



# MEMORANDUM

<b>TO:</b>	Cannabis Regulatory Commission	<b>FROM:</b>	Rogers Agaba Interim Revenue & Tax Administrator
<b>SUBJECT:</b>	Cannabis Business Tax	<b>DATE:</b>	September 21, 2020

## INFORMATION

At the July 2, 2020 Cannabis Regulatory Commission (“CRC”) Meeting, the CRC requested that the Revenue Management Bureau provide annual reports on taxes reported by cannabis businesses. Accordingly, below is a summary of reported taxes by Oakland cannabis businesses from 2015 to the present, with background information on the City of Oakland’s tax rates for cannabis businesses.

### **BACKGROUND / LEGISLATIVE HISTORY**

#### *Oakland’s Cannabis Regulatory History*

The City of Oakland has been a leader in regulating cannabis. After California voters legalized medical cannabis in 1996 via Proposition 215, the City established Oakland Cannabis Buyers Club (“OCBC”) as its medical cannabis provider in 1998 under Oakland Municipal Code (“OMC”) 8.46. Following the federal closure of OCBC, the City of Oakland enacted OMC 5.80 in 2004, which established the nation’s first permitting process for medical cannabis dispensaries. In 2011 the City of Oakland expanded the number of available dispensary permits from four to eight and attempted to establish a permitting process for the cultivation of medical cannabis under OMC 5.81; however, threats of federal intervention and the lack of comprehensive state law prevented any implementation of OMC 5.81.

After the passage of the Medical Cannabis Regulation and Safety Act (“MCRSA”) in 2015 and the Adult-Use of Marijuana (“AUMA”) or Proposition 64 in 2016, the City of Oakland adopted the nation’s first equity program through amendments to OMC 5.80 and 5.81 that also legalized the adult-use of cannabis and established a permitting process for the cannabis industry’s entire supply chain in the spring of 2017.

#### *Oakland’s Cannabis Taxation History*

In July 2009, Oakland voters approved Measure F making Oakland the first City in the nation to impose a tax on (medical) cannabis businesses. Measure F established a tax rate of \$18 per \$1,000, or 1.8 percent, of gross receipts.

In November 2010, Oakland voters approved Measure V increasing the tax rate on medical cannabis businesses from 1.8% to five percent (5%) of annual gross receipts and creating a new tax rate of 10 percent (10%) of gross receipts on non-medical cannabis businesses, referred to as adult-use or recreational. The additional 10 percent adult-use tax rate was put forth in anticipation of Proposition 19, which would have legalized adult use of cannabis in November 2010. Since Proposition 19 failed at the ballot box Oakland did not implement the adult-use tax rate until January 1, 2018 following the passage of Proposition 64 and City Council’s legalization of adult use in 2017.

## State Cannabis Taxes

The passage of Proposition 64 created two new State cannabis taxes<sup>1</sup>:

1. A 15 percent excise tax imposed upon the purchasers of cannabis and cannabis products.
2. A cultivation tax imposed upon cannabis cultivators on all harvested cannabis that enters the commercial market. The cultivation tax is:
  - \$9.25 per dry-weight ounce of cannabis flowers that enter the commercial market,
  - \$2.75 per dry-weight ounce of cannabis leaves that enter the commercial market, and
  - \$1.29 per ounce of fresh cannabis plant<sup>2</sup>.

The California Department of Taxes and Fee Administration (“CDFTA”), formerly the Board of Equalization, is responsible for collecting the excise taxes from businesses that cultivate, manufacture, distribute, and sell cannabis in California. In the City of Oakland, the City Administrator’s office handles the City’s cannabis regulatory program and all related application, licensing, permitting and renewal processes. The City Finance Department’s Revenue Management Bureau handles the rules, regulations and collection of cannabis business tax annually.

### Oakland Reduces its Cannabis Tax Rates and Establishes Equity Tax Rebate Program

On December 10, 2019, the Oakland City Council adopted Ordinance No. 13573 C.M.S. amending OMC Title 5, Chapter 5.04, Sections 5.04.480 and 5.04.481 to create a tiered and category-based tax structure for cannabis businesses. The new tiered and category-based tax structure for 2020 Tax Year, and if applicable, for a business newly established in calendar year 2019, is as follows:

Table 1: 2020 Tax Rates

Cannabis Business Tax Rates - 2020 Tax Year (including cannabis businesses <b>established/started</b> in 2019 paying for 2019 Tax Year in 2020)					
Total Gross Receipts	Retail (store-front & delivery)	Indoor Cultivation	Outdoor Cultivation	Manufacturing, Packaging, Storage	Distribution
Up to \$1.5M * <b>Equity Only</b> *	0.12%	0.12%	0.12%	0.12%	0.12%
Up to \$500K	0.12%	0.12%	0.12%	0.12%	0.12%
\$500K+ - \$1.5M	5% Medical 6.5% Non-Medical	5% Medical 6.5% Non-Medical	5% Medical 6.5% Non-Medical	5% Medical 6.5 Non-Medical	5% Medical 5% Non-Medical
\$1.5M+ - \$5M	5% Medical 6.5% Non-Medical	5% Medical 6.5% Non-Medical	5% Medical 6.5% Non-Medical	5% Medical 6.5% Non-Medical	5% Medical 5% Non-Medical
Over \$5M	5% Medical 9.5% Non-Medical * <b>Non-Marginal</b> *	5% Medical 9.5% Non-Medical * <b>Non-Marginal</b> *	5% Medical 9.5% Non-Medical	5% Medical 9.5% Non-Medical	5% Medical 9.5% Non-Medical

In addition to the new tiered and category-based tax structure, the City Council also adopted four different tax rebate programs totaling nine separate and distinct conditions upon which a cannabis business would be entitled to the rebate of a portion of the taxes paid for 2020 Tax Year and, if applicable, 2019 Tax Year for businesses started in calendar year 2019 if the business meets the

<sup>1</sup> Taxes will be adjusted for inflation starting in 2020

<sup>2</sup> To qualify for the “fresh plant” category, the unprocessed cannabis must be weighed within two hours of harvesting

required conditions. The rebate programs are as follows:

Table 2: 2020 Cannabis Tax Rebate Programs

2020 Cannabis Business Tax Rebate Programs			
Rebate Program	Rebate Conditions	Qualifying Period	Rebate Amount
Local Hiring Rebate (5.04.481.B.2.a.)	I. 30% of workforce consists of "Equity Employees"	182 Days	0.50%
	II. 25% of workforce consists of Equity Employees in "Essential Roles"	182 Days	0.50%
	III. 20% of workforce consists of Equity Employees in "Managerial Roles"	182 Days	0.50%
Equity Supply Chain (5.04.481.B.2.b.)	I. 30% of value of cannabis products delivered to the business were delivered by an Equity Business	365 Days	0.50%
	II. 25% of value of cannabis products delivered to the business were originally cultivated or manufactured by an Equity Business	365 Days	0.50%
Workforce Quality of Life (5.04.481.B.2.c.)	I. \$20/hr. with health benefits <u>or</u> \$25/hr. without health benefits for all employees employed	365 Days	0.50%
	II. 80% of total employees are full-time employees	365 Days	0.25%
Incubation (5.04.481.B.2.d.)	I. Provide free rent to Equity Business beyond the initial three-year period	Year 4th	1.50%
	II. Provide free rent to Equity Business in the tax year but does not seek "permitting priority"	365 Days	1.50%
<b>IMPORTANT NOTE:</b> In no case will a business be entitled to any rebates that would reduce the overall tax rate of less than 3.5% for 2020 Tax Year or 2019 Tax Year for those cannabis businesses established in 2019; In other words, a cannabis business would be subject to pay the floor/minimum tax rate of 3.5% regardless of the number or the amount of the tax rebates.			

## HISTORICAL CANNABIS TAX REVENUE

Table 3 summarizes the reported cannabis business tax revenue for the calendar years 2015-2019 and the latest reported revenue for the current calendar year 2020. Notably, total reported cannabis business tax revenue for 2020 shows a decline of about 31 percent when compared to the total revenue for 2019 and that the actual amount paid to date represents of about 40 percent of the total revenue for 2019.

Table 3: Historical Cannabis Tax Revenue

Tax Year	Number of Business	Revenue
2020 <sup>3</sup>	252	\$8.89 million
2019	195	\$12.85 million
2018	139	\$8.07 million
2017	85	\$7.48 million
2016	77	\$4.64 million
2015	70	\$3.61 million

### General Statistics:

The following general statistics are intended to provide the CRC a snapshot of key information. Certain statistics for prior years, such as the number of retailers vs. non-retailers, equity vs. non-equity businesses, or the breakdown between different segments of industry, such as cultivation,

<sup>3</sup> Through September 18, 2020: Total \$8.89M (~69% of 2019 revenue). Paid = \$5.19 million (~40% of 2019 revenue); Outstanding Balance = \$3.70 million. The current public health emergency has resulted in many businesses struggling making payments. Staff will continue to work with businesses on a case by case basis for the payment of taxes.

manufacturing, distribution, delivery, are not available because the tax rates were fixed prior to 2019 tax year regardless of the type of operation and that many businesses engage in multiple segments of the industry.

Table 4: Retail vs. Non-Retail Operation

Tax Year	Retail	Non-Retail	Total
2020	112	140	252
2019	73	122	195

Table 5: Equity vs. Non-Equity Operation

Tax Year	Equity	Non-Equity	Total
2020	78	174	252
2019	Not Tracking		

Table 6: Payment Plan vs. Non-Payment Plan

Tax Year	Payment Plan	Non-Payment Plan	Total
2020	42	210	252
2019	57	138	195

Table 7: Business by Gross Receipts and Percentage of Reported Revenue

Gross Receipts	2020		2019	
	No. of Business	Percentage of Revenue (based on reported revenue of \$5.19M - see footnote #3)	No. of Business	Percentage of Revenue (based on reported revenue of \$12.85M)
Up to \$500K	195	8.94%	151	7.75%
\$500K+ - \$1.5M	27	8.88%	19	15.40%
\$1.5M+ - \$5M	26	39.46%	18	29.92%
Over \$5M	4	42.72%	7	46.93%
<b>Total</b>	<b>252</b>	<b>100%</b>	<b>195</b>	<b>100%</b>

Equity Tax Rebate Program

As of this writing, staff has not received an application for a tax rebate.

**Conclusion:**

The above information is being provided in response to the request from the Cannabis Regulatory Commission. Staff will be available to speak to the information provided herein at the October 1, 2020 CRC meeting.

For questions, please contact Rogers Agaba, Interim Revenue & Tax Administrator, at (510) 238-7009.

Respectfully Submitted,

*Rogers K. Agaba*

Rogers Agaba  
Interim Revenue & Tax Administrator