

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Section 3801, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit

Factual Basis

The Cannabis Tax Law (Rev. & Tax. Code (RTC), § 34010 et seq.) imposes a cannabis excise tax upon purchasers of cannabis and cannabis products in this state. RTC section 34011.2, subdivision (a)(1) 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 15 percent of the gross receipts of any retail sale by a cannabis retailer. Prior to the enactment of Assembly Bill No. (AB) 564 (Stats. 2025, ch. 127), RTC section 34011.2 stated that the 15 percent cannabis excise tax rate was subject to adjustment every two years, beginning with the 2025-26 fiscal year. Accordingly, the California Department of Tax and Fee Administration (Department), in consultation with the Department of Finance, adjusted the cannabis excise tax rate to 19 percent effective July 1, 2025. AB 564 amended RTC section 34011.2 to revise the provisions governing the adjustment of the cannabis excise tax rate. Specifically, AB 564 amended RTC section 34011.2 by adding a new subdivision (a)(2) to reduce the cannabis excise tax rate back to 15 percent on and after October 1, 2025, while maintaining that the 19 percent rate determined by the Department applies for the period on and after July 1, 2025, and before October 1, 2025. AB 564 also revised RTC section 34011.2 by renumbering the former paragraphs (2) and (3) of subdivision (a) to new paragraphs (3) and (4) of subdivision (a). These new paragraphs (3) and (4) of subdivision (a) were amended to provide that any subsequent adjustment to the cannabis excise tax rate will not be made until fiscal year 2028-29.

California Code of Regulations (CCR), title 18, section (Regulation) 3801, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit, specifies the cannabis excise tax imposition and tax rate and sets forth the responsibilities of cannabis retailers related to tax collection, including obtaining a cannabis retailer excise tax permit with the Department. Consistent with RTC section 34011.2, as that section read prior to amendment by AB 564, Regulation 3801, subdivision (b) specifies that the cannabis excise tax is 15 percent of the cannabis retailer's gross receipts from any retail sale of cannabis or cannabis products on and after January 1, 2023, and the rate is subject to adjustment every two years, beginning with the 2025-26 fiscal year. As a result of the amendments to RTC 34011.2 by AB 564, Regulation 3801 is no longer consistent with RTC 34011.2. The cannabis excise tax rate is 15 percent on an after January 1, 2023, except for the period between July 1, 2025, and October 1, 2025, during which it was 19 percent. In addition, the rate is no longer subject to adjustment until the 2028-29 fiscal year.

Proposed Changes

The Department proposes changes to Regulation 3801, subdivision (b), to make it consistent with the amendments AB 564 made to RTC section 34011.2. The Department proposes to re-format subdivision (b) to have three paragraphs. The Department proposes that new paragraph (1) of subdivision (b) include the provision in the existing subdivision (b) stating that the cannabis excise tax is 15 percent of the cannabis retailer's 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. The Department proposes changes to that provision to replace "2025-26" with "2028-29" to make it consistent with the amendment to RTC section 34011.2 made by AB 564 to change the beginning of the subsequent rate adjustments to the 2028-29 fiscal year. The Department further proposes to add new paragraph (2) to subdivision (b) to state that notwithstanding subdivision (b)(1), on and after July 1, 2025, and before October 1, 2025, the cannabis excise tax rate is 19 percent of the cannabis retailer's gross receipts from any retail sale of cannabis or cannabis products, to make the regulation consistent with the changes made to RTC 34011.2 by AB 564. Finally, the Department proposes to add new paragraph (3) to subdivision (b) to include the remainder of the language from existing subdivision (b), which sets forth the cannabis retailer's responsibilities in collecting the cannabis excise tax and the purchaser's liability.

The proposed changes to Regulations 3801 make the regulation consistent with RTC section 34011.2 and the Department has no discretion to adopt changes which differ in substance from the ones chosen. Therefore, the Department determined that the proposed changes are appropriate for processing under CCR, title 1, section 100 because they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.