

Chapter 3.56 - COMMERCIAL CANNABIS CULTIVATION AND CANNABIS WHOLESALE AND RETAIL
ACTIVITY TAX

Sections:

3.56.010 - Short title.

This chapter shall be known as the "Commercial Cannabis Cultivation and Cannabis Wholesale and Retail Activity Tax Ordinance of the County of Calaveras."

(Ord. No. 3071, § 2, 7-12-2016)

3.56.020 - Definitions.

For purposes of this chapter, the following definitions shall apply:

"Commercial cannabis activity" for purposes of this chapter only includes cultivation, manufacture, processing, donating, delivering, distribution, or sale of commercial cannabis, or the manufacture, processing, donating, delivering, or distribution of state voter approved legal cannabis, medical cannabis, or a medical cannabis product, except as set forth in Section 19319 of the California Business and Professions Code related to qualifying patients and primary caregivers.

"Licensee" or "registrant" means any person who is required to obtain a cultivation registration under county urgency Ordinance No. 3069; or any person required to obtain an administrative use permit under county code Chapter 17.91; or any person who is otherwise required to obtain a permit, registration, certificate or other entitlement under any permanent successor cannabis ordinance adopted by the board of supervisors, or any cannabis ordinance initiated and passed by the voters of Calaveras County and which becomes the exclusive local law governing commercial cannabis in Calaveras County.

"Manufacturing" means the manufacturing, production, processing, or preparation of any part of the cannabis plant, including cola, calyx, pistil, or trichrome, for production of cannabis oils, resins, ointments, edibles of any kind, or other uses, except as set forth in Section 19319 of the California Business and Professions Code related to qualifying patients and primary caregivers.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Proceeds" means gross receipts of any kind, including without limitation, cash payments, payments by credit/debit card, and reimbursements regardless of form, membership dues, the value of in-kind contributions, and anything else of value received or obtained as a result of the commercial cannabis activity.

"Tax administrator" means the county treasurer/tax collector.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.030 - Cannabis activity tax.

- A. The board of supervisors may impose a tax on the privilege of cultivating, manufacturing, processing, donating, selling, delivering or distributing cannabis, or manufacturing, processing, donating, selling, delivering or distributing medical cannabis or a medical cannabis by-product by a licensee legally operating within the county, except as set forth in Section 19319 of the California Business and Professions Code related to qualifying patients and primary caregivers.
- B. Every person engaged in commercial cannabis activity, as defined in this chapter, shall pay a commercial cannabis activity tax in the following sums:

1. For outdoor and mixed light licensees or registrants: Two dollars per square foot of registered or permitted canopy area commencing upon adoption of the voters until the department of food and agriculture has established and implemented a track and trace program under Business and Professions Code 19335 et seq. And thereafter forty-five dollars per pound of dry weight flower and bud and ten dollars per pound of dry weight trim; and
 2. For indoor licensees or registrants: Five dollars per square foot of registered or permitted canopy area commencing upon adoption of the voters until the Department of Food and Agriculture has established and implemented a track and trace program under Business and Professions Code 19335 et seq.; and thereafter seventy dollars per pound of dry weight flower and bud and fifteen dollars per pound of dry weight trim; and
 3. A gross proceeds tax of seven percent on the manufacturing of cultivated cannabis; and a gross proceeds tax of seven percent on retail medicinal or legal cannabis storefronts, collectives, and dispensaries for general governmental purposes upon approval of the voters.
- C. The tax constitutes a debt owed by the person engaged in commercial cannabis activity to the county.
- D. The tax imposed by this section shall be imposed upon any and all commercial cannabis activities regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous.
- E. The tax imposed by this section shall be used for general governmental purposes.
- F. The tax imposed by this section is a tax and not a fee or special assessment.
- G. The tax imposed by this section shall apply in the unincorporated area of the county.
- H. The tax imposed by this section shall be subject to voter approval pursuant to California Constitution, Art. XIII C.
- I. The tax imposed by this section does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the commercial cannabis activities set forth in this section, as otherwise provided by law.
- J. This section shall not be construed as a limitation upon the taxing authority of the county, as provided by law.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.040 - Obligation to pay tax.

All persons engaged in commercial cannabis activity must pay the full tax imposed by this chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this code, except as required by California or federal law. Failure to pay the tax, after demand for payment in full, shall constitute grounds for registration, permit or certification revocation and may result in revocation proceedings and/or be subject to penalties and assessments as the board of supervisors may establish; and the tax collector may use any or all other code enforcement remedies provided in this county code to abate nuisances for non-payment of taxes in a timely manner, including all other remedies provided by law. No provision in this code can lower the tax rate set forth in this chapter or otherwise reduce the amount of taxes paid hereunder unless the provision states that the reduction applies.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.050 - Authorization to adjust rates.

The board of supervisors may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties or interest charges or assessments

for failure to pay the tax in a timely manner, as otherwise allowed by California law. No action by the board of supervisors under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.060 - Payment of tax does not authorize activity.

The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter implies or authorizes that commercial cannabis activity is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of this chapter, Chapter 17, Chapter 8.06 of the county code, and applicable state law. Nothing in this chapter shall be applied or construed as authorizing the sale of cannabis not in conformance with state law.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.070 - Not a sales tax.

The commercial cannabis activity tax provided under the provisions of this chapter is not a sales or use tax and shall not be calculated or assessed as such. The tax shall not be separately identified or otherwise specifically assessed or charged to any qualified patient or primary caregiver, as defined in Section 11362.7 of the Health and Safety Code.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.080 - Amendments and administration of tax.

- A. The cannabis activity tax shall become effective upon adoption by a majority of the voters casting votes at the general election on Tuesday, November 8, 2016. Any amendment to Chapter 3.56 to increase the tax above the rate expressly provided in such section shall not become effective until such amendment is approved by the voters.
- B. The tax collector or designee shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax, including without limitation, formulation and implementation of penalties to be assessed for failure to pay the tax as provided.
- C. In addition to any other method of collection authorized by law, the tax imposed pursuant to this chapter may be collected in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county of Calaveras.
- D. The tax collector or designee shall annually audit the cannabis activity taxes imposed by this chapter to verify that tax revenues have been properly collected and expended in accordance with the law.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.090 - Reports and remittances.

- A. Taxes under this chapter shall be invoiced once per year but due and payable in two installments per calendar. Each person licensed to conduct cannabis activity shall, on or before June 15 and on or before December 15 of each calendar year, make a return to the tax collector. Such return shall reflect sums owed under this chapter and/or show whether or not any proceeds on commercial cannabis activity were received by that person and the total thereof. At the time the return is filed, the

full amount of the commercial cannabis activity tax shall be remitted to the tax collector. Any person may choose to make a return and remit the full amount of the tax collected to the tax collector monthly, but in no case less than as specified above. Returns and payments are due immediately upon cessation of business for any reason.

- B. For the purposes of this section, "on or before" shall be interpreted as: (1) hand delivery; (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service; or (3) fax or email. Delivery to the postal service must be verified by cancellation by the postal service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a United States Post Office closure date, the tax due date shall be the next business day (excluding federal holidays). Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service. Fax or email delivery shall be evidence by the date stamp of delivery.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.100 - Remitting and reporting requirement upon cessation of operations.

- A. A person who intends to terminate its commercial cannabis activity shall notify the planning department and the tax collector in writing of such termination at least thirty days in advance of the date of termination, unless the decision to terminate was made within less than a thirty-day period.
- B. Each person upon cessation of operations for any reason shall, on or before the same day of the next month following the cessation of operations or on the last day of that month if no corresponding day exists, file a return with the tax collector on approved forms of the commercial cannabis proceeds received, the amount of tax owed for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the tax collector. Returns filed and tax remitted and actually received by the tax collector on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by this chapter.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.110 - Penalties for failure to remit tax when due.

- A. Original Delinquency. Any person who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of tax.
- B. Continued Delinquency. Any person who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- C. Fraud. If the tax collector determines that payment of any remittance is fraudulent, a penalty of twenty-five percent of the amount of the tax shall be added in addition to the penalties stated in subsections A and B of this section.
- D. Penalties Merged with Tax. Every penalty imposed and accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.120 - Determination of tax by tax collector upon failure to report and pay tax—Notice and hearing.

- A. If any person fails to report the proceeds from commercial cannabis activity as required by this chapter or remit the tax as required by this chapter, the tax collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. The tax collector shall, based on the facts and information obtained from the planning department, proceed to determine and assess against such person the tax and penalties provided for by this chapter. The tax collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last-known address.
- B. For purposes of determining the liability of any person failing or refusing to file a return, there shall be a rebuttable presumption that liability is the same as in the maximum liability quarter for the previous fiscal year. Additionally, all civil and criminal penalties and remedies provided for in this chapter shall apply.
- C. In the event records are not produced upon request, or such records are not reasonably auditable, tax penalties will be levied upon the commercial cannabis activity for similar properties within the same area during the audit period. Further, and without limitation, any person's operator who does not produce records following written notice as set forth herein shall pay, in addition to any tax penalties due, the sum of one hundred dollars per day for each day the records are not produced.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.130 - Appeal process.

- A. Waiver of Penalties.
 - 1. Any person engaged in cannabis activity governed by this chapter may request a waiver of penalties by submitting a request for waiver in writing to the county administrative officer (CAO) or designee within seven working days after the operator is notified in writing by the tax collector of the penalty assessment.
 - 2. The CAO or designee shall issue a written decision within ten working days after receipt of the request. Upon receipt of the application for waiver, the CAO or designee may, for good cause, waive the penalties in an amount not to exceed five thousand dollars. The amount determined to be due shall be immediately due and payable unless an appeal is taken.
 - 3. Waiver requests of penalties exceeding five thousand dollars may only be waived, for good cause, by the CAO. The CAO shall issue a written decision within ten working days after receipt of application for waiver. The amount determined to be due shall be immediately due and payable unless an appeal is taken.
- B. Appeal of Determination of Tax and Penalties by Tax Collector.
 - 1. Any person engaged in commercial cannabis activity governed by this chapter may, within seven working days after the serving or mailing of the notice of assessment of taxes and penalties, apply in writing, by letter, email or faxed letter to the CAO for a redetermination on the amount assessed. The person must include a completed return at the time the request for redetermination and offer evidence as to why the tax and/or penalties should not be so assessed. If application for a redetermination on the amount assessed is not made within the time prescribed, the tax and penalties, as determined by the tax collector shall become final and conclusive and immediately due and payable.
 - 2. If such application is made, the CAO or designee shall give his or her determination to the person making said application. Written notice of determination on the application shall be provided by certified mail within no less than ten working days of the application. The amount determined to be due shall be payable within fifteen working days unless a written appeal is filed.
- C. Appeal of Decision of the CAO.

1. Any person engaged in commercial cannabis activity aggrieved by any decision of the CAO with respect to the amount of such tax and/or penalties may appeal to the board of supervisors, neutral third parties, designee or designees, or county hearing officer authorized by the board of supervisors by lodging a written notice of appeal with the board clerk within ten working days of the mailing of the determination by the CAO.
2. If an appeal is filed, the board clerk shall schedule a hearing on the appeal within sixty days from the date of receipt of the appeal.
3. Once the board clerk or designee has scheduled the appeal hearing, written notification thereof shall be given by certified mail to the person engaged in commercial cannabis activity.
4. At the hearing, which can be before the board of supervisors, third party designee, or county hearing officer selected by the board, the person engaged in cannabis activity governed by this chapter (appellant) shall have the right to testify, to be represented by counsel, to present witnesses on his or her own behalf, to cross-examine all other witnesses and to present oral and written documents and evidence on the issues. Appellant may refer to documents or testimony given at the hearing held by the CAO or designee, but shall not be allowed to introduce any new documents, testimony or other evidence unless the party proffering the new evidence can show good cause as to why the new evidence was not presented at the hearing before the CAO or designee.
5. Within thirty days of the conclusion of the hearing, the board of supervisors, designee, or county hearing officer shall issue quasi adjudicatory findings, which shall be final and binding.
6. Any amount determined to be due shall be due and payable immediately upon the decision of the board of supervisors or designee. Said determination shall be the final level of administrative appeal. The finding shall also notify appellant of further rights to appeal under the Code of Civil Procedure.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.140 - Duty to keep records—Right of inspection.

- A. It shall be the duty of each person licensed to engage in cannabis activity under this chapter to keep and preserve for a period of seven years all records as may be necessary to determine the amount of such tax as he or she may have been liable to pay to the county, commencing on January 1, 2018.
- B. The tax collector designee, shall have the right at all times reasonable to inspect all books and records of the person licensed to engage in commercial cannabis activity relating to the operation of the commercial cannabis activity, including, but not limited to, the following:
 1. General ledgers or financial statements.
 2. Subsidiary ledgers and records.
 3. Original documents and records.
- C. All records kept outside of the county of Calaveras must either be produced for review at a designated Calaveras County facility or, upon request, at a reasonable location (within twenty miles of the county line) outside of the county of Calaveras at the licensee's expense.
- D. All tax returns and information furnished by any person licensed to conduct commercial cannabis activity pursuant to this chapter shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performances of official duty pursuant to this chapter, or in the course of any proceedings, hearings, and litigation involving the existence or amount of tax liability of such licensee, or with the written consent of the licensee, or an authorized representative. Said documents may be retained in electronic form.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.150 - Refunds.

- A. Whenever the amount of any tax or penalty has been overpaid under this chapter, it may be refunded as provided in subsection (b) of this section; provided a written claim, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax collector within three years of the date of payment. The claim shall be on forms furnished by the tax collector.
- B. A person licensed to engage in commercial cannabis activity may claim a refund or take as credit against taxes collected and remitted any amount overpaid when it is established, in a manner prescribed by the tax collector, that a refund is due.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.160 - Tax deemed debt to the county—Action by county to collect tax.

Any tax required to be paid by any person licensed to engage in commercial cannabis activity under the provisions of this chapter shall be deemed a debt owed by the licensee to the county. Any person registered, permitted, or otherwise licensed to engage in commercial cannabis activity owing money to the county under the provisions of this chapter shall be liable to an action brought in the name of the county for the recovery of such amount. The tax collector shall inform county counsel within thirty calendar days from the time any person licensed has failed to exhaust or has exhausted internal appeals provided by this chapter.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.170 - Violations.

Any violation of the provisions of this chapter shall be punishable as provided by this section, or as required by Penal Code Section 424.

- A. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.
- B. Any operator or other person who fails or refuses to register as required in this chapter, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set forth in subsection (a) of this section.
- C. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim, with intent to defeat or evade the determination of any amount due required to be made by this chapter, is guilty of a misdemeanor and is punishable as set forth in subsection (a) of this section.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.180 - Severance.

If any section, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this chapter, or any amendments thereto.

(Ord. No. 3071, § 2, 7-12-2016)

3.56.190 - Effective date.

The ordinance codified in this chapter shall become effective upon adoption by a majority of the voters casting votes at the general election on Tuesday, November 8, 2016.

(Ord. No. 3071, § 2, 7-12-2016)