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**AB-1741 Cannabis: taxation: electronic funds transfer.** (2017-2018)

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**Assembly Bill No. 1741**

**CHAPTER 228**

An act to amend Sections 6479.3 and 34013 of the Revenue and Taxation Code, relating to cannabis, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor August 28, 2018. Filed with Secretary of State August 28, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1741, Bonta. Cannabis: taxation: electronic funds transfer.

The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election, authorizes the consumption of nonmedicinal cannabis by persons over 21 years of age, referred to as adult-use cannabis, and provides for the licensure and regulation of certain commercial adult-use cannabis activities. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities.

The Sales and Use Tax Law, which is administered by the California Department of Tax and Fee Administration, requires any person whose estimated tax liability under that law averages \$10,000 or more per month to remit amounts due by electronic funds transfer, as provided. That law authorizes, before January 1, 2022, a person issued a seller's permit for a place of business that is a dispensary, as defined in the Medical Cannabis Regulation and Safety Act, which was repealed, to remit amounts due for retail sales at the dispensary by a means other than electronic funds transfer.

This bill, until January 1, 2022, would instead authorize a person licensed under MAUCRSA, whose estimated tax liability under that law averages \$10,000 or more per month, to remit amounts due by a means other than electronic funds transfer if the board deems it necessary to facilitate collection of amounts due.

AUMA requires the taxes imposed by AUMA to be administered and collected pursuant to the Fee Collection Procedure Law, as specified. The Fee Collection Procedure Law requires any person whose estimated tax liability under that law averages \$20,000 or more per month to remit amounts due by electronic funds transfer, as provided.

This bill, until January 1, 2022, would exempt a person required to pay or collect specified taxes imposed on a person licensed to engage in commercial cannabis activity under MAUCRSA, whose estimated tax liability under that law averages \$20,000 or more per month, from the requirement to remit amounts due by electronic funds transfer if the department deems it necessary to facilitate collection of amounts due.

AUMA authorizes the Legislature to amend the act to further the purposes and intent of the act with a  $\frac{2}{3}$  vote of the membership of each house of the Legislature, except as provided.

This bill would declare that it furthers the purposes and intent of AUMA for a specified reason.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 6479.3 of the Revenue and Taxation Code is amended to read:

**6479.3.** (a) Except as provided in subdivision (k), any person whose estimated tax liability under this part averages ten thousand dollars (\$10,000) or more per month, as determined by the department pursuant to methods of calculation prescribed by the department, shall remit amounts due by an electronic funds transfer under procedures prescribed by the department. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than ten thousand dollars (\$10,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the department.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the department. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6476 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the department under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages ten thousand dollars (\$10,000) or more per month, the department may consider tax returns filed pursuant to this part and any other information in the department's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The department shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

(k) Until January 1, 2022, a person licensed to engage in commercial cannabis activity under Division 10 (commencing with Section 26000) of the Business and Professions Code, may remit amounts due by a means other than electronic funds transfer, if the department deems it necessary to facilitate collection of amounts due.

### **SEC. 2.** Section 34013 of the Revenue and Taxation Code is amended to read:

**34013.** (a) The department shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the taxes imposed by this part, and references to "feepayer" shall include a person required to pay or collect the taxes imposed by this part.

(b) Until January 1, 2022, subdivision (a) of Section 55050 shall not apply to a person required to pay or collect the taxes imposed by this part on a person licensed to engage in commercial cannabis activity under Division 10 (commencing with Section 26000) of the Business and Professions Code if the department deems it necessary to facilitate the collection of amounts due.

(c) The department may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(d) The department shall adopt necessary rules and regulations to administer the taxes in this part. Such rules and regulations may include methods or procedures to tag cannabis or cannabis products, or the packages thereof, to designate prior tax payment.

(e) Until January 1, 2019, the department may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under this division. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the department may remain in effect for two years from adoption.

(f) Any person required to be licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of the taxes not paid, and shall be subject to having its license revoked pursuant to Section 26031 of the Business and Professions Code.

(g) The department may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid, and, upon the department's request, the Attorney General shall bring the actions.

**SEC. 3.** The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Act) by providing the California Department of Tax and Fee Administration with the authority necessary to effectively and efficiently collect the taxes imposed by the Act.

**SEC. 4.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide tax relief to the cannabis industry at the earliest possible time and to incentivize the cannabis industry to comply with state tax law, it is necessary that this act take effect immediately.