

This model ordinance is not intended as legal advice. For legal advice, readers should consult an attorney licensed in their state.

Why Tax Marijuana Locally?

- Raise revenue for community needs
- Like tobacco taxes, help constrain consumption especially by youth
- Regulation of marijuana commerce should be accomplished by a zoning or other ordinance

What is the authority of local government to tax marijuana in California?

- Cities vs. counties – Both can tax
- Incorporated and unincorporated areas – MAUCRSA says *counties can tax cannabis in both unincorporated and incorporated areas but generally will want to reach agreement with cities to avoid opposition to the tax*
- Medical vs. Recreational – medical exempt from sales tax but otherwise both can be taxed alike

What Types of Taxes Can Local Government Use for Marijuana?

- What they can use:
 - Business privilege taxes
 - Taxes on specific product types to steer use
 - Differentiate between business types in non-discriminatory ways
- What they can't do:
 - Sales taxes (preempted)
 - Interfere with State taxes
 - Tax outside boundaries
 - “Confiscatory” taxes (so high as to “confiscate” property)
 - Irrational or discriminatory tax distinctions

What types of marijuana businesses can be taxed?

- Any type, including:
 - Cultivators, including nurseries
 - Manufacturers
 - Testing laboratories
 - Distributors / Wholesalers / Packagers
 - Retail, including delivery into the taxing jurisdiction

Is there any difference in local taxing authority between medical and recreational marijuana?

- No, except as to the uniform sales tax
- This model can be used for either or both
- Provides flexibility to jurisdictions to use the same or different rates
- Too large a difference may push recreational consumers to medical market (sales tax exemption does that to some extent anyway)

What are the basic steps to pass a new local tax in California?

- Ballot Initiatives
- City Council or Board of Supervisors proposed measures

Upcoming dates

- Usual June and November Elections in even-numbered years
- March / April, June and November in odd-numbered years
- Special Elections — any election in which Council or Board seats not contested
- Special taxes can be on any ballot, general taxes must be on general election ballot absent declaration of emergency or initiative petition

What is a general tax vs. a special tax?

- **General tax:** Revenue goes to the general fund
 - >50% of votes required
- **Special Tax:** Revenue is earmarked in whole or part for a specific use(s)
 - >66% of votes required
- **General Tax + advisory committee** or companion measure advising but not mandating a use – Ex: Soda taxes in Berkeley, SF and Oakland

The Proposed Model: Objectives

- **Raise revenue** for local government
- **Constrain consumption**, especially by youth and of more harmful products
- **Inform use of funds**
- **Provide flexibility** to local government to adjust taxes to balance shift to legal market, revenue capture, and constraining consumption over time

Walking through the Model

- The model circulated this week is for a special tax
- General tax model with advisory committee to follow
- “Version 1” - Open to further input

Resolution to Place Measure on the Ballot

- Calls the election (if necessary) and places the measure on the ballot
- Provides the Ballot “Label” – the question printed on the ballot — the last thing voters read
- Should be carefully considered
- Limited to 75 words and recommended to be written at a 5th- 6th grade reading level
- Elections Code section 13119 governs ballot labels for tax measures – rate, duration, purpose, estimated proceeds

Next steps

- The [*City Attorney/County Counsel*] must prepare an impartial analysis of the measure, [9280/9160] California Elections Code
- *Optional*: The [*Mayor/Chair of the Board of Supervisors*] selects two members to prepare a written argument, =<300 words, in [9282/9162] California Elections Code
- *Optional*: Authorize rebuttal arguments

Model Special Tax Ordinance

Findings:

- Establish the reasoning and cite the evidence behind the tax
- Should be adapted to the local context and reflect the choices made in the local measure
- Incorporate local data, if possible on use by youth or incarceration
- Not legally required

Definitions

- Most from State Law
- New definitions
 - **“High Potency”** means cannabis flower containing >17% tetrahydrocannabinol (THC), or a cannabis product containing >50% THC, excluding edibles containing ten =<10mg THC per dose.
 - **“Sweetened cannabis beverage”** is a liquid cannabis product containing natural or artificial sweeteners sold in units intended for consumption exceeding one ounce.

What Kind of Tax?

- **Gross receipts**, not sales tax
 - Sales taxes preempted by Bradley-Burns Uniform Local Sales and Use Tax
- Consistency with **business license tax** — an excise tax on those who exercise the privilege of doing business in a community.
 - Commonly, but not always, based on gross receipts
 - Could be flat fee per employee, square foot or retail space, etc., but not percentage of sales price per se

Flexible Ceiling Up to 15% Gross Receipts

“There is hereby imposed on every cannabis business in the [*City/unincorporated area of the County*] an annual maximum cannabis industry tax of [*fifteen*] percent (15 %) of the gross receipts, plus the amount of any tax paid under paragraph B of this section and less the amount of any tax paid under paragraph C of this section. “

Basic Tax Recommendation

- Tax cannabis...
 - Up to 15% of gross receipts, and
 - Up to \$10/sq ft of cultivation area (credited against gross receipts, adjusted annually by Consumer Price Index)
 - Cultivation tax is credit against gross receipts tax to avoid taxing these receipts twice
 - Credit for crop failure?

Pros and Cons of Gross Receipts on all Cannabis Businesses Approach

- Pros:
 - Can optimize revenue collection
 - Spread tax burden across different business types
 - Help moderate post-legalization price declines
 - Consistent with other local business tax collection mechanisms
- Cons:
 - Can favor vertically integrated businesses over other businesses
 - More payors

Poll #3

Should high-potency marijuana be taxed more?

- A. Yes**
- B. No**
- C. I don't know**

Can Specific Product Types be Taxed Differently by Local Government?

- Yes they can, so long as there is a rational basis, i.e., any good reason that is not irrational or discriminatory on the basis of race, gender, religion, or another protected basis

Tax Complementary Option

In addition to basic tax, model recommends:

- **Tax on High Risk, High Potency** products: up to 1% of gross receipts from each such product times % of THC > 17%
 - Products > 50% THC (e.g. shatter, wax; edibles excluded since 10mg dose/100mg package limit)
 - Flower > 17% (ex: skunk)

Tax Complementary Option

Tax on sweetened cannabis beverages or “Cannapops” of 20% of gross receipts from each such product

Tax is Ceiling, Not Floor

- Tax UP TO 15%
- City Council or Board of Supervisors sets rate and can lower it and raise it back without voter approval
- Tax above ceiling will require voter approval

Creating Regulatory Flexibility

- Increases, decreases or adjustments across products, potency or business sectors are allowed without returning to voters, provided cap is not exceeded
- Will allow local government to adjust the tax burden over time to respond to market
- Creates the need to return to governing body periodically, unless ceiling is used from start

Cultivation Tax

- Tax by square feet rather than amount of product produced
- Tax credited against gross receipts
- Provides disincentive to non-productive land use and eliminates incentive to bleed product into the black market

Registration

- Creates system to register cannabis businesses so you know whom to look to for compliance with the tax and whom to audit if necessary
- May not be needed if local licensing or permitting system already in place

Administration of the Tax

- Payment by the taxed business to city or county, like other local taxes, unlike state cannabis tax which only distributors pay to the CDTFA
- Cannabis business **may separately identify the tax on invoices**, receipts and other evidences of transactions
- Thus, lay people will think of it as a sales taxes even though it is technically a gross receipts tax

Recalling: State taxes are

- A 15% excise tax on average market price charged to purchasers by retailers and paid up via distributors,
- A cultivation tax on all harvested cannabis entering the commercial market, paid up via distributor
 - Flower \$9.25 per dry weight ounce
 - Leaves \$2.75 per dry weight ounce
- Medicinal cannabis exempt from sales and use taxes

See: <http://www.cdtfa.ca.gov/formspubs/CannabisIPweb112017.pdf>

Administration of the Special Tax

- Deposited in a **special account** to fund the stated purposes
- Annual independent and publicly available **audit**
- *[Counties only or cities with health departments: Account shall be managed by the [County Department of Public Health].]*
- [If general tax model used, may go to general fund or be accounted separately]

Special Tax Community Advisory Board

- The Community Advisory Board shall advise and make recommendations on how to best to employ funds subject to specified dedications



Effective Date

- Specify the time needed to effectively inform taxpaying businesses and implement the tax as the effective date; later of:
 - 30 days after business start
 - Start of calendar quarter after tax is approved by voters (or some other convenient date to allow taxpayers and tax collectors to begin to comply and administer)

Advantages of this Model

- Gives jurisdictions flexibility to address market changes and changing public health and social risks
- Can optimize revenue
- Builds on existing local business taxation mechanisms
- Can spread tax burden across industry to avoid distorting the market (unless you want to)
- Dedicates the tax to mitigating and preventing the effects of substance use, otherwise improving public health, and reducing drug-related incarceration

Disadvantages of this Model

- Potential benefit to vertically integrated businesses over non-integrated businesses when taxation cascades — Can be addressed by concentrating taxes at fewer levels
- Larger number of taxpayers
- May want to exempt or reduce tax on testing laboratories which can contribute to quality and safety and to attract what may be viewed as a valuable business