

Adult Use of Marijuana Act Proposition 64 League of California Cities

Wednesday, January 11, 2017
2:00 p.m. – 4:30 p.m.





Presenters

Michael Coleman

Fiscal Policy Advisor, League of California Cities

Tim Cromartie

Legislative Representative, League of California Cities

Agenda

- **Summary of the AUMA**
- **Key Differences: AUMA vs. MMRSA**
- **Personal Use and Personal Cultivation**
- **State Licensing of Commercial Operations**
- **Local Regulation of Commercial Operations**
- **Taxation of Nonmedical Marijuana**
- **Proposition 64 and Taxation**
- **Allocation of Revenues**
- **Local Taxes and Fees**
- **State and Local Sales Tax Exemptions**
- **Local Policy Issues**

Summary

- Legalizes the nonmedical use of marijuana by persons 21 years of age and over and the personal cultivation of six marijuana plants
- Creates state regulatory and licensing system for the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.
- Allows local governments to prohibit or regulate and license commercial nonmedical marijuana
- Takes effect November 9, 2016

Key Differences: AUMA and the MMRSA

For purposes of local regulation, there are four key differences between the Adult Use of Marijuana Act and the Medical Marijuana Regulation and Safety Act.

- 1) **Focus:** The MMRSA regulates medical marijuana, while the AUMA regulates nonmedical marijuana.
- 2) **Taxation:** The MMRSA authorizes counties to impose excise taxes. The AUMA exempts medical marijuana from state and local sales tax. The AUMA imposes state taxes on the purchase and cultivation of non-medical marijuana. Local taxation of nonmedical marijuana is not pre-empted by the AUMA.
- 3) **Local Regulations:** Under the MMRSA and the AUMA, local governments may allow, regulate, or prohibit commercial marijuana businesses within their jurisdictions. This policy choice should be reflected in an ordinance that contains express language regarding marijuana land uses and business regulations.
- 4) **Personal Cultivation:** The MMRSA does not alter local governments' existing authority to prohibit all personal cultivation. Under the AUMA, locals can reasonably regulate but cannot ban indoor private indoor cultivation. Note: Local ability to regulate or prohibit commercial indoor cultivation remains intact even under the AUMA.

Personal Use

- AGE: 21 years of age or older
- POSSESSION: Possess, process, transport, purchase, obtain, or give away 28.5 grams of non-concentrated non-medical marijuana, or 8 grams of concentrated marijuana products
- USE: Smoke or ingest marijuana or marijuana products
- CULTIVATION: Possess, plant, cultivate, harvest, dry or process up to 6 plants per residence for personal use

Restrictions on Personal Use

- No smoking in a public place (except where authorized locally)
- No smoking where smoking tobacco is prohibited
- No smoking within 1,000 feet of a school, day care center or youth center
- No smoking while driving or riding in a vehicle
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the city
- Employers may maintain drug-free workplaces

Personal Cultivation

- Local governments may “reasonably regulate” but not prohibit personal indoor cultivation of up to 6 marijuana plants within a private residence.
- Includes cultivation within a greenhouse or other structure on the same parcel of property that is not visible from a public space.
- Local governments may regulate or prohibit personal outdoor cultivation.

Questions about Personal Use

- What are “reasonable regulations” on personal cultivation of 6 plants within a personal residence?
- Examples:
 - A local requirement for a residential cultivation permit, with an appropriate fee;
 - Requiring as a condition of the permit, that the permit holder agree to periodic inspections (upon appropriate notice), to ensure that cultivation is not:
 - In excess of the six-plant limit
 - Drawing more electrical power from the grid that the structure/house is designed to withstand, thereby causing a fire hazard
 - Presenting a health hazard such as mold accumulation
 - Using more water than is reasonably required to cultivate six plants
 - Express local regulations requiring cultivation to comply with the Fire Code, Building Code and reasonable limitations on the use of water

State Licensing Commercial Operations

- All nonmedical marijuana businesses must have a state license
- State license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulations
- State license will be valid for one year.
- Separate state license required for each business location.

Local regulation/prohibition Commercial Operations

- Cities and counties may adopt and enforce ordinances regulating or completely prohibiting state-licensed marijuana businesses (but may not prohibit use of public roads for deliveries in another jurisdiction).
- State standards are minimum standards. Cities and counties may establish additional standards, requirements and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections.

Local regulation/prohibition Commercial Operations

- Proposition 64 does not require a city to enact a regulatory scheme or prohibition by certain date.
- League anticipates that State will not begin issuing licenses before January 1, 2018.
- If city prohibition or regulations in place before business applies for state license, state license either will not issue or be subject to local regulations.

Taxation of Nonmedical Marijuana

- 15% State excise tax of gross retail sales receipts.
- \$9.25/dry-weight ounce on marijuana flowers State cultivation tax
- \$2.75/dry-weight ounce on marijuana leaves State cultivation tax
- Marijuana cultivated for personal use is exempt from cultivation tax
- Medical marijuana is exempt from State/local sales tax
- Proposition 64 does not prevent cities and counties from imposing local taxes [except sales tax on medical marijuana]

Sales Taxes, Use Taxes, Excise Taxes

- **Excise Tax:** All taxes are either property taxes or excise taxes.
 - A property tax is a tax on the ownership of (real or personal) property and is triggered by the mere ownership of property.
 - An excise tax is a tax on the **privilege** of using or doing something with property.
 - Examples of local excise taxes include: business license tax; transient occupancy tax; parcel tax.
- **State and Local Sales and Use Tax**
 - The sales tax is a tax on the “privilege of selling tangible personal property at retail (R&T 6051).
 - The use tax is imposed on the storage, use or other consumption of tangible personal property purchased from a retailer (R&T 6201).

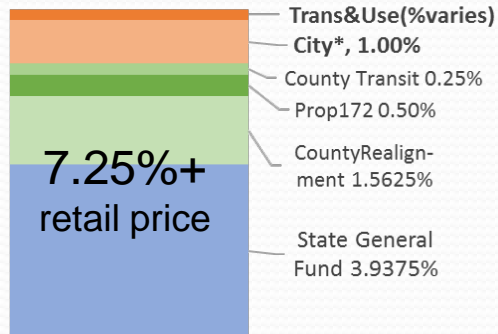
Prop. 64 and Taxation of Marijuana

- Adds a state excise tax of 15% on the privilege of purchasing marijuana at retail (Section 34011(a)). *Effective January 1, 2018*
- Adds an excise tax of \$9.25/dry-weight ounce (flowers) and \$2.75/dry-weight ounce leaves on the privilege of cultivating marijuana. *Effective January 1, 2018*
- Prop. 64 does not affect local governments' authority to impose taxes on medical or non-medical marijuana.
- Marijuana cultivated for personal use is exempt from cultivation tax.
- Medical marijuana is exempt from state/local sales tax. *Effective November 9, 2016*

Taxes and Fees on Marijuana under Proposition 64

Applies to non-medical only

Sales and Use Tax



Effective November 9, 2016

Applies to medical and non-medical

State Marijuana Excise Tax

15%
gross receipts
of retail sale

State Cultivation Taxes

\$9.25/oz flowers
\$2.75/oz leaves

Effective January 1, 2018

Allocation* of State Excise Taxes on Marijuana under Proposition 64

*may be altered by majority vote of the Legislature

60%

youth programs, substance abuse education, prevention and treatment

20%

environmental cleanup, remediation

20%

Reduce DUI, reduce negative health impacts re: marijuana legalization

- A city (or county) that bans cultivation, including outside personal cultivation, or the retail sale of marijuana, is not eligible for some grants.

Local Taxes and Fees on Marijuana

- Proposition 64: The new state excise taxes are “in addition to any other tax imposed by a city, county or city and county” (R&T 34021)
- New, increased, or extended local taxes require voter approval (2/3 for special tax; majority vote for general tax)
- The most common local excise tax is a **business license tax**:
 - Dispensing
 - Manufacturing
 - Cultivation
 - Transportation
- NOTE: Local governments’ sales tax may not differ from Bradley-Burns Uniform Sales and Use Tax Law in either what is taxed or the rate of the tax.

Local Taxes and Fees on Marijuana

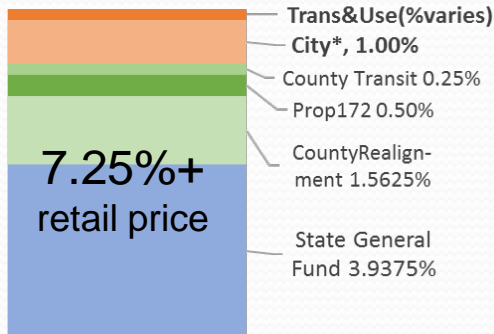
Taxes vs. Fees

- **Business License Taxes** allow revenue to be appropriated for any municipal purpose unless the tax has been approved as a “special tax” for a specific purpose.
- **Business Regulatory Fees** may recover the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits and enforcing these regulations – and should be scaled appropriately.

Taxes and Fees on Marijuana under Proposition 64

Applies to non-medical only

Sales and Use Tax



Effective November 9, 2016

Applies to medical and non-medical

State Marijuana Excise Tax

15%
gross receipts
of retail sale

State Cultivation Taxes

\$9.25/oz flowers
\$2.75/oz leaves

Effective January 1, 2018

City* Marijuana Excise Tax

if enacted/approved by voters

XX%
gross receipts
or other basis

(not a sales tax)

City* Marijuana Business

Regulatory Fee *if enacted*

To pay for regulation.
Limited to cost recovery.

Exemptions from Taxation of Marijuana

- Prop. 64 exempts marijuana cultivated for personal use from the new state cultivation tax.
- Prop. 64 exempts medical marijuana from state/local sales tax.
 - ... but not state or local excise taxes.

State and Local Sales Tax Exemption

- Exempts medical marijuana sales to a patient (or primary caregiver) who has an identification card and a valid government-issued identification from state and local sales and use taxes:

H & S 34011 (g).** The sales and use tax imposed by Part 1 of this division shall not apply to retail sales of medical cannabis, medical cannabis concentrate, edible medical cannabis products or topical cannabis as those terms are defined in Chapter 3.5 of Division 8 of the Business and Professions Code when a qualified patient (or primary caregiver for a qualified patient) provides **his or her card issued under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.

- **NOTE:** A physician's recommendation is not sufficient but is required by Prop 64.
- Takes effect November 9, 2016.

State and Local Sales Tax Exemption

- State Department of Health Services required under existing law to establish voluntary program for issuance of identification cards to “qualified patients.”
- County health departments process applications and issue identification cards
- Prop. 64: All identification cards must be supported by a physician’s recommendation
- Prop. 64: Identification card application system/database may not contain personal information of qualified patients (unique user ID number)
- Prop. 64: County fees limited to \$100 per application. Reimbursement from State is available.

State and Local Sales Tax Exemption

- State Board of Equalization, *Tax Guide for Medical Cannabis Businesses*
 - intended for the industry but may be helpful to local governments.
 - http://www.boe.ca.gov/industry/medical_cannabis.html
- Statewide, the top five cities levying a sales tax on medical marijuana yield \$6,158,000. (Source: HdL Companies)
- Offsetting sales tax revenue gain from sales of non-medical marijuana: unknown.
- Cities will first experience a reduction in revenues from this source for the fourth quarter of 2016 as of March 2017.

State and Local Sales Tax Exemption Mitigating Sales Tax Revenue Losses

Engage with dispensaries and enforce the terms under which the sales tax exemption applies.

- 1) Patients who wish to claim the sales tax exemption must display a valid medical marijuana card and government-issued identification card.
- 2) The card should be issued by either the California Dept. of Health Services or your county's health department.
- 3) A physician's recommendation alone is not sufficient to obtain the sales tax exemption but is required in support of the application for a card.
- 4) Cities may wish to consider adopting a regulation requiring dispensaries to check for card compliance.

Loss of sales tax revenue from medical marijuana sales will be offset to some degree by sales tax revenue from non-medical marijuana sales.

Local policy issues

Does your city want to:

- Take steps to mitigate anticipated loss of sales tax revenue from medical marijuana in the short term?
- Enact business regulations of non-medical marijuana businesses?
- Require retailers of medical marijuana to enforce eligibility for medical marijuana sales tax exemption?
- Impose local taxes on marijuana?

Issues of Concern

- Local approval in licensing process
- Drugged driving, need for sobriety test
- Banking issues
- Taxation

Contact Information

Michael Coleman

Fiscal Policy Advisor

coleman@muni1.com

(530) 758-3952

Tim Cromartie

Legislative Representative

tcromartie@cacities.org

(916) 658-8252