



cda

CANNABIS
DISTRIBUTION
ASSOCIATION



June 30, 2022

Dear Director Maduros,

As organizations representing licensed businesses across the cannabis supply chain, we are writing today regarding implementation of cultivation tax provisions contained in AB 195, and to request timely written clarification from CDTFA that cultivation tax is not applicable to cannabis and cannabis products which did not enter the commercial market prior to July 1, 2022.

With the approval of AB 195 and elimination of state cultivation tax as of July 1, 2022, we anticipate significant confusion among operators regarding whether cultivation tax is applicable to cannabis and cannabis products which are currently held in the inventory of a manufacturer or distributor, and have not yet been transferred to retail.

As written, we are concerned that AB 195 contains provisions which will add to this confusion. Specifically, a non-technical reading of Revenue and Tax Code 34012(a)(2) could be interpreted to suggest that cultivation tax would be due on any cannabis which was transferred from a cultivator to a distributor or manufacturer prior to July 1, 2022.

34012(a)(2) Notwithstanding paragraph (1), the cultivation tax imposed by this subdivision shall not apply to harvested cannabis that enters the commercial market and no tax collection is required pursuant to subdivision (h) if any of the following apply:

(A) The harvested cannabis was first sold or transferred by a cultivator to a manufacturer on or after July 1, 2022.

(B) The harvested cannabis was first sold or transferred by a cultivator to a distributor on or after July 1, 2022.

(C) The harvested cannabis, or cannabis products containing that harvested cannabis, was first sold or transferred by a microbusiness to a distributor or manufacturer that arranges for laboratory testing pursuant to subdivision (a) of Section 26110 of the Business and Professions Code on or after July 1, 2022.

From a technical perspective, however, we understand that California state cannabis tax law has always been clear that cultivation tax is only imposed upon, and only is due for, cannabis which is “harvested and enters the commercial market.” Revenue and Taxation Code 34010 clearly defines “entry into the commercial market” to apply only to cannabis which has completed quality assurance review and testing.

“Enters the commercial market” means cannabis or cannabis products, except for immature cannabis plants and seeds, that complete and comply with a quality assurance review and testing, as described in Section 26110 of the Business and Professions Code.

AB 195 retains this provision, while also sunseting the cultivation tax as a whole beginning on July 1, 2022:

34012. (a) (1) Effective January 1, 2018, and before July 1, 2022, there is hereby imposed a cultivation tax on all harvested cannabis that enters the commercial market upon all cultivators. The tax shall be due after the cannabis is harvested and enters the commercial market.

Read in conjunction, these provisions clearly establish that cannabis cultivation tax should only be due on cannabis which has completed quality assurance review and testing (“entered the commercial market”) prior to July 1, 2022.

While the addition of Revenue and Taxation Code 34012(a)(2) in AB 195 attempts to clarify where cannabis cultivation tax is not due, we do not read this section as overriding other provisions that establish where cultivation tax is due under Revenue and Taxation Code 34012(a)(1): specifically, upon entry into the commercial market before July 1, 2022.

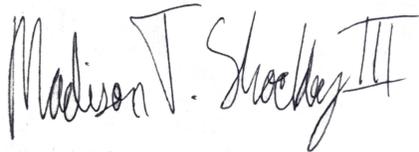
Many cannabis operators are already raising questions on the applicability of cultivation tax following July 1, and we anticipate that these questions will proliferate further once AB 195 takes formal effect.

For this reason, we request that CDTFA prioritize timely written guidance to clarify that cultivation tax is not due on cannabis and cannabis products which had not completed quality assurance review and testing (entered the commercial market) as of July 1, 2022.

Thank you for your consideration,



Genine Coleman
Executive Director
Origins Council



Madison T. Shockley III
President
Cannabis Equity Policy Council



Kenny Morrison
President
California Cannabis Manufacturers Association



Lauren Coté
Co-Chair
Cannabis Distribution Association



Diana Gamzon
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Joanna Cedar
Board Member & Policy Chair
Sonoma County Growers Alliance



Natalynne DeLapp
Executive Director
Humboldt County Growers Alliance



Oliver Bates
President
Big Sur Farmers Association



Michael Katz
Executive Director
Mendocino Cannabis Alliance

A handwritten signature in black ink, appearing to read 'Adrien Keys', with a long horizontal flourish extending to the right.

Adrien Keys
President
Trinity County Agricultural Alliance