposal 4 do not meet the definition of health care facilities in RTC section 6369 (Prescription Medicines), and that sales of "medical" marijuana by and to dispensaries and primary caregivers are subject to tax. In addition, the statute exempts sales and use of "medicines" when prescribed by a licensed physician and dispensed on a prescription filled by a registered pharmacist in accordance with law. Since caregivers and "medical" marijuana dispensaries generally are not registered pharmacists, their sales are subject to tax. The application of tax to sales of "medical" marijuana by dispensaries, and whether such sales are subject to exemption or exclusion from tax under existing statutes is beyond the scope of this Business Taxes Committee topic. However, Messrs. Sands, Conrad, or other parties may request an opinion letter from the Board's Legal Department regarding the application of tax to a specific set of facts.

Prospective basis

Proposal 4 calls for an amnesty for any taxes considered due on past sales of "medical" cannabis due to the inherent confusion in tax policies and to ensure future compliance. Staff believes the Board has no authority to institute a tax amnesty for overdue taxes. Industry may wish to pursue a legislative proposal for such amnesty.

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However, RTC section 6596 and Regulation 1705, *Relief from liability*, provides relief from tax, penalty, or interest charges if the Board determines a taxpayer did not correctly report tax because it reasonably relied on written advice provided by the Board regarding a transaction. Any seller who relied on such advice may apply with the Board for relief from the tax, interest, and penalty. Requests received by the Board are handled on a case by case basis based on the provisions of the statute and the regulation. An electronic copy of Regulation 1705 is available at <http://www.boe.ca.gov/pdf/reg1705.pdf>.

VI. Summary

Since the gross receipts from unlawful sales of “medical” marijuana and other illegal substances are subject to tax, staff is recommending that the Board revise its Compliance Policy and Procedures Manual to specifically direct staff to issue a seller’s permit to any seller required to hold a permit under the law, whether or not the sale or the substance sold is unlawful. The staff recommendation is consistent in part with the proposals submitted by interested parties in regard to the issuance of a seller’s permit. However, the proposals differ from the staff recommendation in three main areas: First, the “medical” marijuana industry has concerns with self-incrimination that could result from the requirement that taxpayers furnish sales and use tax information to the Board; second, some of the proposals recommend exclusion of sales of “medical” cannabis from tax, or an interpretation of current law as exempting sales of “medical” marijuana to and by cannabis clubs; and third, some interested parties would like the Board to adopt a prospective date for requiring sellers of “medical” cannabis to report the tax due.

Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties’ meeting scheduled for August 11, 2005, in Sacramento, to discuss the differences between the staff recommendation and their views.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 07/29/2005

SALES TAX PERMITS**210.000****SELLER'S PERMIT****210.010**

Every person desiring to engage in the business of selling tangible personal property, the gross receipts from the ultimate retail sale of which must be included in the measure of sales tax, must file an application for a seller's permit for each place of business in California. The applicant must furnish such security, as the Board deems necessary, in a form acceptable to the Board.

Persons from out of state who maintain a stock of goods in California from which orders are filled are considered "sellers" under the California Sales and Use Tax law, and are required to hold a seller's permit. (Revenue and Taxation Code section 6006.)

A permit shall be issued to any person who requests one for the sale of tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of sales tax, whether or not the sales or the property sold are unlawful in this state. The person requesting the permit must complete a seller's permit application and provide the information necessary for the Board to administer the state's sales and use tax laws. When the Board has knowledge of unlawful sales, the permit holder will be notified that any sale of tangible personal property is taxable in this state unless exempted or excluded by law, and that the seller's permit is issued to allow the permit holder to report and pay the taxes due. The permit holder will be further informed that issuance of the permit must not be construed as authorizing the permit holder to engage in any business contrary to laws regulating that business or to possess or operate any illegal device, or illegal tangible personal property.

Under the Sales and Use Tax Law, "person" is defined as any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit. A cooperative association that is not incorporated is treated as a partnership with each member fully liable. (Revenue and Taxation Code section 6005.)

Any administrator, executor, trustee or any other person who operates a business as a fiduciary must file an application for a permit or license. These persons, although under the jurisdiction of the courts, must operate according to the laws of the state.

"Living Trust" is a legal entity set up by persons for estate planning purposes. A person may place his/her assets into a living trust, and upon his/her death, assets may be distributed more quickly to heirs, often bypassing probate entirely. A living trust must have a trustee. Living trusts may operate businesses, and should be treated as a corporation when processing applications. Offices should view copies of legal documents establishing a living trust if any doubt exists whether the trust has been properly formed.

Other types of trusts that are about to engage in business should establish to the Board's satisfaction that they are legally formed. "Legally formed" would include documentation from the Franchise Tax Board, Secretary of State, Superior Court, or other authority, or for living trusts, copies of documents establishing the legal trust. If any doubt exists a permit should not be issued until further investigation is made.

May 17, 2005

Memorandum

To: Jeff McGuire, Tax Policy Manager
Tax Policy Division

From: Betty T. Yee, Acting Member
Acting Member, First District

Subject: Interested Parties Process: Seller's Permits for Medicinal Marijuana

I hereby submit the following two proposals for consideration in the Interested Parties process for Seller's Permits:

Proposal #1: Issue Seller's Permits to Anyone

- Add the following new paragraph at the end of existing subdivision (a) of Regulation 1699, *Permits*:

“The Board of Equalization shall issue a permit to any person engaged in the business of selling [or leasing under a lease defined as a sale in Revenue & Taxation Code Section 6006(g)] tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of sales tax, who otherwise qualifies under any provision of this Regulation, and will not inquire or take action on information regarding any aspects of tangible personal property proposed to be sold (or leased) by a seller's permit applicant, other than information or aspects related to the Sales and Use Tax Law.”

- Withdraw Annotation 410.0178, to the extent it is inconsistent with the amendment proposed above in this Proposal #1.
- Withdraw all other Annotations, Legal Department advice letters, and/or Sales and Use Tax Department advice letters, to the extent any of these is inconsistent with the amendment proposed above in this Proposal #1.

Current Board Practice: As described in Annotation 410.0178, “Medicinal Marijuana”: “Since 1996, the Board has adopted a policy of not issuing seller's permits to a person or persons who will engage solely in the sale of marijuana. . . . When a person informs the Board in an application for a seller's permit that it plans to sell ‘medicinal’ marijuana or ‘medical’ cannabis, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board should inform the applicant that although a seller's permit will be issued for the sale of legal tangible personal property, the permit does not allow for the sale of ‘medical’ marijuana or other illegal merchandise. If ‘medical’ marijuana is sold, its sale is subject to tax.”

There is no existing Board regulation on this subject.

Background: On February 8, 2005, the Board heard a claim for refund from Ms. Kathleen Lovell Lemons, doing business as The Hemp Center, which sold tangible personal property, including medicinal cannabis. Petitioner claimed her sales of medicinal cannabis as exempt because she believed she had been advised the Board would not issue a seller's permit for sales of medicinal cannabis. Although the Board denied the claim for refund, it voted 5-0 to review in the Business Taxes Committee the Board's policy regarding the issuance of seller's permits in these circumstances. The hearing transcript reflects Boardmember concern that the policy was developed by Board staff without Boardmember or public input.

Proposal #1 outlined above recognizes the November 1996 voter approval of Proposition 215, the Compassionate Use Act, codified in Health & Safety Code Section 11362.5. This initiative statute legalized the possession and/or cultivation of "marijuana for personal medical purposes of the patient upon the written or oral recommendation of the physician." However, it did not address the sale of medicinal marijuana. Since medicinal marijuana is indisputably tangible personal property, it is indisputably taxable under Revenue & Taxation Code Section 6016, which defines this term as "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses."

Since the sale of medicinal marijuana is indisputably a taxable transaction, it makes no sense for the Board to refuse to grant the seller's permit that Regulation 1699 requires of anyone proposing to sell tangible personal property.

Alternative Proposal #2: No Seller's Permits, No Taxation

- Add the following new paragraph at the end of existing subdivision (a) of Regulation 1699, *Permits*:

"When a person informs the Board in an application for a seller's permit that it plans to sell 'medicinal' marijuana or 'medical' cannabis, or any other illegal tangible personal property the sale of which is illegal under California or federal law, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board will inform the applicant in writing that although a seller's permit will be issued for the sale of legal tangible personal property, the permit does not allow for the sale of 'medical' marijuana or other illegal merchandise. The Board will also inform the permitholder in writing, expressly pursuant to Revenue & Taxation Code Section 6596 and Regulation 1705, that he Board will not include in the permitholder's taxable gross receipts or other measure of tax any receipts from sales of products which the Board has advised the permitholder in writing are not permitted to be sold under the permit."

- Withdraw Annotation 410.0178, to the extent it is inconsistent with the amendment proposed above in this Alternative Proposal #2.

- Withdraw all other Annotations, Legal Department advice letters, and/or Sales and Use Tax Department advice letters, to the extent any of these is inconsistent with the proposed amendment above in this Alternative Proposal #2..

Current Board Practice: As described in Annotation 410.0178, “Medicinal Marijuana”: “Since 1996, the Board has adopted a policy of not issuing seller’s permits to a person or persons who will engage solely in the sale of marijuana. . . . When a person informs the Board in an application for a seller’s permit that it plans to sell ‘medicinal’ marijuana or ‘medical’ cannabis, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board should inform the applicant that although personal property, the permit does not allow for the sale of ‘medical’ marijuana or other illegal merchandise. If ‘medical’ marijuana is sold, its sale is subject to tax.” (Emphasis added)

There is no existing Board regulation on this subject.

Background: On February 8, 2005, the Board heard a claim for refund from Ms. Kathleen Lovell Lemons, doing business as The Hemp Center, which sold tangible personal property, including medicinal cannabis. Petitioner claimed her sales of medicinal cannabis as exempt because she believed she had been advised the Board would not issue a seller’s permit for sales of medicinal cannabis. Although the Board denied the claim for refund, it voted 5-0 to review in the Business Taxes Committee the Board’s policy regarding the issuance of seller’s permits in these circumstances. The hearing transcript reflects Boardmember concern that the policy was developed by Board staff without Boardmember or public input.

Alternative Proposal #2 recognizes the November 1996 voter approval of Proposition 215, the Compassionate Use Act, codified in Health & Safety Code Section 11362.5. This initiative statute legalized the possession and/or cultivation of “marijuana for personal medical purposes of the patient upon the written or oral recommendation of the physician.” However, it did not address the sale of medicinal marijuana.

Since medicinal marijuana is indisputably tangible personal property, it is indisputably taxable under Revenue & Taxation Code Section 6016, which defines this term as “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.”

However, since the Board is refusing to issue seller’s permits to sellers of medicinal marijuana and other “illegal merchandise,” even though Revenue & Taxation Code Section 6066 and Regulation 1699 requires all sellers of tangible personal property to obtain permits, it makes no sense to state that tax applies even though a permit will not be issued.”

Please direct any questions about these two proposals to Steven Kamp, Senior Tax Counsel in my office at (916) 445-7204.

Thank you for your attention to this matter.

cc: Charles Arana, Business Tax Specialist, Tax Policy Division
Steven Kamp, Senior Tax Counsel, Office of Acting Board Member Yee

July 19, 2005

California State Board of Equalization
C/o Chuck Arana
PO BOX 942879
Sacramento, CA 94279-0092



Attn: California State Board of Equalization,

I am writing on behalf of The Compassionate Coalition regarding the Board of Equalization's position on taxation of medical marijuana sales. After thoroughly examining this issue, and soliciting input from medical marijuana patients and caregivers across California, we have come to the conclusion that medical marijuana sales should be subject to standard sales tax. In this letter I hope to explain California's laws that permit medical marijuana sales, and propose a system for taxation of these legal sales.

California's Compassionate Use Act, approved by California voters in 1996, created a right for patients to obtain and use medical marijuana with the recommendation of a physician (Health & Safety Code 11362.5). While the Compassionate Use Act did not specify the method of distribution for medical marijuana, legislation passed in 2003 by the California Senate does clarify this point. Senate Bill 420, now Health & Safety Code 11362.7, makes it clear that medical marijuana may be legally distributed via primary caregivers, cooperatives, and collectives.

Health & Safety Code 11362.7 starts by defining the "primary caregiver", which performs an essential function in medical marijuana law:

- (d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
 - (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
 - (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

Health & Safety Code 11362.756 states that patients and primary caregivers are specifically exempt from criminal marijuana laws when acting in accordance with the Compassionate Use Act of 1996. Additionally, 11362.756 states that a primary caregiver may receive "reasonable compensation" for services and expenses incurred in the course of providing medical marijuana to a qualified patient:

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

Health & Safety Code 11362.775 further states that patients and primary caregivers may legally cultivate medical marijuana “collectively or cooperatively”:

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

California’s Health & Safety Code 11362.7 makes it clear that medical marijuana distribution is legal via caregivers, collectives and cooperatives. Additionally, 11362.7 plainly states that primary caregivers are exempt from criminal statutes relating to marijuana distribution and sales, even when the caregiver “receives compensation for actual expenses, including reasonable compensation incurred for services”.

California’s Health & Safety Code 11362.7 permits a caregiver to receive compensation for reimbursement and services, which could fall under the Board of Equalization’s definition of a “sale”. In such cases, the sale of medical marijuana would be legal. **In order to comply with**

the laws of California, we recommend that the California State Board of Equalization eliminate any policies or guidelines which state that medical marijuana sales are illegal.

We further recommend that that the Board of Equalization apply current tax law to the distribution of medical marijuana. In some cases, a primary caregiver may provide services for a medical marijuana patient, which may include health services, plant maintenance, etc.; under current tax law, these services should be exempt from sales tax. In other cases, a primary caregiver may provide a specified amount of medical marijuana to a patient in exchange for compensation; under current tax law, such a transaction would qualify as a sale, and should be subject to standard sales tax.

This proposal does not require any changes or amendments to current laws, and could be adopted as Board of Equalization policy using the following statement:

"Primary caregiver sales of medical marijuana, in accordance with Health & Safety Code 11362.5 and 11362.7, are subject to standard sales tax and exemptions. Primary caregiver services, such as health services, plant maintenance, etc., are exempt from taxation."

Under this proposal, medical marijuana sales would be regarded as legal, when conducted within the scope of California's medical marijuana laws. As such, medical marijuana sellers would be eligible for sales tax sellers permits from the Board of Equalization, even for the sales of medical marijuana only.

Thank you for your time and consideration. The Compassionate Coalition hopes to continue working with the Board of Equalization to help you understand the laws relating to medical marijuana, and to implement a fair and reasonable policy to tax the sales of medical marijuana.

Please contact us with any questions or concerns.

Sincerely,

Nathan Sands

Chairman of the Board

The Compassionate Coalition

1205 Linden Road

West Sacramento, CA 95691

www.CompassionateCoalition.org

Email: nathan@CompassionateCoalition.org

Phone: (916) 709-2483

-----Original Message-----

From: Chris Conrad [mailto:chris@chrisconrad.com]
Sent: Friday, July 01, 2005 7:28 PM
To: Arana, Chuck
Subject: Comment on medical marijuana sales tax policy

Dear Charles Arana,

I regret that I was unable to attend the hearings earlier this week on taxation of medical marijuana, due to my court work as a cannabis expert.*

Given the clear intent of voters to allow marijuana as medicine despite the DEA's refusal to allow doctors to prescribe it, it may also be exempt from sales tax as it is regarded like "any prescription drug" (see *People v. Mower*, 28Cal.4th 457[2002]); HS 11362.5 and HS11362.7 are, simply, as close to a prescription drug as a state can make it in the face of federal prohibition. That circumstance provides a rational argument against its being taxed at all.

However, as it stands cannabis is not a prescription-specific remedy, and it is well known that many dispensaries sell other items that should be taxed. So there needs to be some equity applied.

It is imperative that people's right against self-incrimination be protected, which in the context of federal law means that they may be liable to sales tax on gross sales but should not have to report whence the income is derived or to fill out any forms that could be used against them in federal court.

Lastly, in the event that medical marijuana is held to be a taxable commodity, there must be an amnesty for any taxes considered due on past sales of cannabis, due to the inherent confusion of conflicting policies without any clear policy they could have followed. That will encourage future compliance.

Thank you for your work in this regard. I anticipate that you will come up with a fair approach that does not jeopardize the will of the voters and legislature to provide for sales of cannabis to qualified patients in California, nor that causes undue expense and encumbrance upon patients and providers.

-- Chris Conrad <chris@chrisconrad.com>
PO Box 1716, El Cerrito CA 94530 USA
510-215-8326 / Fax: 510-234-4460

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* For a copy of my CV and other relevant information, visit:
<http://www.chrisconrad.com> / www.safeaccessnow.net/
www.equalrights4all.org/

Annotation 410.0202, Refusal to Issue a Seller's Permit

410.0202 **Refusal to Issue a Seller's Permit.** The Board does have a legal basis for refusing to issue or revoking a seller's permit when state law makes it illegal to sell tangible personal property at the particular location in question. A person cannot legally engage in business as a seller at locations where selling is forbidden by state law (including state regulations which have the force and effect of law). The legal basis is that a party to an illegal enterprise cannot require the Board to issue, or to continue in good standing, a seller's permit which specifically grants the privilege of engaging in the illegal enterprise. The Board's staff discretion must be exercised so as not to confer permissive authority on a person to embark on, or to continue, an illegal activity. (*Asher v. Johnson*, 26 Cal.App.2d 403). 9/30/85; 7/15/96.

Annotation 410.0178, Medical Marijuana

410.0178 Medical Marijuana. An application was submitted to the Board to obtain a seller's permit for the purpose of selling "vitamins, air purifiers and medicinal marijuana." Since the applicant was selling "tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax," the club qualified as a "seller" as defined by Revenue and Taxation Code section 6014. Therefore, the permit was issued to the club even though the application submitted by the club's proprietors indicated that some of the sales would include "medical" marijuana. Although the cultivation and use of marijuana by certain persons on the recommendation of a physician was decriminalized by the enactment of the "Compassionate Use Act of 1996," the sale of, or possession for sale of, marijuana (for medical purposes or not) is still illegal under California law. Since 1996 the Board has adopted a policy of not issuing seller's permits to a person or persons who will engage solely in the sale of marijuana. In addition, the sale of "medical" marijuana is not an exempt sale of "medicine" because it is not "commonly recognized as a substance or preparation for medicinal use" as required by Revenue and Taxation Code section 6369. Even if marijuana were regarded as a medicine, the sale of marijuana, when sold without a prescription from a licensed physician or when furnished by other than a licensed medical facility, does not meet the requirements for exemption from sales tax as set forth in Regulation 1591, subdivisions (a)(9) and (d). The Sales and Use Tax Law authorizes the Board's imposition and collection of tax measured by gross receipts from the reported illegal sale of "medical" marijuana. Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state, except as specifically exempted by statute. Revenue and Taxation Code section 6901 further provides that it "shall be presumed that all gross receipts are subject to tax unless the contrary is established . . ." Nothing in the Sales and Use Tax Law specifically excludes from taxation the gross receipts from the sale of contraband or illegal substances. When a person informs the Board in an application for a seller's permit that it plans to sell "medical" marijuana or "medical" cannabis, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board should inform the applicant that although a seller's permit will be issued for the sale of legal tangible personal property, the permit does not allow for the sale of "medical" marijuana or other illegal merchandise. If "medical" marijuana is sold, its sale is subject to tax. 12/9/02. (2003-3).



The Humboldt Cooperative

ARCATA BUS LISC 600775

State of California Sales Permit # JHB100421435

601 I Street #B
Arcata, CA 95528

707-822-9330

June 14, 2005

Mr. Jeffrey L. MCGuire
Tax Policy Manager
State Board of Equalization
Sales and Use tax Department
450 N. Street, Sacramento, Ca. 94279-0092

Dear Mr. McGuire;

This is to thank you for forwarding the interested party package regarding the taxation of medical marijuana, and for the opportunity to write on the proposed changes to the permit process. Clarification of the question as to whether the Board should issue a seller's permit as per the initial discussion paper would certainly be welcomed. In this respect please note the following concerns from the perspective of The Humboldt Cooperative.

The effort to provide clear guidance to sellers of medical marijuana within the parameters of the Revenue and Taxation Code is noted in the initial discussion paper to be potentially damaging to dispensary operators. Mandatory record keeping, in light of Federal intolerance, is one example of the potential damages that could occur to our patient body and to ourselves, in that these records could be seized and held against us. On one hand those of us who do pay our sales tax regularly are in fact at a competitive disadvantage, and on the other we stand as virtual sacrificial lambs because we chose to do business in an appropriate manner.

In regard to Tax annotation 410.0202 (refusal to issue a seller's permit) and the language that states that "a party to an illegal enterprise cannot require the Board to issue, or continue in good standing, a seller's permit which specifically grants the privilege of engaging in the illegal enterprise" appears to conflict with the ongoing operation of our cooperative. For example, the annotation concludes, "The Board's staff discretion must be exercised so as

not to confer permissive authority on a person to embark on, or to continue, an illegal activity.” Clearly, the Board has been accepting our sales tax, now on a monthly basis, since the day we opened for business. To say that there is not, at least, an implied on-going relationship is erroneous.

After reviewing the two proposals presented by Ms. Yee it would seem that the first option could be a feasible answer to the question of issuing permits. Those of us who do pay our sales tax have a sincere desire to help our State and local community. We feel that anyone involved in medical marijuana should pay a sales tax. To exempt medical marijuana from taxation only rewards the thugs and fly by night operators that have plagued the spirit and intent of proposition 215, and strengthens the federal position that we are criminals.

We humbly request that the Board take a stand in favor of medical marijuana, and that the Board does not distance itself from those of us who are doing our best to provide good services responsibly in our local communities. It’s bad enough to be viewed as a potential target of the federal government without being regulated down to being an explicitly illegal business enterprise in our own State. We know for a fact that we are lawfully serving the will of the people as per the spirit and intent of SB 420. Again, please stand for the people of California, and work out a doable permit process that allows us to pay our tax, and requires others to pay their tax so that we may reach an equitable, level playing field.

Respectfully,

Dennis A. Turner, M.A. , RPCC
Executive Director



**The SAN FRANCISCO
PATIENTS' ASSOCIATION**
350 Divisadero Street
San Francisco, CA 94117
Phone: 415-552-8653

June 22, 2005

State of California
STATE BOARD OF EQUALIZATION
450 N Street
P.O. Box 942879
Sacramento, CA

ATTN: Jeffrey L. McGuire, Tax Policy Manager
Sales and Use Tax Department

RE: Initial Discussion Paper- Issuing Permit to Retailer with “Unlawful Sales”

Dear Mr. McGuire;

In response to the information sent, including the two proposals submitted by Ms. Betty Yee, the following is submitted. This information is given in order to insure proper understanding of what is really going on from the point of view of medical cannabis patient facilities and services. My name is Rev. Randelyn C. Webster.

By way of credentials:

*President of the San Francisco Patients' Association, also co-founder and co-director of the San Francisco Patients' Cooperative at 350 Divisadero Street in San Francisco, California.

*Member of the San Francisco Medical Cannabis Patients' Facilities and Services Consortium, which is working with the city and county of San Francisco to craft realistic and comprehensive regulations for such organizations.

*Member of San Francisco Medical Cannabis Task Force which was headed by then-Supervisor Mark Leno and included representatives from the Mayor's office, the City Attorney, Board of Supervisors, Department of Public Health, SFPD, County Sheriff, and other appropriate agencies, as well as representatives from patients' groups and patient service facilities.

*Worked on the Compassionate Use Act of 1996 campaign as spokes person and voter's registration table monitor

*Helped draft local legislation which amended insure that qualified patients could medicate inside medical cannabis patient service facilities, as well as San Francisco's Sanctuary Resolution and Proposition S to name just a few.

*Second secretary and one of the many campaign spokespersons for Dennis Peron during his gubernatorial campaign in 1998

*Peer counselor and patient advocate since 1994

*A declared medical cannabis patient since 1980

Here is some information which might be helpful, and which I pray you consider when making any decision regarding medical cannabis patient services and facilities operating in the state of California:

- 1) Medical Cannabis Patient Services and Facilities- by intent and function, are NOT set up as money making, profiteering ventures. Rather, they are often patient owned and patient operated, not-for-profit service facilities whose only goal is serving sick and dying patients who, through recommendation of licensed physicians, use cannabis medicinally.
- 2) These facilities and services were set up as a direct response to instructions set forth in the California Compassionate Use Act of 1996, (a/k/a) Prop 215, which passed into law by election of California citizens and became referenced as California Health and Safety Code §11362.5. There are subsequent subsections to this Code which refer to other elements of this activity.
- 3) These facilities and services were the only possible implementation of the aforementioned Code(s), as the city and state governments and appropriate agencies felt they were not in a position to directly enact implementation.
- 4) These facilities and services are in the process of working with their local governments to regulate their activities as best as possible, and under grave scrutiny of the federal government.
- 5) Due to the potential high risk of incrimination and subsequent criminal prosecution, these facilities and services are in a precarious position when it comes to providing records and information about their operations in an open, public forum which also includes federal scrutiny.
- 6) The federal government refuses to hear any proof of medicinal benefits of cannabis and refuses to allow true, comprehensive studies of cannabis. Rather, the federal government insists that the activities associated with these facilities and services are illegal and criminal
- 7) Regarding the "Unlawful sales" alleged in both the general Initial Discussion and included Proposals:
 - a) these facilities and services are not in the "selling" business, be it retail, wholesale, barter or other forms of exchange.

- b) as indicated by their intentions and actions as true service organizations, these facilities and services function by filling a need which California governments and agencies have not been able to fill-although mandated by Prop 215.
- c) according to SB 420, it is within the confines of this bill for “care givers” to ask for remuneration or compensation for services rendered
- d) these facilities and services operate as “care givers,” or, as the organizations prefer, “care providers” for their patients as follows:
 - * *housing*- many facilities also function as community centers and include at least peer counseling help for patients seeking references to housing agencies
 - * *food*-many facilities serve at least snacks, some hot meals, all throw at least monthly pot luck parties for patients, free of charge
 - * *clothing*-many facilities offer clothing boxes, some offer fun make-overs
 - **safety*-all strive to offer patients a safe, clean, comfortable environment and herbal consultation
- e) If a large portion of safety is indeed perception, then the patient who is served their needs in the method best suited to their particular need is the patient who is being assisted in their quality of life.
- f) There are different models of these facilities and services, as follows:
 - * *Counter service*- some places are only a counter, but they are no less part of the patient care and service field. These facilities are well suited to patients who just need to stop by, or patients who suffer from anxiety or not able to stay inside for long periods of time.
 - **Delivery services* are beneficial to the home-bound/bed bound patient, or patient who is agoraphobic or suffers from anxiety
 - **Grow-Ops/Garden Collectives*-a viable option for patients and care givers who are able to grow the medicine. Some patients can do this, and find it therapeutic.
 - **Community center*- for public forums, educational seminars, private events, medical cannabis community meetings, election debates and voter registration drives
 - **Harm Reduction* - many of these facilities offer Harm Reduction counseling and support groups, which helps patients through their recovery from addictive and harmful behaviors
 - * *Service centers*- for support groups, peer counseling services, cannabis consultation for patients with questions about their medicine
 - **Job training centers*- patients who were oppressed by their illness learn they can do things, learn new skills and, even if for only a few hours, feel they are contributing to their community and their own wellness. Some patients are able to apply their skills to part- or full-time jobs in the “regular” workforce and liberate themselves from poverty and/or homelessness.

* *Learning centers*- some facilities offer computers for their patients use. Patients learn the process of going online, typing and other skills.

**Medical cannabis community centers* - including visiting patients in hospitals and hospices including helping them through the social service net and even holding them while they die, helping patients celebrate their birthdays- sometimes their last, their weddings, and funerals/memorials

As you can see, there is much more than meets the eye when it comes to patient facilities and services. I strongly suggest the State Board of Equalization and all other agencies to take an open minded look at the truth behind the rumors. These facilities and services are not functioning as money-laundering, drug traffickers, rather they are filling a need which was cited and addressed by state and, in some cases, local laws and initiatives.

Rather than trying to come up with a tax which incorrectly reflects the true nature of these organizations, the Board of Equalization should learned about them. Then, and only then can a proper Proposal of any form be drafted.

Several interested persons are hoping to attend the October 25, 2005 Business Taxes Committee meeting. Please let me know how many colleagues are permitted to attend. If you have any questions, please do not hesitate to contact me at the number and address above.

Sincerely,

Rev. Randelyn C. Webster, DSM