

Cannabis Taxation Options

Board of Supervisors May 17, 2022



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COUNTY
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FUTURE

Today's Discussion

- Receive an update on cannabis taxation and the following options for alternate methods or changes to the taxation structure
 - Option 1: Convert from percentage based to square foot basis
 - Option 2: Maintain percentage based but establish minimum tax on cultivation
 - Option 3: Maintain percentage based and return to BOS with amendments to ordinance(s) (staff recommendation)
- Provide direction to staff as needed

Background

- Current taxation method approved by voters in June 2018
 1. Nursery: One percent of gross receipts; and
 2. Distributor (excludes transport only): One percent of gross receipts; and
 3. Manufacturing: Three percent of gross receipts; and
 4. Cultivation: Four percent of gross receipts; and
 5. Retail: Six percent of gross receipts; and
 6. Microbusiness: Six percent of gross receipts.

- Gross receipts are self-reported to Treasurer-Tax Collector by the operator

Background

- Access to State's track-and-trace data did not materialize as promised
- County joined the CA Cannabis Authority (CCA) in late 2021 to help ensure regulatory compliance
- Treasurer-Tax Collector is currently working with outside firm to perform cannabis financial monitoring and individual audits
- November 2022 ballot offers opportunity to change existing tax structure

Option 1 - Develop Tax Structure for Cultivation Area by Square Foot (Requires Ballot Measure)

Pros:

- Ease of tax compliance and monitoring efforts
- Provides more certainty for annual revenue projections
- Easy to predict and stable

Cons:

- Does not account for market fluctuations unless index is established
- Possible annual adjustments needed to keep operations viable
- Industry standard data for indexing is not readily available

Option 2 - Develop Hybrid Tax Structure with Minimum Tax on Cultivation (Requires Ballot Measure)

Pros:

- Ensures that every operator in the cap contributes a minimum amount
- Perceived as equitable and balanced system
- Establishes minimum tax while allowing for taxes on gross receipts over a specified amount

Cons:

- May be difficult to establish minimum with limited information
- Relies on operator inputs/self-reporting
- Adds another level to compliance and reporting

Option 3 – Maintain and Amend Chapter 50A Tax Ordinance (Staff Recommendation)

Pros:

- Opportunity to use existing audit findings to influence needed amendments to Chapters 50 and 50A
- Enhances data collection process for further analysis
- Gross receipts method accounts for market fluctuations

Cons:

- Gross receipts are self reported
- Operations that do not grow do not pay taxes without a mandate to grow
- Annual revenue projections are complex and not as certain

Incentivizing Processing Activities in the County

(Requires Ballot Measure)

- In-county processing activities would maximize the value of taxable cannabis product transfers
- Possible encouragement could include establishing a lower, specific tax rate for processing
- Cumulative minimum tax rate could also be considered

Schedule for Potential November 2022 Ballot Measure

May 17th: Discussion of taxation options for cannabis cultivation; provide direction to staff

June 28th: First reading of ordinance regarding taxation of cannabis related operations

July 12th: Second reading of ordinance and request to place measure on ballot

Recap of Options and Potential Actions	Chapter 50 amendment	Chapter 50A amendment	Ballot Measure
Convert tax structure for cultivation from percentage based to a square foot basis (Option 1)		X	X
Maintain existing percentage based tax rate structure, but establish a minimum tax on cultivation (Option 2)		X	X
Maintain existing percentage based tax rates. Make administrative (non-tax rate) modifications to Chapter 50A tax ordinance and further modifications to Chapter 50 license ordinance (Option 3)	X	X	
Require cultivators holding acreage in the cap to grow (use it or lose it provision)	X		
Provide for temporary following of full or partial acreage within the cap to support agricultural best management practices or other economic/operational reasons	X		
Strengthen existing ordinance language to reiterate that all transfers between licensed activities are reportable/taxable under Chapter 50A		X	
Incentivize processing through modified tax rate structure		X	X

Recommended Actions

- a) Receive an update on cannabis taxation, and the following options for alternate methods or changes to the cannabis taxation structure:
- i. Develop tax structure for cultivation area by square foot; or
 - ii. Develop a hybrid tax structure with a minimum tax on cultivation set by square footage; or
 - iii. Provide direction to staff to maintain current taxation method and return to the Board with proposed amendments to cannabis ordinance(s) clarifying current requirements to improve compliance (staff recommendation); or
 - iv. Provide other direction to staff on taxation methods; and
- b) Determine that pursuant to CEQA Guidelines section 15378(b)(5) the above actions are not a project subject to CEQA review because they are administrative activities that will not result in direct or indirect physical changes in the environment.