

‘Many have lost faith’ as cannabis industry struggles

Taxation among issues which continues to draw complaints

By GARY QUACKENBUSH
For The North Bay Business Journal

Cannabis-related taxes are expected to remain a key issue for the foreseeable future, some industry leaders say, even as one jurisdiction agreed to give the industry some breaks.

According to Scott Toland with UMMA, LLC, a cultivator, level-1 manufacturer and distributor operating in an unincorporated area of Sonoma County near Santa Rosa, “We’re completely inundated with layers upon layers of taxes. It’s like being suffocated and on life support and still finding it harder to breathe. Those in our industry feel deflated and many have lost faith. Profitability is low. Business now is not as good as it was just a year ago, with outdoor operations having declined to their worst level.”

Tiffany Devitt, chief of government and consumer affairs for CannaCraft based in Santa Rosa, said, “Even though Sonoma County supervisors just voted to approve a new cannabis business tax proposal, this action is insufficient to shore up the legal market.”

She said the problem of establishing local taxes early in the history of legalization in 2016, and the subsequent formation of the supply chain, has resulted in a situation where taxes have become compounded.

“The local cultivation tax gets incorporated into the cost of the product and then gets hit with local manufacturing, distribution and retail taxes, and again by state sale and excise taxes,” Devitt said.

“So, at the end of the day, the still-significant local cultivation tax will be retaxed as many as five more times. It’s another example of rearranging deck chairs on the Titanic,” Devitt added.

On Feb. 28, Sonoma County’s Board of Supervisors approved a new cannabis tax rate schedule by a 4 to 1 vote based on where and how cannabis cultivation takes place.

The move comes after months of heavy pressure from cannabis industry representatives who complained



CHRISTOPHER CHUNG / THE PRESS DEMOCRAT

“Small mixed light operators would likely see a tax increase while large mixed cultivators would see a decrease,” Sonoma County Auditor-Controller-Treasurer-Tax Collector Erick Roeser said of recent changes in taxation of the cannabis industry.

that layers of local and state taxes have hampered businesses in California’s legalized market.

Growers will now pay only \$0.75 per square foot for outdoor operations and, \$3 per square foot for mixed-light users (natural and artificial light). However, the tax will increase to \$12.50 per square foot for indoor growers effective July 1, calculated on a gross receipt tax rate of 2.5%, said Erick Roeser, Sonoma County’s auditor, controller, treasurer, and tax collector.

There are 155 growers in the county’s unincorporated areas, Roeser said. Of those, 130 are outdoor growers, 21 have indoor operations and 4 are mixed light cultivators.

“Small mixed light operators would likely see a tax increase while large mixed cultivators would see a decrease,” Roeser added.

Before approving the plan, the board rejected two other options: A 3% rate based on gross value of a grower’s crop, and an extension of a 45% tax rate reduction the board granted to growers last year.

The only no vote on the plan came from Supervisor David Rabbitt.

“I fear a trend toward using a tax base with revenues that can go away. We thought legalizing cannabis would have us rolling in tax dough, but now we see several firms exiting this industry. In my view we moved too fast



Tiffany Devitt

without having enough data or an environmental impact review as things were constantly changing,” Rabbitt said.

He cited, among other factors, slumping prices for cannabis products, the bureaucratic impasse that has led many growers to bypass local permit applications and concerns about the conversion of farmland for cannabis production.

Some growers view the square foot-based plan as a double land tax, without a remedy when a crop fails.

Vince Schloten, of Norcal Growers and Hessel Farms Grange in Sebastopol said, “It is difficult for existing cannabis farmers these days. If our crop is damaged or with mold it is destroyed, and we have no revenue. Under the approved new tax plan we still have to pay property tax as well as the tax on the square footage of our farm plot – meaning we’re being taxed twice on the same land. Why not treat us like the rest of the agriculture community? The square-foot tax is bankrupting us all.”

As Sonoma County is in the midst of a comprehensive study of cannabis regulation many cannabis entrepreneurs believe their concerns and complaints go unheard at the county level.

Shawn Bovee, of Cloverdale

Severance agreements can’t be used to keep employees from talking

By CHERYL SARFATY
The North Bay Business Journal

A federal agency has made it clear that employers cannot force departing employees to keep quiet in exchange for receiving severance pay.

The National Labor Relations Board on Feb. 21 struck down such a requirement as being unlawful in its decision. The case, *McLaren Macomb*, involved a Michigan hospital that terminated 11 employees who had been laid off during the pandemic. As part of the severance agreement, the departing employees would have had to waive their rights to make public comments that could be disparaging to the hospital.

In a statement announcing the decision, the NLRB said: “The agreement broadly prohibited (the employees) from making statements that could disparage or harm the image of the (employer) and further prohibited them from disclosing the terms of the agreement.”

The decision cited a violation of Section 7 of the National Labor Relations Act, which guarantees employees the right to discuss the terms and conditions of their employment without punishment.

Employers have the right to appeal such a decision, according to the NLRB.

“What we’re learning in this decision is that (severance agreements) have to be very narrowly tailored so that they do not interfere with Section 7 rights,” said Lisa Ann Hilario, an employment law specialist at Santa Rosa-based Spaulding McCullough & Tansil.

Hilario said nondispar-

agement and nondisclosure clauses are common in severance agreements because employers need to protect themselves.

“If I’m going to give you money you’re not otherwise entitled to, I don’t want you to turn around and harm my business by telling everyone my product is bad or my service is bad,” Hilario said. “And (employers) generally also don’t want to give a severance if the employee is then going to go and tell all the other employees, ‘Hey, I got \$10,000 out of my employer. Why don’t you go do that, too?’”

The decision reversed a ruling made in a case in 2020 that severance agreements with nondisparagement clauses were voluntary. At the time, the NLRB board operated under a Republican majority. The federal agency’s board and general counsel are appointed by the president and U.S. Senate.

“It’s long been understood by the Board and the courts that employers cannot ask individual employees to choose between receiving benefits and exercising their rights under the National Labor Relations Act,” NLRB Chairman Lauren McFerran said in the statement announcing the ruling. “(The) decision upholds this important principle and restores longstanding precedent.”

Brenda Gilchrist, co-founder and partner at The HR Matrix LLC, a Santa Rosa-based human resources consulting firm, said that “regardless of the legal outcome related to the severance agreements, employers will still have the ability to pursue

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SCOTT TOLAND, with UMMA, LLC, a cultivator, level-1 manufacturer and distributor

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Delivers, LLC., a cannabis nursery operator, said, “Today the industry is going sideways, and there are some like me have all but lost interest in advocating for what’s wrong or what should change within the regulatory and taxing process as I was years ago when helping to draft Cloverdale’s cannabis plan.”

He says malaise has set in among cannabis growers who say regulators and elected officials are not listening to them and have not shown sufficient willingness in the past to support their businesses at a sustainable level.

“If they did, it would be evident if they lowered taxes, fees and eased overly restrictive regulations so those licensed can more effectively compete against the black-market players that don’t have such constraints. I continue to be an advocate for cutting property tax on inventory at the retail business level, and also reject the concept of having to pay tax on a cannabis product before it is sold,” Bovee said.



Journal Special Correspondent Gary Quackenbush worked at the Wall Street Journal and headed communications departments at AT&T, Pacific Bell, and General Cellular Corporation, as well as several Silicon Valley high tech PR agencies in addition to serving as West Coast editor for Telecommunications Magazine, and later writing for the Windsor Times, and the Sonoma County Farm Bureau. Reach him at Gary.Quackenbush@gmail.com

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legal action for defamation or other legally protected matters.”

The National Labor Relations Board is an independent federal agency established in 1935. The NLRB on its website states it “protects employees from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor

CANNABIS INDUSTRY FACTS

- In 2022, legal cannabis sales in California reached \$5.3 billion, down 8.2% from \$5.77 billion in 2021 (the first decline since it became legal). Despite the drop, California still represents roughly 20% of the \$26 billion industry.
- The global cannabis market was \$20.47 billion in 2020 projected to grow from \$28.266 billion in 2021, and to \$197.74 billion in 2028 at a CAGR of 321.04% for the 2021-2028 period.
- In the U.S., sales of legal recreational cannabis are expected to reach an estimated \$25 billion by 2025, with a projected 50 million consumers. Legal marijuana sales are forecast to increase steadily each year.
- By 2024, the recreational cannabis market in California is forecast to reach \$7.2 billion.
- California had the most cannabis cultivation licenses (6,881) of any state in the nation in 2022.
- The median average cost to grow a pound of dried cannabis flower in a warehouse/indoors in the U.S. in 2020 was \$472 dollars. The cheapest cultivation method was outdoor growing, at a median average cost of \$214 dollars.

Sources: Fortune Business Insights, Legalprox, Statista and California Department of Tax & Fee Administration

practice charges each year.”



Cheryl Sarfaty covers tourism, hospitality, health care and employment. She previously worked for a Gannett daily newspaper in New Jersey and NJBIZ, the state’s business journal. Cheryl has freelanced for business journals in Sacramento, Silicon Valley, San Francisco and Lehigh Valley, Pennsylvania. She has a bachelor’s degree in journalism from California State University, Northridge. Reach her at cheryl.sarfaty@busjrn.com or 707-521-4259.