



MEMORANDUM

TO:	Cannabis Regulatory Commission	FROM:	Margaret O'Brien Revenue & Tax Administrator
SUBJECT:	Cannabis Business Taxes	DATE:	May 27, 2021

INFORMATION

This annual report provides the Cannabis Regulatory Commission (“CRC”) the unaudited Business Taxes reported directly to the City of Oakland (“City”) and Sales & Use Taxes reported directly to the California Department of Tax & Fee Administration (“CDTFA”) by individuals and businesses engaging in commercial cannabis activities in Oakland.

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 the 2010 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.

In November 2018, Oakland voters approved the 2018 Measure V allowing cannabis businesses to pay business taxes quarterly, cannabis manufacturing and/or cultivation businesses to deduct the value of raw materials from gross receipts in calculating business taxes and authorizing the City Council, without returning to voters, to amend medical or non-medical cannabis business taxes in any manner that does not increase the tax rate.

In December 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 beginning in 2020 and changing each year for 2021 and 2022 calendar years. Thereafter, the tax rate structure is scheduled to remain the same at the 2022 tax structure unless the City Council makes further changes as authorized in the 2018 Measure V.

Table 1: 2021 Tax Rates

2021 Cannabis Business Tax Rates					
	Retail (store-front & delivery)	Indoor Cultivation	Outdoor Cultivation	Manufacturing Packaging & Storage	Distribution
Equity Cannabis Business					
\$0 - \$1.5M	0.12%	0.12%	0.12%	0.12%	0.12%
\$1.5M - \$5M	5.00%	5.00%	5.00%	5.00%	4.50%
Over \$5M	5.00% medical 8.00% Adult-Use (Non-Marginal)	5.00% (Non-Marginal)	5.00%	5.00%	4.50%
General (Non-Equity) Cannabis Business					
\$0 - \$500K	0.12%	0.12%	0.12%	0.12%	0.12%
\$500K+ - \$1.5M	5.00%	5.00%	5.00%	5.00%	4.50%
\$1.5M+ = \$5M	5.00%	5.00%	5.00%	5.00%	4.50%
Over \$5M	5.00% medical 8.00% Adult-Use (Non-Marginal)	5.00% (Non-Marginal)	5.00%	5.00%	4.50%

Table 2: 2022 & After Tax Rates

2022 & After Cannabis Business Tax Rates					
	Retail (store-front & delivery)	Indoor Cultivation	Outdoor Cultivation	Manufacturing Packaging & Storage	Distribution
Equity					
\$0 - \$1.5M	0.12%	0.12%	0.12%	0.12%	0.12%
\$1.5M - \$5M	5.00%	5.00%	4.50%	4.50%	3.00%
Over \$5M	5.00%	5.00%	5.00%	5.00%	4.00%
General (Non-Equity)					
\$0 - \$750K	0.12%	0.12%	0.12%	0.12%	0.12%
\$750K+ - \$1.5M	4.00%	4.00%	3.50%	3.50%	2.50%
\$1.5M+ = \$5M	4.00%	4.00%	4.50%	4.50%	3.00%

2022 & After Cannabis Business Tax Rates					
	Retail (store-front & delivery)	Indoor Cultivation	Outdoor Cultivation	Manufacturing Packaging & Storage	Distribution
Over \$5M	5.00% (Non-Marginal)	5.00% (Non-Marginal)	5.00%	5.00%	4.00%

Oakland's Cannabis Equity Tax Rebate Program

In addition to the new tiered and category-based tax structure for cannabis businesses in December 2019, the City Council also adopted an Equity Tax Rebate Program for cannabis businesses. The program consists of four different tax rebates totaling nine separate and distinct conditions upon which a cannabis business would be entitled to the rebate of a portion of the taxes paid.

Table 3: 2021 Cannabis Tax Rebate Program

2021 Cannabis Business Tax Rebate Program			
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%
IMPORTANT NOTE: In no case will a business be entitled to any rebates that would reduce the overall tax rate of less than 3.5% for 2021 Tax Year; 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.			

California Sales & Use Tax

Sales and Use Tax applies to the retail sale or use of "tangible personal property." The total sales tax percentage in the City of Oakland is 9.25% meaning on a \$1 taxable purchase, the sales tax paid is 9.25 cents. The City receives 1% of the total sales, meaning the City receives 1 cent on a \$1 purchase. The remaining 8.25% is allocated to the state and local taxing districts.

California Cannabis Excise Taxes

The passage of Proposition 64 created two new State cannabis taxes¹:

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 plant².

CANNABIS BUSINESS TAX REVENUE & STATISTICS

Table 4 summarizes the reported cannabis business tax revenue for the calendar years 2015-2020 and the latest reported revenue for the current calendar year 2021.

Table 4: Cannabis Business Tax Revenue

Tax Year	Number of Business	Revenue
2021 ³	187	\$13.47 million
2020	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 as of the date of this report. Certain statistics for prior years, such as the number of retailers vs. non-retailers, equity vs. non-equity businesses, are not available because the tax rates were fixed prior to 2019 tax year regardless of the type of operation or activity. The breakdown of revenue by individual activity or segment of the cannabis industry (store front, delivery, cultivation, manufacturing, distribution, etc.) cannot be separated because many cannabis businesses engage in multiple segments of the industry. Furthermore, the applicable tax is the tax rate that produces the highest amount of the taxes owed based on the total gross receipts generated by the business without respect to the portion of gross receipts generated from any particular taxable activity (Oakland Municipal Code § 5.04.480.C).

Table 5: Retail vs. Non-Retail Operation

Tax Year	Retail	Non-Retail	Total
2021	93	94	187
2020	112	140	252
2019	73	122	195

¹ Taxes will be adjusted for inflation starting in 2020.

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

³ Through May 26, 2021: Total \$13.47M (Paid = \$5.83million; Outstanding Balance = \$7.67 million)

Table 6: Equity vs. Non-Equity Operation

Tax Year	Equity	Non-Equity	Total
2021	54	133	187
2020	78	174	252
2019	Not Tracking		

Table 7: Payment Plan vs. Non-Payment Plan

Tax Year	Payment Plan	Non-Payment Plan	Total
2021	30	157	187
2020	42	210	252
2019	57	138	195

Table 8: Business by Gross Receipts and Percentage of Reported Revenue

Gross Receipts	2021		2020		2019	
	No. of Business	Percentage of Revenue	No. of Business	Percentage of Revenue	No. of Business	Percentage of Revenue
Up to \$500K	115	6.72%	195	8.94%	151	7.75%
\$500K+ - \$1.5M	35	13.26%	27	8.88%	19	15.40%
\$1.5M+ - \$5M	26	\$29.01%	26	39.46%	18	29.92%
Over \$5M	11	\$51.01%	4	42.72%	7	46.93%
Total	187	100%	252	100%	195	100%

SALES & USE TAX REVENUE

Table 9: Adjusted Sales Tax reported to the CDTFA

Calendar Year	Number of Business	Revenue
2021 ⁴	n/a	n/a
2020	103	\$1.56 million
2019	121	\$1.30 million
2018	79	\$1.16 million

Staff will be available to speak to the information provided herein at the June 3, 2021 CRC meeting. For questions regarding this report, please contact Rogers Agaba, Assistant Revenue & Tax Administrator, (510) 238-7009.

Respectfully submitted,

Margaret L. O'Brien

Margaret L. O'Brien
Revenue and Tax Administrator
Finance Department

⁴ There is an interval of time lag of approximately 2 – 2 ½ months from the close of the quarter to the date the City receives the Sales & Use Tax data. For example, the City expects to receive the sales tax data for the first quarter 2021 (Jan-Mar 2021) in June 2021. The time lag represents the interval needed for filers to prepare their returns and remit their payments to the CDTFA, and for the CDTFA to process returns and prepare the data for the City.