



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

November 13, 2015

Senator Floyd Prozanski
900 Court Street NE S415
Salem OR 97301

Re: Taxation of marijuana transferred by a medical marijuana dispensary

Dear Senator Prozanski:

You have asked this office for an opinion on whether a city or county may adopt an ordinance that imposes a tax on marijuana and marijuana-derived products sold by a medical marijuana dispensary on and after July 1, 2015.¹ The answer to your question is no, a city or county may not adopt such an ordinance.

State law currently prohibits the enactment of any tax by a city or county on marijuana or marijuana-derived products, except as expressly authorized by state law.² Under section 34a, chapter 614:

(1)(a) Except as expressly authorized by this section, the authority to impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly.

(b) Except as expressly authorized by this section, a county, city or other municipal corporation or district may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items in this state.

Section 34a then sets forth the circumstances under which a city or county may adopt an ordinance imposing a tax or fee. The ordinance must be referred to the electors of the city or county for approval at the next statewide general election.³ The ordinance may only impose a tax or fee on marijuana or marijuana-derived products being sold by a marijuana retailer that holds a license issued by the Oregon Liquor Control Commission.⁴ Finally, the ordinance may

¹ All statutes that are a part of the Oregon Medical Marijuana Act referenced in this opinion were amended by chapter 614, Oregon Laws 2015 (Enrolled House Bill 3400) (hereinafter chapter 614). Those amendments become operative on March 1, 2016. See section 179, chapter 614. For purposes of this opinion, we cite the versions of those statutes that are currently operative. Please note, however, that the amendments to those statutes does not change our analysis of the question that you have asked.

² The provision of law in question, section 34a, chapter 614, became effective on passage (June 30, 2015). See section 182, chapter 614 (declaring an emergency and specifying that chapter 614 becomes effective on passage). Unlike other provisions of chapter 614, section 34a also became *operative* on passage. See section 178, chapter 614 (excluding section 34a from sections subject to a January 1, 2016, operative date).

³ Section 34a (2) and (3), chapter 614.

⁴ Section 34a (2), chapter 614.

not impose a tax or fee in excess of three percent of the price of the marijuana or marijuana-derived product.⁵ In short, under this provision of law, a city or county is prohibited from imposing a tax or fee of any sort on a medical marijuana dispensary.

It also is important to understand the context under which marijuana and marijuana-derived products are transferred by medical marijuana dispensaries to medical marijuana cardholders.⁶ Under current law, medical marijuana dispensaries⁷ may transfer usable marijuana and immature marijuana plants to medical marijuana cardholders or the designated primary caregivers of medical marijuana cardholders.⁸ However, medical marijuana dispensaries may not own the marijuana or the marijuana-derived products. All marijuana and marijuana-derived products are owned by the medical marijuana cardholder who originally applied to the Oregon Health Authority for the privilege to grow marijuana for medical purposes.⁹ Thus, medical marijuana dispensaries *do not sell* marijuana or marijuana-derived products to medical marijuana cardholders, they merely function as a mechanism by which marijuana and marijuana-derived products may be transferred from one medical marijuana cardholder to another medical marijuana cardholder. A medical marijuana dispensary may receive reimbursement from a medical marijuana cardholder for the “normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.”¹⁰ However, reimbursement for those costs is not a “sale” of marijuana or marijuana-derived products, and a medical marijuana dispensary that does sell marijuana or marijuana-derived products is subject to disciplinary action, including loss of registration.¹¹ With this in mind, a city or county may not impose a tax on marijuana and marijuana-derived products sold by a medical marijuana dispensary because no marijuana or marijuana-derived products are actually being sold. A medical marijuana dispensary that is in compliance with state law is merely being reimbursed for the costs associated with making a transfer from one medical marijuana cardholder to another.

There is one exception to the provisions of law described above: if a medical marijuana dispensary elects to make sales as described in section 2, chapter 784, Oregon Laws 2015 (Enrolled Senate Bill 460) (hereinafter chapter 784), then on and after January 4, 2016, the medical marijuana dispensary must collect a tax on the sale of marijuana and marijuana-derived

⁵ Section 34a (4), chapter 614.

⁶ The term used for medical marijuana cardholder in state law is “registry identification cardholder.” See ORS 475.309. For purposes of this opinion, we use the term “medical marijuana cardholder” as it is the more commonly used term.

⁷ The term used for medical marijuana dispensaries under current state law is “medical marijuana facility.” However, chapter 614 amended state law to change the term to “medical marijuana dispensary.” See sections 80 and 86, chapter 614.

⁸ ORS 475.314.

⁹ See ORS 475.304 (5) (specifying that “[a]ll usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a [medical marijuana] cardholder by a person responsible for a marijuana grow site are the property of the [medical marijuana] cardholder and must be provided to the [medical marijuana] cardholder, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a medical marijuana [dispensary] registered under ORS 475.314, upon request”) and ORS 475.314 (6)(a) (specifying that a medical marijuana dispensary “may receive usable marijuana or immature marijuana plants only from a [medical marijuana] cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana [dispensary] obtains authorization, on a form prescribed by the [Oregon Health] Authority by rule and signed by a [medical marijuana] cardholder, to receive the usable marijuana or immature marijuana plants”).

¹⁰ ORS 475.314 (10)(a).

¹¹ ORS 475.314 (11).

products to individuals to whom the medical marijuana dispensary makes a retail sale.¹² Importantly, this is a sales tax imposed and collected by the state, not a city or county.¹³ Under the law, medical marijuana dispensaries may make a retail sale to any person who is 21 years of age or older.¹⁴ Further, the rate of the tax is prescribed by state law: 25 percent of the sales price.¹⁵ Finally, medical marijuana dispensaries are most likely not making retail sales to medical marijuana cardholders. Medical marijuana dispensaries are most likely still transferring marijuana and marijuana-derived products to medical marijuana cardholders for the cost of reimbursement. Thus, the tax imposed by section 21a, chapter 699, is most likely a tax that only affects individuals who are not medical marijuana cardholders.

If you have any other questions about this matter, do not hesitate to contact our office.

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Very truly yours,

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¹² Section 21a, chapter 699, Oregon Laws 2015 (Enrolled House Bill 2041) (hereinafter chapter 699). See also section 2, chapter 784 (specifying that a medical marijuana dispensary may sell the seeds of marijuana, the dried leaves and flowers of marijuana and immature marijuana plants to any person who is 21 years of age or older under certain conditions) and section 2, chapter 699 (imposing upon the retail sale of marijuana items in this state, including marijuana leaves, marijuana flowers and immature marijuana plants, a direct tax on the consumer of a marijuana item).

¹³ See section 3, chapter 699.

¹⁴ Section 2, chapter 784.

¹⁵ Section 21a (2), chapter 699.