

[Assembly Bill 1512](#) (McCarty)

Date: 04/17/17

Program: Opioid Tax

Sponsor: Author

Revenue and Taxation Code Sections 33001, 33002, 33003, 33004, 33005 & 33006

Effective: January 1, 2018

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This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Imposes a tax upon the first sale of an opioid in this state at the rate of \$0.01 per milligram of active opioid ingredient.

Summary of Amendments: Among other things, the amendments since the previous analysis change the operative date to January 1, 2018.

Purpose: According to the author's office, to fund opioid substance abuse treatment and prevention centers.

Fiscal Impact Summary: Annual revenues of \$88.1 million.

Existing Law: California's Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer, unless the law provides a specific exemption or exclusion. For patient treatment, the law² exempts from sales and use tax retail sales of medicines, as defined, when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on a prescription filled by a pharmacist,
- furnished by a licensed physician to his or her own patient,
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

Proposed Law: This bill creates the Opioid Addiction Prevention and Rehabilitation Act, which would impose a tax upon the distribution of opioids by every person including, but not limited to, a manufacturer or wholesaler, that makes the first sale in this state of opioids, where the sale is for the purpose of resale in the regular course of business, at the rate of one cent per milligram of active opioid ingredient. The revenues, less refunds, would be deposited in the Opioid Prevention and Rehabilitation Program Fund (OPRPF) which this bill creates. Upon appropriation by the Legislature, the monies in the OPRPF shall be transferred to the State Department of Health Care Services (DHCS) and allocated to counties based on need and population to provide critical resources for addiction prevention and rehabilitation programs.

Definitions. This bill defines the following terms:

- "Active opioid ingredient" means that portion of a product that is an opioid.
- "Distribution" means the sale of untaxed opioids in this state.
- "In this state" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States.
- "Opiate" means the dried, condensed juice of a poppy, *Papaver somniferum*, which has a narcotic, soporific, analgesic, and astringent effect.
- "Opioid" means an opiate or any synthetic or semisynthetic narcotic that has opiate like activities but is not derived from opium and has effects similar to natural opium alkaloids, and any derivatives thereof.

¹ Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

² Sales and Use Tax Law Section 6369.

- “Person” means person as defined in Section 55002.
- “Sale” means any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means.
- “Untaxed opioid” means any opioid which has not yet been distributed in a manner as to result in a tax liability under this part.

BOE administration. The BOE will assess and collect the tax in accordance with the Fee Collection Procedures Law (FCPL).³ The references in the FCPL to “fee” shall include the tax imposed by this bill, and the reference to “feepayer” shall include the taxpayer required to pay the tax imposed by this bill.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

Returns. The opioid distributors required to register with the BOE must file quarterly returns on or before the last day of the calendar month following the end of the calendar quarter. The opioid distributors must pay the tax to BOE with the return, based on the amount of active opioid ingredients first sold for resale in this state.

This bill becomes operative January 1, 2018.

Background: In 1939 the California Triplicate Prescription Program (TPP) was, capturing Schedule II prescription information. In 1997, Assembly Bill 2693 (Ch. 789, Stats 1998) created the Controlled Substance Utilization Review and Evaluation System (CURES), implementing a monitoring system for Schedule II drug prescriptions and dispensing by all practitioners authorized to prescribe or dispense these substances. The CURES program, administered by Department of Justice, ran concurrently with TPP to examine the comparative efficiencies. In 1999, CURES replaced TPP and began capturing Schedules II through IV prescription information. In 2009, the California Prescription Drug Monitoring Program (PDMP), was introduced as a searchable, client facing component to CURES. CURES requires pharmacists to weekly report dispensations of Schedule II through IV controlled substances. CURES houses the following information: (1) drugs prescribed or dispensed, (2) name, address, phone number, age, and gender of patient, (3) the prescriber’s information, (4) pharmacy information and quantity of the controlled substance dispensed, (5) number of refills, (6) date of prescription, and (7) date of dispensing of prescription.

In 2016, Senate Bill 833 (Ch. 30, Stats 2016) established the Naloxone Grant Program within the California Department of Public Health (CDPH) with the goal to reduce the number of fatal overdoses from opioid drugs, including prescription opioids and heroin. A total of \$3 million was allocated on a one-time basis to support the program.⁴ CDPH awards funding to local health departments, local government agencies or, on a competitive basis, to community-based organizations, regional opioid prevention coalitions, or both. The funding is used to support or establish programs that provide Naloxone to first responders and to at-risk opioid users through programs that serve at-risk drug users, including, but not limited to, syringe exchange and disposal programs, homeless programs, and substance use disorder treatment providers.

Commentary:

1. **Effect of the bill.** Imposes a \$0.01 per milligram of active opioid ingredient tax upon the first sale of the opioid in this state. The revenues, less refunds, would be deposited in the OPRPF which this bill creates for DHCS to allocate to counties for addiction prevention and rehabilitation programs.
2. **The April 17, 2017 amendments** change the tax’s operative date from the first day of the first calendar quarter 90 days after enactment to January 1, 2018. Also, the State Department of Health Care Services will administer the funds instead of the State Department of Public Health.

³ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

⁴ [California Department of Public Health](#) – Naloxone Grant Program

3. **May be difficult to identify who owes the tax.** Identifying the parties who make the first sale of opioids in this state may be difficult. Generally, BOE identifies affected taxpayers by NAICS codes. However, since the tax could be imposed on different points of a sale depending on who makes the first sale in California, BOE would need to identify several NAICS codes to incorporate all responsible taxpayers. Identifying taxpayers in multiple NAICS codes could result in failure to properly register some taxpayers and unnecessarily registering others. If the sale of opioids currently is monitored by another state agency, the bill should be amended to allow that agency to share with BOE information identifying potential taxpayers.
4. **The BOE currently administers similarly structured tax programs.** The cigarette and tobacco products tax is imposed on the distributor of cigarettes or tobacco products. The tobacco distributor is a person or company that purchases untaxed cigarettes and makes the first distribution of cigarettes in this state. Distributors are required to obtain and maintain a license with BOE⁵ and remit the amounts owed each month on a BOE provided form. Distributors must list on the invoice the amount of California tobacco products taxes due to the BOE to show taxes paid on the first sale into California.
5. **How would the BOE be reimbursed for administrative costs?** The BOE would be responsible to administer and collect the opiate tax. In order to notify and register taxpayers, develop computer programs and reporting forms, and hire appropriate staff, funding would be required to cover the BOE's administrative costs not identified in the BOE's budget for fiscal year 2017-18.

Typically, the BOE would seek payment from the OPRF for administrative start-up costs through the budget change proposal process. However, the OPRF would not have a balance to reimburse the BOE's administrative start-up costs prior to collection of the tax. To address this funding issue, this bill should be amended to add language authorizing a loan from the General Fund, or other eligible fund, to the OPRF, to be repaid from taxes collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed tax program. Without an appropriation for administrative start-up costs, the BOE would have to divert General Fund dollars to the proposed tax program, which would have a negative impact on state and local government revenues.

Furthermore, the bill does not specify funding for the BOE's on-going administrative costs. The following amendment is suggested to clarify the BOE's funding for ongoing administrative costs:

33006. All taxes, interest, penalties, and other amounts collected pursuant to this part, less refunds and the board's costs of administration, shall be deposited into the Opioid Prevention and Rehabilitation Program Fund created in Section 11740 of the Health and Safety Code.

6. **Technical amendments.** Electronic return filing requirements should be added to the bill for consistency with the other tax and fee programs the BOE administers.

33005(c) The tax imposed by this part shall be due and payable to the board on or before the last day of the month next succeeding each calendar quarter, together with a return for that calendar quarter. Returns shall be filed with the board using electronic media and authenticated in a form or pursuant to methods as may be prescribed by the board.

7. **A delayed operative date of July 1, 2018 is suggested.** The BOE must identify, notify, and register taxpayers; develop computer programs; hire and train key staff; create necessary forms and returns; and answer taxpayer inquires. These functions must take place before the tax becomes operative.

The BOE is currently in the implementation stage of replacing its legacy computer system. The new system, known as the Centralized Revenue Opportunity System ([CROS](#)), is due for its first roll out in April 2018. The CROS project involves extensive reconfiguring of the BOE's primary tax administration system. The implementation and stabilization efforts will occupy significant BOE staff resources for the rest of 2017, and into 2020.

⁵ Revenue and Taxation Code (RTC) 30011

In addition, the BOE is implementing new tax programs under [Proposition 56](#) (Cigarette and Tobacco Tax Law), [Proposition 64](#) (Marijuana Tax Law), and [AB 2153](#) (Lead Acid Battery Fee), and other legislative mandates including [ABx2 11](#) (Cigarette and Tobacco Products Licensing Act fees), AB 1245 (New Employment Registry Program), and [AB 1717](#) (Prepaid Mobile Telephony Services Surcharge). Based on the lack of available resources, the BOE could not administer a new tax or fee program or make other significant programming changes before July 1, 2018, without substantial risk to legislative and voter approved mandates and other projects currently in process.

Costs: The BOE would incur substantial costs to implement a new tax program. These costs include: identifying and registering affected taxpayers, developing forms and publications, developing and testing related computer programs, processing returns, payments, and claims for refunds, and carrying out compliance and audit efforts to ensure proper reporting, in addition to developing regulations, training staff, and answering inquiries from the public. A detailed cost estimate is pending.

Revenue Impact: Background, Methodology, and Assumptions: As reported by the International Narcotics Control Board (INCB), United States’ opioid consumption in morphine equivalence (ME) milligrams totaled 700.78 milligrams per capita in 2014. Based on calculations from the Pain & Policy Studies Group (PPSG) which utilizes a Morphine Equivalence (ME) metric, adjusted for population and for 6 principal opioids, active opioid consumption data are tabulated and tracked. According to PPSG data and BOE calculations of the equivalency conversion of ME, consumption of active opioids totaled 324.85 milligrams per capita. The data represent the amounts of active opioids distributed legally in the country for medical and scientific purposes to healthcare institutions and programs that are licensed to dispense to patients, such as hospitals, nursing homes, pharmacies, hospices and palliative care programs.

Opioid	2014 ME Equivalent (mg per capita)	Chart Value	Distribution
Methadone ME	199.17	48.13	14.81%
Morphine	73.78	73.78	22.71%
Pethidine ME	1.14	4.38	1.35%
Oxycodone ME	259.22	187.50	57.72%
Fentanyl ME	120.01	1.38	0.42%
Hydromorphone ME	47.46	9.69	2.98%
Total	700.78	324.85	100.00%

The opioid consumption data are displayed in milligrams per capita, which is calculated by first converting the morphine equivalence consumption data received from INCB to active opioid milligrams and then adjusting the data to reflect California’s reduced use, a factor of 69% compared to US prescriptions. The California adjustment factor takes into accounts the fact that fewer opioid prescriptions are written here compared to national averages. According to surveys by the U.S. Centers for Disease Control (CDC), an average of 57 prescriptions per 100 people are written for opioids in California, compared to 82.5 per 100 for the nation as a whole. If these prescriptions are typical, California opioid consumption would be 69% of national opioid consumption (California ratio of 57.0 prescriptions for every 100 people / United States 82.5 prescriptions to every 100 people = 0.6909).

Estimated California consumption per capita 224.44 (324.85 × 69.09%) × California population of 39,256,000 (1/1/2016 DOF) = 8,810,616,640 milligrams.

8,810,616,640 milligrams × proposed tax rate of \$0.01 = revenues of \$88.1 million.

Estimated CA Consumption per capita	224.44
CA Population (1/1/2016, DOF)	39,256,000
Milligrams	8,810,616,640
Tax Rate	\$0.01
Revenues	\$88,106,166

Revenue Summary: Based on the proposed fee of \$0.01 per milligram of active opioid ingredient, an annual estimated \$88.1 million in fee revenues could be generated ($\$0.01 \times 8,810,616,640$ milligrams = \$88.1 million).

Qualifying Remarks: Based on Pain & Policy Studies Group tracking, data indicates opioid consumption in morphine equivalence prescription peaked in 2011 and declined since then. Reporting from International Narcotics Control Board states that the differences in consumption levels between countries continued to be very significant, owing to various economic, knowledge, regulatory and other factors influencing the use of morphine in the treatment of pain.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.