



MEMORANDUM

COUNTY OF LAKE

COUNTY COUNSEL

TO: THE HONORABLE BOARD OF SUPERVISORS

FROM: ANITA L. GRANT
County Counsel 

SUBJECT: PRORATION OF CANNABIS CULTIVATION TAXES

DATE: February 27, 2020

Your Board has posed questions on whether proration of cannabis cultivation taxes must occur. Given the clarifications your Board has provided as to the triggering event for the taxes to begin to accrue which are outlined below, proration has become a very limited issue, applicable only in the first year in which the cultivation activities begin.

Lake County Ordinance Number 3047, the Lake County Cannabis Cultivation Tax Ordinance, (hereinafter, the “Cannabis Tax Ordinance”) provides that its purpose, “is to impose a tax on cannabis cultivation operations which occur in the unincorporated areas of the County of Lake . . .” (Sec. 18-45.)

Cultivation is defined as the germinating, cloning, seed production, planting, growing, and harvesting of cannabis plants and the on-site drying, curing, grading, or trimming of cannabis plants. (Cannabis Tax Ordinance, Sec. 18-49.1) Legally-authorized cannabis cultivation is defined as cannabis cultivation performed in compliance with local and state laws and regulations. (Id. at Sec.18-49.4.) The activities subject to the tax are defined as: “Except as otherwise exempted herein, all legally authorized cannabis cultivation which occurs in the unincorporated areas of the County of Lake is subject to imposition of the Lake County Cannabis Cultivation Operations Tax. (Id. at Sec. 8-50) The only exemption is personal use. (Id. at Sec. 8-52). An annual tax is imposed of \$1 per square foot of an outdoor cannabis cultivation site, \$2 per square foot of a mixed-light cultivation site, and/or \$3 per square foot of an indoor cultivation site. (Cannabis Tax Ordinance, Sec. 18-51) The Ordinance describes the manner of tax collection as follows:

The tax imposed by this Chapter shall be collected by the Lake County Treasurer-Tax Collector biannually in the same manner as other taxes fixed and collected by the County of Lake. For purposes of this Chapter, taxes shall begin to accrue on the date on which a person becomes engaged in legally-authorized cannabis cultivation in accordance with the applicable provisions of the Lake County Code and all other applicable state and federal laws and regulations. (Cannabis Tax Ordinance, Sec. 18-54.)

On May 14, 2019, the Board of Supervisors adopted Resolution Number 2019-70, a Resolution

Adopting a Policy for the Collection of Taxes Due Pursuant to the Lake County Cannabis Cultivation Tax Ordinance. In this resolution it was the finding of the Board that, for purposes of the Cannabis Tax Ordinance, legally-authorized cannabis cultivation requires the performance of cultivation actions of the type described in said ordinance. For purposes of the accrual of taxes under this Ordinance, to “begin to engage in cannabis cultivation operations” means to take any action(s) on that real property for which the permit is obtained to physically carry on a cannabis cultivation activity described in the Ordinance.” Further, “Taxes imposed under the Ordinance are hereby deemed to accrue when said cultivation, whether indoor or outdoor, begins and all required state and local permits have been obtained.”

On November 5, 2019, the Board adopted Resolution Number 2019-162 which amended the resolution described above solely to address “certain narrowly-prescribed circumstances” - those of a cannabis cultivation permittee who has engaged in permitted cannabis cultivation in Lake County for a period of no less than two years. The Board determined that such a permittee may be allowed to completely opt-out from all cannabis cultivation operations at a particular permitted location for a specified period of time, under the following circumstances:

- a. The permittee must cease all cultivation operations under his/her permit at the subject location.
- b. The permittee must provide written notice to the Community Development Department of his/her decision to completely opt-out for a specified period on or before June 1 of a tax year.
- c. The permittee must acknowledge and agree that once he/she issues such a written notice, that permittee is completely foreclosed from engaging in cannabis cultivation operations at the subject location for the time specified in the opt-out notice filed by that permittee.
- d. The permittee agrees that consequent to his/her notice of a complete opt-out, he/she will permit Community Development to enter the subject location at reasonable times for purposes of conducting an inspection(s) to ensure that all cannabis cultivation operations have ceased.

Your Board has now clarified that taxes do not accrue until an act of cultivation as defined herein actually occurs. Further, your Board has clarified that taxes will stop accruing in certain circumstances when there has been an opt-out as to cultivation activities.

It is the first year of legally-authorized cultivation that the billings, which are issued in biannual cycles, are adjusted to reflect the date that cultivation actually begins. The same type of adjustment may also be necessary if a permittee chooses to opt out for a time and then begin cultivation again. Proration reflects the actual period of time cultivation occurs in that first year or after an opt-out period, rather than the entire tax year.

Proration is not required by the terms of the Cannabis Tax Ordinance. It is consistent, however, with the County’s collection of other taxes. Here, proration occurs only in limited circumstances. If your Board wishes to provide further clarification as to the collection methods for cannabis taxes consistent with your actions above, it is within your authority to do so as long as you do not increase the amount of the tax or broaden the scope of the tax imposed.