



COUNTY OF HUMBOLDT

For the meeting of: 2/7/2022

File #: 22-152

To: Board of Supervisors

From: County Administrative Office

Agenda Section: Departmental

SUBJECT:

Direct the County Administrative Office (CAO) to Implement a Cannabis Excise Tax Suspension/Reduction Program

RECOMMENDATION(S):

That the Board of Supervisors:

1. Direct the CAO to develop a Cannabis Excise Tax Suspension/Reduction Program; and
2. Direct the CAO to draft a resolution for final review and approval establishing and documenting the program as directed by your Board; and
3. Provide additional direction as needed.

SOURCE OF FUNDING:

Measure S Cannabis Excise Tax - General Fund (1100)

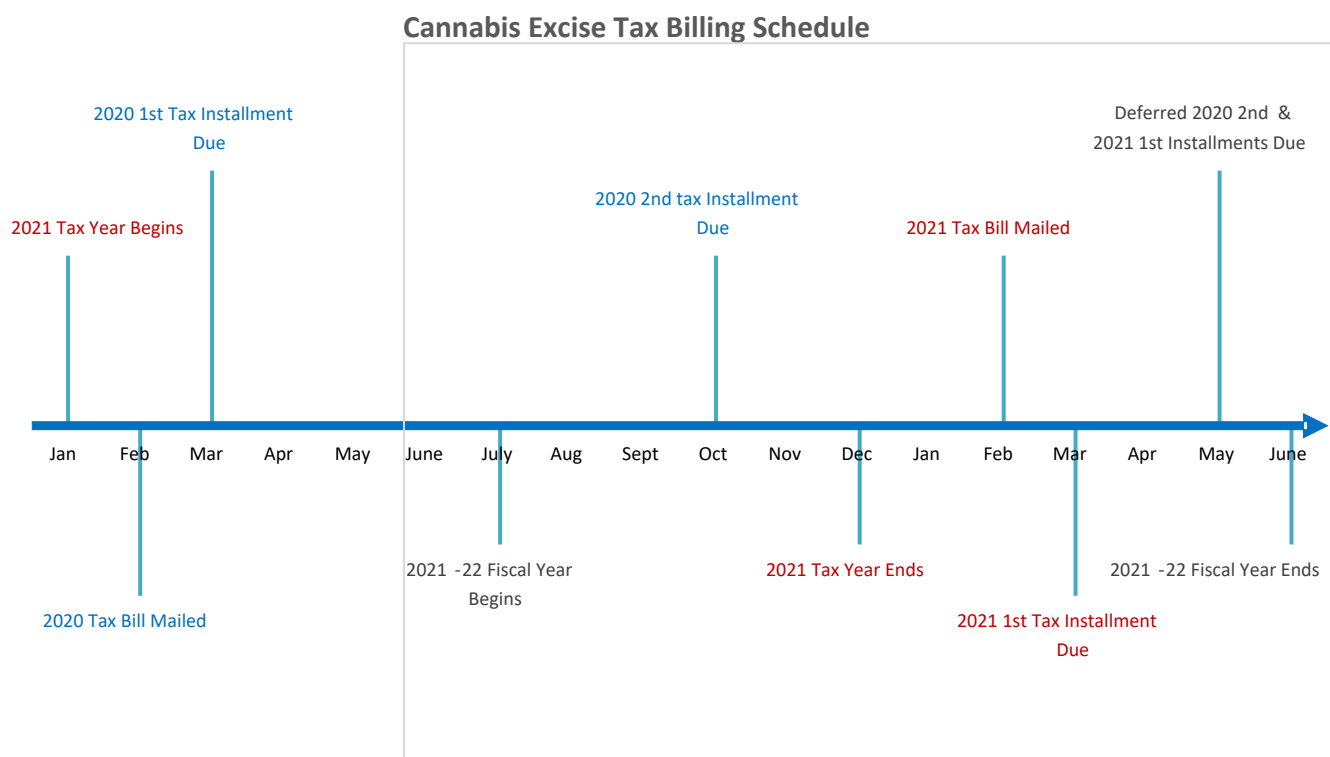
DISCUSSION:

This report seeks Board direction and possible action to create a Cannabis Excise Tax Suspension/Waiver program for Tax Year 2021 and direction on considerations for Tax Year 2022, billed and collected a year in arrears for calendar year 2022 and 2023. At the request of your Board, staff on Feb. 1, 2022 was directed to return with tax relief options to respond to the current state of the cannabis industry, which is experiencing unsustainably low market pricing and an inability to sell existing cannabis inventory.

The original agenda item presented on Feb. 1, 2022, received more than 60 comments and over 2 hours of input from members of the public, and most represented cannabis cultivators who advocated for your Board to provide relief from Measure S excise taxes in the form of a tax suspension. Your Board provided two concepts for a potential excise tax suspension/reduction program, a reduction (50-100%) based on an equal percentage to all tiers, or a percentage reduction based on cultivation tiers (Outdoor, Mixed Light or Indoor).

Tax Year vs. Collection Year vs. Fiscal Year

One of the challenges in discussing cannabis excise tax assessments is that there are three different years being discussed for one year's assessment. Tax years are calendar years running from January to December. The assessments for a tax year are billed in arrears the following calendar year and collected in two installments (March and October). To add to the complexity, the county's fiscal year (FY) runs from July to June, which means that the second half of one tax year and the first half of the next is the basis for the cannabis excise tax revenue for budget and the financial statements. It also means that Board direction to reduce or waive a particular tax year will only be applied to half of the FY. The chart below provides an 18-month overview of relevant dates for calendar year 2021 and the first 6 months of 2022.



Retroactive Suspension/Reduction of Tax Year 2020 Assessment

The discussions during the Feb. 1, 2022, Board meeting included whether to reduce, waive or continue to defer the second installment of the Tax Year 2020, which was due in October, 2021. On Oct. 5, 2021, your Board directed the Treasurer-Tax Collector to waive late fees on payments for that installment until May 31, 2022. The Treasurer-Tax Collector reminded your Board that the October, 2021 installment is related to cultivation activity from calendar year 2020, and that any retroactive reduction or waiver of the already assessed taxes was likely not consistent with Section 719-6. (a) Collection and Remittance, of the Humboldt County Code, which states:

The tax imposed by this chapter shall be collected by the Humboldt County Treasurer-Tax Collector in the same or similar manner as other taxes fixed and collected by the County of Humboldt to capture the calendar year taxes required by this chapter upon information provided by the Humboldt County Planning and Building Department. For

purposes of this chapter, taxes shall be owed for each and every year in which a commercial marijuana cultivation permit is issued by the Humboldt County Planning and Building Department.

Suspending or reducing the tax assessments for Tax Year 2020 is also problematic because 41% of cultivators have paid in full, 31% paid the first installment (due Mar. 15, 2021) but not the second, and 28% paid nothing towards the assessments for 2020 (see chart below). To uniformly administer such a waiver, refunds or credits would be necessary for cultivators who have already paid. With cannabis excise taxes collected through Dec. 31, 2021, at only \$2.3 million, a refund of just one of the Tax Year 2020 installments would result in payments or tax credits of \$3.65 million and create a negative revenue total for FY 2021-22 of an estimated \$1.3 million and potentially make budget adjustments necessary immediately.

Tax Year 2020 Excise Tax Collections				
	\$ Value Paid	Owed	# Of Accounts	%
Paid in Full	\$ 7.3 M	\$ -	478	41%
Paid 1st Install/O	\$ 3.2 M	\$ 3.1 M	362	31%
No Payment for T	\$ -	\$ 5.8 M	330	28%
Total	\$ 10.5 M	\$ 8.9 M	1,170	100%

**\$ Value Paid includes penalties and interest applied to 1st Installment Payments*

Requiring the second installment for Tax Year 2020, which was due in Oct. 2021, to be paid by May 31, 2022 without penalty will increase the FY 2021-22 Measure S revenues by an estimated \$2.9 million, even after allowing for the 31% delinquency allowance and not accounting for the first installment of Tax year 2021, which your Board will likely reduce.

As a reminder, the Project Trellis Local Equity Program has grant funding available (including \$3.4 million recently announced by the state, plus a remaining \$1.05 remaining from the prior grant) which can provide financial assistance to cultivators who have outstanding tax liabilities that may jeopardize the cultivators' permits status.

Below are options that your Board indicated you would like to consider for tax relief for local cultivators:

Tax Year 2021

Billed in February, 2022

First installment due March, 2022

Second installment due October, 2022

Option 1 - An equal percentage of waived excise tax for all cultivators.

50% All Tiers for Tax Year 2021

	Outdoor	Mixed	Indoor	Total
\$ Amount of Revised Revenue	\$5.7 M	\$4.1 M	\$150 K	\$ 12.2 M
Delinquency Allowance	\$1.8 M	\$1.3 M	\$50 K	\$ 3.8 M
\$ Amount of Revenue	(\$7.4 M)	(\$5.4 M)	(\$200 K)	(\$ 13.0 M)
75% All Tiers for Tax Year 2021				
\$ Amount of Revised Revenue	\$2.8 M	\$2.1 M	\$75 K	\$5.0 M
Delinquency Allowance	\$900 K	\$600 K	\$25 K	\$1.5 M
\$ Amount of Revenue	(\$9.4 M)	(\$6.8 M)	(\$250 K)	(\$16.5)
<i>*Delinquency allowance of 31% is an average of Tax Year 2019 & 2020 (16%+47% / 2). This is d</i>				

Incorporating the 31% delinquency allowance, a 50% reduction in all tiers results in an estimated revenue reduction for Tax Year 2021 of 66%, or \$13 million. A 75% reduction in all tiers results in an estimated revenue reduction of 83% or \$16.5 million, inclusive of the 31% delinquency allowance. Please note that to create a consistent basis for comparison, estimated current billings are based on the current permits for a gross revenue amount of \$19.9 million.

A 100% reduction in all tiers for Tax Year 2021 simply reduces revenue to \$0 and no allowance is necessary for delinquent taxpayers.

Option 2 - a stepped reduction to each cultivation tier (Outdoor, Mixed and Indoor).

50%/25%/0% - Tier 1/2/3 for Tax Year 2021				
	Outdoor	Mixed	Indoor	Total
50% \$ Revised Revenue	\$5.7 M			
25% \$ Revised Revenue		\$6.2 M		
0% \$ Revised Revenue			\$300 K	
Delinquency Allowance	\$1.8 M	\$1.9 M	\$100 K	\$3.8 M
\$ Amount of Revenue	(\$7.4 M)	(\$4.0 M)	(\$100 K)	(\$11.5 M)
75%/50%/25% - Tier 1/2/3 for Tax Year 2021				
75% \$ Revised Revenue	\$2.9 M			
50% \$ Revised Revenue		\$4.1 M		
25% \$ Revised Revenue			\$200 K	
Delinquency Allowance	\$900 K	\$1.3 M	\$50 K	\$2.2 M

\$ Amount of Revenue	(\$9.4 M)	(\$5.4 M)	(\$150 K)	(\$14.9 M)
<i>*Delinquency allowance of 31% is an average of Tax Year 2019 & 2020 (16%+47%/2). This is c</i>				

Incorporating the 31% delinquency allowance, a 50-25-0% reduction in the tier steps results in an estimated revenue reduction for Tax Year 2021 of 58% or \$11.5 million. A 75-50-25% reduction in the tier steps, results in an estimated revenue reduction for Tax Year 2021 of 75% or \$14.9 million.

Tax Year 2022

Billed in February, 2023

First installment due March, 2023

Second installment due October, 2023

Your Board could choose to implement one of the same strategies discussed for Tax Year 2021 or direct staff to re-evaluate the evolving changes in the cannabis market and the impacts to both cultivators and the county's financial status prior to Tax Year 2022. Staff recommends delaying action on Tax Year 2022. The current market situation developed quickly, in just a few months and is likely to continue to evolve over the next 6 to 10 months.

The CAO's recommendation is to provide no retroactive waiver of the 2nd installment of Tax Year 2020, to reduce the Tax Year 2021 excise tax by either 50% for all tiers or apply the 50-25-0% tier steps, and to return to your Board in later this year with an evaluation of the implemented tax reduction program in order to consider whether additional adjustments are warranted.

Potential Tax Incentives for Cannabis Cultivators

During the Feb. 1, 2022 Board meeting, there was some discussion regarding revising the proposed cannabis tax incentive program to provide matching funds for both the Planning and Building Department's \$18.6 million grant program and the Project Trellis Equity Program funding. As a reminder to your Board, tax incentives for cultivators was originally discussed on Nov. 19, 2019, and direction was provided to staff to return to the Board with appropriate documentation to implement recommended tax incentives for solar and clean renewable energy, road improvements and small cultivators. With the business interruptions caused by COVID-19 and the diversion of resources, little progress has been made on this action item.

FINANCIAL IMPACT:

The options provided above set forth the estimated financial impacts of each scenario based on Tax Year 2021. As discussed, the second half of one Tax Year and the first half of the next is the basis for the cannabis excise tax revenue for budget and the financial statements. That means that whatever reduction/suspension criteria your Board determines is best, it will impact the tax amounts due for the first installment of 2021, scheduled for collection by May 31, 2022. In addition, the deferred second installment of Tax Year 2020 is also due by May 31, 2022. Deferred collections, even applying the 31

percent delinquency allowance, will help offset any reduction or suspension for the FY 2021-2022. For illustration purposes an example for option 1 and option 2 are provided below and assume the same reductions are made in the 2022 Tax Year, so than an annualized estimate is provided for FY 2022-23.

Option 1 - 50% All Tiers for Tax Year 2021 & 2022			
Fiscal Year (FY)	Budget	Actual	Estimated Actual
2017-18	\$ 4,876,000	\$ 7,191,258	
2018-19	\$ 17,726,000	\$ 11,888,712	
2019-20	\$ 8,010,000	\$ 10,817,667	
2020-21	\$ 13,900,000	\$ 18,092,149	
2021-22*	\$ 9,200,000	\$ 2,300,444	\$ 8,652,717
2022-23	\$ 6,870,000	\$ -	\$ 6,870,000

**Actual for FY 2021-22 is through 12-31-2021.*

Option 2 – 50%/25%/0% - Tier 1/2/3 for Tax Year 2021 & 2022			
Fiscal Year (FY)	Budget	Actual	Estimated Actual
2017-18	\$ 4,876,000	\$ 7,191,258	
2018-19	\$ 17,726,000	\$ 11,888,712	
2019-20	\$ 8,010,000	\$ 10,817,667	
2020-21	\$ 13,900,000	\$ 18,092,149	
2021-22*	\$ 9,200,000	\$ 2,300,444	\$ 9,420,000
2022-23	\$ 8,390,000	\$ -	\$ 8,390,000

**Actual for FY 2021-22 is through 12-31-2021.*

STRATEGIC FRAMEWORK:

This action supports your Board’s Strategic Framework by engaging in discussions of our regional economic future.

OTHER AGENCY INVOLVEMENT:

- Treasurer Tax Collector
- Economic Development
- Planning and Building Department

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board direction and discretion

ATTACHMENTS:

File #: 22-152

1. [Measure S Staff Report from 2-1-2022 <https://humboldt.legistar.com/LegislationDetail.aspx?ID=5398955&GUID=8A142226-5675-4ACE-9BD8-D073C7E54F34&Options=&Search=>](https://humboldt.legistar.com/LegislationDetail.aspx?ID=5398955&GUID=8A142226-5675-4ACE-9BD8-D073C7E54F34&Options=&Search=>)

PREVIOUS ACTION/REFERRAL:

Board Order No.: H-2

Meeting of: February 1, 2022

File No.: 22-87