



Mendocino County

Legislation Text

File #: 23-0359, Version: 1

To: Board of Supervisors

From: Supervisor Mulheren

Meeting Date: March 28, 2023

Department Contact: Supervisor Mulheren

Phone: 707-463-4441

Item Type: Consent Agenda

Time Allocated for Item: N/A

Agenda Title:

Adoption of an Ordinance Amending Sections 6.32.050 and 6.32.100 of the Mendocino County Code to Provide, for Cannabis Cultivation and Nursery Operations, a Reduction in the Cannabis Business Tax for Tax Years 2023 and 2024 and to Establish a Penalty and Interest Amnesty Program and a Prior Year Tax Payment Plan

(Sponsor: Supervisor Mulheren)

Recommended Action/Motion:

Adopt ordinance amending Sections 6.32.050 and 6.32.100 of the Mendocino County Code to provide, for cannabis cultivation and nursery operations, a reduction in the cannabis business tax for tax years 2023 and 2024 and to establish a penalty and interest amnesty program and a prior year tax payment plan; and authorize Chair to sign same.

Previous Board/Board Committee Actions:

This item was heard at the February 27, 2023, General Government Committee of Supervisors Mulheren and Haschak. This ordinance was introduced and the first reading was waived on March 14, 2023.

Summary of Request:

Per the discussion at the Board's April 19, 2022, meeting, cannabis cultivators are struggling with both market conditions and the cost of local and state regulations. In an effort to reduce this strain and allow a larger number of cultivators to enter the regulated market through the local permit program, Supervisor Mulheren requested a recommendation from the General Government Committee on February 27, 2023 for an item to the full Board on March 14, 2023, that would include direction to the Treasurer-Tax Collector and Mendocino Cannabis Department to notify Cannabis Program applicants of a 50% reduction in Cannabis Business Tax for years 2022-23 and 2023-24.

In addition to this reduction, Supervisor Mulheren suggested an Amnesty Program for penalties and interest from years 2019-20, 2020-21, and 2021-22.

Supervisor Mulheren also recommended establishment of a Prior Year Cannabis Business Tax Payment Plan for payment of back taxes. The Payment Plan was intended to allow applicants to stay in the Program and catch up on their deferred taxes over three years, while keeping current with new taxes as they are due. Supervisor Mulheren's proposal for the Three-Year Payment Plan was:

25% of Cannabis Business Taxes due for all prior years by May 31, 2023

50% of remaining Cannabis Business Taxes due for prior years by June 30, 2024

25% of final Business Taxes due for prior years by June 30, 2025

Supervisor Haschak agreed to send this item to the full Board as presented while both Supervisor Mulheren and Haschak agreed that Supervisor Mulheren would work with the Auditor-Treasurer- Tax Collector Offices and the Mendocino Cannabis Department. Through these conversations Supervisor Mulheren is presenting to the full Board three options related to Cannabis Business Tax in Mendocino County.

The Board can vote to approve none, one, two or all three of these options. The ordinance drafted for introduction includes all three of these options.

Cannabis Business Tax Penalty and Interest Amnesty Program; per previous testimony (April 2022) from Julie Forrester Acting Treasurer-Tax the Penalties and Interest for the Cannabis Cultivation and Nursery Tax are very high and should eventually be reduced. In an effort to have an immediate relief from this program and with advice from the Auditor-Treasurer-Tax Collector Office to include 2018's taxes Supervisor Mulheren proposes to the Board that Penalties and Interest from years 2018, 2019, 2020 and 2021 be included in an Amnesty program. Cannabis Business Tax payees could be notified of this program through the 2022 True-Up Notifications and through Mendocino Cannabis Department updates through Zoom and with CannaNotes, the Executive Office could also include this notification in the CEO Report for March 28, 2023. Estimates from April of 2022 for Interest & Penalties 2018 - \$674,157.57, 2019 - \$790,906, 2020 - \$713,340.21, 2021 - \$813,286.36, Total 2018-2021 - \$2,991,690.13 in potential reduced costs to cannabis cultivators.

Per the conversation with the Board at the April 19, 2022, Board Meeting there was a desire to reduce the Cannabis Business Tax for cultivation and nurseries on a temporary basis of two years while the initial State and local licensing process was occurring and because of current market conditions. The original item included a 2022-23 timeline. Cannabis Business Tax is received on a calendar year basis, so the request of the Board currently is to approve a 50% reduction in Cannabis Business Tax for years 2023 and 2024. This would allow time to notify the payees of the reduction before the 2023 quarterly taxes are paid. Payees can be notified through the 2022 True-Up process via the Treasurer-Tax-Collector Department. The fiscal impact is unknown. The payment plan and Amnesty could be notified through the True-Up process. The 50% reduction would have to be notified with the 2023 First quarter return that would typically be postmarked 4/1/2023. The 50% reduction may be enough of a reduction in tax to allow more payees to stay in the program or it may retain the same number of payees and reduce the tax by 50%. Estimated Cannabis Business Tax for FY22/23 - Budget is \$1,500,000, YTD December 2022 - \$590,000 had been collected.

The third Cannabis Business Tax recommendation has the potential to be the most staff intensive program to implement and would also likely be the item that would benefit Mendocino County the most in the long term. The original Cannabis Ordinance was written to allow legacy cultivators to remain on their properties to continue their lifestyle and contribute to the overall economics of the County. Due to a variety of reasons including market conditions and concerns over the local permitting system some cultivators may not have paid taxes in years 2018, 2019, 2020, & 2021. If these applicants are not able to pay past due taxes in the timeline presented by the Mendocino Cannabis Department, they might not be able to be reprioritized in time to get their State License and that increased Property Value, Cannabis Business Tax and Increased Sales Tax from that business would be lost by the County in perpetuity.

Supervisor Mulheren's proposal for the Payment Plan to the General Government Committee was:

25% of Cannabis Business Taxes due for all prior years by May 31, 2023

75% of Cannabis Business Taxes due for all prior years by June 30, 2024

100% of Cannabis Business Taxes due for all prior years by June 30, 2025

(Percentages updated for clarity)

For years 2019-20, 2020-21, and 2021-22

Cannabis Business Tax is calculated on a calendar year basis; the recommendation before the Board is to approve a payment plan for Cannabis Business Tax for years 2018, 2019, 2020, & 2021 and use the same timelines as the original proposal with percentages edited for clarity of amount due. The Treasurer-Tax Collectors Office will calculate the amount that is past due for years 2018, 2019, 2020, 2021 and applicants will pay 25% of that to the Treasurer-Tax Collectors office by May 31, 2023, and bring the receipt to the Mendocino Cannabis Department in order to be reprioritized. The timeline proposed would have an unknown impact on the Treasurer-Tax Collectors office as it coincides with the Transit Occupancy Tax and Unsecured Property Tax collection timelines, however we don't know how many applicants will participate in a payment plan. If a payee fails to follow the payment plan their Amnesty from Interest and Penalties would be void and those amounts would be returned to their account and become payable immediately to the Treasurer-Tax Collector Office, payees must also remain current with all current year cannabis business tax bills in order to remain in the Payment Plan.

A payment plan would also have an impact on the workload of the Mendocino Cannabis Department. This would allow some applicants to be reprioritized and would potentially change the timelines presented in the most Mendocino Cannabis Department update to the General Government Committee on February 27, 2023. The number of businesses that would use the payment plan to be reprioritized is unknown but could be in the range of 0-279 and the Cannabis Department Deprioritization based on local taxes is shown in Attachment A and listed below.

Potential revenue from delinquent tax for Prior years; 2018 - \$700,579, 2019 - \$908,429, 2020 - \$1,052,010, 2021 - \$1,590,853. Total Cannabis Business Tax that could be collected by Mendocino County through a payment plan 2018-2021 - \$4,251,871.

Information from the Mendocino Cannabis Department regarding potential reprioritization impacts

(See Attachment A)

There are 279 Active AG Numbers with delinquent taxes due.

- 170 do NOT have a DCC license.
- 109 applicants with DCC license could be reprioritized if taxes were not delinquent.
109 reprioritizations would include,
- 19 issued permits,
- 46 complete applications, and
- 44 incomplete applications
109 reprioritizations would, increase staffing needs by,
- 19 issued permits x 100 hours = 1900 hours
- 46 complete applications x 200 hours = 9200 hours
- 44 incomplete applications x 200 hours = 8800 hours
- 19,900 additional hours / 1,664 hours per year per full-time planner = 12 more full-time planners for 12 months to complete processing

If average processing for applications turns out to be closer to 150 hours

- 19 x 100 = 1900 hours

- 46 x 150 = 6900 hours
- 44 x 150 = 6600 hours
- 15,400 additional hours / 1664 hours per year per full-time planner = 9.25 more full-time planners for 12 months to complete processing

Budget implications for reprioritization on the Mendocino Cannabis Department:

- Additional Contractual Assistant Planners, like the County's specification for a Planner Tech, the cost would \$235,040 per additional contractual planner, per year. This would likely cost the department somewhere between:

9.25 x \$235,040.00 = \$2,174,120 additional in contract planning services and

12 x \$235,040.00 = \$2,820,000 additional in contract planning services

- Additional Contractual Associate Planners, like the County's specification for Planner I/II, the cost would be \$278,720.00 per additional contractual planner, per year.

9.25 x \$278,720.00 = \$2,578,160 additional in contract planning services and

12 x \$278,720.00 = \$3,344,640 additional in contract planning services

Alternative Action/Motion:

Provide alternate direction.

Does This Item Support the General Plan? Yes

Strategic Plan Priority Designation: A Thriving Economy

Supervisory District: All

vote requirement: Majority

Supplemental Information Available Online At: N/A

Fiscal Details:

source of funding: General Fund
current f/y cost: Unknown cost to Mendocino Cannabis Department and Treasurer-Tax Collector Department based on number of participants

annual recurring cost: N/A

budget clarification: N/A

budgeted in current f/y: No
if no, please describe: The receipt of taxes from prior years is not included in this budget and could increase the budget, however the reduction by 50% could affect the budget negatively for years 2023 and 2024, unknown number of participants
revenue agreement: N/A

Agreement/Resolution/Ordinance Approved by County Counsel: Yes

CEO Liaison: Executive Office

CEO Review: Choose an item.

CEO Comments:

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Executed By: Atlas Pearson, Senior Deputy Clerk
Date: March 28, 2023

Final Status: Adopted
Executed Item Type: Ordinance **Number:** 4518

