

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Wiener and Atkins Analyst: Janet Jennings Bill Number: SB 148
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: January 17, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Cannabis State Payment Collection Law/BOE May Enter Into Collection Agreement with FTB

SUMMARY

This bill would authorize the Board of Equalization (BOE) or a county to enter into agreements to collect cash payments from cannabis-related businesses for other state agencies, including the Franchise Tax Board (FTB).

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

RECOMMENDATION – NO POSITION

REASON FOR THE BILL

The reason for the bill is to assist cannabis-related businesses that cannot have bank accounts to pay their state debts.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2018.

STATE LAW

California taxes its residents on all income, including income from medical cannabis-related activities. California taxes non-residents on income from California sources. All income apportioned to California by business entities is taxable. Medical cannabis businesses are to operate as a cooperative or collective under current law. In 2015, California passed three new medical marijuana laws: Assembly Bills 243 and 266, and Senate Bill 643, that when implemented will extend cannabis to recreational use and allow all business types to operate a cannabis related business.

An interagency agreement is a contract between two or more California state agencies subject to the approval of the Director of General Services. There are three types of interagency agreements: (1) payable; (2) reimbursement; and (3) Memo of Understanding (MOU). The payable interagency agreement is used when the FTB contracts to pay for a service to be provided by another state agency. The reimbursement agreement is used when the FTB provides a service to be paid for by another state agency. An MOU is a contract between two state agencies for services where no money is exchanged.

THIS BILL

This bill would allow the BOE or a county to enter into an agreement with a state agency, including the FTB, to collect cash payments for any fee, fine, penalty, or other charge payable to the state agency by a person that is a cannabis-related business.

The BOE would be required to collect fees, fines, penalties, and other charges upon entering into an agreement with the FTB. A county would be required to collect fees, fines, penalties, and other charges only if both the board of supervisors of the county and the county tax collector or county treasurer-tax collector approves of entering into an agreement with the FTB to make those collections.

For the collection by the BOE or a county of fines, penalties, or other charges on behalf of the FTB pursuant to an agreement, the BOE or county would be reimbursed for its costs of collection from the funds or accounts which those fines, penalties, or other charges are to be deposited, not to exceed 10 percent of the amounts collected, upon appropriation by the Legislature.

The FTB's agreement with the BOE or a county would allow the FTB to impose a cash collection fee in an amount reasonably necessary to recover the collection costs to be incurred by the BOE or county in dealing with cash payments, which may include, but are not limited to, the costs of processing and securing the cash payments, but could not exceed 10 percent of any amounts collected.

- The amount of the cash collection fee would be determined by the FTB and the BOE or county.
- A cash collection fee could not be imposed if the fine, penalty, or other charge already includes amounts reasonably necessary to recover the collection costs of cash payments.
- Any cash collection fees imposed would be deposited into the funds or accounts which the fine, penalty, or other charge to be collected is deposited.
- No cash collection fee would be authorized for the collection of a tax, as defined in Section 3 of Article XIII A of the California Constitution.

Any such agreement would be required to include:

- A provision that the BOE or county be reimbursed for the administrative costs of the collection from the funds or accounts which the fees, fines, penalties, taxes, or other charges are otherwise required by law to be deposited, and would specify whether that reimbursement is continuously appropriated or made upon appropriation by the Legislature.
- A provision that the BOE or county transmit the collected moneys to the Treasurer to be deposited in the State Treasury to the credit of the funds or accounts which the fees, fines, penalties, taxes, or other charges are otherwise required by law to be deposited.
- A provision that describes the administrative costs the BOE or county would incur in carrying out the collection, which costs could not exceed 10 percent of the moneys collected.

- The amount of any cash collection fee, if imposed, and how the amount was determined by the FTB and the BOE or county.
- Any other provisions the BOE or county and the FTB determines is necessary to implement the collection of the fees, fines, penalties, taxes, or other charges.

This bill would define the following terms and phrases:

“County” means a county and a city and county.

“Regulatory fee” means a charge as defined in paragraph (3) of subdivision (b) of Section 3 of Article XIII A of the California Constitution.

“State agency” mean a state entity, as defined in Section 11000 of the Government Code that administers any fee, fine, penalty, or other charge payable by a cannabis-related business. This definition specifically includes the FTB.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs and operations.

TECHNICAL CONSIDERATIONS

The bill language contains terms that are inconsistent “fee, fine, penalty, or other charge payable” “fee, fine, penalty, or other charges payable” “fee, fine, penalties, or other charges payable” “fines, penalties, taxes, or other charges” and “fine, penalty, or other charge”. For consistency the author may want to amend the bill to utilize the consistent term “fees, fines, penalties, taxes, or other charges.”

LEGISLATIVE HISTORY

AB 2149 (Bonilla, 2016/2017), was substantially similar to SB 148. AB 2149 failed passage from the Senate Appropriations Committee.

OTHER STATES’ INFORMATION

Since this bill provides for an interagency agreement between California state agencies and counties, a review of other states’ tax laws is not relevant.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

This bill would not impact the state’s income tax revenue.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some could argue that this bill would allow cannabis-related businesses to meet their state obligations.

Opponents: Some could argue that this bill does not address the lack of access to financial services by cannabis-related businesses.

LEGISLATIVE STAFF CONTACT

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