



MENDOCINO COUNTY TREASURER-TAX COLLECTOR
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Date: June 19, 2018

To: Honorable Board of Supervisors

From: Shari L. Schapmire, Treasurer-Tax Collector
Matthew Kiedrowski, Deputy County Counsel

Subject: Discussion and Possible Action Including Introduction and Waive First Reading of an Ordinance Amending Mendocino County Code Chapter 6.32 - Cannabis Business Tax

In an effort to more efficiently collect the tax imposed in Chapter 6.32, the Treasurer-Tax Collector has been before the Board of Supervisors on two separate occasions to discuss possible amendments, as well as to seek direction on numerous items within the Board's purview.

The purpose of this memorandum is to review the Board direction provided to date, as well as to review certain additional changes that are being brought forward since the last meeting this item was before the Board.

Board Direction Provided on February 27, 2018: The Board provided direction on the following items, which amendments are now included on the red-line version of the ordinance attached as part of this agenda packet.

1. "Growing cycle" has now been eliminated from §6.32.050, B(1)(a), B(1)(b), and B(1)(c) and eliminated from definitions in §6.32.040(R).
2. "Fiscal year" has now been changed to "calendar year" in all instances referenced in §6.32.050 and §6.32.060. "Fiscal year" has now been eliminated from definitions in §6.32.040. "Calendar Year" has now been added to definitions in §6.32.040.
3. All minimum tax requirements mandated in §6.32.050(b) are imposed beginning January 1, 2018.
4. The Board approved recommended amendments to §6.32.040(Q), definition of "Gross receipts." With the recommended changes, gross receipts taxes will only be reported and remitted on actual cash receipts received, not on receivables or credits that may or may not materialize.
5. The Board approved the recommended amendments to §6.32.050(D) to add "processor" to the list of commercial cannabis business types imposed with an annual cannabis

business tax; processor was included in the purpose of the ordinance. The definition of “processor” has also been added to §6.32.040.

Board Direction Provided on March 27, 2018: The Board provided direction on the following items which amendments are now included on the red-line version of the ordinance attached as part of this agenda packet.

6. The Board provided direction to allow cultivators that file a Notice of Non-Cultivation to be exempted from the requirement to pay the minimum payment amounts provided for in section 6.32.050.B.1. Staff has added paragraph d. to section 6.32.050.B.1, which reads as follows:

Persons who file a Notice of Non-Cultivation with the Department of Agriculture pursuant to Chapter 10A.17 shall not be required to pay the minimum payment amounts required by this paragraph B.1 for either (1) the calendar year in which the Notice of Non-Cultivation is filed or (2) the calendar year in which the Notice of Non-Cultivation terminates, at the election of the Person; for Persons who do not make an election, the Treasurer-Tax Collector shall select the first of the two calendar years.

Generally, the period of Non-Cultivation will begin in one calendar year and end in the next. The proposed language allows for the taxpayer to select one of the two calendar years affected by the Non-Cultivation period for which there to be no minimum tax owed.

7. County Counsel further reviewed the definition of “square foot” in §6.32.040, which specifically refers to the maximum amount of canopy space authorized by a County permit. “County permit” is also a defined term of Chapter 6.32, and specifically references permits issued pursuant to Chapter 10A.17. Based on these defined terms, the cultivation types and sizes authorized by Chapter 10A.17, and how the square footage numbers in §6.32.050 line up with the permit types of Chapter 10A.17, the tax should be calculated based on the permit size applied for. County Counsel’s Office has made proposed changes to the ordinance to more simply refer to the cannabis cultivation permit types in §6.32.050. At the request of the Treasurer-Tax Collector, the relevant paragraphs still refer to the permit types, but only in a non-exclusive list.

Other direction provided on March 27, 2018, was to continue to apply the tax in certain situations, without any exemption. In the event of total or partial crop failure, all taxes required under Chapter 6.36, including minimum due amounts, continue to be imposed on all cultivators. In the event of crop eradication conducted by law enforcement agencies, all taxes required under Chapter 6.36, including minimum due amounts, continue to be imposed on all cultivators.

Additional Proposed Changes

In preparing the ordinance for this agenda item, staff has identified certain minor changes:

8. Section 6.32.040(H) – Added the word “or” to complete the clause “by, for, or as a part of.”
9. Section 6.32.040(K) - Added “to a retail customer at a separate location” to the definition of “delivery.”

10. Section 6.32.040(L) – Deleted certain language to the definition of “dispensary” that appeared to make any smoke shop a dispensary. Changed “and” to “or” at the end of the sentence to account for cannabis or cannabis products.
11. Section 6.32.040(O) and (P) – Added the word “the” where necessary and appropriate.
12. Section 6.32.040(U) – Minor clarifying revisions related to persons with an identification card.
13. Section 6.32.040(W) – Minor clarifying change to the definition of “sale” to mean sale of cannabis or cannabis products.
14. Section 6.32.040(Y) – Updated section reference from Business and Professions Code section 19300 to section 26000 to reflect change made by MAUCRSA.
15. Section 6.32.080 – Added the word “for” to complete the phrase “provided for under.”
16. Section 6.32.160 – Added the word “the date” to paragraph B to clarify that the lien shall continue from the date of filing of the certificate. Added the phrase “of any required notice” to the end of paragraph C to clarify when notice shall be published.
17. Section 6.32.300 – Added the word “the” to paragraph B.

Proposed Changes

Section 6.32.300 authorizes the Board of Supervisors to amend Chapter 6.32 in any manner that does not increase the tax rate above the minimum rate specified or in a manner that otherwise constitutes a tax increase for which voter approval is required under the California Constitution. The section specifically states that “[a]n action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter.” Note that this sentence is proposed for a non-substantive amendment by adding “the” before the word “interpretation.”

The amendments proposed by this ordinance

Recommended Motion

That the Board of Supervisors Introduce and Waive First Reading of an Ordinance Amending Mendocino County Code Chapter 6.32 – Cannabis Business Tax

Attachments

1. Memorandum prepared for February 27, 2018, Board of Supervisors Meeting
2. Memorandum prepared for March 27, 2018, Board of Supervisors Meeting
3. Ordinance – Redline Version
4. Ordinance – Clean Version
5. Ordinance Summary