

**Initial Statement of Reasons for the Proposed Adoption of
California Code of Regulations, Title 18, Division 2, Chapter 8.8,
Cannabis Excise Tax Effective on and after January 1, 2023, New Sections 3800,
Application of Chapter and Definitions, and 3820, Responsible Person Liability,
and Amendments to Current Sections 3501, Records, 3700, Cannabis Excise
and Cultivation Taxes, 3703, Excess Cannabis Tax, 3800, Cannabis Excise
Tax and Cannabis Retailer Excise Tax Permit, 3805, Cannabis
Excise Tax Credit, and 3810, Vendor Compensation**

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND
ANTICIPATED BENEFITS**

Current Law

On June 30, 2022, the Legislature enacted Assembly Bill No. (AB) 195 (Stats. 2022, ch. 56). As relevant here, AB 195 amended the Cannabis Tax Law (CTL) (commencing with Revenue and Taxation Code (RTC) section 34010) to:

- Discontinue the imposition of the cultivation tax imposed by RTC section 34012 beginning July 1, 2022.
- Discontinue the cannabis excise tax imposed by RTC section 34011 on purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer, beginning January 1, 2023, and the requirement for the distributor to collect the cannabis excise tax imposed by RTC section 34011 from the cannabis retailer on cannabis or cannabis products sold or transferred to a cannabis retailer on or after January 1, 2023.
- Impose a new cannabis excise tax on purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer, beginning January 1, 2023 (RTC, § 34011.2).
- Require cannabis retailers to collect the new cannabis excise tax imposed by RTC section 34011.2, beginning January 1, 2023, and report and remit it directly to the California Department of Tax and Fee Administration (Department).
- Require all cannabis retailers to obtain a separate cannabis tax permit from the Department beginning January 1, 2023 (RTC, § 34014).
- Allow a cannabis retailer to claim a credit for cannabis excise tax paid to a distributor on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023 (RTC, § 34011.01).
- Allow a licensed cannabis retailer that is approved by the Department of Cannabis Control (DCC) for a fee waiver to retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax after they are approved by the Department. (RTC, § 34011.1).

- Make a responsible person liable for cannabis taxes they willfully fail to pay or cause to be paid for a corporation, partnership, limited partnership, limited liability partnership, or limited liability company under specified circumstances (RTC, § 34015.2).

Cultivation Tax

Subdivision (a) of RTC section 34012 imposed a cultivation tax on harvested cannabis that entered the commercial market from January 1, 2018, to June 30, 2022. Cannabis entered the commercial market on or before June 30, 2022, if the cannabis or cannabis products made from the cannabis completed and complied with both the testing and quality assurance review described in Business and Professions Code (BPC) section 26110 on or before June 30, 2022. (RTC, § 34010, subd. (m).)

Cultivators are liable for the cultivation tax imposed under RTC section 34012 until the tax is paid to the state. (RTC, § 34012, subd. (h).) Distributors and manufacturers were required to collect the cultivation tax from a cultivator on the cultivator's first sale or transfer of cannabis to a distributor or manufacturer if the sale or transfer occurred on or before June 30, 2022. (RTC, § 34012, subds. (a)(2) & (h); Cal. Code Regs. (CCR), tit. 18, § (Regulation or Reg.) 3700, subd. (d).) Also, an invoice, receipt, or other document given to a cultivator by a licensed distributor or manufacturer is sufficient to relieve the cultivator from further liability for the cultivation tax to which the invoice, receipt, or other document refers. (RTC, § 34012, subd. (h).)

Once collected, the associated cultivation tax was required to follow the cannabis and the cannabis products made from the cannabis it was collected on, from one licensed party to the next, until the cannabis and cannabis products reached the distributor that performed the quality assurance review described in BPC section 26110. (RTC, § 34012, subd. (h); Reg. 3700, subd. (d).) The associated cultivation tax was imposed under RTC section 34012 if the cannabis or cannabis products completed and complied with the testing and quality assurance review requirements described in BPC section 26110 on or before June 30, 2022. If imposed, the associated cultivation tax was required to be reported and paid to the Department by the distributor that performed the quality assurance review with their return for the period in which the tax was imposed. (RTC, §§ 34012, subd. (h), & 34015, subd. (a) (as amended by section 29 of AB 195); Reg. 3700, subd. (e).) Therefore, a distributor should have already filed their last cultivation tax return with the Department. Also, subdivision (a) of RTC section 34012.5 provides that the cultivation tax required to be collected by a distributor or required to be collected by a manufacturer, and any amount unreturned to the cultivator that is not tax but was collected from the cultivator under the representation by the distributor or the manufacturer that it was tax, constitutes a debt owed by the distributor or the manufacturer to this state.

Cannabis Excise Tax Imposed Prior to January 1, 2023

RTC section 34011 (as amended by section 19 of AB 195) imposed a cannabis excise tax on purchasers of cannabis or cannabis products sold in this state from January 1, 2018, to December 31, 2022, at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. In an arm's length transaction, the average market price was the wholesale cost of the cannabis or cannabis products sold or transferred to the cannabis retailer, plus a mark-up, as determined by the Department. (RTC, § 34010, subd. (c)(1)(A).) In a nonarm's length

transaction, the average market price was the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products. (RTC, § 34010, subd. (c)(2).)

Subdivision (b)(1) of RTC section 34011 required a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in an arm's length transaction before January 1, 2023. It required a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in a nonarm's length transaction before January 1, 2023, or at the time of retail sale by the cannabis retailer, whichever is earlier. A distributor was also required to report and remit the cannabis excise taxes it was required to collect under RTC section 34011 to the Department on or before the last day of the month following the period in which the distributor sold or transferred the cannabis or cannabis products to the cannabis retailer. (RTC, §§ 34011, subd. (b)(1) & 34015 as amended by section 29 of AB 195; Reg. 3700, subd. (j).) Therefore, a distributor should have already filed their last cannabis excise tax return, reporting their sales and transfers of cannabis and cannabis products to cannabis retailers, with the Department on or before January 31, 2023. Also, a distributor should have remitted the cannabis excise taxes on the sales and transfers reported on their last return by January 31, 2023, regardless of whether the taxes were collected or required to be collected from cannabis retailers before January 31, 2023.

Subdivision (b)(1) of RTC section 34011 also required a cannabis retailer to collect the cannabis excise tax from the purchaser on their retail sales of cannabis or cannabis products before January 1, 2023. It also required a cannabis retailer to pay their distributor(s) the cannabis excise tax required to be collected on cannabis or cannabis products the distributor(s) sold or transferred to the cannabis retailer before January 1, 2023, regardless of whether the cannabis or cannabis products were sold by the retailer to a purchaser before January 1, 2023. Therefore, a cannabis retailer may have been required to pay cannabis excise taxes under RTC section 34011 to a distributor that it could not collect from a purchaser because the cannabis or cannabis products were not sold to a purchaser prior to January 1, 2023. However, if that is the case, a cannabis retailer may claim a credit for the cannabis excise tax amounts paid to the distributor, pursuant to RTC section 34011, on cannabis or cannabis products sold to a purchaser on or after January 1, 2023, as discussed in more detail below.

In addition, subdivision (a) of RTC section 34012.5 provides that the cannabis excise tax required to be collected by a distributor, and any amount unreturned to the cannabis retailer that is not tax but was collected from the cannabis retailer under the representation by the distributor that it was tax, constitutes a debt owed by the distributor to this state. Also, subdivision (h) of Regulation 3700 defines excess cannabis excise tax to mean an amount represented by a cannabis retailer to a customer as constituting cannabis excise tax that is computed upon an amount that is not taxable or is in excess of the taxable amount, and requires a cannabis retailer to refund excess cannabis excise tax to the customer from which it was collected or remit it to a distributor so it can be reported and paid to the Department.

Finally, subdivision (i) of Regulation 3700 clarifies how the cannabis excise tax imposed by RTC section 34011 applied when a distributor sold or transferred cannabis or cannabis products to cannabis retailers with cannabis accessories. It provides that the cost of cannabis accessories is included in the average market price to which the cannabis excise tax applied when a distributor

sold or transferred cannabis or cannabis products to a cannabis retailer with cannabis accessories for a lump-sum charge. However, when a distributor separately stated the price of the cannabis or cannabis products from the cannabis accessories, the cannabis excise tax applied to the average market price of the cannabis or cannabis products, and not to the separately stated charge for the cannabis accessories.

Cannabis Excise Tax Effective On and After January 1, 2023

Subdivision (a)(1) of RTC section 34011.2 provides that effective on and after January 1, 2023, a new cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer. Subdivision (a)(2) of RTC section 34011.2 requires the Department to adjust the rate of this cannabis excise tax, in consultation with the Department of Finance, for the 2025-2026 fiscal year and every two years thereafter. Subdivision (c) of RTC section 34011.2 requires a cannabis retailer to collect this cannabis excise tax from the purchaser on their retail sales on and after January 1, 2023, and report and remit the tax directly to the Department pursuant to RTC section 34015 (as added by section 30 of AB 195, operative January 1, 2023). Subdivision (b) of RTC section 34011.2 provides that a purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to this state, except that an invoice, receipt, or other document from a cannabis retailer given to the purchaser pursuant to section 34011.2 is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

Subdivision (a) of RTC section 34015 provides that the cannabis excise tax imposed by RTC section 34011.2 is due and payable to the Department quarterly and requires each cannabis retailer to file a return for the preceding quarterly period with the Department on or before the last day of the month following each quarterly period of three months, unless otherwise prescribed by the Department. Also, subdivision (a) of RTC section 34012.3 provides that the cannabis excise tax required to be collected by a cannabis retailer, and any amount not returned to the purchaser that is not tax but was collected from the purchaser under the representation by the cannabis retailer that it was tax, constitutes debt owed by the cannabis retailer to this state.

Transition Provisions

Subdivision (a) of RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of old cannabis excise tax owed prior to January 1, 2023, shall be paid by the retailer to the distributor on or before April 1, 2023. However, this shall not be construed to require the Department to enforce this obligation.

On and after January 1, 2023, a cannabis retailer must collect the new cannabis excise tax imposed by RTC section 34011.2 from purchasers on its retail sales of cannabis or cannabis product and remit that tax directly to the Department pursuant to RTC section 34011.2. Where a retailer has already paid the old cannabis excise tax on that cannabis or cannabis product to a distributor pursuant to RTC section 34011 prior to January 1, 2023, subdivision (b) of RTC section 34011.01 provides that the retailer may claim a credit on their cannabis excise tax return for those amounts. Also, subdivision (a) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and relieves distributors

from the requirement to obtain and maintain a separate cannabis tax permit from the Department, beginning January 1, 2023.

Fee Collection Procedures Law

RTC section 34013 requires the Department to administer and collect the cannabis taxes imposed under the CTL pursuant to the Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.). Also, when the Department determines that any amount, including cannabis excise tax, has been paid more than once, the FCPL authorizes the Department to credit the excess amount paid on amounts then due from the person that paid them and refund the balance if a timely claim for refund or credit is filed. (RTC, §§ 55221 & 55222.)

Vendor Compensation

Subdivision (a)(1) of RTC section 34011.1 (operative January 1, 2023) provides that until December 31, 2025, a licensed cannabis retailer that has received approval from the DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax collected by the retailer. Approval for a fee waiver under BPC section 26249 includes approval for a fee waiver that is contingent upon the availability of funds.

Subdivision (a)(2) of RTC section 34011.1 provides that to apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department that sets forth the name under which they transact or intend to transact business, the location of their place or places of business, and any other information the Department may require. It also provides that the cannabis retailer shall also include with the application their seller's permit number and cannabis tax permit number and a copy of their cannabis license and DCC approved fee waiver. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the Department.

Subdivision (a)(3) of RTC section 34011.1 provides that upon verification that a licensed cannabis retailer meets the requirements of RTC section 34011.1, the Department shall issue the cannabis retailer a notice approving vendor compensation. Subdivision (a)(4) of RTC section 34011.1 provides that to maintain eligibility for vendor compensation, a licensed cannabis retailer shall maintain eligibility for a fee waiver under BPC section 26249 and any relevant implementing regulations. An approval for vendor compensation shall expire on the last day of the calendar quarter following notification to the Department that a cannabis retailer is no longer eligible for a fee waiver. If a cannabis retailer maintains eligibility for a fee waiver, an approval for vendor compensation shall remain valid for one year commencing on the first day of the calendar quarter following the date the Department issues the notice and may be renewed as prescribed by the Department.

Subdivision (a)(5) of RTC section 34011.1 provides that to notify the Department of a cannabis retailer's eligibility for vendor compensation under this section, the DCC shall either maintain a database accessible to the Department reflecting whether a cannabis retailer is eligible or has become ineligible for a fee waiver under BPC section 26249 and implementing regulations or otherwise provide information upon request of the Department for purposes of verifying a cannabis retailer's eligibility under RTC section 34011.1.

Also, CCR, title 4, section (DCC Regulation) 15000.1 requires a separate commercial cannabis license for each location where a licensee engages in commercial cannabis activity. DCC Regulation 15014.1 implements BPC section 26249 and provides that commercial cannabis businesses that satisfy the requirements for a license fee waiver are only eligible for one such waiver from the DCC per 12-month licensure period. DCC Regulation 15014.1 also requires a commercial cannabis business to submit a complete application for licensure or renewal as part of their application for a fee waiver and provides that the DCC will only process their complete fee waiver request in the order in which the application or renewal for commercial cannabis licensure has been approved by the DCC. While the fee waiver from the DCC applies to a 12-month licensure period, a commercial cannabis business may reapply for a fee waiver for a subsequent licensure period.

In addition, DCC Regulation 15020 clarifies that the same commercial cannabis license can be renewed before it expires by submitting a completed license renewal form and the annual license fee to the DCC no later than the last business day before it expires. It clarifies that the same commercial cannabis license can still be renewed after it expires by submitting a completed license renewal form, the annual license fee, and a 50 percent late fee to the DCC within 30 calendar days after the license expired. It clarifies that in the event a license is not renewed prior to its expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any commercial cannabis or cannabis products under that license until the license is renewed. It also clarifies that a licensee that does not submit a complete license renewal application, including the late fee, to the DCC within 30 calendar days after the expiration of their license shall forfeit their eligibility for a license renewal and be required to submit a new license application for a new commercial cannabis license. Also, the DCC has authority to revoke commercial cannabis licenses and subdivision (b) of BPC section 26055 provides that revocation of a commercial cannabis license issued by the DCC shall terminate the ability of the licensee to operate pursuant to that license within California until a new license is obtained.

Responsible Person Liability

Subdivision (a) of RTC section 34015.2 provides that upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax for, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the CTL, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to the CTL.

Subdivision (b) of RTC section 34015.2 provides that the officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period they had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

Subdivision (c) of RTC section 34015.2 provides that personal liability may be imposed pursuant to this section only if the Department can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company is required to collect the cannabis excise tax imposed pursuant to RTC section 34011 or 34011.2 or cultivation tax imposed pursuant to RTC section 34012 and that it failed to report and pay the tax.

Subdivision (d) of RTC section 34015.2 provides that except as provided in subdivision (e), the sum due for the liability under this section may be collected by determination and collection in the manner provided in chapter 3 (commencing with section 55040) and chapter 4 (commencing with section 55121) of the FCPL.

Subdivision (e) of RTC section 34015.2 provides that a notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the Department obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Department, this filing shall not constitute actual knowledge by the Department under this section.

Subdivision (f) of RTC section 34015.2 provides that for purposes of this section, “willfully fails to pay or to cause to be paid” means that the failure was the result of an intentional, conscious, and voluntary course of action.

Medicinal Cannabis Designated for Donation

To provide access to medicinal cannabis patients who have difficulty accessing cannabis or cannabis products, BPC section 26071 allows a licensed cannabis retailer to provide free cannabis or cannabis products to a medicinal cannabis patient or their primary caregiver. Also, subdivision (h) of RTC section 34011.2 provides that this section shall not be construed to impose a cannabis excise tax upon medicinal cannabis, or medicinal cannabis product, donated for no consideration to a medicinal cannabis patient pursuant to BPC section 26071.

In addition, BPC section 26071 and DCC Regulation 15411 require cannabis and cannabis products to be designated for donation by a licensee in the track and trace system before they are provided to a medicinal cannabis patient or their primary caregiver. DCC Regulation 15049 requires all licensees to record the destruction of cannabis or cannabis products in the track and trace system, including cannabis or cannabis products designated for donation. Also, DCC’s website explains that licensees, including licensed cannabis retailers, cannot change the donation designation made by another licensee, but a licensee may change its own donation designations.¹

¹ <https://cannabis.ca.gov/2020/02/donations-of-cannabis-and-cannabis-product/>.

Trade Samples

DCC Regulation 15041.2 defines the term “trade sample.” DCC Regulations 15041.2 through 15041.7 establish rules for licensees to designate cannabis or cannabis products in their possession as a trade sample, provide trade samples to other licensees and their own employees, and for the consumption of trade samples pursuant to BPC section 26153.1.

DCC Regulation 15041.4 allows a licensed cultivator, manufacturer, distributor, microbusiness, or cannabis retailer to designate trade samples. It allows a licensed cultivator, manufacturer, distributor, or microbusiness to provide trade samples to their own employees and other licensees, including licensed cannabis retailers. It only allows a licensed cannabis retailer to provide trade samples to their own employees and prohibits a licensed cannabis retailer from providing trade samples to other licensees or other unlicensed persons, including retail customers. It also prohibits a licensee, including a licensed cannabis retailer, from providing trade samples for any payment or consideration or to an employee as compensation, and prohibits an employee from selling a trade sample provided by their employer.

DCC Regulation 15041.6 requires trade samples that are not consumed by a licensee or their employee to be destroyed. Also, DCC Regulation 15041.3 provides that once cannabis or cannabis products have been designated as a trade sample, the designation cannot be changed, unless the designation is changed to medicinal cannabis or cannabis products for donation by the licensee that originally designating the cannabis or cannabis products as a trade sample. So, a licensed cannabis retailer may not change the designation of trade samples provided by another licensee, but they can change the designation of trade samples they designated to medicinal cannabis or cannabis products for donation.

In addition, subdivision (i)(1) of RTC section 34011.2 provides that this section shall not be construed to impose a cannabis excise tax upon cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1. Subdivision (i)(2) of RTC section 34011.2 further provides that a person licensed under division 10 of the BPC that sells cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1 shall be liable for the cannabis excise tax imposed by this section as if the person were a cannabis retailer at the time of sale.

Emergency Cannabis Tax Regulations

RTC section 34013 authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the CTL. Also, AB 195 amended subdivision (e) of RTC section 34013 to authorize the Department to prescribe, adopt, and enforce any emergency regulations, until January 1, 2024, as necessary to implement, administer, and enforce its duties under division 2 of the RTC, which includes the CTL and FCPL. Subdivision (e) also specifies that the emergency regulations adopted by the Department may remain in effect for two years from adoption.

The Department determined that there were issues (or problems within the meaning of Gov. Code (GC), § 11346.2, subd. (b)) regarding the return, remittance, and collection of excess cannabis tax, issues regarding credits for cannabis excise tax retailers paid to distributors on

cannabis or cannabis products sold to purchasers on or after January 1, 2023, and issues regarding the CTL's new vendor compensation provisions, including the requirement for a retailer to include its cannabis tax permit number on its application to retain vendor compensation. The Department held an interested parties meeting on October 6, 2022, to discuss proposed emergency regulations to address those issues. Following the interested parties meeting, the Department adopted new chapter 8.8 (commencing with Reg. 3800), Cannabis Excise Tax Effective on and after January 1, 2023, in division 2 of title 18 of the CCR (chapter 8.8), new Regulation 3703, Excess Cannabis Tax, to be included in chapter 8.7 in division 2 of title 18 of the CCR (chapter 8.7), new Regulations 3800, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit, 3805, Cannabis Excise Tax Credit, and 3810, Vendor Compensation, to be included in chapter 8.8, and amendments adding subdivision (h)(6) to Regulation 3700 in chapter 8.7 as emergency regulations for the specific purpose of addressing the above issues (or problems) and implementing the CTL's new requirements for cannabis retailers to obtain cannabis tax permits, as discussed further below. The emergency regulations became operative on January 30, 2023, and will be repealed by operation of law on January 31, 2025, unless the Department adopts them as permanent regulations through the regular rulemaking process in the Administrative Procedure Act (APA) (commencing with GC, § 11340) and submits the completed rulemaking file to the Office of Administrative Law (OAL) by January 30, 2025.

Emergency Regulation 3703, Excess Cannabis Tax

Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax that was computed upon an amount that was not subject to cultivation tax or was in excess of the amount of cultivation tax required to be collected from the cultivator is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the cultivator that paid it. Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax on cannabis or cannabis used to make cannabis products that did not enter the commercial market on or before June 30, 2022, is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the cultivator that paid it. Any amount a distributor collected from a cannabis retailer under the representation by the distributor that it was cannabis excise tax that was computed upon an amount that was not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the cannabis retailer represents a debt owed to the state under RTC section 34012.5, unless it is returned to the retailer that paid it. Additionally, any amount a cannabis retailer collected from a purchaser under the representation that it was cannabis excise tax that was computed upon an amount that was not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the purchaser constitutes debt owed by the cannabis retailer to this state under RTC section 34012.3, unless it is returned to the purchaser that paid it.

The Department determined that there were issues (or problems) regarding the return or remittance of excess cultivation tax because there was no regulation clarifying RTC section 34012.5's provisions regarding excess cultivation tax. The Department also determined that there were issues (or problems) regarding the return or remittance of excess cannabis excise tax because the procedures for the remittance of excess cannabis excise tax in subdivision (h) of Regulation 3700 were outdated after the CTL was amended by AB 195 to require retailers to report and remit cannabis excise tax directly to the Department and no longer require distributors

to collect cannabis excise tax from retailers and report and remit it to the Department. Therefore, the Department determined that it was reasonably necessary to adopt emergency Regulation 3703 and emergency amendments to add subdivision (h)(6) to Regulation 3700 for the specific purpose of addressing those issues (or problems). Emergency Regulation 3703 defines excess cannabis tax to include all the excess cultivation and cannabis excise described above and provides procedures to ensure that excess cannabis tax is refunded to the person that paid it or paid to the Department. Emergency Regulation 3703 supersedes the outdated excess cannabis excise tax provisions in subdivision (h) of Regulation 3700 and subdivision (h)(6) of Regulation 3700 expressly clarifies that the excess cannabis excise tax provisions in subdivision (h) are superseded by the provisions in Regulation 3703 and no longer operative on and after January 30, 2023.

Emergency Regulation 3800

Subdivision (a)(1) of RTC section 34011.2 provides that effective on and after January 1, 2023, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at a rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer. Subdivision (c) of RTC section 34011.2 provides that the cannabis retailer shall be responsible for collecting the cannabis excise tax from the purchaser and remitting that tax to the Department. Also, subdivision (a)(2) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and prohibits any person from engaging in business as a cannabis retailer without such a permit, beginning January 1, 2023.

The Department determined that there were issues (or problems) because some cannabis retailers might not be aware that the cannabis excise tax imposed by RTC section 34011.2 applies to their gross receipts from retail sales of cannabis or cannabis products on and after January 1, 2023, and that they were required to collect and remit the tax directly to the Department. Therefore, the Department determined that it was reasonably necessary to adopt subdivisions (a)(3) and (b) of emergency Regulation 3800 for the specific purposes of addressing the issues regarding the application, collection, and remittance of the cannabis excise tax imposed by RTC section 34011.2. Subdivision (a)(3) defines “Department” and subdivision (b) clarifies that RTC section 34011.2 imposes a cannabis excise tax on purchasers of cannabis or cannabis products sold at retail in this state on and after January 1, 2023, that the tax is 15 percent of the cannabis retailer’s gross receipts, and that the cannabis retailer is responsible for collecting the tax from the purchaser and remitting the tax to the Department.

The Department also determined that there were issues (or problems) because some cannabis retailers may not be aware that RTC section 34014 requires cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023, and there was no regulation clarifying how to obtain such a permit. Therefore, the Department determined that it was reasonably necessary to adopt subdivisions (a)(1), (2), (4), (5), and (6), (c), and (d) of emergency Regulation 3800 for the specific purposes of addressing those issues.

Subdivision (a)(1) of emergency Regulation 3800 provides that “business information” means information the Department deems necessary to determine if a person is required to obtain a

cannabis retailer excise tax permit from the Department, determine if the person is required to remit the cannabis excise tax it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person's books and records. Such information includes, but is not limited to, the name of the person's business, the addresses of the person's business locations, the date the person's business started or will start, the business's business activities, the business's projected revenue, and the name and contact information of at least one individual the Department may contact to obtain access to the business's books and records. Subdivision (a)(2) provides that "contact information" means information the Department deems necessary to contact and communicate with a person applying for a cannabis retailer excise tax permit and with that person's authorized representative(s). Such information includes, but is not limited to, a current mailing address, email address, and telephone number. It provides that "Department" means the California Department of Tax and Fee Administration. Subdivision (a)(4) provides that "identifying information" means information the Department deems necessary to specifically identify a person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the person's name, the person's type (e.g., individual, partnership, limited liability company, corporation, etc.), and the person's federal Employer Identification Number, and may also include, but is not limited to, the person's driver's license number or other government-issued identification card number or entity number issued by the California Secretary of State. Subdivision (a)(5) provides that "ownership information" means information the Department deems necessary to identify the owners of an entity or business. Such information may include, but is not limited to, the owners' names and contact information. Subdivision (a)(6) also provides that "representative information" means information the Department deems necessary to verify that the individual that submitted an application for a cannabis retailer excise tax permit is the person applying for a cannabis retailer excise tax permit or is authorized to submit the application on behalf of the person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the individual's name, title, and contact information.

Subdivision (c) of emergency Regulation 3800 incorporates the requirement for a person to have a cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023. Subdivision (d) of Emergency Regulation 3800 requires a person to complete and submit an application for a cannabis retailer excise tax permit through the Department's online services portal via its website at www.cdtfa.ca.gov to obtain a cannabis retailer excise tax permit. It also clarifies that every application for a cannabis retailer excise tax permit shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information.

Emergency Regulation 3805

RTC section 34011.2 requires a cannabis retailer to collect the cannabis excise tax imposed by section 34011.2 from the purchasers on their retail sales of cannabis or cannabis products made on and after January 1, 2023, and remit that tax to the Department. Subdivision (a) of RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of cannabis excise tax imposed by RTC section 34011 owed prior to January 1, 2023, shall be paid by the retailer to the distributor. Subdivision (b) of RTC section 34011.01 also provides that a cannabis retailer may claim a credit on their cannabis tax return for cannabis excise tax paid to a distributor, pursuant to RTC section 34011, before January 1, 2023,

on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023, in a retail sale for which the cannabis retailer is responsible for collecting and remitting cannabis excise tax to the Department under RTC section 34011.2.

In addition, for purposes of a cannabis retailer claiming a cannabis excise tax credit, the Department is not aware of any significant difference between cannabis excise tax a retailer paid to a distributor, pursuant to RTC section 34011, before or after January 1, 2023, on cannabis or cannabis products:

- The distributor sold or transferred to the cannabis retailer prior to January 1, 2023; and
- The cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2.

When a cannabis retailer pays cannabis excise tax to a distributor after January 1, 2023, on cannabis or cannabis products sold or transferred to the cannabis retailer before January 1, 2023, pursuant to RTC section 34011, and then remits cannabis excise tax on the retail sale of the same cannabis or cannabis products after January 1, 2023, pursuant to RTC section 34011.2, the FCPL authorizes the Department to credit the excess amount the retailer paid to the distributor against amounts owed by the retailer and refund the difference because the retailer paid cannabis excise tax twice on the same retail sale. Also, nothing indicates that the enactment of RTC section 34011.01 was intended to limit the Department's authority to credit or refund amounts under the FCPL.

The Department determined that there was an issue (or problem) because some cannabis retailers might not be aware that they could claim a credit for cannabis excise tax paid to a distributor on cannabis or cannabis products on or after January 1, 2023, pursuant to RTC section 34011, against cannabis excise tax imposed on the retail sale of the cannabis or cannabis products on or after January 1, 2023, by RTC section 34011.2. There was an issue (or problem) because there was no regulation clarifying how cannabis retailers should claim a credit for cannabis excise tax paid to a distributor on cannabis or cannabis products, pursuant to RTC section 34011, against cannabis excise tax imposed on the retail sale of the cannabis or cannabis products on or after January 1, 2023. There was an issue (or problem) because there was no regulation clarifying whether a cannabis retailer could claim a refund in lieu of such a credit. There was also an issue (or problem) because there was no regulation clarifying the types of records a cannabis retailer needs to maintain to support such a credit or refund. Therefore, the Department determined that it was reasonably necessary to adopt emergency Regulation 3805 for the specific purpose of addressing those issues.

Subdivision (a) of emergency Regulation 3805 provides that a cannabis retailer may claim a credit on their cannabis tax return for the cannabis excise tax amount the cannabis retailer paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2. Subdivision (a) clarifies that the credit must be taken on the cannabis retailer's cannabis tax return filed for the period in which the retail sale of the cannabis or cannabis products occurred. If the credit is not taken on the proper return, the cannabis retailer may file a claim for refund for the amount for which they could have claimed a timely credit.

Subdivision (a) also clarifies that a cannabis retailer may not claim a credit or refund for any amount that a distributor refunded to the cannabis retailer. Subdivision (b) of emergency Regulation 3805 clarifies the types of records a cannabis retailer is required to maintain to support a cannabis excise tax credit or refund.

Emergency Regulation 3810

RTC section 34011.1, operative January 1, 2023, provides that until December 31, 2025, a licensed cannabis retailer that has received approval from the DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax. To apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department and include a copy of their DCC issued cannabis license and DCC approved fee waiver. The Department shall issue the cannabis retailer a notice approving the vendor compensation upon verification that the cannabis retailer meets the requirements of RTC section 34011.1. An approval is generally valid for one year.

The Department determined that there were issues (or problems) because there was no regulation that prescribed the form and manner of the application to retain vendor compensation, clarified the requirements to receive approval to retain vendor compensation, clarified the periods for which vendor compensation may be retained, clarified the cannabis excise taxes from which vendor compensation may be retained, or provided procedures for reporting and claiming vendor compensation. Therefore, the Department proposed to adopt emergency Regulation 3810 for the specific purpose of addressing those issues.

Subdivision (a) of emergency Regulation 3810 defines and clarifies the meaning of terms used in the regulation. It clarifies that “cannabis excise tax” means the cannabis excise tax imposed by RTC section 34011.2. It clarifies that “fee waiver” means a retailer license fee waiver or retailer license renewal fee waiver. It clarifies that a licensed cannabis retailer is a cannabis retailer that has obtained a retailer license pursuant to division 10 of the BPC. It also clarifies that “licensed retail premises” means the physical location from which commercial cannabis activities are authorized to be conducted under a retailer license.

Subdivision (b) of emergency Regulation 3810 incorporates the first sentence in subdivision (a)(1) of RTC section 34011.1 and clarifies that a licensed cannabis retailer may retain vendor compensation in an amount equal to 20 percent of the cannabis excise taxes imposed on the cannabis retailer’s retail sales of cannabis or cannabis products authorized under their retailer license for one licensed retail premises if the licensed retailer has received: (1) approval from DCC for a fee waiver that applies to the issuance or renewal of that retailer license; and (2) a notice from the Department approving the licensed cannabis retailer to retain vendor compensation from the cannabis excise taxes imposed on their retail sale of cannabis or cannabis products authorized under that retailer license. The clarifications make the regulation consistent with DCC’s regulations, which only provide for the issuance of license fee waivers, provide that a licensee shall be eligible for one license fee waiver from the DCC per 12-month licensure period, and require a separate license for each location where a licensee engages in commercial cannabis activity.

Subdivisions (c)(1), (2), and (3) of emergency Regulation 3810 implement subdivision (a)(2) of RTC section 34011.1. Subdivision (c)(1) requires a licensed cannabis retailer to request approval to retain vendor compensation by submitting a completed Vendor Compensation Application through the Department's online services portal. Subdivision (c)(2) requires a completed application to include the information required by subdivision (a)(2) of RTC section 34011.1, and clarifies that the place or places of business referred to in subdivision (a)(2) of RTC section 34011.1 are the place or places where the licensed cannabis retailer is authorized to engage in retail sales of cannabis or cannabis products. In addition to the information required by statute, subdivision (c)(2) of the regulation requires a licensed cannabis retailer's application to include their contact information and indicate the place where commercial cannabis activities are authorized to be conducted under the retailer license for which DCC approved the cannabis retailer's fee waiver, the issuance and expiration date and number of that retailer license, and the date DCC approved the fee waiver to assist the Department with determining eligibility to retain vendor compensation. Subdivision (c)(3) requires a completed application to be submitted with the documents required by subdivision (a)(2) of RTC section 34011.1 and clarifies that subdivision (a)(2) of RTC section 34011.1 requires a cannabis retailer to submit a copy of the retailer license for which DCC approved the fee waiver.

Subdivision (c)(4) of emergency Regulation 3810 implements subdivision (a)(3) of RTC section 34011.1. It provides that the Department will notify the cannabis retailer in writing as to whether the cannabis retailer is approved to retain vendor compensation and if they are approved, the Department will also specify the quarterly periods for which they are approved to retain vendor compensation.

Subdivision (d) of emergency Regulation 3810 incorporates and clarifies subdivisions (a)(4) and (5) of RTC section 34011.1. It provides that an approval to retain vendor compensation is effective on the first day of the calendar quarter commencing after the date in which the Department issues a notice approving a Vendor Compensation Application and is valid for that calendar quarter. It clarifies that an approval generally remains valid for four consecutive calendar quarters unless it expires earlier under subdivision (d)(3). Subdivision (d)(3) clarifies that an approval to retain vendor compensation expires on the last day of the calendar quarter commencing after the date DCC first notifies the Department that the cannabis retailer is no longer eligible for a fee waiver pursuant to RTC section 34011.1, unless the approval already expired. Subdivision (d)(4) also clarifies that a licensed cannabis retailer may not retain vendor compensation from the cannabis excise taxes required to be reported for any period after the date their approval to retain vendor compensation expires. Finally, subdivision (d) provides examples to illustrate the specified retention periods. The first example provides that a licensed cannabis retailer that is approved to retain vendor compensation during the first calendar quarter of 2023 will be approved to retain vendor compensation for the second, third, and fourth calendar quarters of 2023, and first calendar quarter of 2024, unless the approval to retain vendor compensation expires earlier under subdivision (d)(3). The second example provides that if DCC notifies the Department in the first calendar quarter of 2024 that a cannabis retailer is no longer eligible for a fee waiver, the cannabis retailer's approval to retain vendor compensation expires on the last day of the second calendar quarter, unless the approval to retain vendor compensation already expired under subdivision (d)(2).

Subdivision (e) of emergency Regulation 3810 clarifies that an approval to retain vendor compensation only approves a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under the retailer license for which they received approval from DCC for a fee waiver.

Subdivision (e) also clarifies that an approval to retain vendor compensation does not approve a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on any other retail sales, including, but not limited to, sales made after the retailer license for which they received approval from DCC for a fee waiver has expired and before that license is renewed, or made after that retailer license is revoked, or made under any other retailer license.

Subdivision (f) of emergency Regulation 3810 provides that a new Vendor Compensation Application must be submitted if the licensed cannabis retailer's previous approval has expired or their retailer license for which they received approval from the DCC for a fee waiver has expired and not been renewed or has been revoked. Subdivision (g) of emergency Regulation 3810 requires a licensed cannabis retailer to report the vendor compensation retained from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products, as a credit on their Cannabis Retailer Excise Tax Return for the corresponding reporting period in which the cannabis retailer made the retail sales of the cannabis or cannabis products. Subdivision (g) also provides that a cannabis retailer must file a claim for refund with the Department if the cannabis retailer remits any amount of cannabis excise tax to the Department that it was eligible to retain. Finally, subdivision (h) of emergency Regulation 3810 clarifies that a cannabis retailer shall not retain vendor compensation from cannabis excise taxes imposed on retail sales of cannabis or cannabis products made after December 31, 2025, as provided in subdivision (a)(1) of RTC section 34011.1.

Subsequent Emergency Amendments to Regulation 3700

After the adoption of the emergency amendments to Regulation 3700 discussed above, the Department determined that there was an issue (or problem) because some cannabis retailers were confused about whether subdivision (i) of Regulation 3700 applied when determining whether their charges for cannabis accessories, are included in their gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2 on and after January 1, 2023. Therefore, the Department determined that it was reasonably necessary to adopt emergency amendments adding subdivision (i)(3) to Regulation 3700 for the specific purpose of addressing the issue by clarifying that subdivision (i) is inoperative on and after January 1, 2023. This is because subdivision (i) implements, interprets, and makes specific the old cannabis excise tax imposed by RTC section 34011 and that cannabis excise tax does not apply to cannabis or cannabis products sold in this state on or after January 1, 2023. The emergency amendments adding subdivision (i)(3) to Regulation 3700 became operative on December 15, 2023, and will be repealed by operation of law on December 16, 2025, unless the Department adopts them through the APA's regular rulemaking process and submits the completed rulemaking file to OAL by December 15, 2025.

Regulations 3501 and 4901

RTC section 55302 authorizes the Department to examine a cannabis retailer's books and records as it deems necessary to administer and collect cannabis taxes pursuant to the FCPL.

FCPL Regulation 3501, Records, currently requires a cannabis retailer to maintain and make available for examination, records in the manner set forth in Regulation 4901, Records.

Also, Regulation 4901 currently requires a cannabis retailer to maintain and make available all records necessary to determine their correct cannabis tax liability and all records necessary for the proper completion of their required cannabis tax returns. It also currently provides that the failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade cannabis tax and may result in penalties or other appropriate administration action.

Proposed Regulatory Action

The Department is now proposing to adopt the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulations 3703, 3800, 3805, and 3810, and chapter 8.8 as permanent regulations through the APA's regular rulemaking process because the Department determined that their adoption is reasonably necessary for the specific purposes of addressing the same issues (or problems) for which they were originally adopted as emergency regulations, as discussed above. The Department is proposing to adopt amendments to Regulation 3501 and new Regulations 3800, Application of Chapter and Definitions, and 3820, Responsible Person Liability, through the APA's regular rulemaking process because the Department determined that their adoption is reasonably necessary for the specific purposes of addressing the issues (or problems) discussed below. The Department is also proposing to renumber emergency Regulation 3800 as Regulation 3801 and adopt amendments to renumbered emergency Regulation 3801 and emergency Regulation 3810 through the APA's regular rulemaking process because the Department determined that their adoption is reasonably necessary for the specific purposes of addressing the issues (or problems) discussed below. The Department is not proposing any amendments to the current text of the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulations 3703 and 3805, or the title of chapter 8.8.

Amendments to Regulation 3501

RTC section 34011.2 does not impose cannabis excise tax on medicinal cannabis or medicinal cannabis product donated for no consideration to a medicinal cannabis patient pursuant to BPC section 26071, or cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1. (RTC, § 34011.2, subs. (h) and (i)(1).) However, RTC section 34011.2 does impose cannabis excise tax on purchases of medicinal cannabis, medicinal cannabis products, and cannabis or cannabis products designated as trade samples in retail sales. Also, subdivision (i)(2) of RTC section 34011.2 expressly provides that any person licensed under division 10 of the BPC that sells cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1 is liable for the cannabis excise tax imposed by section 34011.2 as if the person were a cannabis retailer at the time of sale. Therefore, a cannabis retailer needs to maintain records and make them available to the Department to establish that they did not make retail sales of any medicinal cannabis or cannabis products designated for donation and they did not make any sales of cannabis or cannabis products designated as trade samples, which are subject to cannabis excise tax.

The Department determined that there is an issue (or problem) because there is no regulation that expressly requires a cannabis retailer to maintain records to establish that they did not make retail sales of any medicinal cannabis or cannabis products designated for donation and they did not make any sales of cannabis or cannabis products designated as trade samples, and some cannabis retailers may not be aware that they are required to maintain such records. Therefore, the Department determined that it is reasonably necessary to propose to amend Regulation 3501 for the specific purpose of addressing that issue.

To avoid any potential future confusion over these record keeping requirements, the Department is proposing to add new subdivision (c) to Regulation 3501 through the APA's regular rulemaking process to clarify that the records cannabis retailers are required to maintain and make available under Regulation 4901, include, but are not limited to, records documenting:

- Their receipt of cannabis and cannabis products designated as trade samples pursuant to BPC section 26153.1 and implementing regulations, their consumption of such trade samples, their providing of such trade samples to their employee for that employee's inspection or consumption, and the destruction of such trade samples.
- The cannabis and cannabis products they designate as trade samples to be provided to an employee pursuant to BPC section 26153.1 and implementing regulations, their providing of such trade samples to their employee for that employee's inspection or consumption, the destruction of such trade samples, and the changing of such trade samples' designation to medicinal cannabis and cannabis products for donation.
- Their receipt of medicinal cannabis and cannabis products designated for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a medicinal cannabis patient or primary caregiver pursuant to BPC section 26071, and the destruction of such medicinal cannabis and cannabis products.
- The medicinal cannabis and cannabis products they designate for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a medicinal cannabis patient or primary caregiver pursuant to BPC section 26071, the destruction of such medicinal cannabis and cannabis products, and the removal of the donation designation from such medicinal cannabis and cannabis products.

In addition, the Department is proposing to replace "board" with "Department" in subdivision (a) of Regulation 3501 to clarify that "board," as used in RTC section 55302, means the Department pursuant to RTC section 20. Also, the Department is proposing to change the name of subdivision (b) of Regulation 3501 from "Specific Applications" to "Ballast Water Management Fee" because that subdivision only clarifies the record keeping requirements for that fee.

New Regulation 3800 and Amendments to Emergency Regulations 3800 and 3810

The Department determined that there is an issue (or problem) because some readers may be confused about the application of chapter 8.8. Therefore, the Department determined that it is reasonably necessary to propose to adopt new Regulation 3800 to be included in chapter 8.8 and renumber emergency Regulation 3800 as Regulation 3801 through the APA's regular rulemaking process for the specific purpose of addressing that issue. Subdivision (a) of proposed Regulation 3800 clarifies that:

- Chapter 8.8 applies to the cannabis excise tax imposed by RTC section 34011.2 on and after January 1, 2023; and
- Chapter 8.7 applies to the cannabis excise tax imposed by RTC section 34011 before January 1, 2023, the cultivation tax imposed by RTC section 34012 before July 1, 2022, and excess cannabis tax.

In addition, the Department determined that there is an issue (or problem) because the terms “Department” and “division 10” are used in more than one regulation in chapter 8.8, but not defined in one place at the beginning of the chapter. Therefore, the Department determined that it is reasonably necessary to propose to include subdivision (b) in proposed Regulation 3800 and amend renumbered emergency Regulation 3801 and emergency Regulation 3810 through the APA’s regular rulemaking process for the specific purpose of addressing that issue. Subdivision (b) of proposed Regulation 3800 incorporates renumbered emergency Regulation 3801’s definition of “Department” and defines “division 10” to mean division 10 of the BPC. The amendments delete the definitions of “Department” from renumbered emergency Regulation 3801 and emergency Regulation 3810 and shorten the reference to division 10 in emergency Regulation 3810 accordingly. The Department is also proposing to adopt amended renumbered Emergency Regulation 3801 with the additional amendments discussed below and amended emergency Regulation 3810 through the APA’s regular rulemaking process.

Additional Amendments to Renumber Emergency Regulation 3801

Subdivision (a) of RTC section 34011.2 requires the Department, in consultation with the Department of Finance, to adjust the cannabis excise tax rate for the 2025-26 fiscal year and every two years thereafter. Subdivisions (c) and (d) of RTC section 34011.2 require a cannabis retailer to collect the cannabis excise tax from purchasers and provide each purchaser with an invoice, receipt, or other document that separately states the cannabis excise tax. Also, subdivision (b) of RTC section 34011.2 provides that a purchaser’s liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to this state, except that an invoice, receipt, or other document given to the purchaser by the cannabis retailer is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

The Department determined that there is an issue (or problem) because subdivision (b) of renumbered emergency Regulation 3801 incorporates the current 15 percent rate of the cannabis excise tax imposed by RTC section 34011.2 and the incorporation of that rate may cause confusion if the rate of the cannabis excise tax imposed by RTC section 34011.2 changes every two years beginning with the 2025-2026 fiscal year. Therefore, the Department determined that it is reasonably necessary to propose to amend the second sentence in subdivision (b) of renumbered emergency Regulation 3801 through the APA’s regular rulemaking process for the specific purpose of addressing that issue. The proposed amendments clarify that the cannabis excise tax is 15 percent of the gross receipts from any retail sale of cannabis or cannabis products on and after January 1, 2023, and that the rate is subject to adjustment every two years, beginning with the 2025-26 fiscal year. The current cannabis excise tax rate will be available on the Department’s website.

The Department determined that there are issues (or problems) because chapter 8.8 does not incorporate the provisions of subdivisions (b), (c), and (d) of RTC section 34011.2 and some purchasers and cannabis retailers may be confused about their requirements. Therefore, the Department determined that it is reasonably necessary to propose to reformat the second half of the second sentence in subdivision (b) of renumbered emergency Regulation 3801, as the third sentence, and amend that sentence through the APA's regular rulemaking process so it clarifies that the cannabis retailer is responsible for collecting the cannabis excise tax, providing the purchaser with an invoice, receipt, or other document that separately states the cannabis excise tax, and remitting the tax to the Department for the specific purpose of addressing those issues. The Department also determined that it is reasonably necessary to propose to add a new fourth sentence to subdivision (b) in renumbered emergency Regulation 3801 through the APA's regular rulemaking process to further clarify that a purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to the Department, except that an invoice, receipt, or other document given to the purchaser by the cannabis retailer that separately states the cannabis excise tax is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers, for the specific purpose of addressing those issues.

Furthermore, subdivision (a) of RTC section 34014.1 authorizes the Department to suspend or revoke a person's cannabis retailer excise tax permit when the person fails to comply with the provisions of the CTL or the Department's regulations relating to the cannabis excise tax, or the cannabis retailer's seller's permit has been suspended or revoked under the Sales and Use Tax Law, or its cannabis license issued by DCC has been suspended or revoked under division 10 of the BPC. It also requires the Department to give a person notice and conduct a hearing before revoking or suspending their cannabis retailer excise tax permit. Subdivision (a)(2) of RTC section 34014 provides that any person required to obtain a permit who engages in business as a cannabis retailer without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor. Also, Penal Code section 19 provides that a misdemeanor under subdivision (a)(2) of RTC section 34014 is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both because no other statute prescribes the punishment for that offense.

The Department determined that there are issues (or problems) because some cannabis retailers may not be aware that their cannabis tax permit may be revoked pursuant to RTC section 34014.1 and that RTC section 34014 makes it is a misdemeanor punishable as provided in Penal Code section 19 to engage in business as a cannabis retailer without such a permit. Therefore, the Department determined that it is reasonably necessary to propose to add new subdivision (e) to renumbered emergency Regulation 3801 through the APA's regular rulemaking process for the specific purpose of addressing those issues. New subdivision (e) clarifies when a cannabis retailer excise tax permit may be revoked or suspended in accordance with RTC section 34014.1. It also clarifies that any person required to obtain a cannabis retailer excise tax permit who engages in business as a cannabis retailer without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

New Regulation 3820

The Department determined that there is also an issue (or problem) because there is no regulation that implements and clarifies the provisions of RTC section 34015.2, which make a responsible person liable for unpaid cannabis excise taxes imposed by RTC section 34011.2, interest, and penalties owed by a corporation, partnership, limited partnership, limited liability partnership, or limited liability company under specified circumstances. Therefore, the Department determined that it is reasonably necessary to propose to adopt new Regulation 3820 through the APA's regular rulemaking process for the specific purpose of addressing that issue.

Subdivision (a) of proposed Regulation 3820 provides that any responsible person who willfully fails to pay or to cause to be paid any cannabis excise tax due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to RTC section 34011.2 shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company if the Department establishes that, while the person was a responsible person, the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to collect the cannabis excise tax imposed pursuant to RTC section 34011.2 and failed to remit such tax when due.

Subdivision (b)(1) of proposed Regulation 3820 defines "responsible person" to mean any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of cannabis excise tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the CTL. It also clarifies that the fact that the person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that a person is a "responsible person." Subdivision (b)(2) defines "willfully fails to pay or to cause to be paid" to mean that the failure was the result of an intentional, conscious, and voluntary course of action" as provided in subdivision (f) of RTC section 34015.2. It clarifies that a failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or motive. It clarifies that a person has willfully failed to pay the taxes or to cause them to be paid, only when the Department establishes all of the following:

- On or after the date that the taxes came due, as prescribed by RTC section 34015, the responsible person had actual knowledge that the taxes were due, but not being paid;
- The responsible person had the authority to pay the taxes or to cause them to be paid on the date that the taxes came due, as prescribed by RTC section 34015, and when the responsible person had actual knowledge that the taxes were due, but not being paid; and
- When the responsible person had actual knowledge that the taxes were due, but not being paid, the responsible person had the ability to pay the taxes but chose not to do so.

It also clarifies that a responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on their own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid. Subdivision (b)(3) clarifies that the "termination" of the business of a corporation, partnership,

limited partnership, limited liability partnership, or limited liability company includes the discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a cannabis retailer excise tax permit.

Subdivision (c) of proposed Regulation 3820 incorporates the collection provisions from subdivisions (d) and (e) of RTC section 34015.2. Subdivision (d) of proposed Regulation 3820 clarifies that the Department has the burden to prove that the requirements for personal liability have been satisfied under the preponderance of the evidence standard of proof.

Discussion Paper and Interested Parties Meeting

On October 26, 2023, the Department distributed a discussion paper with the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) to Regulation 3700, emergency Regulation 3703, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820. On November 16, 2023, the Department held an interested parties meeting to obtain public input.

The Department received a letter dated November 30, 2023, from Jonatan Cvetko, Executive Director for the United Cannabis Business Association (UCBA). In the letter, the UCBA requested that the Department revise new Regulation 3820 to close a loophole and ensure that an entity which enters into a management agreement with a cannabis licensee and the owners of the entity will be held personally liable for any taxes incurred under the entity's management of the cannabis licensee's business in circumstances where the entity would not have the statutorily required control or supervision of, or the responsibility for the filing of returns or the payment of tax for the cannabis licensee. However, the Department did not include the requested revisions in new Regulation 3820 because the Department determined that they were inconsistent with RTC section 34015.2. The Department did not receive any other comments regarding the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) to Regulation 3700, emergency Regulation 3703, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820.

Determinations

The Department has determined that the adoption of the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 through the APA's regular rulemaking process is reasonably necessary for the specific purposes of addressing all the issues (or problems) discussed above. The Department anticipates that their adoption will promote fairness and benefit cultivators, manufacturers, distributors, cannabis retailers, purchasers, and the Department by:

- Clarifying cannabis retailers' record keeping requirements;
- Clarifying the application of subdivisions (h) and (i) of Regulation 3700;

- Prescribing updated procedures for excess cannabis tax to be returned, remitted, or collected;
- Clarifying the application of chapter 8.8;
- Clarifying the requirements for a cannabis retailer to register with the Department for a cannabis retailer excise tax permit, clarifying that cannabis retailers are responsible for collecting, reporting, and remitting the cannabis excise tax imposed by RTC section 34011.2 and providing an invoice, receipts, or similar document to the purchaser that will relieve the purchaser of liability for the tax to which the invoice, receipt, or similar document refers, clarifying that a cannabis retailer excise tax permit may be revoked or suspended under specified circumstances, and clarifying that it is a misdemeanor to engage in business as a cannabis retailer without such a permit or after such a permit has been canceled, suspended, or revoked;
- Clarifying when a cannabis retailer may claim a credit for cannabis excise tax paid to a distributor, under RTC section 34011, on cannabis or cannabis products sold to purchasers on or after January 1, 2023, clarifying that a cannabis retailer may file a claim for refund for the amount of the credit if not claimed on the proper return, and clarifying the documentation that must be retained to substantiate a credit or refund;
- Clarifying the cannabis excise taxes from which vendor compensation may be retained under RTC section 34011.1, clarifying the type of fee waiver a licensed cannabis retailer must receive to be approved to retain vendor compensation, prescribing the form and manner of filing the application for approval to retain vendor compensation, clarifying the statutory retention periods, clarifying how vendor compensation shall be reported on a return, and clarifying that a licensed cannabis retailer must file a claim for refund if they remit taxes they were eligible to retain; and
- Clarifying the provisions of RTC section 34015.2, which make a responsible person liable for unpaid cannabis excise taxes imposed by RTC section 34011.2 under specified circumstances.

In addition, the Department has determined that the adoption of the proposed regulatory action is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820.

DOCUMENTS RELIED UPON

The Department relied upon Department staff's understanding of division 10 of the BPC, as implemented, interpreted, and made specific by the DCC regulations discussed above, RTC section 20, and the CTL and FCPL in proposing to adopt the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 through the APA's regular rulemaking process. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

ALTERNATIVES CONSIDERED

The Department considered whether to begin the APA's regular rulemaking process to adopt the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 through the APA's regular rulemaking process at this time or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 through the APA's regular rulemaking process because the Department determined that they are reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Department's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GC SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting the proposed regulatory action on California businesses and individuals, which includes the adoption of the amendments to Regulation 3501, the emergency amendments adding subdivisions (h)(6) and (i)(3) to Regulation 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 through the APA's regular rulemaking process. The Department determined that the proposed regulatory action implements and clarifies the provisions of the CTL and FCPL, and that businesses and individuals will not incur any additional costs to comply with the amendments and new regulations that they would not otherwise incur to comply with the CTL and FCPL. The Department also determined that cultivators, manufacturers, distributors, cannabis retailers, and purchasers will generally benefit from the clarifications provided by the proposed regulatory action, but they will not receive a monetary benefit.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. The Department also prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of the proposed regulatory action will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the State of California and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, the amendments to Regulations 3501 and 3700, emergency Regulation 3703, chapter 8.8, new Regulation 3800, amended renumbered emergency Regulation 3801, emergency Regulation 3805, amended emergency Regulation 3810, and new Regulation 3820 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of the proposed regulatory action will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Department's initial determination that the adoption of the proposed regulatory action will not have a significant adverse economic impact on business.