

**ASSEMBLY BILL**

**No. 2506**

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**Introduced by Assembly Members Quirk and Lackey**

February 17, 2022

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An act to amend Sections 34011 and 34012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2506, as introduced, Quirk. Cannabis: excise tax: cultivation tax.

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. AUMA imposes an excise tax on upon purchasers of cannabis or cannabis products sold in this state at the rate of 15% of the average market price of any retail sale by a cannabis retailer, and a separate cultivation tax on harvested cannabis that enters the commercial market, as specified. Existing law, beginning January 1, 2020, requires the California Department of Tax and Fee Administration to adjust the cultivation tax rate for inflation each calendar year, except for the 2021 calendar year, in which existing law prohibited the department from adjusting for inflation unless the adjustment was for an inflation rate less than zero. Existing law requires revenues from the excise and cultivation taxes to be deposited into the California Cannabis Tax Fund, which is continuously appropriated for specified purposes.

This bill would suspend the imposition of the cultivation tax from July 1, 2023, to July 1, 2028, and would discontinue the requirement that the department adjust the cultivation tax rate for inflation for the

2023 calendar year and during the suspension. The bill would increase, from July 1, 2023, until July 1, 2028, the excise tax by an additional percentage that the Department of Finance estimates will generate the amount of revenue that would have been collected pursuant to the cultivation tax.

AUMA authorizes legislative amendment of its provisions with a 2/3 vote of both houses, without submission to the voters, to further its purposes and intent.

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

This bill would take effect immediately as a tax levy.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) In 2016, California voters approved Proposition 64, the  
4 Control, Regulate and Tax Adult Use of Marijuana Act (AUMA).  
5 In its statement of purpose and intent, AUMA calls for regulating  
6 marijuana in a way to “prevent illegal production or distribution  
7 of marijuana,” “reduce barriers to entry into the legal, regulated  
8 market,” and “tax the growth and sale of marijuana in a way that  
9 drives out the illicit market for marijuana and discourages use by  
10 minors, and abuse by adults.”

11 (b) Proposition 64 established two commercial cannabis taxes  
12 that, effective January 1, 2018, imposed an excise tax upon the  
13 retail sale of cannabis and cannabis products at a rate of  
14 fifteen-percent, and a cultivation tax of nine dollars and twenty-five  
15 cents (\$9.25) for dry-weight flower per ounce, and two dollars and  
16 seventy-five cents (\$2.75) per dry-weight leaves per ounce.  
17 Beginning January 1, 2022, the cultivation tax rates were adjusted  
18 for inflation as required by the Cannabis Tax Law to ten dollars  
19 and eight cents (\$10.08) per dry-weight flower per ounce and three  
20 dollars (\$3.00) per dry-weight leaves per ounce.

21 (c) The cultivation tax imposes a flat rate tax per ounce,  
22 irrespective of the wholesale market rate and is compounded as  
23 the cannabis and cannabis products move through the supply chain.

1 The cumulative tax rate imposed by existing law is substantial and  
2 has undermined the legal regulatory system.

3 (d) The licensed cannabis market is currently experiencing a  
4 precipitous decline in the average wholesale price for cannabis  
5 flower and leaves making the current cultivation tax rate for flower  
6 equivalent to more thirty percent (30%) of gross receipts and the  
7 current tax rate for dry leaves and trim equivalent to more than  
8 one hundred fifty percent (150%) of gross receipts.

9 (e) The ongoing consequences of high state taxes has continued  
10 to economically challenge legal cannabis businesses, disincentivize  
11 new cannabis businesses from entering the legal market, and  
12 contribute to rapid growth in the illicit market.

13 (f) In a December 2019 report, the Legislative Analysts' Office  
14 (LAO) found that the weight based cultivation tax does not  
15 compare well with other taxation methods in achieving the key  
16 objectives of reducing harmful cannabis use, stabilizing tax  
17 revenue, and ease of administration and recommended its  
18 elimination.

19 (g) It is the intent of the Legislature to suspend the cultivation  
20 tax rate to reduce the size of the state's illicit cannabis market and  
21 to stimulate sales in the licensed, regulated, and taxed cannabis  
22 market.

23 (h) By temporarily reducing the tax burden on legal cannabis  
24 businesses, the act will meet the objectives set forth in Proposition  
25 64 to encourage customers to purchase cannabis and cannabis  
26 products from licensed businesses, thereby reducing illicit market  
27 activity and supporting the continued growth of a regulated  
28 cannabis market in California.

29 SEC. 2. Section 34011 of the Revenue and Taxation Code is  
30 amended to read:

31 34011. (a) (1) (A) Effective January 1, 2018, a cannabis excise  
32 tax shall be imposed upon purchasers of cannabis or cannabis  
33 products sold in this state at the rate of 15 percent of the average  
34 market price of any retail sale by a cannabis retailer. ~~A~~

35 (B) *Effective July 1, 2023, and until July 1, 2028, the cannabis*  
36 *excise tax imposed in subparagraph (A) shall be increased by an*  
37 *additional percentage of the average market price of any retail*  
38 *sale by a cannabis retailer that the Department of Finance*  
39 *estimates will generate an amount of revenue equivalent to the*  
40 *amount that would have been collected pursuant to the*

1 *weight-based cultivation tax imposed under Section 34012, as that*  
2 *section read on June 30, 2023.*

3 (2) A purchaser's liability for the cannabis excise tax is not  
4 extinguished until the cannabis excise tax has been paid to this  
5 state except that an invoice, receipt, or other document from a  
6 cannabis retailer given to the purchaser pursuant to this subdivision  
7 is sufficient to relieve the purchaser from further liability for the  
8 tax to which the invoice, receipt, or other document refers.

9 ~~(2)~~

10 (3) Each cannabis retailer shall provide a purchaser with an  
11 invoice, receipt, or other document that includes a statement that  
12 reads: "The cannabis excise taxes are included in the total amount  
13 of this invoice."

14 ~~(3)~~

15 (4) The department may prescribe other means to display the  
16 cannabis excise tax on an invoice, receipt, or other document from  
17 a cannabis retailer given to the purchaser.

18 (b) (1) A distributor in an arm's length transaction shall collect  
19 the cannabis excise tax from the cannabis retailer on or before 90  
20 days after the sale or transfer of cannabis or cannabis product to  
21 the cannabis retailer. A distributor in a nonarm's length transaction  
22 shall collect the cannabis excise tax from the cannabis retailer on  
23 or before 90 days after the sale or transfer of cannabis or cannabis  
24 product to the cannabis retailer, or at the time of retail sale by the  
25 cannabis retailer, whichever is earlier. A distributor shall report  
26 and remit the cannabis excise tax to the department pursuant to  
27 Section 34015. A cannabis retailer shall be responsible for  
28 collecting the cannabis excise tax from the purchaser and remitting  
29 the cannabis excise tax to the distributor in accordance with rules  
30 and procedures established under law and any regulations adopted  
31 by the department.

32 (2) A distributor shall provide an invoice, receipt, or other  
33 similar document to the cannabis retailer that identifies the licensee  
34 receiving the product, the distributor from which the product  
35 originates, including the associated unique identifier, the amount  
36 of cannabis excise tax, and any other information deemed necessary  
37 by the department. The department may authorize other forms of  
38 documentation under this paragraph.

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

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

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

8 (f) The sales and use taxes imposed by Part 1 (commencing  
9 with Section 6001) shall not apply to retail sales of medicinal  
10 cannabis, medicinal cannabis concentrate, edible medicinal  
11 cannabis products, or topical cannabis as those terms are defined  
12 in Division 10 (commencing with Section 26000) of the Business  
13 and Professions Code when a qualified patient or primary caregiver  
14 for a qualified patient provides their card issued under Section  
15 11362.71 of the Health and Safety Code and a valid  
16 government-issued identification card.

17 (g) Nothing in this section shall be construed to impose an excise  
18 tax upon medicinal cannabis, or medicinal cannabis product,  
19 donated for no consideration to a medicinal cannabis patient  
20 pursuant to Section 26071 of the Business and Professions Code.

21 (h) (1) Nothing in this section shall be construed to impose an  
22 excise tax upon cannabis or cannabis products designated as a  
23 trade sample pursuant to Section 26153.1 of the Business and  
24 Professions Code.

25 (2) A person licensed under Division 10 (commencing with  
26 Section 26000) of the Business and Professions Code that sells  
27 cannabis or cannabis products designated as a trade sample  
28 pursuant to Section 26153.1 of the Business and Professions Code  
29 shall be liable for the excise tax imposed by this section as if the  
30 person were a cannabis retailer at the time of sale.

31 SEC. 3. Section 34012 of the Revenue and Taxation Code is  
32 amended to read:

33 34012. (a) ~~Effective~~(1) *Except as provided in paragraph (2),*  
34 *effective* January 1, 2018, there is hereby imposed a cultivation  
35 tax on all harvested cannabis that enters the commercial market  
36 upon all cultivators. The tax shall be due after the cannabis is  
37 harvested and enters the commercial market.

38 (1)

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

1     ~~(2)~~

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

4     (2) *Effective July 1, 2023, until July 1, 2028, the cannabis*  
5 *cultivation tax imposed in paragraph (1) shall be zero dollars (\$0).*

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) All cannabis removed from a cultivator's premises, except  
35 for plant waste or medicinal cannabis or medicinal cannabis  
36 products designated for donation, shall be presumed to be sold and  
37 thereby taxable under this section, except as otherwise exempt  
38 pursuant to Section 34012.2.

39 (j) The tax imposed by this section shall be imposed on all  
40 cannabis cultivated in the state pursuant to rules and regulations

1 promulgated by the department, but shall not apply to cannabis  
2 cultivated for personal use under Section 11362.1 of the Health  
3 and Safety Code or cultivated by a qualified patient or primary  
4 caregiver in accordance with the Compassionate Use Act of 1996  
5 (Proposition 215), found in Section 11362.5 of the Health and  
6 Safety Code.

7 (k) (1) For the 2020 calendar year, the rates set forth in  
8 subdivisions (a), (b), and (c) shall be adjusted by the department  
9 for inflation.

10 (2) For the 2021 calendar year, the rates shall be those imposed  
11 for the 2020 calendar year in paragraph (1) and shall not be  
12 adjusted for inflation unless the adjustment is for an inflation rate  
13 that is less than zero.

14 (3) For the 2022 calendar year, the rates shall be those imposed  
15 for the 2021 calendar year in paragraph (2) and shall be adjusted  
16 by the department for inflation.

17 (4) Beginning ~~January 1, 2023~~, *July 1, 2028*, the rates imposed  
18 for the previous calendar year shall be adjusted by the department  
19 annually for inflation.

20 (l) The Department of Cannabis Control is not responsible for  
21 enforcing any provisions of the cultivation tax.

22 SEC. 4. The Legislature finds and declares that this act furthers  
23 the purposes and intent of the Control, Regulate and Tax Adult  
24 Use of Marijuana Act.

25 SEC. 5. This act provides for a tax levy within the meaning of  
26 Article IV of the California Constitution and shall go into  
27 immediate effect.