



COUNTY OF HUMBOLDT

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Title: Update and Possible Board Action on Cannabis Excise Tax Reduction Program

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Attachments: 1. Staff Report, 2. Humboldt County Code Chapter 9, 3. Public Comment - I1.pdf

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| 11/1/2022 | 1 | Board of Supervisors | approved as amended | Pass |

To: Board of Supervisors

From: County Administrative Office

Agenda Section: Departmental

SUBJECT:

Update and Possible Board Action on Cannabis Excise Tax Reduction Program

RECOMMENDATION(S):

That the Board of Supervisors:

1. Accept an update on the Cannabis Excise Tax Reduction Program; and
2. Consider providing staff direction on Tax Year 2023 Cannabis Excise Taxes.

SOURCE OF FUNDING:

Measure S Cannabis Excise Tax - General Fund (1100)

DISCUSSION:

This report provides an update on the Cannabis Excise Tax Reduction program established by the Humboldt County Board of Supervisors (Board) on Feb. 7, 2022, and adopted by Resolution No. 22-34 on March 8, 2022. On Feb. 7, 2022, the Board was presented with options to suspend or reduce excise taxes. The Board elected to:

1. Allow Tax Year 2021 second installment payments originally due in October 2021 to be paid by Sept. 15, 2022, without penalty;
2. Allow Tax Year 2022 first installment payments originally due in March 2022 to be paid by Sept. 15, 2022, but with penalty;

3. Temporarily reduce Cannabis Excise taxes for Tax Year 2022 by 85% for all cultivators; and
4. Revisit Tax Year 2023 tax assessments in Fall of 2022.

Tax Year 2021 (Cultivation Year 2020)

At the Feb. 7, 2022 meeting, staff presented for Tax Year 2021 that 59% of cannabis excise tax accounts remained with balances owed. As of late September, that number has improved to 49% of accounts with balances owed. Total billed taxes for Tax Year 2021 were \$19.6 million and the status of tax collections is as follows, as of Oct. 26, 2022:

| Tax Year 2021 (Cultivation Year 2020) Excise Tax Collections - Updated 10.26.22 | | | | | |
|--|---------------|----------|---------------|------|--|
| | \$ Value Paid | Owed | # Of Accounts | % | |
| Paid in Full | \$ 8.7 M | \$ - | 563 | 51% | |
| Paid 1st Install/Owe 2 | \$ 2.9 M | \$ 2.8 M | 309 | 28% | |
| No Payment for Tax Year 2021 | \$ - | \$ 5.3 M | 226 | 21% | |
| Total | \$ 11.6 M | \$ 8.1 M | 1,098 | 100% | |
| <i>*\$ Value Paid/Owed includes penalties and interest applied to payments</i> | | | | | |

Due to applied penalties to first installment payments, the total taxes billed have increased since last update resulting in a \$1 million increase in taxes collected, but only \$700,000 decreased in amount owed. The Board extended the second installment payment due date to Sept. 15, 2022, without penalty.

Tax Year 2022 (Cultivation Year 2021)

At the Feb. 7, 2022 meeting, the Board elected to temporarily reduce cannabis excise taxes for Tax Year 2022 by 85% for all cultivators and allow first installment payments due in March 2022 to be paid by Sept. 15, 2022, with penalties. The second installment payments were due on Oct. 17, 2022. Total billed taxes for Tax Year 2022 were \$3.2 million and the status of tax collections is as follows:

| Tax Year 2022 (Cultivation Year 2021) Excise Tax Collections As of 10.27.22 | | | | | |
|--|---------------|----------|---------------|------|--|
| | \$ Value Paid | Owed | # Of Accounts | % | |
| Paid in Full | \$ 1.1 M | \$ - | 512 | 43% | |
| Paid 1st Install/Owe 2 | \$ 0.4 M | \$.3 M | 172 | 14% | |
| No Payment for Tax Year 2022 | \$ - | \$ 1.4 M | 508 | 43% | |
| Total | \$ 1.5 M | \$ 1.7 M | 1,192 | 100% | |
| <i>*\$ Value Paid/Owed includes penalties and interest applied to payments</i> | | | | | |

Delinquent Tax Payments

As of Oct. 27, 2022, 49% of cultivators are in past due status for excise taxes from Tax Year 2021 and 57% are in past due status for Tax Year 2022. Your Board has waived some penalties and interest over

the past year, but those penalty and interest holidays have expired. Per Humboldt Municipal Code (Code) Section 719-7, payments made 30 days after the due date are subject to a 10% penalty and outstanding taxes after Dec. 31 of each year accrue interest at 1.5% per month or 18% per year. Additional cost recovery fees may also be applied. Further, Code Section 719-8 provides that any violation of the Cannabis Excise Tax Chapter, shall constitute a public nuisance and be subject to any and all administrative, civil, or criminal remedies available.

Staff is not recommending an aggressive enforcement program to collect the past due taxes, but a process to close accounts and stop assessing taxes on businesses that are no longer operating is needed.

Tax Relief Measures of Other Jurisdictions

In the time since the Board opted to reduce the County of Humboldt's cannabis excise tax in February 2022, the State of California and several other California counties have acted on cannabis taxes in their jurisdictions.

California Assembly Bill 195 (AB 195) was signed into law on June 30, 2022. AB 195 amends the California Government Code regarding cannabis cultivation and excise taxes. The bill eliminates the cultivation tax levied on cultivators when cannabis enters the commercial market - effective July 1, 2022, while maintaining the excise tax at 15% through 2024. After 2024, AB 195 allows for the excise tax to be adjusted and places responsibility for collection of the excise tax on retailers rather than distributors. In addition, the bill establishes new state tax credits for which cannabis businesses and licensees may be eligible.

Similar to the Board's action, at their April 5, 2022 meeting, the Sonoma County Board of Supervisors amended its Cannabis Business Tax Ordinance to reduce cannabis cultivation tax rates by 45% retroactive to July 1, 2021 through June 30, 2023. In a separate agenda item at that meeting, they also approved a resolution to extend select payment due dates for Fiscal Year (FY) 2021-22. Sonoma County estimates it will see a revenue reduction of \$832,000 annually from their previously budgeted amount of \$2.5 million. Additionally, staff identified that Sonoma County has a Cannabis Tax Fund surplus which will be able to absorb the revenue reductions.

On April 19, 2022, the Lake County Board of Supervisors passed a resolution which ratified their previous action to suspend Consumer Price Index increases, postpone cannabis tax payments to May 15, 2022, suspended penalties, and further postponed Tax Year 2021 second installments to Oct. 31, 2022 without penalties. In addition, this resolution temporarily reduced Tax Year 2021 and 2022 cultivation tax rates by 50% and temporarily changed the calculation from cultivation area to canopy area for Tax Year 2022 and Tax Year 2023. In their presentation of options to their Board of Supervisors on March 8, 2022, Lake County staff identified an anticipated annual reduction of revenue of \$8.7 million with a 50% reduction in tax rate and the change in calculation of taxes. Staff advised against further reduction beyond this, as the Lake County would not be able to meet current appropriations.

The Monterey County Board of Supervisors has taken several actions on cannabis tax rates in recent months. Initial action was taken in January 2022 with an effective date of March 31, 2022, to reduce cultivation tax rates by varying percentages depending on cultivation tier, reduce the distribution tax to

0%, and waive cultivation tax penalties for fiscal year 2021-2022 Quarter 3 if paid in full by Quarter 4. At their June 1, 2022 meeting, the Board of Supervisors elected to further reduce the tax rates for mixed-light and indoor cultivation tiers. After these adjustments, Monterey County staff estimated the revenue reduction for FY 2021-22 to be \$3.2 million. Monterey County continues to consider additional tax relief measures such as payments plans, options to address delinquent payments, and additional tax rate reductions.

The Mendocino County Board of Supervisors considered reducing their cannabis tax by 50% for two (2) years starting in Tax Year 2022-23 at their meeting on April 19, 2022. The Board of Supervisors requested that staff return with options for implementation of a payment plan and a tax rate reduction.

Project Trellis Funding

Project Trellis Local Equity Program funding has disbursed \$3.9 million to the community. The first round of the program was able to accept 62% of applications and the second round accepted 83% of applications. Approximately two-thirds of the program's funds have been awarded to projects for regulatory compliance, technical assistance, financial solvency and capital improvement. Staff anticipate that they will be successful in receiving the next round of funding to continue the program which will be \$3.4 million. Applicants that were not accepted in the latest round of the program, but remain eligible will be considered in the next round. It is anticipated that applications will be open to the community toward the end of this year.

As part of this ongoing effort to support the cannabis industry, Humboldt County's Economic Development Division has also received feedback from cannabis partners who have expressed concerns that the county's Project Trellis Equity program is limited by state requirement to only those who meet specified income criteria. These same stakeholders have expressed a desire to see Project Trellis evolve from a program focused on cultivation and commodity market strategies, to that of supporting a cannabis economy which is rooted in craft and boutique cannabis products, cannabis tourism, cannabis business education and cannabis community events such as festivals, high-value cultivar auctions, strain licensing events or public genetics sales.

Such events and activities could be modeled after concepts similar to Fashion Week in New York, or Beaujolais Nouveau in France, which are renown internationally and drive tourism and economic benefits for their communities. For comparison, the 2018 Emerald Cup hosted approximately fourteen thousand (14,000) participants in Santa Rosa, California. Based on an independent economic impact report commissioned by the event organizers the economic impacts of the 2018 Emerald Cup were identified as follows:

- Approximately \$17 million was infused into Sonoma County.
- The event supported more than 200 jobs and 271 local vendors.
- Nearly 7,000 of the event's 14,027 attendees stayed at hotels or private home rentals.
- Event producers spent between \$40,000 and \$125,000 on rental space.

- The City of Santa Rosa received more than \$45,000 from sales tax and registration fees from the event, despite being held on a rainy weekend in December.

Cannabis tourism, events and auctions (or genetics sales) can provide revenue and marketing opportunities for more than just cultivators and can create benefits for a multitude of Humboldt-based cannabis businesses, including, without limitation, farms, nurseries, breeders, retail, distribution and cannabis tourism companies. Other ancillary industries, such as the hospitality sector, including, without limitation, hotels, food and beverage establishments, event spaces/support services, car rental companies and retail, are also likely to experience increased revenue and marketing opportunities as a result of said activities.

However, given the current financial crisis in Humboldt's cannabis industry, many local cannabis stakeholders do not have the means to start these programs on their own. Furthermore, staff have been notified by the state that match requirements for future equity funding will be increasing, thereby putting more strain on communities.

Therefore, when considering changes to Measure S, or other cannabis related funding streams, the Board may wish to consider how Project Trellis, and other initiatives, can and should be changed to support emerging cannabis industry-related activities, consider which of these activities to support and how and to identify what revenue sources will be utilized to aid the industry in bringing those efforts to fruition.

FINANCIAL IMPACT:

The financial impact of the reduction in Tax Year 2022 billed Cannabis Excise taxes has reduced billed taxes by \$16.4 million. The taxes due collection rate based on Tax Year 2021 was 59% or \$11.6 million. Thus far, 46% of Tax Year 2022 reduced rate billed taxes have been collected. Should the Tax Year 2022 taxes reach the collections of Tax Year 2021, it is anticipated that the County of Humboldt will collect approximately \$450,000 more for a total collection of \$1.9 million. This is a \$9.7 million reduction in tax collections over the previous year.

STRATEGIC FRAMEWORK:

The recommended actions support the Board of Supervisors' Strategic Framework by engaging in discussions of the regional economic future.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion.

ATTACHMENTS:

1. Humboldt County Code Chapter 9 - Commercial Marijuana Cultivation Tax

PREVIOUS ACTION/REFERRAL:

Board Order No.: H-2, C-1, H-3

Meeting of: 2/1/2022, 2/7/2022, 3/8/2022

File No.: 22-87, 22-152, 22-278