



MENDOCINO COUNTY TREASURER-TAX COLLECTOR
501 LOW GAP RD. ROOM 1060, UKIAH, CA 95482
(707) 234-6875

Date: February 27, 2018
To: Honorable Board of Supervisors
From: Shari L. Schapmire, Treasurer-Tax Collector
Subject: Discussion and Possible Direction Regarding Possible Amendments to the Cannabis Business Tax Ordinance (Chapter 6.32)

Background on State & Local Regulations Regarding Cannabis Business Tax:

- On October 9, 2015, Governor Brown signed three bills into legislation – AB-243, AB-266, and SB-643; the enactment of these bills created the statewide licensing and regulatory framework for medical cannabis. Mandated throughout the bills are requirements for local licensing and permitting;
- Per SB-643, counties were authorized to impose a tax upon specified cannabis-related activities, if approved by the electorate. On August 2, 2016, Chapter 6.32, Cannabis Business Tax, Ordinance No. 4361 was adopted by the Board of Supervisors;
- On November 8, 2016, the voters of Mendocino County approved Measure AI, thereby imposing a cannabis business tax on commercial cannabis businesses;
- In addition, on November 8, 2016, the voters of the State of California approved Proposition 64, thereby legalizing the recreational use of cannabis, as defined in the Adult Use of Marijuana Act;
- On January 1, 2017, the County began imposing the Cannabis Business Tax on commercial cannabis dispensaries;
- On May 4, 2017, the County began imposing the Cannabis Business Tax on commercial cannabis cultivation;
- On July 1, 2017, the County began imposing the Cannabis Business Tax on commercial cannabis nurseries;
- On November 16, 2017, the County began imposing the Cannabis Business Tax on commercial cannabis businesses that require a Cannabis Facilities Business License.

Taxing Responsibility: The Mendocino County Treasurer-Tax Collector has been tasked with the responsibility of collecting and enforcing all cannabis-related taxes, as mandated. In an effort to more efficiently collect the tax, staff is requesting amendments to Chapter 6.32, Cannabis Business Tax, as indicated on the red-line version attached. In addition, staff is also

requesting direction by the Board on issues that were not considered at the time Chapter 6.32 was drafted.

Cannabis Business Tax Implementation Process on Cultivation: As defined in section 6.32.050(B), the Cannabis Business Tax imposed on commercial cannabis cultivation is, first and foremost, based on gross receipts; secondary, a minimum amount of taxes, per growing cycle, are required to be remitted each fiscal year. As staff worked with the software vendor to incorporate this scenario in the financial tracking system it became obvious the only way to accomplish this goal was to first meet the gross receipts criteria and then address the issue of a “true-up” at the end of each fiscal year. As the minimum amount required per growing cycle is based on square footage, and not on permit type, staff will be required to manually review each account where the gross receipts received do not appear to have exceeded the minimum amount due; if it is determined, after the review of square footage on each particular growing cycle, that the required minimum threshold has not been met, an invoice will be generated for any balance due.

Issues Relating to Redwood Complex Fire: Due to the horrific event that ravaged our community in early October 2017, the Board of Supervisors issued the following directives in an effort to assist participants that were situated in the mandatory evacuation zones:

- During the 2017-18 fiscal year, any cultivators subject to mandatory evacuation orders will not be subject to minimum tax requirements for their first growing cycle; and
- Beginning with the 2017-18 2nd Quarter, no gross receipts taxes are imposed on any cultivators subject to mandatory evacuation orders that experienced total crop loss due to conditions related to the fire.

Since the directives have been issued, additional concerns from program participants have been brought forward concerning ash, smoke, and fire retardant damage experienced by those situated outside the mandatory evacuation zones.

Cannabis Cycles Working Group: The Cannabis Cycles Working Group met on November 3, 2017; staff included Shari Schapmire, Lis Cader, Matthew Kiedrowski, Diane Curry, and Cassandra Borgna. Cannabis industry participants included Casey O’Neill, Hannah Nelson, Ron Edwards, and Valerie Edwards.

All participants were concerned with the implementation of the minimum taxes due per growing cycle, particularly after the effects of the devastating fires. While there were suggestions to permanently remove all requirements mandating minimum taxes due, regardless of the number of growing cycles, the final recommendation from the working group was to suspend all minimum taxes due on all growing cycles for FY 2017-18 and to re-visit this situation no later than fiscal year end.

Request for Board Direction Regarding Working Group Recommendation: Staff is seeking direction from the Board in response to the above recommendation from the working group.

If tax minimums are retained by the Board, direction to staff is requested as outlined in the next section.

Issues for Board Consideration Relating to Minimum Tax per Growing Cycle: Direction or clarification is requested on the following items:

1. Imposition of minimum amount due requirements on perpetual grows where cannabis is planted throughout the year in two to four week increments.

Staff Recommendation: Add language in section 6.32.050 indicating a “not to exceed” number of growing cycles per fiscal year.

2. Imposition of minimum amount due requirements on growing cycles covering two fiscal years.

Staff Recommendation: Add language in section 6.32.040 under definitions of a growing cycle, “for tax purposes, the growing cycle is determined at the end of the growing cycle.” For minimum amount due requirements, “square footage is calculated at the end of the growing cycle.”

3. Imposition of minimum amount due requirements on cultivators who currently have no product and plan to wait until next year to plant.

Staff Recommendation: No minimum tax required if there are zero growing cycles.

4. Imposition of minimum amount due requirements in the event of partial or complete crop failure.

Staff Recommendation: Defer to Board Direction

5. Imposition of minimum amount due requirements in the event of crop eradication by law enforcement.

Staff Recommendation: Defer to Board Direction

6. Imposition of minimum amount due requirements on cultivators who were affected by the Redwood Complex Fire, but were not situated in one of the evacuation zones.

Staff Recommendation: Apply evacuation zone directive to this group as well.

Other Issues for Board Consideration:

7. Amendments to section 6.32.040(Q), definition of “Gross Receipts.”

Staff Recommendation: Staff is recommending all references to “receivables” and “credits” be removed from this section as indicated in the red-line version. In addition to a cash basis accounting and reporting of revenues the current definition includes an accrual basis as well. 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.

8. Amendment to section 6.32.050(D) – Tax imposed on all other commercial cannabis businesses.

Staff Recommendation: Staff is recommending an addition to section 6.32.040 to include the definition of “processor.”

Cannabis Business Tax Collections – January 1, 2017 to February 8, 2018

<u>Business Type</u>	<u>Amount Collected</u>
Dispensary	\$315,215.06
Cultivator - Type 2	\$280,158.23
Cultivator - Type 1	\$33,077.12
Cultivator - Cottage	\$59,611.69
Nursery	\$68,125.00
Total	\$756,187.10