



Complying with California's Rules for Cannabis Trade Samples and Medical Cannabis Donations

Omar Figueroa, Esq.
Lauren Mendelsohn, Esq.

Presented for the Humboldt County Growers Alliance



Disclaimer: Not Legal Advice

The information contained herein is provided for educational and informational purposes only, and should not be construed as legal advice or as an offer to perform legal services on any subject matter. The content of this presentation contains general information and may not reflect current legal developments or information. The information is not guaranteed to be correct, complete or current. The Law Offices of Omar Figueroa (“LOOF”) makes no warranty, expressed or implied, about the accuracy or reliability of the information in this presentation.

Recipients of content from this presentation should not act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances at issue from an attorney licensed in the recipient’s state. LOOF expressly disclaims all liability with respect to actions taken or not taken by the recipient based on any or all of the information or other contents of this presentation.

The transmission of this presentation, in whole or in part, does not constitute or create an attorney-client relationship between any recipients. Nothing herein is intended to create an attorney-client relationship and shall not be construed as legal advice. This is not an offer to represent you, nor is it intended to create an attorney-client relationship. The only way to become a LOOF client is through a mutual agreement in a formal letter. This presentation is not soliciting clients and does not propose any type of transaction.



About the Speakers



Omar Figueroa, Esq.

[Omar Figueroa](#) is the Founder and Principal Attorney of the Law Offices of Omar Figueroa, one of the leading cannabis licensing, regulatory compliance, and intellectual property law firms in California. With more than twenty three years of experience at the vanguard of cannabis law in the Golden State, he is widely respected as an industry expert. He frequently speaks at events and has taught several continuing legal education (CLE) seminars related to cannabis law and legal ethics.

Omar is the author of numerous legal reference works on [California Cannabis Laws and Regulations](#) as well as [New York Cannabis Laws and Regulations](#).

Omar is a graduate of Yale College, Stanford Law School, and the Trial Lawyers College. He has also completed an Executive Education program for directors of corporate boards at the Wharton School in Philadelphia.

Omar is a Director of the [National Cannabis Industry Association](#), the [California Cannabis Tourism Association](#), and the Sebastopol Center for the Arts. He is also a Chapter Leader of the Sonoma County ACLU Chapter. He is also a Founding Lifetime Member and former Director of the [International Cannabis Bar Association](#), a Lifetime Member of the [NORML Legal Committee](#), and recognized with the [Distinguished Counsel's Award](#) by NORML.



About the Speakers



Lauren Mendelsohn, Esq.

Lauren Mendelsohn is a Senior Associate Attorney at the Law Offices of Omar Figueroa, a boutique Sonoma County-based law firm focusing on the cannabis and hemp industries. She is an activist at heart who enjoys helping individuals and businesses navigate regulatory regimes and the criminal justice system. She was named a 2020 and 2021 Northern California Rising Star by Super Lawyers®.

Lauren focuses on cannabis permitting and licensing, regulatory compliance, business formations and transactions, intellectual property, government relations, and post-conviction relief. She formerly chaired the Board of Directors of [Students for Sensible Drug Policy \(SSDP\)](#), an international non-profit aimed at ending the counterproductive “War on Drugs.”

Lauren currently sits on the Board of Directors of the [International Cannabis Bar Association](#) and the [Sonoma County Growers Alliance](#). Lauren earned her J.D. from the University of California, Irvine School of Law and her B.S. in Psychology from the University of Maryland.



Outline

- Trade Samples
- Donations of Medical Cannabis
- Potential Consequences for Noncompliance
- Resources
- Q & A

I. Cannabis Trade Samples



Trade Samples: Background

- Before the passage of AB141 in 2021, there was no way to designate cannabis products provided from one licensee to another for marketing purposes as trade samples to avoid the cannabis taxes.
- AB141 added new language to the Business & Professions Code as well as the Revenue and Taxation Code to create such a procedure for trade samples.
- The Department of Cannabis Control (DCC) has adopted regulations pertaining to trade samples.



Law on Trade Samples - Bus. & Prof. Code

Business & Professions Code §26153.1(a)-(c):

- (a) A licensee may designate cannabis or a cannabis product as a trade sample at any time while the cannabis or cannabis product is in the possession of the licensee.
- (b) Upon the designation of the cannabis or cannabis product as a trade sample, the licensee shall do both of the following:
 - (1) Record the associated quantity, product type, and unique identifiers of the cannabis or cannabis product into the track and trace program established pursuant to Section 26067.
 - (2) Label the cannabis or cannabis product with the following: “TRADE SAMPLE. NOT FOR RESALE OR DONATION.”
- (c) Cannabis or cannabis products designated as a trade sample may be transported between licensees by an employee of a licensee.



Law on Trade Samples - Bus. & Prof. Code

Business & Professions Code §26153.1(d):

- (1) Cannabis or cannabis products designated as a trade sample shall not be sold or donated by any licensee.
- (2) Notwithstanding Section 26153, cannabis or cannabis products designated as a trade sample may be given for no consideration to an employee of the licensee that designated the trade sample or to another licensee, subject to all the following requirements:
 - (A) A trade sample shall only be given for the purposes of conducting research and development, education, or targeted advertising to licensees about new or existing cannabis or cannabis products.
 - (B) Cannabis or cannabis products designated as a trade sample given to another licensee shall be recorded in the track and trace system pursuant to Section 26067.
 - (C) A licensee shall maintain records of cannabis or cannabis products designated as a trade sample that are given to employees.
 - (D) An employee of the licensee shall not possess or transport trade samples in amounts exceeding the following:
 - (i) Twenty-eight and one-half grams of nonconcentrated cannabis.
 - (ii) Eight grams of concentrated cannabis, including concentrated cannabis contained in cannabis products.
 - (iii) Six immature cannabis plants.



Law on Trade Samples - Bus. & Prof. Code

Business & Professions Code §26153.1, subsections (d)(3), (d)(4),(e), (f):

- (d)(3) Cannabis or cannabis products may be consumed by the licensee or an employee of the licensee.
- (4) Cannabis or cannabis products shall not be given to a retail customer.
- (e) (1) The bureau shall establish by regulation a definition of trade sample.
- (2) (A) The bureau may establish by regulation a limit on the quantity of cannabis and cannabis goods designated by a licensee as trade samples.
- (B) The bureau shall not establish a limit pursuant to this paragraph that is less than 2 percent of each batch.
- (f) Cannabis or cannabis products designated as a trade sample shall be subject to quality assurance and testing pursuant to Section 26110.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34011(h)(1)-(2). Cannabis Excise Tax.

(h) (1) Nothing in this section shall be construed to impose an excise tax upon cannabis or cannabis products designated as a trade sample pursuant to Section 26153.1 of the Business and Professions Code.

(2) A person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code that sells cannabis or cannabis products designated as a trade sample pursuant to Section 26153.1 of the Business and Professions Code shall be liable for the excise tax imposed by this section as if the person were a cannabis retailer at the time of sale.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34012(i). Cannabis Cultivation Tax.

(i) All cannabis removed from a cultivator's premises, except for plant waste or medicinal cannabis or medicinal cannabis products designated for donation, shall be presumed to be sold and thereby taxable under this section, except as otherwise exempt pursuant to Section 34012.2.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34012.2. Trade Samples.

- (a) On and after January 1, 2022, there is exempt from the cultivation tax imposed pursuant to Section 34012 the cultivation of all harvested cannabis that will be, or has been, designated a trade sample pursuant to Section 26153.1 of the Business and Professions Code and all harvested cannabis that is used to manufacture a cannabis product that is designated a trade sample pursuant to Section 26153.1 of the Business and Professions Code.
- (b) The department shall adopt regulations prescribing the procedures for how the exemption provided in subdivision (a) shall be implemented.
- (c) A person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code that sells cannabis exempt from the cultivation tax pursuant to subdivision (a) or sells any cannabis product that is manufactured with cannabis exempt from the cultivation tax pursuant to subdivision (a) shall be liable for the cultivation tax imposed by Section 34012 as if the person were a cultivator of the cannabis at the time of sale.
- (d) Notwithstanding any other law, the department may adopt and readopt emergency regulations to implement this section. The provisions of this section shall be applicable to emergency regulations adopted or readopted pursuant to this section. The emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of public peace, health, safety or general welfare.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34012.5. Excess Tax.

- (a) The cultivation tax and cannabis excise tax required to be collected by the distributor, or required to be collected by the manufacturer pursuant to paragraph (2) of subdivision (h) of Section 34012, and any amount unreturned to the cultivator or cannabis retailer that is not tax but was collected from the cultivator or cannabis retailer under the representation by the distributor or the manufacturer that it was tax constitute debts owed by the distributor or the manufacturer to this state.
- (b) A distributor or manufacturer that has collected any amount of tax in excess of the amount of tax imposed by this part and actually due from a cultivator or cannabis retailer, may refund such amount to the cultivator or cannabis retailer, even though such tax amount has already been paid over to the department and no corresponding credit or refund has yet been secured. The distributor or manufacturer may claim credit for that overpayment against the amount of tax imposed by this part that is due upon any other quarterly return, providing that credit is claimed in a return dated no later than three years from the date of overpayment.
- (c) Any tax collected from a cultivator or cannabis retailer that has not been remitted to the department shall be deemed a debt owed to the State of California by the person required to collect and remit the tax.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34013(f). Administration.

(f) Any person required to be licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of the taxes not paid, and shall be subject to having its license revoked pursuant to Section 26031 of the Business and Professions Code .



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34016(a), (b). Inspection Authority.

(a) Any peace officer or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

- (1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.
- (2) Inspections may be at any place at which cannabis or cannabis products are sold to purchasers, cultivated, or stored, or at any site where evidence of activities involving evasion of tax may be discovered.
- (3) Inspections shall be conducted no more than once in a 24-hour period.

(b) Any person who fails or refuses to allow an inspection shall be guilty of a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the California Cannabis Tax Fund.



Law on Trade Samples - Rev. & Tax Code

Revenue & Taxation Code §34016(c)-(f). Inspection Authority.

(c) Upon discovery by the board or a law enforcement agency that a licensee or any other person possesses, stores, owns, or has made a retail sale of cannabis or cannabis products, without evidence of tax payment or not contained in secure packaging, the board or the law enforcement agency shall be authorized to seize the cannabis or cannabis products. Any cannabis or cannabis products seized by a law enforcement agency or the board shall within seven days be deemed forfeited and the board shall comply with the procedures set forth in Sections 30436 through 30449, inclusive.

(d) Any person who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

(e) Any violation of any provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

(f) All moneys remitted to the board under this part shall be credited to the California Cannabis Tax Fund.



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.2. Trade Samples.

- (a) For the purposes of this division, “trade sample” means a limited amount of cannabis goods that has been designated by a licensee to be provided to other licensees for the purposes of targeted advertising.
- (b) Cannabis goods that have been designated as trade samples may be provided from one licensee to another licensee for the purpose of providing the recipient licensee with product information to aid in making purchasing decisions about new or existing cannabis goods.
- (c) Live plants and seeds cannot be designated or provided to licensees as trade samples.



Trade Samples: Regulations

4 Cal. Code of Regs. §15041.3. Designating Trade Samples.

- (a) Licensees shall designate cannabis goods as trade samples through the track and trace system.
- (b) At the time of designation as a trade sample, cannabis goods must be in the possession of the licensee making the designation.
- (c) Once cannabis goods have been designated as a trade sample, the designation cannot be changed.
- (d) After laboratory testing, cannabis goods that have been designated as trade samples may be transferred to licensees in accordance with section 15041.4.



Trade Samples: Regulations

4 Cal. Code of Regs. §15041.4, subsections (a) & (b)

§15041.4. Providing Trade Samples.

- (a) Cannabis goods that have been designated as trade samples may be provided to any licensee except licensed cannabis event organizers, distributor transport only licensees, and testing laboratory licensees.
- (b) The following licensees may designate and provide trade samples to other licensees:
- (1) Cultivators;
 - (2) Manufacturers;
 - (3) Distributors; and
 - (4) Microbusinesses authorized to engage in cultivation, manufacturing, or distribution.



Trade Samples: Regulations

4 Cal. Code of Regs. §15041.4, subsection (c)

§15041.4. Providing Trade Samples.

(c) The following licenses shall not designate or provide trade samples to other licensees:

- (1) Retailers;
- (2) Cannabis event organizers;
- (3) Distributor transport only licensees; and
- (4) Testing laboratories.



Trade Samples: Regulations

4 Cal. Code of Regs. §15041.4, subsection (d)

§15041.4. Providing Trade Samples.

(d) Cannabis goods designated as trade samples may not be provided:

- (1) For any payment or consideration;
- (2) Without adhering to sales and excise tax requirements, if any;
- (3) To employees as compensation;
- (4) To an unlicensed person, including retail customers; or
- (5) For a cost.



Trade Samples: Regulations

4 Cal. Code of Regs. §15041.4(e), (f), (g) & (h). Providing Trade Samples.

(e) The transfer from one licensee to another of cannabis goods designated as a trade sample must be recorded in the track and trace system.

(f) A licensee may provide cannabis goods that have been received from another licensee as a trade sample to an employee for that employee's inspection or consumption.

(g) Cannabis goods provided to employees as trade samples must be properly recorded in the track and trace system. The transaction shall be recorded as a package adjustment when provided to the employee. The adjustment note must include the name or licensee-assigned employee number of the employee and the date and time the cannabis goods were provided to the employee.

(h) Cannabis goods provided to employees as trade samples shall not be sold, given away, or otherwise transferred by the employee to any person.



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.5(a), (b) & (c). Requirements for Trade Samples.

(a) In addition to the requirements of section 15041.3(d), cannabis goods provided to another licensee as a trade sample must be packaged and labeled in accordance with the packaging and labeling requirements found in the Act and this division for cannabis goods sold at retail.

(b) Cannabis goods provided to another licensee as a trade sample must comply with all laboratory testing requirements applicable to cannabis goods sold at retail.

(c) Cannabis goods must be labeled with the following: “TRADE SAMPLE. NOT FOR RESALE OR DONATION.”



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.5(d), (e) & (f). Requirements for Trade Samples.

(d) After laboratory testing, cannabis goods designated as trade samples must remain in the packaging until provided to a licensee's employee for inspection or consumption and must not be opened, resealed, or repackaged in any way.

(e) Transportation of cannabis goods designated as trade samples must be conducted in accordance with the transportation requirements in the Act and this division. Any licensee authorized to engage in distribution activities may transport trade samples.

(f) Notwithstanding subsection (e), an employee of a licensee authorized to engage in transportation may transport cannabis goods designated as trade samples in a vehicle that is not registered to the licensee and shall not be required to comply with the requirements of section 15311(g). Employees transporting cannabis goods under this subsection shall not transport an amount of cannabis goods that exceeds the possession limits established in section 11357 of the Health and Safety Code.



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.6. Consumption of Trade Samples.

- (a) All consumption of cannabis goods provided as a trade sample must comply with all laws regarding the consumption of cannabis goods.
- (b) Cannabis goods provided to employees as trade samples shall not be consumed by employees who are engaging in the transportation of cannabis goods, delivery of cannabis goods, or any activity that requires the operation of a motor vehicle.
- (c) Cannabis trade samples provided to licensee employees that are not consumed by the employee must be destroyed in accordance with the requirements of the Act and this division.



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.7(a), (b). Trade Sample Limits.

(a) A licensee is limited to designating the following aggregate amounts of cannabis goods as trade samples in a calendar month period:

- (1) For cannabis in the form of dried flower, a total of two pounds; and
- (2) For manufactured and nonmanufactured cannabis products, a total of 900 individual units.

(b) Licensees authorized to provide trade samples may provide trade samples to multiple recipient licensees.



Trade Samples: Regulations

4 Cal. Code of Regs. § 15041.7(c) & (d). Trade Sample Limits.

(c) A licensee is limited to providing the following aggregate amounts of cannabis goods as trade samples to each recipient licensee in a calendar month period:

- (1) For cannabis in the form of dried flower, five (5) grams per strain and no more than six (6) strains to each recipient licensee; and
- (2) For manufactured and nonmanufactured cannabis products, five (5) individual units, as packaged for retail sale, per cannabis product line and no more than six (6) individual cannabis product lines to each recipient licensee.

(d) The limits provided in subsection (c) apply to the transfer of cannabis trade samples from one licensee to each recipient licensee and do not limit the total amount of cannabis trade samples that a licensed distributor may transport.



Trade Samples: Regulations

18 Cal. Code of Regs. §3700(k). Cannabis Excise and Cultivation Taxes.

(k) Penalties.

(1) Penalty for Unpaid Taxes. In addition to any other penalty imposed pursuant to the Fee Collection Procedures Law (commencing with section 55001 of the Revenue and Taxation Code) or any other penalty provided by law, a penalty of 50 percent of the amount of the unpaid cannabis excise tax or cannabis cultivation tax shall be added to the cannabis excise tax and cultivation tax not paid in whole or in part within the time required pursuant to sections 34015 and 55041.1 of the Revenue and Taxation Code.

(2) Relief from Penalty for Reasonable Cause. If the Department finds that a person's failure to make a payment of the cannabis excise tax or cannabis cultivation tax is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by subdivision (k)(1) for such failure.

Any person seeking to be relieved of the penalty shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.



Trade Samples Exempted from Cannabis Taxes

“Beginning January 1, 2022, AB 141 also exempts from [the] cultivation tax, all harvested cannabis that will be, or has been, designated as a trade sample and all harvested cannabis that is used to manufacture a cannabis product that is designated as a trade sample.”

“Additionally, the cannabis excise tax does not apply to cannabis or a cannabis product designated as a trade sample that is given to another licensee without consideration.”



**CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION**



Trade Samples: Cultivators

As a cultivator, one can provide cannabis trade samples to any cannabis licensee except cannabis event organizers, transport-only distributors, and testing laboratories; and one can receive trade samples from manufacturers, distributors, other cultivators, and microbusinesses authorized to engage in cultivation, manufacturing, or distribution. (NOTE: by definition, microbusinesses must engage in at least three of the four following license types: cultivation, manufacturing, distribution, or retail. Therefore, it seems every microbusiness is authorized to engage in cultivation, manufacturing, or distribution.)

- Do not pay the cultivation tax for trade samples
- Provide documentation indicating the items are trade samples
- Keep documentation that indicates no cultivation tax was paid
- Keep documentation about any cultivation tax returned due to goods later being designated as trade samples



Trade samples: Manufacturers

As a manufacturer, one can provide cannabis trade samples to any cannabis licensee except cannabis event organizers, transport-only distributors, and testing laboratories; and one can receive them from cultivators, distributors, other manufacturers, and microbusinesses.

- Do not collect cultivation tax on goods designated as trade samples
- Provide documentation indicating that no cultivation tax was collected when another licensee receives trade samples from you
- Keep documentation indicating that no cultivation tax was collected from or paid to another licensee
- Return any cultivation taxes collected from a cultivator for cannabis that was later designated as trade samples (if not possible, pay it to CDTFA via the distributor who arranged for the required testing)



Trade Samples: Distributors

As a distributor, one can provide cannabis trade samples to other DCC licensees except cannabis event organizers, transport only distributors, and testing laboratories; and one can receive trade samples from cultivators, manufacturers, distributors, and microbusinesses.

- Do not collect cultivation tax on cannabis designated a trade samples
- Keep documentation indicating you did not collect the cultivation tax
- Return any cultivation taxes collected from a cultivator for cannabis that was later designated as trade samples (if not possible, pay it to CDTFA via the distributor who arranged for the required testing)
- Do not collect cannabis excise tax on trade samples provided to a retailer
- Provide documentation to retailers that you provide trade samples to indicating that no cannabis excise tax was collected, and maintain copies for your records



Trade Samples: Retailers

As a cannabis retailer, one can receive cannabis trade samples from cultivators, manufacturers, distributors, and microbusinesses authorized to engage in cultivation, manufacturing, or distribution; but a cannabis retailer cannot designate cannabis or cannabis products as trade samples and cannot provide trade samples to other licensees or consumers.

- Keep documentation indicating you did not pay the excise tax to a distributor for trade samples received



Providing and Receiving Trade Samples: Summary

In summary, licensed cultivators, manufacturers, tax-collecting distributors, and microbusinesses can give and receive cannabis trade samples but cannabis event organizers, transport only distributors, and testing laboratories can neither give nor receive trade samples. Retailers can only receive trade samples but cannot give trade samples to other licensees or consumers.

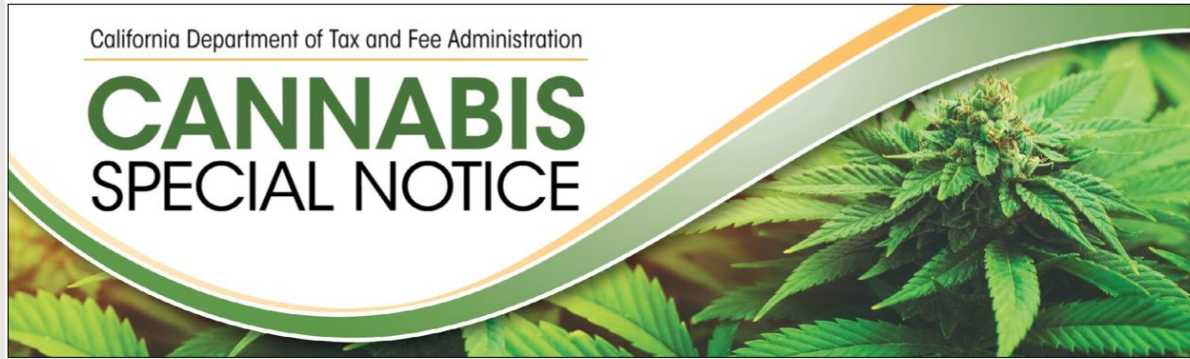


Documenting Trade Sample Transactions

The following information should be included on documentation, such as a letter, invoice, note, or preprinted form, between the licensee providing and the licensee receiving the trade samples:

- A statement indicating that cultivation tax or cannabis excise tax, as applicable, was not collected on cannabis trade samples.
- The date the cannabis trade samples were provided or received,
- Your business name,
- Your CDTFA seller's permit number and cannabis tax account number (if applicable),
- Your DCC cannabis license number,
- The name, license type, and DCC cannabis license number of the licensee providing or receiving the cannabis trade samples,
- The description and unique identifier of the cannabis trade samples, and
- The name and license number of the transporting distributor, if different than the licensee providing or receiving the trade samples.

The documentation should be consistent with the information in METRC.



Cannabis Trade Samples Exempt from Cannabis Taxes

What documentation is needed?

Each licensee providing or receiving trade samples should keep documentation to support that the cannabis or cannabis products are designated as trade samples and were given to or received by another licensee without payment or consideration. Without proper documentation, a cannabis licensee may be liable for all applicable taxes that would otherwise be due if the cannabis or cannabis products were sold.

- A cannabis licensee may use CDTFA-230-CD, *Cannabis Tax Exemption Certificate*, as written certification that the cannabis or cannabis products were given and used as trade samples. The CDTFA-230-CD is available on our website at www.cdtfa.ca.gov/DownloadFile.ashx?path=/formspubs/cdtfa230cd.pdf.



Tax Exemption Certificate

(Form CDTFA-230-CD)

CDTFA-230-CD REV. 1 (11-21)

CANNABIS TAX EXEMPTION CERTIFICATE

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Cannabis Tax Exemption Certificate

I, _____ will (check one box):

- ☐ Donate the medicinal cannabis or medicinal cannabis product(s), described in section 5 below, that I am receiving under this certificate from the licensee identified in section 4 below to medicinal cannabis patients or to a cannabis retailer for subsequent donation to medicinal cannabis patients.
- ☐ Use, and not sell, the cannabis trade sample(s) described in section 5 below that I am receiving under this certificate from the licensee listed in section 4 below.

1. My seller's permit account number _____

2. My cannabis distributor tax permit account number (if applicable) _____

3. My commercial cannabis license type and number _____

4. This certificate is for medicinal cannabis and medicinal cannabis products, or for cannabis trade samples as described in section 5 that I received from the following cannabis licensee. No cultivation tax or cannabis excise tax was collected or paid:

Licensee name _____ License number _____

5. Description of medicinal cannabis and medicinal cannabis product(s), or cannabis trade sample(s):

Item name _____	Unique identifier _____	Quantity _____
Item name _____	Unique identifier _____	Quantity _____
Item name _____	Unique identifier _____	Quantity _____

6. I have read and understand the following:

I understand that if I sell or use the medicinal cannabis or medicinal cannabis product(s) received under this certificate in any manner other than for donation, I will owe the use tax based on the purchase price of similar products, the cannabis excise tax based on the average market price of similar products, and the cultivation tax based on the weight and category of the cannabis ([Revenue and Taxation Code section 6414](#) and [34012.1](#)).

I understand that if I sell the cannabis trade sample(s) received under this certificate, I will owe the cannabis excise tax based on the average market price of similar products and the cultivation tax based on the weight and category of the cannabis used in the trade sample ([Revenue and Taxation Code sections 34011](#) and [34012.2](#)). In addition, if I sell the cannabis trade sample in a retail sale, I will owe the sales tax based on the retail sale ([Revenue and Taxation Code section 6051](#)).

NAME OF LICENSEE RECEIVING CANNABIS EXEMPT FROM CANNABIS TAXES _____

SIGNATURE OF LICENSEE, LICENSEE'S EMPLOYEE, OR AUTHORIZED REPRESENTATIVE _____

PRINTED NAME OF PERSON SIGNING _____

TITLE _____

ADDRESS OF LICENSEE _____

TELEPHONE NUMBER _____

DATE _____

Note: Each licensee identified on this form should retain this form as documentation to support the cannabis described in section 5 above is exempt from cannabis taxes.



Key Takeaways: Cannabis Trade Samples

- Cannabis and cannabis products designated as trade samples which are provided from one licensee to another are not subject to cultivation and excise taxes.
- Only certain types of licensees can designate cannabis goods as trade samples.
- If a product designated as a trade sample is sold, then taxes are due on that transaction.
- Use CDTFA's Tax Exemption Certificate to record transactions involving cannabis trade samples.

II. Donations of Medical Cannabis



Medical Cannabis Donations: Background

- Idea: Patients (and primary caregivers) who have trouble accessing medical cannabis should be allowed to receive donated cannabis from licensees who wish to provide such donations.
- Idea: Businesses who donate medical cannabis to patients or primary caregivers shouldn't have to pay taxes on that donation.
- Senate Bill 34 (2019) → made this possible



Donated Medical Cannabis Exempt from Taxes

“Beginning March 1, 2020, California law provides that cannabis retailers may donate free medicinal cannabis or medicinal cannabis products (medicinal cannabis) to medicinal cannabis patients, or cannabis licensees may donate free medicinal cannabis to cannabis retailers for subsequent donation to medicinal cannabis patients, without payment of certain taxes (see Senate Bill 34).”

“What taxes will not apply to donated medicinal cannabis?”

- The cultivation tax will not apply to medicinal cannabis when the cultivator designates for donation in the California Cannabis Track-and-Trace system.
- The cannabis excise tax does not apply when a cannabis retailer donates free medicinal cannabis to a medicinal cannabis patient.
- The use tax will not apply when a cannabis retailer donates free medicinal cannabis to a medicinal cannabis patient, or when another licensee, such as a distributor or manufacturer, donates free medicinal cannabis to a retailer for subsequent donation to a medicinal cannabis patient.”



California Department of Tax and Fee Administration

CANNABIS SPECIAL NOTICE

Donated Medicinal Cannabis Exempt from Taxes

Beginning March 1, 2020, California law provides that cannabis retailers may donate free medicinal cannabis or medicinal cannabis products (medicinal cannabis) to medicinal cannabis patients, or cannabis licensees may donate free medicinal cannabis to cannabis retailers for subsequent donation to medicinal cannabis patients, without payment of certain taxes (see [Senate Bill 34](#)).

What taxes will not apply to donated medicinal cannabis?

- The *cultivation tax* will not apply to medicinal cannabis when the cultivator designates for donation in the California Cannabis Track-and-Trace system.
- The *cannabis excise tax* does not apply when a cannabis retailer donates free medicinal cannabis to a medicinal cannabis patient.
- The *use tax* will not apply when a cannabis retailer donates free medicinal cannabis to a medicinal cannabis patient, or when another licensee, such as a distributor or manufacturer, donates free medicinal cannabis to a retailer for subsequent donation to a medicinal cannabis patient.

Who qualifies as a medicinal cannabis patient?

A medicinal cannabis patient is a qualified patient who possesses a qualifying physician's recommendation, or a qualified patient or the patient's primary caregiver with a valid Medical Marijuana Identification Card issued by the California Department of Public Health.

How do you certify that the medicinal cannabis will be donated?

The cannabis licensee that receives medicinal cannabis for donation must certify in writing to the licensee donating it that the medicinal cannabis will ultimately be donated to a medicinal cannabis patient. Cannabis licensees may use a written document, such as a letter, note, purchase order, or preprinted form, as a cannabis donation certificate. Or, a cannabis licensee may use CDTFA-230-CD, *Cannabis Donation Certificate* as a written certification that the medicinal cannabis will be donated to a medicinal cannabis patient. The CDTFA-230-CD is available on our website at www.cdtfa.ca.gov/formspubs/cdtfa230cd.pdf.

When taken in good faith by the licensee donating the medicinal cannabis, the written certification relieves:

- The cultivator from the liability of the cultivation tax.
- The manufacturer from its responsibility to collect the cultivation tax from the cultivator.
- The distributor from its responsibility to collect the cultivation tax from the cultivator and the cannabis excise tax from the retailer.
- Each licensee from liability of the use tax when donating the medicinal cannabis.

If a cannabis licensee certifies in writing that medicinal cannabis will be donated to a medicinal cannabis patient and later sells or uses the medicinal cannabis in some other manner than for donation, the certifying licensee will be liable for any taxes that would be due, including the cultivation tax, cannabis excise tax, and use tax.

For more information

We encourage you to read our online *Tax Guide for Cannabis Businesses* at www.cdtfa.ca.gov/industry/cannabis.htm. You may also call our Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays. When calling, select the option for *Special Taxes and Fees*.



Law on Medical Cannabis Donations

Rev. & Tax Code §6414(a),(b).

(a) The storage, use, or other consumption in this state of medicinal cannabis or medicinal cannabis product shall be exempt from the use tax in either of the following circumstances:

(1) The medicinal cannabis or medicinal cannabis product is donated by a cannabis retailer licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code to a medicinal cannabis patient.

(2) The medicinal cannabis or medicinal cannabis product is donated by a person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code to a cannabis retailer for subsequent donation to a medicinal cannabis patient.

(b) (1) The exemption specified in subdivision (a) shall apply only if the cannabis retailer certifies in writing to the licensee that donates the medicinal cannabis or medicinal cannabis product, in such a form as the department may prescribe, that the medicinal cannabis and medicinal cannabis product will be used in a manner and for a purpose specified in subdivision (a). The licensee that donates the medicinal cannabis or medicinal cannabis product shall keep a copy of the certification for no less than seven years. The certification in writing shall relieve the licensee that donates the medicinal cannabis or medicinal cannabis product of liability for use tax only if it is taken in good faith.

(2) If a licensee uses the donated medicinal cannabis or medicinal cannabis product in some manner or for some purpose other than those specified in subdivision (a), the licensee shall be liable for the payment of use tax, the measure of tax to the licensee shall be deemed that licensee's purchase price for similar product, and the licensee shall be subject to having their license suspended by the Department of Cannabis Control pursuant to Section 26031 of the Business and Professions Code.



Law on Medical Cannabis Donations

Rev. & Tax Code §6414(c)-(f).

(c) “Medicinal cannabis” and “medicinal cannabis product” shall have the same meaning as those terms are defined in Section 26001 of the Business and Professions Code.

(d) “Cannabis retailer” shall have the same meaning as that term is defined in Section 34010.

(e) “Medicinal cannabis patient” shall mean a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician’s recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(f) (1) This section shall become operative upon completion of the necessary changes to the track and trace program in order to implement the act adding this section, as determined by the Department of Food and Agriculture, or on March 1, 2020, whichever occurs first.

(2) This section shall remain in effect only until five years after it becomes operative, and as of that date is repealed.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(1)

(a) To provide access to medicinal cannabis patients who have difficulty accessing cannabis or cannabis products, a licensee that is authorized to make retail sales may provide free cannabis or cannabis products if all of the following criteria are met:

(1) Free cannabis or cannabis products are provided only to a medicinal cannabis patient or the patient's primary caregiver. For purposes of this section, "medicinal cannabis patient" includes a qualified patient, as defined under Section 11362.7 of the Health and Safety Code, or a person in possession of a valid identification card issued under Section 11362.71 of the Health and Safety Code.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(2)(A)

(2) (A) A licensed retailer providing medicinal cannabis or medicinal cannabis products pursuant to this section to a qualified patient, as defined under Section 11362.7 of the Health and Safety Code, that possesses a valid physician's recommendation, shall ensure that the physician is in good standing by following the procedures described in subparagraph (B) before providing the qualified patient with any medicinal cannabis or medicinal cannabis products that a cultivator certified were for donation pursuant to Section 34012.1 of the Revenue and Taxation Code or that are exempt from the use tax pursuant to Section 6414 of the Revenue and Taxation Code.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(2)(B)

(B) In order to verify the physician's recommendation, the licensed retailer shall do all of the following:

- (i) Verify with the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine that the attending physician has a license in good standing to practice medicine or osteopathy in the state.
- (ii) Keep a copy of the patient's or primary caregiver's driver's license or other government issued identification.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(3)-(4)

(3) Except as provided for under Section 34012.1 of the Revenue and Taxation Code, the cannabis or cannabis products comply with all applicable requirements for cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or donation under this division.

(4) A licensee intending to donate the cannabis or cannabis products shall designate the cannabis or cannabis products for donation in the track and trace system. If a cultivator certified that the cannabis or cannabis products are designated for donation to medicinal cannabis patients pursuant to Section 34012.1 of the Revenue and Taxation Code, a licensee shall not change that designation pursuant to subdivision (b) of Section 34012.1 of the Revenue and Taxation Code.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(5)-(6)

(5) Before being provided to the patient or primary caregiver, the cannabis or cannabis products have been properly recorded in the track and trace system as belonging to the retailer.

(6) The cannabis or cannabis products provided to a medicinal cannabis patient or the primary caregiver of the patient in a single day shall not exceed the possession limits prescribed by Section 11362.77 of the Health and Safety Code.



Law on Medical Cannabis Donations

Business & Professions Code §26071(a)(7)-(8)

(7) The event shall be properly recorded in the retailer's inventory records and the track and trace system. The retailer shall include in its inventory records for each medicinal cannabis patient the number of an identification card issued pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code or a copy of the physician's recommendation for no less than four years. If the medicinal cannabis patient is a qualified patient, as defined under Section 11362.7 of the Health and Safety Code, that possesses a valid physician's recommendation, the retailer shall certify in writing that they verified the recommendation pursuant to paragraph (2) and shall keep a copy of that certification for no less than seven years.

(8) A licensed retailer that donates medicinal cannabis or medicinal cannabis products shall note the donation in their sales invoice or receipt pursuant to Section 26161 of the Business and Professions Code.



Law on Medical Cannabis Donations

Business & Professions Code §26071(b)-(d)

(b) In addition to the provision of free cannabis or cannabis products in subdivision (a), a licensee that is authorized to make retail sales may donate cannabis or cannabis products and the use of equipment in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction.

(c) A licensee that is authorized to make retail sales may contract with an individual or organization to coordinate the provision of free medicinal cannabis or medicinal cannabis products on the retailer's premises. Licensed retailers that are solely authorized to engage in retail sales by means of delivery may provide free medicinal cannabis or medicinal cannabis products by means of delivery.

(d) This section shall become operative upon completion of the necessary changes to the track and trace program in order to implement the act adding this section, as determined by the Department of Food and Agriculture, or on March 1, 2020, whichever occurs first.



Law on Medical Cannabis Donations

Revenue & Taxation Code §34010(v)-(w)

(v) "Medicinal cannabis patient" shall mean a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(w) "Designated for donation" shall mean medicinal cannabis donated by a cultivator to a cannabis retailer for subsequent donation to a medicinal cannabis patient pursuant to Section 26071 of the Business and Professions Code.



Law on Medical Cannabis Donations

Revenue & Taxation Code §34011(f)-(g)

(f) The sales and use taxes imposed by Part 1 (commencing with Section 6001) shall not apply to retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal cannabis products or topical cannabis as those terms are defined in Division 10 (commencing with Section 26000) of the Business and Professions Code when a qualified patient or primary caregiver for a qualified patient provides their card issued under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.

(g) Nothing in this section shall be construed to impose an excise tax upon medicinal cannabis, or medicinal cannabis product, donated for no consideration to a medicinal cannabis patient pursuant to Section 26071 of the Business and Professions Code.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34012.1(a)-(b)

(a) Notwithstanding Section 34012, on and after the operative date of the act adding this section, the cultivation tax shall not be imposed on medicinal cannabis designated for donation by a cultivator in the track and trace system.

(b) A person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code that certifies in writing that medicinal cannabis or a medicinal cannabis product will be donated to a medicinal cannabis patient and sells or uses the medicinal cannabis or medicinal cannabis product in some manner or for some purpose other than donation, shall be liable for the taxes under this part. The certification in writing shall relieve the cultivator that donates the medicinal cannabis from liability for the taxes imposed and shall relieve the distributor from liability for the taxes required to be collected under this part, only if the certification is taken in good faith.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34012.1(c)-(e)

(c) A distributor or manufacturer shall not collect or remit the cultivation tax for medicinal cannabis or medicinal cannabis products designated for donation by a cultivator.

(d) A cultivator shall keep records of any medicinal cannabis or medicinal cannabis products designated for donation.

(e) Nothing in this part shall be construed to impose a cultivation tax upon medicinal cannabis or medicinal cannabis products designated for donation.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34012.1(f)-(g)

(f) For purposes of this section, "medicinal cannabis" and "medicinal cannabis product" shall mean cannabis and cannabis product, as defined in Section 26001 of the Business and Professions Code, intended for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient.

(g) (1) This section shall become operative upon completion of the necessary changes to the track and trace program in order to implement the act adding this section, as determined by the Department of Food and Agriculture, or on March 1, 2020, whichever occurs first.

(2) This section shall remain in effect only until five years after it becomes operative, and as of that date is repealed.



Law on Medical Cannabis Donations

Revenue & Taxation Code §34012(i)

(i) All cannabis removed from a cultivator's premises, except for plant waste or medicinal cannabis or medicinal cannabis products designated for donation, shall be presumed to be sold and thereby taxable under this section, except as otherwise exempt pursuant to Section 34012.2.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34012.5. Excess Tax.

(a) The cultivation tax and cannabis excise tax required to be collected by the distributor, or required to be collected by the manufacturer pursuant to paragraph (2) of subdivision (h) of Section 34012, and any amount unreturned to the cultivator or cannabis retailer that is not tax but was collected from the cultivator or cannabis retailer under the representation by the distributor or the manufacturer that it was tax constitute debts owed by the distributor or the manufacturer to this state.

(b) A distributor or manufacturer that has collected any amount of tax in excess of the amount of tax imposed by this part and actually due from a cultivator or cannabis retailer, may refund such amount to the cultivator or cannabis retailer, even though such tax amount has already been paid over to the department and no corresponding credit or refund has yet been secured. The distributor or manufacturer may claim credit for that overpayment against the amount of tax imposed by this part that is due upon any other quarterly return, providing that credit is claimed in a return dated no later than three years from the date of overpayment.

(c) Any tax collected from a cultivator or cannabis retailer that has not been remitted to the department shall be deemed a debt owed to the State of California by the person required to collect and remit the tax.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34013(f). Administration.

(f) Any person required to be licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of the taxes not paid, and shall be subject to having its license revoked pursuant to Section 26031 of the Business and Professions Code.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34016(a), (b). Inspection Authority.

(a) Any peace officer or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

- (1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.
- (2) Inspections may be at any place at which cannabis or cannabis products are sold to purchasers, cultivated, or stored, or at any site where evidence of activities involving evasion of tax may be discovered.
- (3) Inspections shall be conducted no more than once in a 24-hour period.

(b) Any person who fails or refuses to allow an inspection shall be guilty of a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the California Cannabis Tax Fund.



Law on Medical Cannabis Donations

Revenue & Taxation Code 34016(c)-(f). Inspection Authority.

(c) Upon discovery by the board or a law enforcement agency that a licensee or any other person possesses, stores, owns, or has made a retail sale of cannabis or cannabis products, without evidence of tax payment or not contained in secure packaging, the board or the law enforcement agency shall be authorized to seize the cannabis or cannabis products. Any cannabis or cannabis products seized by a law enforcement agency or the board shall within seven days be deemed forfeited and the board shall comply with the procedures set forth in Sections 30436 through 30449, inclusive.

(d) Any person who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

(e) Any violation of any provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

(f) All moneys remitted to the board under this part shall be credited to the California Cannabis Tax Fund.



Regulations on Medical Cannabis Donations

14 Cal. Code of Regs. §15411

- a) A licensed retailer shall not provide free cannabis goods to any person. A licensed retailer shall not allow individuals who are not employed by the licensed retailer to provide free cannabis goods to any person on the licensed premises.
- (b) Notwithstanding subsection (a), in order to provide access to medicinal cannabis patients who have difficulty accessing medicinal cannabis goods, a licensee who holds an M-Retailer license, an M-Retailer Non-storefront license, or an M-Microbusiness license that is authorized for retail sales may provide free medicinal cannabis goods if the following criteria are met:
- (1) Free cannabis goods are provided only to a medicinal cannabis patient or primary caregiver for the patient in possession of an identification card issued under section 11362.71 of the Health and Safety Code.
 - (2) The cannabis goods comply with all applicable laboratory testing requirements under this division.
 - (3) Prior to being provided to the patient or primary caregiver, the cannabis goods have been properly recorded in the track and trace system as belonging to the licensed retailer.
 - (4) The cannabis goods shall not leave the licensed premises unless placed in an opaque package as required for purchased cannabis goods under Business and Professions Code section 26070.1. The cannabis goods must comply with all packaging and labeling requirements in this division applicable to cannabis goods for sale by a licensed retailer.
 - (5) The cannabis goods shall be applied toward the daily purchase limit for a medicinal cannabis customer pursuant to section 15409.
 - (6) The event shall be properly recorded in the licensed retailer's inventory records and the track and trace system.
- (c) In addition to the provision of free cannabis goods in subsection (b), a licensee may donate cannabis goods and the use of equipment in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction. The licensee shall ensure that all cannabis goods provided pursuant to this subsection comply with subsections (b)(2) and (b)(6).



Regulations on Medical Cannabis Donations

18 Cal. Code of Regs. §3700(k)

(k) Penalties.

(1) Penalty for Unpaid Taxes. In addition to any other penalty imposed pursuant to the Fee Collection Procedures Law (commencing with section 55001 of the Revenue and Taxation Code) or any other penalty provided by law, a penalty of 50 percent of the amount of the unpaid cannabis excise tax or cannabis cultivation tax shall be added to the cannabis excise tax and cultivation tax not paid in whole or in part within the time required pursuant to sections 34015 and 55041.1 of the Revenue and Taxation Code.

(2) Relief from Penalty for Reasonable Cause. If the Department finds that a person's failure to make a payment of the cannabis excise tax or cannabis cultivation tax is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by subdivision (k)(1) for such failure.

Any person seeking to be relieved of the penalty shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.



Tax Exemption Certificate

(Form CDTFA-230-CD)

CDTFA-230-CD REV. 1 (11-21)

CANNABIS TAX EXEMPTION CERTIFICATE

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Cannabis Tax Exemption Certificate

I, _____ will (check one box):

- ☐ Donate the medicinal cannabis or medicinal cannabis product(s), described in section 5 below, that I am receiving under this certificate from the licensee identified in section 4 below to medicinal cannabis patients or to a cannabis retailer for subsequent donation to medicinal cannabis patients.
- ☐ Use, and not sell, the cannabis trade sample(s) described in section 5 below that I am receiving under this certificate from the licensee listed in section 4 below.

1. My seller's permit account number _____

2. My cannabis distributor tax permit account number (if applicable) _____

3. My commercial cannabis license type and number _____

4. This certificate is for medicinal cannabis and medicinal cannabis products, or for cannabis trade samples as described in section 5 that I received from the following cannabis licensee. No cultivation tax or cannabis excise tax was collected or paid:

Licensee name _____ License number _____

5. Description of medicinal cannabis and medicinal cannabis product(s), or cannabis trade sample(s):

Item name _____	Unique identifier _____	Quantity _____
Item name _____	Unique identifier _____	Quantity _____
Item name _____	Unique identifier _____	Quantity _____

6. I have read and understand the following:

I understand that if I sell or use the medicinal cannabis or medicinal cannabis product(s) received under this certificate in any manner other than for donation, I will owe the use tax based on the purchase price of similar products, the cannabis excise tax based on the average market price of similar products, and the cultivation tax based on the weight and category of the cannabis ([Revenue and Taxation Code section 6414](#) and [34012.1](#)).

I understand that if I sell the cannabis trade sample(s) received under this certificate, I will owe the cannabis excise tax based on the average market price of similar products and the cultivation tax based on the weight and category of the cannabis used in the trade sample ([Revenue and Taxation Code sections 34011](#) and [34012.2](#)). In addition, if I sell the cannabis trade sample in a retail sale, I will owe the sales tax based on the retail sale ([Revenue and Taxation Code section 6051](#)).

NAME OF LICENSEE RECEIVING CANNABIS EXEMPT FROM CANNABIS TAXES _____

SIGNATURE OF LICENSEE, LICENSEE'S EMPLOYEE, OR AUTHORIZED REPRESENTATIVE _____

PRINTED NAME OF PERSON SIGNING _____

TITLE _____

ADDRESS OF LICENSEE _____

TELEPHONE NUMBER _____

DATE _____

Note: Each licensee identified on this form should retain this form as documentation to support the cannabis described in section 5 above is exempt from cannabis taxes.



Key Takeaways: Donations of Medical Cannabis

- Donated medical cannabis is not subject to cultivation, excise, or use taxes.
- Cultivators can designate cannabis goods as donations in METRC.
- Retailers can also designate cannabis goods as donations in METRC, but if the cultivator has already done so the retailer should not change this designation.
- Cannabis goods donated to medical cannabis patients or primary caregivers must comply with all requirements applicable to other cannabis goods.
- Daily donation amounts per patient or caregiver can't exceed possession limits in Section 11362.77 of the Health and Safety Code.
- Retailers providing the free cannabis goods to patients or caregivers must properly record and maintain information about the patients they provided such goods to.

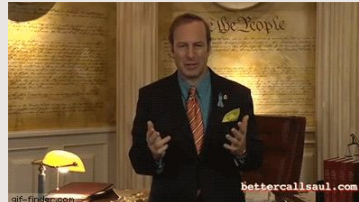
III. Potential Consequences; Resources



Potential Consequences

Potential consequences for failure to comply with trade sample or medical cannabis donation requirements:

- License suspension or revocation
- Seizure of products
- Failure to comply with cannabis tax law = misdemeanor
- Tax liability for unpaid sales, cultivation and excise taxes
- Potentially criminal arrest and prosecution for unlawful sales of cannabis, maintaining a place for the unlawful distribution of a controlled substance, failure to pay taxes, and conspiracy





Helpful Resources

- MAUCRSA (Business & Professions Code sections):
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=BPC&division=10.&title=&part=&chapter=&article=
- MAUCRSA (Revenue & Tax Code sections):
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=RTC&division=2.&title=&part=14.5.&chapter=&article=
- Cannabis Tax Regulations: <https://www.cdtfa.ca.gov/lawguides/vol3/ctr/ctr-all.html>
- DCC regulations:
<https://cannabis.ca.gov/wp-content/uploads/sites/2/2021/10/DCC-Cannabis-Regulations-Sept.-2021.pdf>
- DCC page on donated medical cannabis:
<https://cannabis.ca.gov/2020/02/donations-of-cannabis-and-cannabis-product/>
- CDTFA's Tax Guide for Cannabis Businesses: <https://www.cdtfa.ca.gov/industry/cannabis.htm>
- Special Notice - Trade Samples: <https://www.cdtfa.ca.gov/formspubs/L837.pdf>
- Special Notice - Donated medical cannabis: <https://www.cdtfa.ca.gov/formspubs/I729.pdf>
- Tax exemption certificate (CDTFA-230-CD):
<https://www.cdtfa.ca.gov/DownloadFile.ashx?path=/formspubs/cdtfa230cd.pdf>
- METRC bulletin on trade samples:
<https://www.metrc.com/wp-content/uploads/2021/11/CA-Bulletin-2021-007-Trade-Samples-Guidance.pdf>

Q & A





Thank you!

Omar Figueroa, Esq.

Law Offices of Omar Figueroa
7770 Healdsburg Ave.
Sebastopol, CA, 95472
omar@omarfigueroa.com
(707) 829-0215

Lauren Mendelsohn, Esq.

Law Offices of Omar Figueroa
7770 Healdsburg Ave.
Sebastopol, CA, 95472
lauren@omarfigueroa.com
(707) 829-0215

www.omarfigueroa.com

— LAW OFFICES OF —
OMAR FIGUEROA