

**Final Statement of Reasons for the Proposed Adoption
of California Code of Regulations, Title 18, Section 3802,
Gross Receipts from Sales of Cannabis and Cannabis Products,
With Proposed Amendments**

UPDATE OF INFORMATION IN THE INITIAL STATEMENT OF REASONS

The California Department of Tax and Fee Administration (Department) adopted California Code of Regulations (CCR), title 18, section (Regulation) 3802, Gross Receipts from Sales of Cannabis and Cannabis Products, with the proposed amendments through the regular rulemaking process in the Administrative Procedure Act (APA) (commencing with Gov. Code (GC), § 11340) without making any changes.

The Department received a timely written comment regarding the proposed regulatory action from Mark Russ (Russ) at mark.russ@goldflora.com in an email dated April 25, 2025. The Department received a timely written request for a public hearing from Anthony Almaz, as counsel for South Cord Management LLC (Catalyst), in a letter dated May 22, 2025. The Department also received timely written requests for a public hearing from Rachel Wright, CPA, in letters dated May 26, 27, and 28, 2025, submitted on behalf of DTPG Collective, 55 OC Collective, Inc., 2018FMO LLC, City Compassionate Caregivers, Inc., Grupo Flor Corporation, Lynwood Farms, LLC, and Toluca Lake Collective, Inc.

On June 9, 2025, the Department provided notice of the time, date, and place of the public hearing to every person who had filed a request for notice of regulatory actions with the Department. The Department also provided notice of the time, date, and place of the public hearing to every person who submitted a request to receive distributions of all materials or cannabis tax materials from the Department's Business Taxes Committee (BTC)¹, which considers issues relating to the sales and use tax laws and special taxes and fees laws, and held an interested parties meeting to discuss the proposed certification of Regulation 3802 on August 29, 2024.

The Department conducted the requested public hearing regarding the proposed regulatory action on June 23, 2025, and the following interested parties commented on the proposed adoption of Regulation 3802 with the proposed amendments: Dana Cisneros (Cisneros) from the Cannabis Corporate Law Firm, Elliot Lewis (E. Lewis) from Catalyst, Josh Lewis (J. Lewis) from Embark, Andrew DeAngelo (DeAngelo) former owner and operator of Harborside, Darren Story (Story) from Coastal Sun Farms, Hirsh Jain (Jain) from Anada Strategy and Verdant Strategies, Rachel Wright (Wright) from Verdant Strategies, Anthony Almaz (Almaz) from Catalyst, and Jerred Kiloh (Kiloh) from the United Cannabis Business Association.²

¹ Information about the BTC is available at <https://cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>.

² All the meeting participants are listed in the attendance report included in the rulemaking file.

The interested parties that commented on the proposed regulatory action generally opposed the adoption of Regulation 3802 with the proposed amendments. Some interested parties supported a separately-stated rule, such as the separately-stated rule in subdivision (b) of Revenue and Taxation Code (RTC) section 34011, as added by Proposition 64 (Prop. 64),³ or subdivision (i) of Regulation 3700,⁴ to address the issue (or problem) regarding whether “the gross receipts of any retail sale by a cannabis retailer,” as used in RTC section 34011.2, include charges for other tangible personal property (non-cannabis items) purchased with cannabis or cannabis products in a retail sale. Some interested parties also questioned the Department’s authority to adopt Regulation 3802 and the Department’s interpretations of RTC sections 6012 and 34011.2 and asked what changed so that the separately-stated rules in subdivision (b) of RTC section 34011 and subdivision (i) of Regulation 3700 no longer apply. The interested parties’ oral and written comments are all summarized and responded to below.

The factual basis, specific purposes, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed regulatory action are the same as provided in the ISR.

The Department did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed regulatory action that was not identified in the ISR, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Department’s initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Department’s determination that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000, and the Department’s economic impact assessment, which determined 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;
- Will not affect the expansion of businesses currently doing business within the State of California; and
- Will not affect the benefits of emergency Regulation 3802 to the health and welfare of California residents, worker safety, or the state’s environment.

No Mandate Imposed on Local Agencies or School Districts

The Department has determined that the adoption of Regulation 3802 with the proposed amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

³ Discussed on page 5 of the initial statement of reasons (ISR).

⁴ Discussed on page 7 of the ISR.

Public Comments

Comment 1

Russ said “I strongly oppose the proposed permanent adoption of Regulation 3802, which expands the definition of gross receipts to include mandatory packaging, testing, and processing fees. By taxing these compliance costs, the rule unfairly increases my total cost and penalizes law abiding consumers.”

Response to Comment 1

The Department did not make any changes to the proposed regulatory action due to Russ’s comment. This is because any amount the purchaser is required to pay to purchase cannabis or cannabis products at retail is required to be included in gross receipts pursuant to RTC sections 6012, 34010, and 34011.2, unless expressly excluded by statute. Also, there is nothing unfair about Regulation 3802 and nothing in Regulation 3802 penalizes law abiding customers.

Also, subdivision (a) of RTC section 6012 provides that “gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of the “cost of the materials used, labor or service cost, interest paid, losses, or any other expense.” Sales and Use Tax Annotations (Annotations)⁵ 295.1242 (5/18/95), 295.1304 (7/3/96), 295.1319 (8/17/01), 295.1340 (2/20/96), 295.1410 (5/29/80), and 295.2000 (11/14/91) summarize the long-standing opinion of the Department’s Legal Division that charges added to the price of tangible personal property to reimburse the retailer for a cost of doing business are included in gross receipts, unless expressly excluded or deductible from gross receipts pursuant to RTC section 6012.⁶ Annotation 295.2000 summarizes the long-standing opinion of the Department’s Legal Division that a fee a purchaser of tangible personal property is required to pay to reimburse the retailer for the cost of processing a credit card sale through the card issuer is included in gross receipts, as a nondeductible cost of doing business. Also, Annotation 295.1387 (11/15/91) summarizes the Legal Division’s long-standing opinion that amounts a purchaser of tangible personal property must pay to compensate or reimburse a retailer for the cost of labor or materials used to package an item are generally included in taxable gross receipts under RTC section 6012.⁷ Therefore, the Department determined that RTC section 6012 also requires charges added to the price of cannabis or cannabis products to reimburse a cannabis retailer for a cost of doing business to be included in

⁵ “Annotations” are summaries of the conclusions reached in selected legal rulings of Department counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law. (Reg. 35101, subd. (a)(1).) However, they are entitled to a degree of deference in some situations. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-15.)

⁶ As discussed on page 4 of the ISR.

⁷ As discussed on pages 8 and 9 of the ISR.

gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2, and there is nothing unfair or inconsistent about that determination.

In addition, Subdivision (b)(1) of RTC section 6012 requires charges for services that are part of the sale of tangible personal property to be included in gross receipts for sales tax purposes. Therefore, the Department determined that RTC section 6012 also requires charges for services that are part of the sale of cannabis or cannabis products to be included in gross receipts for purposes of the cannabis excise tax imposed by RTC section 34011.2,⁸ and there is nothing unfair or inconsistent about that determination

Furthermore, Annotation 295.1690 (8/16/78) summarizes the long-standing opinion of the Department's Legal Division that "services that are part of the sale" within the meaning of subdivision (b)(1) of RTC section 6012 include any services the seller must perform to produce and sell tangible personal property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property. Also, Annotation 295.1502 (9/22/88) summarizes the long-standing opinion of the Department's Legal Division that a retailer's charges for handling tangible personal property it sells are included in the retailer's gross receipts, as charges for services that are part of the sale. Therefore, the Department determined that RTC section 6012 also requires a retailer's charges for handling cannabis or cannabis products to be added to the gross receipts from the sale of the cannabis or cannabis products for purposes of the cannabis excise tax imposed by RTC section 34011.2, and there is nothing unfair or inconsistent about that determination.

Comment 2

Cisneros said "this is a gross overreach by the [Department] to now include services, subscription fees, membership fees. All of these things are not typically taxable in the State of California."

Response to Comment 2

The Department did not make any changes to the proposed regulatory action due to Cisneros's comment because Regulation 3802 is not a gross overreach, RTC section 6012 expressly includes charges for any services that are a part of the sale of cannabis or cannabis products in gross receipts, and Regulation 3802 only requires subscription or membership fees to be included in gross receipts if the purchaser is required to pay them to purchase cannabis or cannabis products. Also, the Department's response to comment 1 explains in more detail why charges for services that are part of the sale and charges to reimburse the cannabis retailer for the cost of doing business are included in gross receipts.

⁸ As discussed on page 10 of the ISR.

Comment 3

Cisneros said the Department is applying a “tax that’s compounded on our customers” and that it is “inappropriate “and “an overreach by the Department in terms of rulemaking authority.”

Response to Comment 3

The Department did not make any changes to the proposed regulatory action due to Cisneros’s comment because any compounding of taxes is statutory and not due to the proposed regulatory action.

Comment 4

Cisneros said the Department is “employing an erroneous interpretation of [section] 6012. 6012 does in fact exclude [business taxes].” Cisneros said that “since [the] inception of Prop. 64 in 2018,” the Department “has erroneously taken a position on 6012,” and has been “applying the law incorrectly and overcharging our consumers,” and it is “begging for litigation.”

Response to Comment 4

The Department did not make any changes to the proposed regulatory action due to Cisneros’s comment because the Department is correctly interpreting RTC section 6012. Also, Annotation 295.1187 (12/13/95) summarizes the Department’s Legal Division’s long-standing opinion that local and district sales taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with RTC section 7200) or in accordance with the Transactions and Use Tax Law (commencing with RTC section 7251) are excluded from gross receipts under subdivisions (c)(5) of RTC section 6012. However, amounts a purchaser of tangible personal property must pay to compensate or reimburse a retailer for other taxes imposed on the retailer by a city, county, city and county, or rapid transit district, including, but not limited to, business taxes measured by a business’s gross receipts, are not excluded from gross receipts under subdivisions (c)(5) of RTC section 6012. This is because the Legal Division’s opinion is that local taxes are only imposed “upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts,” under subdivision (c)(5), if they are imposed on individual retail sales of tangible personal property and expressly measured by a stated percentage of “sales price” or “gross receipts,” as defined in RTC sections 6011 and 6012, respectively. However, the Department has never determined that it was necessary to adopt a regulation to address this issue for sales tax purposes, and the Department determined that it was not necessary to address this issue in Regulation 3802 because it’s primarily a sales tax issue.

Comment 5

Cisneros asked if the Department “requested an opinion from the Attorney General about whether or not what they’re doing is in fact lawful. Because it does seem that you are putting a tax on new items that are not defined as cannabis goods, which is where the tax

belongs per Prop. 64.” Cisneros said “it would be really helpful if the Attorney General were involved to give a statement here and to clarify the appropriate authority of a state agency in terms of implementing a tax and the appropriate authority in passing new tax measures that apply to the retail sales of cannabis.”

Response to Comment 5

The Department did not make any changes to the proposed regulatory action or request an opinion from the Attorney General due to Cisneros’s comment. This is because the Department is responsible for administering and collecting the cannabis excise tax imposed by RTC section 34011.2. The Department has the authority to adopt and enforce regulations, such as Regulation 3802, related to the administration and enforcement of the cannabis excise tax imposed by RTC section 34011.2. The Department also has experience implementing taxes and fees and expertise interpreting tax laws, including RTC section 6012. Therefore, the Department does not need to consult with and has not requested an opinion from the Attorney General about the cannabis excise tax imposed by RTC section 34011.2 or Regulation 3802 with the proposed amendments.

Comment 6

Cisneros asked the Department to provide citations to the “code sections that” the Department “is in fact relying on because we are all very much in the dark about where you are deriving this authority from in making these new rules because there has not been a change in the law” or the transactions being taxed.

Response to Comment 6

The Department did not make any changes to the proposed regulatory action due to Cisneros’s comment. RTC section 34013 in the Cannabis Tax Law (CTL) (RTC, § 34010 et seq.) authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the CTL. Also, Assembly Bill No. (AB) 195 (Stats. 2022, ch. 56)⁹ added RTC section 34011.2 to the CTL to change the cannabis excise tax so it is “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,” on and after January 1, 2023. Subdivision (n) of RTC section 34010 provides that for purposes of the CTL, “gross receipts” has the same meaning as set forth in RTC section 6012 in the Sales and Use Tax Law (SUTL) (RTC, § 6001, et seq.). Therefore, RTC sections 34010, 34011.2, and 34013 are the specific code section in the CTL that the Department is relying upon for purposes of adopting Regulation 3802 with the proposed amendments to clarify the meaning of the phrase “gross receipts of any retail sale by a cannabis retailer” as used in RTC section 34011.2 and the meaning of “gross receipts” as defined in RTC section 34010, which cross-references the definition of “gross receipts” in RTC section 6012 in the SUTL.

⁹ AB 195 is discussed on pages 7 and 8 of the ISR.

Comment 7

Cisneros also said the Department “is violating the will of the voters” and even if AB “195 is your authority, the voters still haven’t approved it.”

Response to Comment 7

The Department did not make any changes to the proposed regulatory action due to Cisneros’s comment. AB 195 was not a proposition that required voter approval. AB 195 was an Assembly Bill that was enacted by a two-thirds vote of the Legislature and approved by the Governor. Also, article III, section 3.5 of the California Constitution generally prohibits the Department from declaring the statutory changes made to the CTL by AB 195 to be unconstitutional, unless an appellate court has determined that they are unconstitutional.

Comment 8

E. Lewis asked the Department to clarify and identify the specific statutes in the CTL that gave the Department the authority to redefine or “implement a new definition of cannabis goods” on the record.

Response to Comment 8

The Department did not make any changes to the proposed regulatory action due to E. Lewis’s comment because the Department is not redefining the term “cannabis goods,” which is not used in the CTL.¹⁰ The Department is adopting Regulation 3802 with the proposed amendments to clarify the meaning of the phrase “gross receipts of any retail sale by a cannabis retailer” as used in subdivision (a) of RTC section 34011.2 and the meaning of “gross receipts” as defined in RTC section 34010, which cross-references the definition of “gross receipts” in RTC section 6012 in the SUTL. Also, RTC section 34013 in the CTL authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the CTL, including RTC sections 34010 and 34011.2.

Comment 9

E. Lewis asked the Department to agree that Regulation 3802 is “a tax raise,” concede “that prior to 2023 the taxes were lower on the same items than they are today,” such as a vape cartridges, and concede that it is because the same product is “now going to be taxed at a higher rate.”

¹⁰ The Department of Cannabis Control (DCC) defines “cannabis goods” to mean “cannabis and cannabis products in final form and packaged and labeled as they will be sold at retail” (Cal. Code Regs., tit. 4, § 15000, subd. (f).) So, cannabis goods include packaging, such as a jar or vape cartridge.

Response to Comment 9

The Department did not make any changes to the proposed regulatory action due to E. Lewis's comment. Regulation 3802 does not impose any new cannabis excise taxes or increase the rate of the cannabis excise tax imposed by RTC section 34011.2. However, the Department acknowledges that more cannabis excise tax may be imposed on some transactions under RTC section 34011.2 and Regulation 3802, than was imposed under RTC section 34011 and the separately-stated rule for accessories in subdivision (i) of Regulation 3700.

For example, if a distributor sold vape cartridges containing cannabis products to a cannabis retailer prior to January 1, 2023, and separately stated the amount it charged the retailer for the cannabis products from the amount charged for the vape cartridges, then subdivision (i) of Regulation 3700 excluded the vape cartridges from the average market price subject to the cannabis excise tax imposed by RTC section 34011. However, if a cannabis retailer sells a cannabis product at retail and requires the purchaser to purchase the vape cartridge containing the cannabis product as a condition of the sale of the cannabis product, then Regulation 3802 includes the amount charged for the vape cartridge in the gross receipts subject to the cannabis excise tax imposed by RTC section 34011.2, regardless of whether the amount is separately stated.

Comment 10

E. Lewis said that in Regulation 3700 the Department “clearly allowed excise tax to be separately stated.” E. Lewis asked how did Regulation 3802 “come to be” and “[b]ased on what authority.” E. Lewis asked “what happened between your interpretation [and analysis] in 3700 and present.” E. Lewis said I “don’t think you have a basis.”

Response to Comment 10

The Department did not make any changes to the proposed regulatory action due to E. Lewis's comment. Prop. 64 added RTC section 34011 to impose a cannabis¹¹ excise tax beginning January 1, 2018. Subdivision (b) of RTC section 34011, as added by Prop. 64, provided that “Except as otherwise provided by regulation, the tax levied under this section shall apply to the full price, if nonitemized, of any transaction involving both [cannabis or cannabis products] and any other otherwise distinct and identifiable goods or services, and the price of any goods or services, if a reduction in the price of [cannabis or cannabis products] is contingent on purchase of those goods or services.” However, Senate Bill No. (SB) 94 (Stats. 2017, ch. 27) repealed the original version of subdivision (b) of RTC section 34011¹² before the cannabis excise tax was ever imposed, and the separately-stated rule in the original version of subdivision (b) never in fact applied to cannabis excise taxes.

¹¹ The tax was originally called the “marijuana” excise tax.

¹² As discussed on p. 5 of the ISR.

The Department adopted the separately-stated rule for cannabis accessories in subdivision (i) of Regulation 3700 to implement, interpret, and make specific RTC section 34011, as amended by SB 94, which:

- Imposed cannabis excise tax upon purchasers of cannabis or cannabis products at a rate of 15 percent of the “average market price of any retail sale by a cannabis retailer”; and
- Required a distributor that sold or transferred cannabis or cannabis products to a cannabis retailer to collect the cannabis excise tax from the cannabis retailer, sometimes before the cannabis or cannabis products were purchased from the cannabis retailer in a retail sale.

However, AB 195 added RTC section 34011.2 to change the cannabis excise tax so it is “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,” on and after January 1, 2023, and remove the requirement for the distributor to collect the cannabis excise tax from the cannabis retailer. AB 195 amended RTC section 34011 so that its cannabis excise tax would be ineffective on January 1, 2023, and RTC section 34011 would be inoperative on April 1, 2023. Also, subdivision (i) of Regulation 3700 became inoperative on January 1, 2023, because it applied to a cannabis excise tax that became ineffective on the same date. Therefore, the separately-stated rule for cannabis accessories in subdivision (i) of Regulation 3700 has been inoperative since January 1, 2023, and it never applied to the cannabis excise tax imposed by RTC section 34011.2.

In addition, the Department considered whether to extend the provisions of subdivision (i) of Regulation 3700 so that they apply to the cannabis excise tax imposed by RTC section 34011.2 or adopt a similar separately-stated rule to address the issue (or problem) regarding whether “the gross receipts of any retail sale by a cannabis retailer,” as used in RTC section 34011.2, include charges for non-cannabis items purchased with cannabis or cannabis products in a retail sale. The Department determined that the provisions of subdivision (i) of Regulation 3700 are inconsistent with RTC section 34011.2 because:

- RTC section 34011.2 does not require distributors to collect cannabis excise tax, and the transaction in which a distributor sells or transfers cannabis or cannabis products to the cannabis retailer is not relevant to the imposition, collection, remittance, or reporting of the current cannabis excise tax;
- The CTL, including RTC section 34011.2, does not require charges for cannabis, cannabis products, or non-cannabis items sold with cannabis or cannabis products to be separately stated (see *Dell, Inc. v. Superior Court* (2008) 159 Cal.App.4th 911, 917, 929, 931); and
- The CTL does not refer to cannabis accessories or require charges for cannabis accessories to be excluded from “the gross receipts of any retail sale by a cannabis

retailer” for purposes of the cannabis excise tax imposed by RTC section 34011.2.¹³

The Department determined that the separately-stated rule for cannabis accessories in subdivision (i) of Regulation 3700 did not ultimately ensure full compliance with RTC section 34011 as intended. This is because the RTC section 34011 cannabis excise tax was 15 percent. It was in addition to state and local sales and use tax. It was also included in gross receipts for purposes of assessing state and local sales and use tax. Therefore, some distributors and retailers misused the separately-stated rule to evade the cannabis excise tax and gain a competitive advantage. They used the separately-stated rule to artificially attribute taxable charges for cannabis or cannabis products to non-cannabis items, such as plastic bags and jars, for cannabis excise tax purposes.¹⁴ Therefore, the Department also determined that a similar separately-stated rule would not ensure full compliance with RTC section 34011.2 for similar reasons.

As a result, the Department determined that it would be unreasonable to use subdivision (i) of Regulation 3700 or a similar separately-stated rule to address the issue regarding whether the gross receipts of any retail sale by a cannabis retailer include charges for non-cannabis items purchased with cannabis or cannabis products in a retail sale and rejected that alternative as unreasonable.¹⁵

Comment 11

E. Lewis asked questions regarding the adoption of Regulation 3802 as an emergency regulation, including “what was the emergency.”

Response to Comment 11

The Department did not make any changes to the proposed regulatory action due to E. Lewis’s comment. The questions regarding the adoption of Regulation 3802 as an emergency regulation, including what the emergency was, are not relevant to the adoption of Regulation 3802 with the proposed amendments through the regular rulemaking process in the APA. Also, the questions relate to issues in pending litigation.¹⁶

Comment 12

E. Lewis also asked if the APA would prohibit the Department from making substantial changes to the text of Regulation 3802 without going back through the APA process and whether hypothetical changes were “substantial.”

¹³ As discussed on page 14 of the ISR.

¹⁴ As discussed on p. 7 of the ISR.

¹⁵ As discussed on p. 15 of the ISR.

¹⁶ *HNHPC, INC. v. CDTFA*, Orange County Superior Court: 30-2023-01369643-CU-WM-WJC, filed September 28, 2023.

Response to Comment 12

The Department did not make any changes to the proposed regulatory action due to E. Lewis's comment. Also, the Department did not make any changes to the proposed text of Regulation 3802 with the proposed amendments. Therefore, the questions about whether hypothetical changes to the text would be so substantial as to require the Department to go back through the APA process are not relevant to the adoption of Regulation 3802 with the proposed amendments.

Comment 13

J. Lewis said "that when California voters overwhelmingly passed Prop. 64 their intentions were clear. They wanted to sensibly regulate legal cannabis, undermine the illicit market and provide access to safe and tested product, but unfortunately this approach to taxation doesn't align with the clear mandate from the voters." J. Lewis said "[t]axes on taxes, taxes on payment processing fees, taxes on taxes, on taxes. This is not the system the voters approved." J. Lewis also said "[w]e need to work together to ensure the tax structure supports a functional market. This was the clear mandate."

Response to Comment 13

The Department did not make any changes to the proposed regulatory action due to J. Lewis's comment. The Department is aware that the State of California imposes cannabis excise tax 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. (RTC section 34011.2.) The State of California imposes sales tax on a retailer's gross receipts from the retail sale of tangible personal property, including cannabis and cannabis products, in this state. (RTC section 6051.) The State of California also requires the cannabis excise tax to be included in a retailer's gross receipts for sales tax purposes. (RTC section 34011.2, subd. (f).) Therefore, sales tax is imposed on cannabis excise tax by statute.

The Department is also aware that local sales taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC section 7200 et seq.) and district sales taxes imposed pursuant to the Transactions and Use Tax Law (RTC section 7251 et seq.) apply to retailer's gross receipts from the retail sale of tangible personal property, including cannabis and cannabis products, in this state. (RTC sections 7202 and 7261.) Also, a county may impose business taxes on a cannabis retailer's gross receipts as defined in the county's business tax ordinance. (See, e.g., RTC section 34021.5.) Therefore, multiple layers of state and local taxes may be imposed on a cannabis retailer's gross receipts. However, the Department has a duty to enforce the CTL as written, and none of this information has a bearing on the meaning of subdivision (a)(1) of RTC section 34011.2 or the meaning of "gross receipts" as defined in RTC section 6012.

Comment 14

DeAngelo agreed with the comments made by Cisneros, E. Lewis, and J. Lewis. DeAngelo asked if the Department "had similar clarification[s]" of gross receipts or

excise tax for the wine, firearms, tobacco, or petroleum industry or is the cannabis industry “being treated uniquely and differently” because DeAngelo wants to know on record “if a comparable industry is subject to these kinds of multi layers of taxes when it comes to providing services, packaging, or things that aren’t the actual product itself.”

Response to Comment 14

The Department did not make any changes to the proposed regulatory action due to DeAngelo’s comment.

On and after July 1, 2024, RTC section 36011 imposes an excise tax upon licensed firearms dealers, firearms manufacturers, and ammunition vendors, at the rate of 11 percent of the gross receipts from the retail sale in this state of any firearm, firearm precursor part, or ammunition (firearms excise tax). RTC section 36042 provides that the tax is in addition to any other tax or fee imposed by the state, or a city, county, or city and county, including state, local and district sales taxes, and local business taxes. Therefore, the firearms industry is subject to multiple layers of taxes.

Also, subdivision (e) of RTC section 36001 provides that for purposes of the firearms excise tax, “gross receipts” shall have the same meaning as that term is defined in RTC section 6012. The opinion of the Department’s Legal Division is that, for purposes of the firearms excise tax, gross receipts include the sales price of the firearms, firearm precursor parts, or ammunition and all charges related to the sale, such as any business expense separately added to any taxable sale listed separately on the invoice or receipt provided to the purchaser, including, but not limited to shipping charges, merchant credit card fees, discretionary transfer fees, and handling fees. Therefore, the Department has similar clarifications of gross receipts for firearms excise tax purposes, as cannabis excise tax purposes. However, the Department has not yet adopted a regulation to clarify the meaning of “the gross receipts from the retail sale of any firearm, firearm precursor part, or ammunition” for purposes of the firearms excise tax.

In addition, California petroleum fuel and wine taxes are imposed on a per gallon basis (see, e.g., RTC sections 7360 and 32151) and California cigarette and tobacco products taxes are imposed on each cigarette, tobacco product, or electronic cigarette distributed in this state. (See, e.g., RTC sections 30101 and 30121.) The petroleum fuel, wine, and cigarette and tobacco products taxes are not imposed on gross receipts as defined in RTC section 6012. Therefore, there is no need for similar clarifications of gross receipts for petroleum fuel, wine, and cigarette and tobacco products tax purposes, as there are for cannabis excise tax and firearms excise tax purposes. However, state, local, and district sales taxes generally apply to retail sales of petroleum fuel, wine, cigarettes, and tobacco products in this state, and local business taxes may be imposed on the businesses that make such sales. Therefore, the petroleum fuel, wine, and cigarette and tobacco industries are also subject to multiple layers of taxes.

Comment 15

Story said “the excise tax is being treated like sales tax.” “We’re already being charged sales tax on the packaging and all the other cost of goods.” “So, you’re double taxing.” “It’s ridiculous.”

Response to Comment 15

The Department did not make any changes to the proposed regulatory action due Story’s comment. The Department is not turning the cannabis excise tax imposed by RTC section 34011.2 into a general sales tax. However, the cannabis excise tax imposed by RTC section 34011.2 is similar to a sales tax because the rate of the cannabis excise tax and the rate of the sales tax imposed by RTC section 6051 both apply to “gross receipts,” as defined in RTC section 6012, from retail sales.

Comment 16

Story said “Nicole Elliott and Nick Maduros conspired with the governor’s office to close the loophole, in their words, because they thought that they were not getting enough taxes from the cannabis industry.”

Response to Comment 16

The Department did not make any changes to the proposed regulatory action due Story’s comment. The allegations regarding Nicole Elliot and Nick Maduros are not relevant to the adoption of Regulation 3802 with the proposed amendments through the regular rulemaking process in the APA. Also, the allegations relate to issues in pending litigation.¹⁷

Comment 17

Story said the Department should “redefine gross receipts to be in line with Prop. 64 and it should be the gross receipts of the cannabis and cannabis goods as strictly defined in the Health and Safety Code, not the packaging or any other cost of goods.” Story said it’s “pretty easy for us to extrapolate” the cost of “cannabis and cannabis goods, and you guys can recover your tax off that,” otherwise “we just see you guys in court.”

Response to Comment 17

The Department did not make any changes to the proposed regulatory action due Story’s comment. The Department is implementing, interpreting, and making specific the current provisions of RTC sections 6012, 34010, and 34011.2. The repealed and inoperative provisions of Prop. 64 are not relevant to the proper interpretation of those code sections. Also, the Department’s response to comment 1 explains in more detail why charges for

¹⁷ *SCSA GROUP, INC. v. CDTFA*, Orange County Superior Court: 30-2024-01433413-CU-NP-CJC filed October 15, 2024.

service that are part of the sale and charges to reimburse the cannabis retailer for the cost of doing business are included in gross receipts.

Comment 18

Story said Regulation 3802 is effectively trying to “raise the sales tax by percent” by turning the excise tax into a sales tax, and “going against the will of the voters” by doing so.

Response to Comment 18

The Department did not make any changes to the proposed regulatory action due to Story’s comment. The Department is not turning the cannabis excise tax imposed by RTC section 34011.2 into a general sales tax. However, the cannabis excise tax imposed by RTC section 34011.2 is similar to a sales tax because the rate of the cannabis excise tax and the rate of the sales tax imposed by RTC section 6051 both apply to “gross receipts,” as defined in RTC section 6012, from retail sales.

Comment 19

Story asked why the Department thinks it is ok to impose cannabis excise tax on packaging, such as jars from China. Story also asked the Department to reconsider Regulation 3802, suggested getting it “in line with the intent of the voters,” and excluding the separately-stated price of packaging, such as jars, from cannabis excise tax subject to audit.

Response to Comment 19

The Department did not make any changes to the proposed regulatory action due to Story’s comment. The Department is adopting Regulation 3802 with the proposed amendments to clarify the meaning of the phrase “gross receipts of any retail sale by a cannabis retailer” as used in subdivision (a) of RTC section 34011.2 and the meaning of “gross receipts” as defined in RTC section 34010, which cross-references the definition of “gross receipts” in RTC section 6012 in the SUTL.

Subdivision (a) of RTC section 34011.2 only imposes cannabis excise tax on purchasers of cannabis or cannabis products. Also, subdivision (a) of RTC section 6012 provides that “gross receipts” mean the total amount of the sale price of the retail sales of retailers. Therefore, the Department determined that the gross receipts of any retail sale by a cannabis retailer, as used in subdivision (a) of RTC section 34011.2, include any amount the purchaser is required to pay to purchase cannabis or cannabis products.

The Department determined that whether the gross receipts of any retail sale by a cannabis retailer, as used in subdivision (a) of RTC section 34011.2, include charges for non-cannabis items, such as packaging, depends upon the terms of the retail sale of the cannabis or cannabis products because the tax applies to the gross receipts from that retail sale, and there is nothing unfair or inconsistent about that determination. The Department determined that when the cannabis retailer requires a purchaser to purchase specific non-

cannabis items as a condition of the retail sale of cannabis or cannabis products, there is a bundled transaction. (*Bekkerman v. California Dept. of Tax & Fee Administration* (2024) 99 Cal.App.5th 1264, 1269 (*Bekkerman*).) The Department also determined that when there is such a bundled transaction, the charges for the non-cannabis items included in the bundled transaction are required to be attributed to the cannabis or cannabis products and included in the cannabis retailer's gross receipts from the sale of the cannabis or cannabis products. This is because:

- The charges are commingled in such a bundled transaction (*Bekkerman* at pp. 1273, 1274), regardless of whether the cannabis retailer segregates or separately states the charges;
- Including all the charges for such a bundled transaction in gross receipts is necessary to provide consistent tax treatment and certainty for cannabis retailers (*Bekkerman* at p. 1274); and
- Including all the charges for such a bundled transaction in gross receipts is necessary to discourage cannabis retailers from trying to evade the cannabis excise tax by artificially attributing commingled charges for cannabis or cannabis products to non-cannabis items included in such a bundled transaction. (*Levitt v. Faber et al.* (1937) 20 Cal.App.2d Supp. 758, 762 (*Levitt*).)

In addition, the Department determined that it is not a bundled transaction when a cannabis retailer does not require a purchaser to purchase specific non-cannabis items as a condition of the retail sale of cannabis or cannabis products and a purchaser purchases the optional non-cannabis items with the cannabis or cannabis products. Also, when a transaction is not a bundled transaction, a reasonable amount charged for the optional non-cannabis items is not required to be attributed to the cannabis or cannabis products and included in the cannabis retailer's gross receipts from the sale of the cannabis or cannabis products. However, when the amount claimed as charged for optional non-cannabis items exceeds a reasonable amount, the excess amount is in fact charged for the cannabis or cannabis products. Therefore, the excess amount is required to be attributed to the cannabis or cannabis products and included in the cannabis retailer's gross receipts from the sale of the cannabis or cannabis products to discourage the cannabis retailer from trying to evade the cannabis excise tax by artificially attributing charges for cannabis or cannabis products to optional non-cannabis items. (*Levitt*, supra, at p. 762.)¹⁸

Furthermore, the Department's response to comment 10 explains why the Department ultimately rejected the separately-stated rule Story asked the Department to reconsider.

Comment 20

Jain said "I want to . . . echo the comments made by my colleagues," Cisneros and W. Lewis. "I think they made very good arguments as to why Regulation 3802 is based on a faulty legal interpretation, is not grounded in the legal authority of the [Department], and in fact constitutes a tax increase," which is "nothing less than a violation of the will of the voters" and "a subversion of democracy." Jain said "[t]he stated purpose of Prop. 64 was

¹⁸ As discussed on pages 9 and 10 of the ISR.

to replace an illegal market with a legal market, and I think . . . you don't need to be an economist to know that this will embolden the already rampant illicit market in the state." Jain also said "what happens in California has national and global reverberations," and urged the Department "to consider that bigger picture" in the decision-making process.

Response to Comment 20

The Department did not make any changes to the proposed regulatory action due to Jain's comment. Regulation 3802 is based on the express provisions of RTC sections 6012, 34010, and 34011.2 as previously discussed in response to comment 6. Also, Regulation 3802 does not impose any new cannabis excise taxes or increase the rate of the cannabis excise tax imposed by RTC section 34011.2. However, the Department acknowledges that more cannabis excise tax may be imposed on some transactions under RTC section 34011.2 and Regulation 3802, than was imposed under RTC section 34011 and the separately-stated rule for accessories in subdivision (i) of Regulation 3700, as previously discussed in response to comment 9.

Also, AB 195 was not a proposition that required voter approval. AB 195 was an Assembly Bill that was enacted by a two-thirds vote of the Legislature and approved by the Governor, and article III, section 3.5 of the California Constitution generally prohibits the Department from declaring the statutory changes made to the CTL by AB 195 to be unconstitutional, unless an appellate court has determined that they are unconstitutional, as previously discussed in response to comment 7. Therefore, the Department must follow the express provisions of RTC sections 6012, 34010, and 34011.2 regardless of the purpose of Prop. 64 and the impact of Regulation 3802 outside California.

Comment 21

Wright said "I represent hundreds of operators." Wright said "I think everybody made some really good points before." Wright said "I see on a daily basis how much difficulty [the operators] have with the tax on tax on tax." Wright said there are a lot of business owners whose "lives are hanging in the balance," including owners that came from "the illicit market," and there are a lot of people "that are gonna get ready to, as they say, see you in court." Wright also asked for clarification about what the next stage in the rulemaking process is after the public hearing.

Response to Comment 21

The Department did not make any changes to the proposed regulatory action due to Wright's comment. The Department is aware that multiple layers of state and local taxes may be imposed on a cannabis retailer's gross receipts. However, the Department has a duty to enforce the CTL as written, even if some cannabis retailers have difficulty complying with their statutory state and local tax obligations or threaten litigation. Also, after the public hearing the next stages in the rulemaking process were the consideration of public comments and preparation of the final rulemaking documents for submission to the Office of Administrative Law.

Comment 22

Almaz noted that subdivision (b) of RTC section 34011, as added by Prop. 64, excluded separately-stated charges for other goods and services from the cannabis excise tax, unless a “reduction in the price of the cannabis or cannabis products is contingent on the purchase of the other goods [or] services.” Almaz noted that subdivision (a)(1) of RTC section 34011.2 imposes cannabis excise tax on “purchasers of cannabis or cannabis products sold in this state at 15^[19] percent of the gross receipts of any retail sale by the cannabis retailer.” So, Almaz believes subdivision (a)(1) must be read so that the tax is limited to 15 percent of the gross receipts from the retail sale of cannabis or cannabis products.

Almaz also noted that subdivision (a)(3) of RTC section 34011.2 requires the Department to estimate the amount of cultivation tax that would have been collected in the previous fiscal year, “as a percentage of gross receipts from the retail sale of cannabis and cannabis products by cannabis retailers in the previous calendar year.” Subdivision (f) of RTC section 34011.2 requires “Gross receipts from the sale of cannabis or cannabis products for purposes of assessing the sales and use taxes” to include the tax imposed by RTC section 34011.2. Therefore, Almaz believes subdivisions (a)(3) and (f) support Almaz’s interpretation of subdivision (a)(1) of RTC section 34011.2.

Response to Comment 22

The Department did not make any changes to the proposed regulatory action due to Almaz’s comment. RTC section 34011.2 does refer to “gross receipts from the retail sale of cannabis and cannabis products” in subdivision (a)(3) and “gross receipts from the sale of cannabis or cannabis products” in subdivision (f). However, neither phrase is used in subdivision (a)(1) of RTC section 34011.2, which imposes the cannabis excise tax, or in subdivision (n) of RTC section 34010, which defines “gross receipts.” Therefore, the provisions of subdivisions (a)(3) and (f) do not change the meaning of subdivision (a)(1) of RTC section 34011.2 or the meaning of “gross receipts” as defined in subdivision (n) of RTC section 34010.

Comment 23

In addition, Almaz said that “the average market price” upon which the prior cannabis excise tax was imposed “was nothing more than another way of getting to gross receipts.” Almaz said “[w]e had Regulation 3700,” which interpreted average market price. So, “I’m having a very hard time understanding what [the Department is] relying on to say that [AB 195] was a dramatic change.” Almaz also said there is nothing in the statute that “even suggests that it’s any retail sale of anything besides cannabis and cannabis products” and asked the Department to reconsider its position.

¹⁹ The cannabis excise tax rate increased to 19 percent on July 1, 2025, in accordance with subdivision (a)(2) of RTC section 34011.2.

Response to Comment 23

The Department did not make any changes to the proposed regulatory action due to Almaz's comment. RTC section 34011 imposed cannabis excise tax upon 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. Subdivision (c) of RTC section 34010 provides that "average market price" means both of the following: "In an arm's length transaction, the average retail price determined by the wholesale cost of the cannabis or cannabis products sold or transferred to a cannabis retailer, plus a mark-up, as determined by the Department on a biannual basis in six-month intervals." "In a nonarm's length transaction, the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products." Also, most business transactions are arm's length transactions. Therefore, the average market price under RTC section 34011 was not the retailer's gross receipts or a way of getting to gross receipts in most transactions.

Also, RTC section 34011.2 imposes cannabis excise tax 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," not 15 percent of "the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products." Therefore, the Legislature imposed the current cannabis excise tax on different gross receipts than the old cannabis excise tax was imposed on in nonarm's length transactions, and the Legislature must have intended for the new phrase "gross receipts of any retail sale by a cannabis retailer" to be interpreted differently in some way.

In addition, RTC section 34011.2 does refer to "gross receipts from the retail sale of cannabis and cannabis products" in subdivision (a)(3) and "gross receipts from the sale of cannabis or cannabis products" in subdivision (f). However, neither phrase is used in subdivision (a)(1) of RTC section 34011.2, which imposes the cannabis excise tax, or in subdivision (n) of RTC section 34010, which defines "gross receipts." Therefore, the provisions of subdivisions (a)(3) and (f) do not change the meaning of subdivision (a)(1) of RTC section 34011.2 or the meaning of "gross receipts" as defined in subdivision (n) of RTC section 34010.

Comment 24

Kiloh asked if there is more or less tax collected "per revenue dollar pre-AB 195 or post-AB 195." Kiloh also said the "purpose and intent [of AB 195] was to lower the tax and it wasn't just for cultivation tax."

Response to Comment 24

The Department did not make any changes to the proposed regulatory action due to Kiloh's comment. The Department maintains an open data portal on its website at cdtfa.ca.gov/dataportal. The portal currently has data regarding quarterly cannabis tax revenues and taxable sales revenues from the first quarter of 2018 through the first quarter of 2025. However, the data only includes taxable cannabis sales revenues from the first quarter of 2023 through the first quarter of 2025 because AB 195 required

cannabis retailers to report and remit cannabis excise tax imposed on or after January 1, 2023, directly to the Department. However, the Department is not sure what Kiloh meant by cannabis excise tax collected “per revenue dollar.” The data portal does not have data about cannabis excise tax collected “per revenue dollar” pre-AB 195 or post-AB 195. Also, the amount of cannabis excise tax collected “per revenue dollar” does not have a bearing on the meaning of subdivision (a)(1) of RTC section 34011.2 or the meaning of “gross receipts” as defined in RTC section 6012.

Determination Regarding Alternatives

The Department considered whether to extend the provisions of subdivision (i) of Regulation 3700 so that they apply to the cannabis excise tax imposed by RTC section 34011.2 or adopt a similar separately-stated rule to address the issue (or problem) regarding whether “the gross receipts of any retail sale by a cannabis retailer,” as used in RTC section 34011.2, include charges for non-cannabis items purchased with cannabis or cannabis products in a retail sale. The Department determined that it would be unreasonable to use subdivision (i) of Regulation 3700 or a similar separately-stated rule to address the issue and rejected that alternative as unreasonable, as discussed above and in the ISR.

The Department determined that no alternative to the adoption of the emergency Regulation 3802 with the proposed amendments would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department did not reject any reasonable alternative to the adoption of emergency Regulation 3802 with the proposed amendments that would lessen any adverse impact the proposed regulatory action may have on small business.

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 purpose 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.

Request for Early Effective Date

The amendments to Regulation 3802 generally clarify its original provisions to avoid potential confusion. Therefore, the Department requests that the amendments to Regulation 3802 be effective on filing with the Secretary of State so that all of Regulation 3802 is effective at the same time, and there is no confusion.