



Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

June 7, 2019

Re: Agenda Item 5e, Cultivation Tax Appeals

Honorable Supervisors and Staff:

Thank you for taking the time to hear this matter.

Staff Proposal & Memo:

In general, we support Staff's recommendation of a three person Appeals Body or Panel. We hope that the Board of Supervisors will consider our suggestions regarding additional specific procedural concerns as well as categories or basis for appeals. In any event, if the Board authorizes the Appeals body to create the specific appeals process and procedures, we request that the proposal come back before the Board of Supervisors for review before it is adopted and implemented.

Procedural Issues for Tax Appeal

- A. Time for Appeal: 30 days. Current ordinance only gives 15 days to file an appeal. Additional time would allow small farmers enough time to file the proper forms and qualifying proof that might be required. At the very least, please extend the deadline for filing this year, when the true-up was not issued until the beginning of the spring planting season and no set appeal process was in place during the slower months of winter. If only a Notice of Appeal is required and all proof is presented at the hearing date, then 15 days seems reasonable to file such notice except for this year where there has been so much confusion. We strongly recommend giving farmers additional time to file the appeal paperwork.
- B. Request for Appeal Statement of Basis: We recommend that each applicant's request for appeal delineate the basis under which they believe they qualify for relief. We suggest that there are two categories: One in which the applicant is exempt from all or part of the tax initially assessed (due to one of the listed eligibility factors listed below) and one in which the applicant may be given more time to pay the tax without penalty or interest (for example, if they have not sold product and/or not received the income for product grown in a particular tax year until the following tax year)
- C. Time for Notice of Hearing: Not less than 15 days advance notice. Given that small farmers are usually handling all aspects of their farming operation, that they are required under state licensing regulations to be present at their farm Monday-Friday for at least two hours per day, and that they often must spend a considerable amount of time to travel to and from Ukiah, we request that the Notice of Hearing Scheduled provide a minimum of 15 business days advance notice. We also request that in addition to mailed notice, the date for the hearing is also provided by email to the email address listed on the business tax registration.
- D. Time for Payment of Amount Due After Hearing: 30 days. Given that no other business is taxed on a product that they might not have actually produced or might not have had gross receipts for, it seems reasonable to request that any amount due after the hearing is not due and

payable immediately, as currently indicated in the ordinance, but would be due and payable within 30 days.

Eligibility Requirements for Tax Appeal

We support Staff's identification of the major issues regarding the minimum tax and potential basis for appeal. Specifically:

- Proven Crop loss/Acts of God are critical to consider if we want a sustainable tax base from small cultivators.
- Financial hardship is also an important basis to consider.
- Withdrawals and denials of permits, as well as temporary non-operation filings or suspension of cultivation activities pursuant to Cannabis Program rules should be considered.

With respect to State license issues and other specific potential basis for appeal, we recommend the following:

A. Relief from All or Part of 2018 Tax

1. No State Temporary License or Local Authorization: Cultivators who can demonstrate they did not receive a local authorization and/or temporary state license until past the time that would be conceivable to cultivate based on their type of license. Proof of eligibility may include a copy of the local authorization, temporary state license, County site inspection report, time stamped photograph of cultivation site, or other proof acceptable to the appeals body that proves cultivation was not occurring. Our recommendation is that only cultivators who can demonstrate that they did not cultivate as of August 15, 2018 for Outdoor, October 15, 2018 for Mixed Light and November 15, 2018 for Indoor are eligible for appeal.

Example of an eligible tax appeal candidate:

Cultivator received a temporary state license for an outdoor operation in October 2018. It is not possible for this license holder to produce a crop at this point in the season. Another example is an applicant who applied for local authorization any time between October and December prior to the extension of Phase 1. Those applicants may have received local authorization too late to cultivate whether or not they were able to make the state deadline of December 1st.

2. Cultivators that changed license type in 2018: Changes in permit type within a certain time period, where proof is provided the cultivator did not grow the category they initially applied for, should only be required to pay tax based on the current license type they hold on a prorated basis. Examples of proof required could include inspection forms, change in permit style or size, application for a state license in a different size or style and other proof acceptable to the appeals body.

Important examples of change categories include:

Those on resource lands that were not able to expand until after approval of an Administrative Permit and either the AP was not yet processed or the applicant could not move forward with the expansion in the time anticipated in 2018; Applicants who obtained a size or type authorization who either could not effectuate that anticipated size or type and had to change; Nursery applicants that initially applied for 22k square feet and due to market conditions have had to change to 12k square feet of Nursery and add 10,000 square feet of flowering cultivation.

3. Victims of the 2018 fire who can provide documentation of crop loss and/or crop damage due to fire should be relieved of tax obligation. Documentation may include photographs, insurance claims, lab testing results, and other proof acceptable to the appeals body.

4. Victims of distributor fraud and/or breach of contract who can provide proof of legal action taken against distributor, copies of shipping manifests, written communication, or other proof acceptable to the appeals body that establish distributor took product and never paid the cultivator.

Unfortunately there are countless people that sold product into the legal market and because of bad actors, have never been paid.

5. Cultivators who can provide documentation that a crop was stolen should be eligible for tax appeal. Proof of documentation may include a police report, track and trace report through METRC or SICPA, or other proof acceptable to the appeals body.

B. Relief From Time Tax Is Payable

1. Cultivators that can prove they had no revenue in 2018 from crops grown in 2018 should be given more time to pay minimum tax (whether or not they eventually made money from 2018 crop in 2019 which will be taxed in 2019).

On average, outdoor cultivators do not harvest their crop until the 4th quarter and most often it is not fully cured and available to the market until the following year. They are automatically at a disadvantage to meet the tax minimum requirement because essentially they only have one quarter to sell product.

C. Other Considerations

The Appeal process should apply to cultivators that have already paid the tax, as well as those have not yet paid.

Cost recovery for an appeals process is reasonable, however we respectfully request that the Board of Supervisors ensure that the process that is implemented is the most efficient process possible and does not unnecessarily or inadvertently add costs to those who can least afford it.

We appreciate the opportunity to comment on this important issue for small cultivators.

Respectfully,

Mendocino Cannabis Alliance