



State Board of Equalization

News Release

Chairman Jerome E. Horton

4th District – Los Angeles

Kristine Cazadd
Interim Executive Director
www.boe.ca.gov

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Contact: NR 32-11-H
Juan Carlos Flores
323-980-1221

Board of Equalization Rules Sales of Medical Marijuana Taxable

Jerome E. Horton, Chairman of the California Board of Equalization (BOE), announced today that the Board reaffirmed that the sale of medical marijuana is not exempt from sales tax as exempt medicine.

In a case involving the Berkeley Patients Group, Inc., a medical marijuana dispensary in Berkeley, California, which claimed that their medical marijuana sales were classified as medicine and therefore exempt from sales tax, the Board of Equalization ruled that Berkeley Patients Group's sales of medical marijuana do not meet the definition of a sale of exempt medicine, and are therefore subject to tax. The case came before the Board at its Sacramento meeting this week.

California Revenue and Taxation Code section 6051 states that sales tax is imposed upon all retailers for the privilege of selling tangible personal property at retail in this state, unless it is specifically exempted by statute. The Board relied on section 6051 in concluding that there is no specific exemption from sales and use tax for sales or consumption of medical marijuana and, therefore, the selling of medical marijuana as tangible personal property is subject to taxation. Consequently, the Berkeley Patients Group is responsible for sales tax payments from 2004 up to the present for sales of medical marijuana.

The Board further affirmed that sellers of marijuana are required to hold a seller's permit and are required to file and pay sales tax. Persons who make sales without a seller's permit are also generally subject to an eight year look-back period for taxes, penalties, and interest.

The BOE audited the Berkeley Patients Group, Inc. for the period July 1, 2004 through June 30, 2007 and found that Berkeley Patients Group, Inc. owes more than \$6.4 million in tax and interest.

"The United States Supreme court has ruled that as a general matter, the unlawfulness of an activity does not prevent its taxation," Horton said. *See Dep't of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 778 (1994)*. "Sales of illegal medical marijuana and illegal marijuana in California are subject to tax."

Horton is also proposing legislation to regulate the distribution of marijuana from the growers to the retailers as a way of controlling illegal sales and assessing tax when properly due.

"The time is overdue for the state to provide leadership for this industry regarding the manufacturing and sale of marijuana similar to what we did for cigarettes and liquor," Horton said. "Such proposed

controls will have the same effect of regulating and controlling sales and capturing the appropriate sales tax.”

Under proposed legislation, the BOE would administer a statewide license program for every marijuana grower, importer, wholesaler, and retailer in order to regulate marijuana sales in the state. A tax would be imposed on the distribution of medical marijuana at a rate equivalent to that imposed upon tobacco products. Any marijuana or marijuana products distributed by any unlicensed person would be subject to seizure. In addition, the unlicensed person would be subject to a fine of up to \$5,000 or imprisonment not to exceed one year in county jail, or both.

Elected in 2010, Chairman Jerome E. Horton is the Fourth District Member of the California State Board of Equalization (BOE), representing more than 8.5 million residents in Los Angeles County. He is also the BOE Legislative Committee chairman. Horton is the first African American to serve on the BOE since its inception in 1879, and the third African American constitutional officer in California’s history. Horton previously served as a member of the California State Assembly from 2000-2006.

The five-member California State Board of Equalization is a publicly elected tax board responsible for the collection of more than \$48 billion annually in taxes and fees supporting state and local government services. It hears business tax appeals, acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes. For more information on other taxes and fees in California, visit www.taxes.ca.gov.

For more information on the issue of medical marijuana, visit: www.boe.ca.gov/news/marijuana.htm.

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