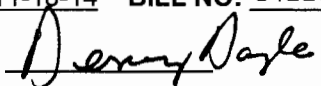


AGENDA BILL

Beaverton City Council
Beaverton, Oregon


SUBJECT: A Resolution Establishing Tax Rates for the Sale of Marijuana, Medical Marijuana, and Marijuana-Infused Products in the City of Beaverton

FOR AGENDA OF: 11-18-14 **BILL NO:** 14221

Mayor's Approval: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 11-12-14

CLEARANCES: Finance
CAO 

PROCEEDING: CONSENT AGENDA

EXHIBITS: -Resolution
-Portland's Marijuana Tax Revenue Estimates

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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RECOMMENDED ACTION:

The City Council adopts the attached Resolution, which establishes a tax rate for the sale of marijuana, medical marijuana, and marijuana-infused products in the city of Beaverton.

HISTORICAL PERSPECTIVE:

The City Council on October 28, 2014 adopted Ordinance No. 4647, establishing a tax on marijuana, medical marijuana, and marijuana-infused products in the city of Beaverton, codified as Chapter 7.03.005 – 7.03.070 of the Beaverton City Code. Per Section 7.03.015, the City Council authorized the levy of a tax to be paid by every seller exercising the taxable privilege of selling marijuana, medical marijuana, or marijuana-infused products. Measure 91, which legalized recreational marijuana in Oregon, passed on November 4, 2014. This resolution sets the tax rates for both sellers of medical marijuana (0%) and sellers of recreational marijuana (10%).

INFORMATION FOR CONSIDERATION:

Estimating the revenue generated by taxing medical and recreational marijuana is difficult. Several assumptions must be made and the data is open to interpretation. However, the city of Portland has prepared a reasonable marijuana tax revenue estimate. Applying that estimate to the city of Beaverton using a per capita approach yields the following: a 0% tax on sales of medical marijuana and a 10% tax on sales of recreational marijuana is tentatively estimated to raise between \$260,000 and \$620,000 annually. Because Portland's marijuana industry is already relatively established (Portland has at least 72 medical marijuana dispensaries while Beaverton's dispensary moratorium is still in effect), it is likely that the lower end of the revenue estimate for the city of Beaverton is most realistic.

The city of Portland's full report on marijuana tax revenue estimates is attached.

RESOLUTION NO. 4277

**A RESOLUTION ESTABLISHING TAX RATES FOR
THE SALE OF MARIJUANA, MEDICAL MARIJUANA, AND MARIJUANA-INFUSED PRODUCTS
IN THE CITY OF BEAVERTON**

WHEREAS, the Beaverton City Council on October 28, 2014 adopted Ordinance No. 4647, establishing a tax on marijuana, medical marijuana, and marijuana-infused products in the city of Beaverton, codified as Chapter 7.03.005 – 7.03.070 of the Beaverton City Code; and,

WHEREAS, per Section 7.03.015 of the Beaverton City Code, the Council shall by resolution establish a tax rate for the sale of such goods; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1. Pursuant to Section 7.03.015 of the Beaverton City Code, the City Council authorizes the levy of a tax to be paid by every seller exercising the taxable privilege of selling marijuana, medical marijuana, or marijuana-infused products. The amount of tax levied is to be established by Resolution.

Section 2. Pursuant to this Resolution, the City Council of the City of Beaverton hereby establishes a tax rate of zero percent (0%) of the gross sale amount paid to the seller by a registry identification cardholder for medical marijuana and marijuana-infused products.

Section 3. Pursuant to this Resolution, the City Council of the City of Beaverton hereby establishes a tax rate of ten percent (10%) of the gross sale amount paid to the seller by an individual who is not a registry identification cardholder for marijuana and marijuana-infused products.

ADOPTED by the Council this _____ day of _____, 2014.

APPROVED by the Mayor this _____ day of _____, 2014.

AYES: _____

NAYS: _____

ATTEST:

APPROVED:

CATHERINE L. JANSEN, CITY RECORDER

DENNY DOYLE, MAYOR



Marijuana Tax Revenue Estimates

October 2014

Revenue Division

Bureau of Revenue and Financial Services

Office of Management and Finance

City of Portland, Oregon

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Executive Summary

This document was prepared to estimate the revenue impact to the City of Portland if marijuana use and sales are legalized under Oregon Ballot Measure 91, the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act". It also estimates additional revenues associated with Portland imposing a 10% local tax on the sale, transfer, mixing, handling, or serving of recreational marijuana (hereafter collectively referred to as "sales tax"), and a 5% sales tax on medical marijuana.

If Oregon voters pass Ballot Measure 91 this November, the State of Oregon has estimated the resulting excise tax will increase annual state revenues by \$17 million to \$40 million.¹ After state administrative expenses are deducted, 10% of net revenues would be distributed to local jurisdictions. The Bureau of Revenue and Financial Services (BRFS) estimates the City of Portland's annual share of this revenue, after deducting state expenses, will be in the range of \$171,000 to \$556,000 over the next three fiscal years.

Annual Portland expenses for recreational and medical marijuana regulation and taxation are tentatively estimated at approximately \$1 million, and possibly more.

To offset city expenses and raise new revenue, BRFS recommends Portland City Council impose a tax of ten (10) percent on gross sales of recreational marijuana, and five (5) percent on gross sales of medical marijuana.² This proposed sales tax is estimated to raise:

- 10% on recreational marijuana: between \$1.7 million and \$4.0 million annually
- 5% on medical marijuana: between \$796,000 and \$1.8 million
- Total: between \$2.5 million and \$5.8 million

Table 1 illustrates that net of estimated city costs, additional unrestricted revenues should be available for deposit into the General Fund.

Figure 1. Estimated Net Revenue from Portland's Proposed Marijuana Tax

	FY 2015-2016 ³		FY 2016-2017 and Ongoing	
	Low	High	Low	High
Marijuana Tax Proceeds	\$2,493,900	\$5,849,010	\$2,493,900	\$5,849,010
Estimated City-wide Administrative Costs ⁴	\$1,125,000		\$925,000	
Net Revenue Available for Deposit into the General Fund	\$1,368,900	\$4,724,010	\$1,568,900	\$4,924,010

¹ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

² The Ballot Measure purports to preempt local taxation. BRFS and the City Attorney's Office recommend passing a local tax for a range of reasons as discussed during the City Council work session on October 7, 2014. See Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Oregon Ballot Measure 91), Section 42, <http://oregonvotes.org/irr/2014/053text.pdf> : accessed 14 October 2014.

³ Assumes state permitting of recreational marijuana retail sales begins soon after passage of Ballot Measure 91.

⁴ Aggregated regulatory cost estimates from the Bureau of Development Services, Office of Neighborhood Involvement and Police Bureau; plus tax collection costs from the Bureau of Revenue and Financial Services, Revenue Division. See Figure 6 for additional detail.

Ballot Measure 91 Revenue Allocation Methodology

As it relates to distribution of taxes to local jurisdictions, Section 44 of Oregon Ballot Measure 91 states, in pertinent part:

- (1) After [the state] withholds such moneys as it may deem necessary...
- (2) To assist local law enforcement in performing its duties under the measure, 10 percent of the distributable revenues shall be transferred to the cities of the state. For all distributions before July 1, 2017, the distributions will be made according to population as determined by the State Board of Higher Education. For all distributions made from the Oregon Marijuana Account on or after July 1, 2017, fifty percent of the 10 percent will be made according to the number of licenses issued in each city under sections 19 to 21 of the measure as a percentage of the licenses issued in the state; section 19 is production licenses, 20 is processor licenses, 21 is wholesale licenses. The remaining fifty percent of the 10 percent will be distributed according to the number of retail licenses issued in each city as a percentage of the licenses issued in the state.⁵

Estimated Portland Revenue under Measure 91 Allocation Methodology

According to the State of Oregon's revenue estimate for Ballot Measure 91, the estimated gross annual revenues from marijuana excise taxes, when fully implemented, *may* range from \$17 million to \$40 million.⁶ The impact statement did not indicate how long "full implementation" is expected to take, and the matter is open to some debate.⁷ This analysis assumes the tax will be implemented in fiscal year 2015-2016 but the first full year of revenues may not occur until the following fiscal year.

The Oregon Liquor Control Commission (OLCC) estimates that start-up costs are \$300,000 in fiscal year 2015-2016, \$2.5 million in fiscal year 2016-2017, and \$1.0 million in fiscal year 2017-2018. Additionally, OLCC annual operating expenses are estimated to be \$3.2 million per year.⁸ Using these cost estimates, distributable (net) tax revenue may range from \$13.5 million to \$36.5 million in 2015-2016, \$11.3 million to \$34.3 million in 2016-2017, \$12.8 million to \$35.8 million in 2017-2018, and \$13.8 million to \$36.8 million going forward.⁹

State revenues distributed to local governments before July 1, 2017 are based on population; thereafter, they are based on the number of permits in each jurisdiction. Portland makes up 15.12 percent of Oregon's total

⁵ Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Oregon Ballot Measure 91), Section 44, <http://oregonvotes.org/irr/2014/053text.pdf> : accessed 9 October 2014.

⁶ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

⁷ The ballot measure is unclear as to the timing of the legalization of retail sales. The Portland City Attorney's Office has noted: Section 7(8) of the measure provides that by January 1, 2016, the OLCC shall prescribe forms and adopt titles and regulations to implement and administer the measure; Section 18(1) provides that on or before January 4, 2016, the OLCC shall begin receiving applications for licensing to produce, process and sell marijuana, and provides that the Commission shall not unreasonably delay the processing, approval, or rejection of applications, or issuance of licenses; Section 82(1) provides that Sections 3-73 become effective July 1, 2015, including the two aforementioned sections; Section 18(2) states that the OLCC may take any action before July 1, 2015 necessary to enable the Commission to exercise the duties, functions and powers conferred on the OLCC by the measure; and Section 84 provides that the Act is effective 30 days after voter approval.

⁸ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

⁹ Figures not adjusted for inflation.

population.¹⁰ Using these figures and deducting state estimated expenses, Portland's distribution from the Oregon Marijuana Account can be calculated as shown in Figure 2, line 4.

Figure 2. Estimated Portland Revenue under Measure 91 Allocation Methodology¹¹

	FY 2015-2016		FY 2016-2017		FY 2017-2018		Ongoing	
	Low	High	Low	High	Low	High	Low	High
1. Gross Revenue Projection	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000
2. State of Oregon Estimated Expenses	\$3,500,000		\$5,700,000		\$4,200,000		\$3,200,000	
3. State of Oregon Net (Distributable) Revenue	\$13,500,000	\$36,500,000	\$11,300,000	\$34,300,000	\$12,800,000	\$35,800,000	\$13,800,000	\$36,800,000
4. City of Portland Share based on Population (line 3 x 10% x 15.12%)	\$204,120	\$551,880	\$170,856	\$518,616	\$193,536	\$541,296	\$208,656	\$556,416

Portland Revenue under a City Imposed Marijuana Sales Tax

Based upon our review of available literature, we believe the average state excise tax on recreational marijuana sold by producers may be \$28 per ounce.¹² Using this figure, the State of Oregon's projected revenue of \$17 million to \$40 million would equate to statewide annual marijuana sales of 607,000 to 1,429,000 ounces (37,938 to 89,313 pounds).¹³ Portland's estimated share of statewide recreational marijuana sales may therefore range from 92,000 to 216,000 ounces (5,750 to 13,500 pounds) annually.¹⁴ According to year-to-date figures from the Colorado Department of Revenue, 52 percent of sales of marijuana is related to medical marijuana.¹⁵ Assuming these percentages would hold true in Portland, Portland's medical marijuana sales could range from 100,000 to 234,000 ounces (6,250 to 14,625 pounds) annually. Portland's total annual sales (recreational and medical combined) may range from 192,000 to 450,000 ounces (12,000 to 28,125 pounds).

¹⁰ Population Research Center, College of Urban and Public Affairs, Portland State University website, population estimates as of July 1, 2013, <http://www.pdx.edu/prc/population-estimates-0> : accessed 9 October 2014.

¹¹ These figures assume there will be no adjustment for inflation, and that the distribution percentages before and after July 1, 2017 remain approximately the same (the number of issued licenses is correlated to population which drives local demand).

¹² Oregon Cannabis Tax Revenue Estimate, ECONorthwest report dated July 22, 2014, citing research of Dr. Seth Crawford, PhD, Oregon State University, ECONorthwest website, http://www.econw.com/media/ap_files/7-31-2014_CannabisFinalReport.pdf : accessed 9 October 2014. See also Dr. Crawford's research, *Estimating the Quasi-Underground: Oregon's Informal Marijuana Economy*, Humboldt Journal of Social Relations, Issue 36, 2014; http://www.humboldt.edu/hjsr/issues/issue%2036/10_CRAWFORD_Oregons_Informal_Marijuana_Economy.pdf : accessed 9 October 2014.

¹³ Estimates of total consumption vary widely depending upon methodology. See, for example, Market Size and Demand for Marijuana in Colorado, a report prepared for the Colorado Department of Revenue, 2014, Table 11, pg. 20, <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadname1=Content-Disposition&blobheadname2=Content-Type&blobheadvalue1=inline%3B+filename%3D%22Market+Size+and+Demand+Study%2C+July+9%2C+2014.pdf%22&blobheadvalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252008574534&ssbinary=true> : accessed 13 October 2014. BRFS took a conservative approach beginning with the statewide forecast.

¹⁴ Portland's population is 15.12% of the total state population and we assume, perhaps conservatively, that this is the percentage of statewide sales allocable to Portland.

¹⁵ See State of Colorado Marijuana Taxes, Licenses, and Fees Transfers and Distribution, July 2014, Sales Reported in August, <https://www.colorado.gov/pacific/sites/default/files/0714%20Marijuana%20Tax,%20License,%20and%20Fees%20Report.pdf> : accessed 13 October 2014. The 52% figure was calculated by dividing Medical Marijuana sales tax on line 2 by total sales tax on line 1.

Using an estimated post-excise tax recreational marijuana price of \$205 per ounce and an estimated medical marijuana cost of \$177 per ounce,¹⁶ additional revenue from the City of Portland's proposed marijuana tax may range from \$2.5 million to \$5.8 million annually. This estimate assumes a 90% compliance rate from businesses expected to collect and remit the proposed marijuana tax. See Figure 3.

Figure 3. Portland's Proposed Marijuana Tax Revenue Estimate (10% & 5%)

	Recreational (10%)		Medical (5%)		Total	
	Low	High	Low	High	Low	High
1. Ounces of Marijuana Sold	92,000	216,000	100,000	234,000	192,000	450,000
2. Average Price Per Ounce	\$205		\$177		\$177 - \$205	
3. City of Portland Tax Proceeds	\$1,886,000	\$4,428,000	\$885,000	\$2,070,900	\$2,771,000	\$6,498,900
4. City of Portland Net Tax Proceeds Assuming 90% Compliance ¹⁷	\$1,697,400	\$3,985,200	\$796,500	\$1,863,810	\$2,493,900	\$5,849,010

Diversion and Tax Avoidance

The primary difficulty in estimating marijuana sales tax avoidance behavior is the opaque nature of the black market. It is difficult to credibly estimate market size and price elasticity of demand without reliable data. Colorado, the first state to legalize recreational sales, is in the first year of implementation and the market is considered both unstable and immature. Nevertheless, it is instructive to review the Colorado experience to glean an understanding of possible tax avoidance and diversion from recreational to medical sales driven by a differential in tax rates.

January 1, 2014 was the first day recreational marijuana could be sold to anyone 21 and over at licensed stores in Colorado.¹⁸ Colorado taxes recreational marijuana as follows:

- 2.9% general sales tax
- 10% marijuana sales tax
- 15% marijuana excise tax
- 27.9% combined rate (local jurisdictions may impose additional taxes)

In Colorado, medical marijuana is subject only to the state general sales tax of 2.9%, creating a variance of 25 percentage points in the tax rate (and presumably retail price) between recreational and medical marijuana. Did this large variance drive a change in the number of people applying for and receiving medical marijuana cards?

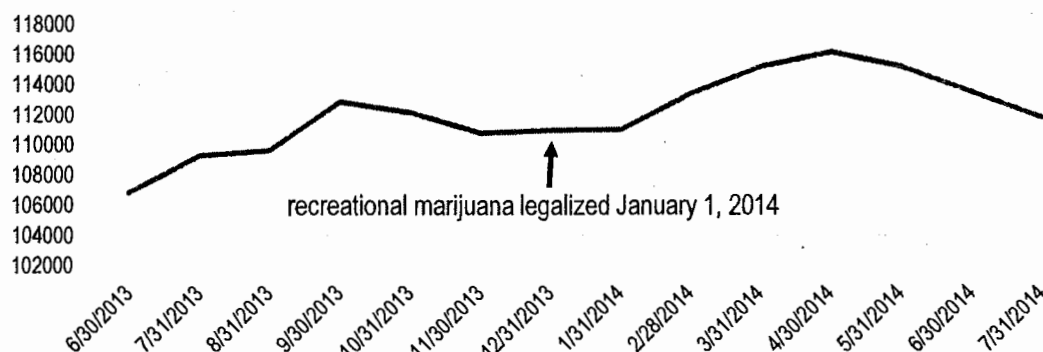
¹⁶ Dr. Seth Crawford, Oregon State University, authored a study entitled, *Estimating the Quasi-Underground: Oregon's Informal Marijuana Economy*. Dr. Crawford surveyed 72 Oregon residents 18 and older to collect information about marijuana use and purchase patterns. He found that the average marijuana user pays about \$177 per ounce of the drug on the "informal" (black) market. Using an estimated black market base cost of \$177 per ounce, recreational marijuana in Portland, after adding state excise taxes, would likely cost about \$205 per ounce. Actual costs following market maturation over the next five years or so will vary. Online medical marijuana prices in Portland are frequently observed to be advertised at \$220 per ounce. We believe \$205 per ounce is a conservative number for forecasting purposes and the actual price in the short to intermediate term may be higher.

¹⁷ We estimate compliance rates mirroring those found for "brick and mortar" business locations under the Business License Law (PCC 7.02).

¹⁸ "10 things to know about nation's first recreational marijuana shops in Colorado," CNN website, <http://www.cnn.com/2013/12/28/us/10-things-colorado-recreational-marijuana/> : accessed 9 October 2014.

In the seven months for which there is data following legalization of recreational marijuana in Colorado, the total number of patients who possessed a valid medical marijuana card rose from just over 111,000 to a high of 116,000 and then fell back to just below 112,000. It is too early to identify long term trends in the Colorado market as they relate to tax avoidance and diversion; the data is open to interpretation. See Figure 4.

Figure 4. Colorado Medical Cardholders as of July 31, 2014



Source: Data from the Colorado Department of Public Health & Environment.

To minimize diversion and tax avoidance, BRFS recommends a low overall tax rate and narrow difference between the tax rate for recreational and medical marijuana. We also recommend keeping the rates in rough parity with adjacent jurisdictions. These measures, if adopted, should help to mitigate diversion/tax avoidance from the recreational to the black and medical markets. Figure 5 estimates the cumulative impact of the state excise and local sales taxes as they relate to possible pricing (assuming retailers pass the entire burden to buyers).

Figure 5. Estimated Post-Tax Cost of Marijuana in Portland

	Recreational (10%)	Medical (5%)
Estimated Black Market Base Cost of One Ounce	\$177.00	\$177.00
Estimated Average Oregon Excise Tax	\$28.00	\$0.00
Portland Tax (10%/5%)	\$20.50	\$8.85
Total	\$225.50	\$185.85
Cumulative Increase Over Black Market	27%	5%

Estimated Costs of Regulation and Taxation

Figure 6 details tentative bureau budgets related to marijuana regulation and taxation. These estimates are subject to change as regulatory requirements are developed.

Figure 6. Estimated Costs of Administering Marijuana Regulations and Taxation

Bureau	One-Time	Ongoing	FTE and Description of Workload
BRFS/Revenue Division	\$150,000	\$280,000	1.25 FTE; tax collection and audit
Development Services/Fire		\$150,000	1.0 FTE; safety inspections
Neighborhood Involvement	\$50,000	\$345,000	2.5 FTE; notification and enforcement of regulatory function
Police Bureau		\$150,000	1.0 FTE; investigations
Total	\$200,000	\$925,000	

Conclusion

BRFS recommends implementing a sales tax of 10% on recreational and 5% on medical marijuana sales.

Appendix A. Recreational and Medical Marijuana Taxation as of October 6, 2014

Jurisdiction	Recreational	Medical
Cornelius, Oregon	10% of gross sales	0% of gross sales
Forest Grove, Oregon	10% of gross sales	0% of gross sales
Happy Valley, Oregon	10% of gross sales	0% of gross sales
Hillsboro, Oregon	10% of gross sales	0% of gross sales
Ashland, Oregon	10% of gross sales	5% of gross sales
Central Point, Oregon	10% of gross sales	5% of gross sales
Coquille, Oregon	10% of gross sales	5% of gross sales
Gearhart, Oregon	10% of gross sales	5% of gross sales
King City, Oregon	10% of gross sales	5% of gross sales
Lake Oswego, Oregon	10% of gross sales	5% of gross sales
Milwaukie, Oregon	10% of gross sales	5% of gross sales
Tigard, Oregon	10% of gross sales	5% of gross sales
West Linn, Oregon	10% of gross sales	5% of gross sales
Wilsonville, Oregon	12% of gross sales	7.5% of gross sales
Scappoose, Oregon	20% of gross sales	10% of gross sales
Seaside, Oregon	Ordinance to tax passed. No rate set.	Ordinance to tax passed. No rate set.
Tualatin, Oregon	Ordinance to tax passed. No rate set.	Ordinance to tax passed. No rate set.
Dayton, Oregon	Considering 10% of gross sales	Considering 0% of gross sales
Klamath Falls, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Nehalem, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Newberg, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Rogue River, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
La Grande, Oregon	Considering 25% of gross sales	Considering 0% of gross sales
Medford, Oregon	Considering 6-18%	
Eugene, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
Springfield, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
St. Helens, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
State of Washington	31.971 % of gross sales *	6.971 % of gross sales *
State of Oregon	\$5 - \$35 **	\$0
State of Colorado	27.9% of gross sales ***	2.9% of gross sales
Boulder, Colorado	12.06% to 14.12% ****	3.56% to 7.12%
Seattle, Washington	.215% of gross sales *****	.215% of gross sales *****
*	Includes 0.471% B&O tax, 6.5% retail sales and use tax and a 25% excise tax plus any local sales taxes. No excise tax is due for medical marijuana sales.	
**	Tax is imposed upon marijuana producers at the rate of \$35 per ounce on all marijuana flowers, \$10 per ounce on all marijuana leaves, \$5 per immature marijuana plant.	
***	Includes 10% state marijuana tax, 2.9% state sales tax and a 15% excise plus any local sales taxes. No state marijuana tax or excise tax is due for medical marijuana sales.	
****	Recreational cultivation facilities incur a 5% excise tax and a 7.06% use tax. Recreational retail locations incur a 7.06% use tax and a 7.06% sales tax. Medical cultivation facilities incur a 3.56% use tax. Medical retail locations incur a 3.56% use tax and a 3.56% sales tax. Sales tax is paid on the retail sales amount charged to the customer. Use tax is paid on the cost of assets and expenses of the business. Excise tax is paid on the amount calculated on the weight or number of plants multiplied by the value set. \$1,876 per pound for bud/flower, \$296 per pound for trim, \$9 per plant per immature plant.	
*****	Only liable for the Business License Tax. Tax is only due if annual taxable gross revenue is \$100,000 or more.	