



June 29th, 2022

The Honorable Gavin Newsom  
Governor, State of California  
State Capitol, First Floor  
Sacramento, CA 95814

The Honorable Toni Atkins  
Senate Pro Tempore  
State Capitol, Room 205  
Sacramento, CA 95814

The Honorable Anthony Rendon  
Speaker of the Assembly  
State Capitol, Room 219  
Sacramento, CA 95814

**Re: AB/SB 195 - SUPPORT**

Dear Governor Newsom, Speaker Rendon, and Pro Tem Atkins,

On behalf of Origins Council, representing nearly 900 licensed small and independent cannabis businesses in six legacy producing counties throughout California, we are writing today in support of AB/SB 195, the proposed cannabis trailer bill, and to offer technical comments on specific provisions within the proposal.

Over the past year, statewide oversupply of cannabis has led to plummeting wholesale prices which have severely impacted small, legacy cannabis farmers who lack access to capital and have limited access to the marketplace. This immediate-term market crisis is occurring at the same time that small producers face a confluence of challenging tax, market, regulatory, and land use policies which have led many farmers who entered the legal market with high expectations to drop out of the licensed market altogether. This collapse, which is both currently underway and accelerating, affects not just legacy producers and their livelihoods, but also deeply impacts our historic cannabis producing communities whose economic foundation has rested on cannabis for many decades.

While the tax policy contained in AB/SB 195 represents a significant step in the right direction, we also must emphasize that tax reform alone will not fundamentally alter the cascading effect the market crisis is having upon our small farmers and the economies of our rural legacy producing communities. The reality is that we are at the precipice of losing this invaluable agricultural legacy in California.

Below, we offer comments on provisions included in AB/SB 195, as well as necessary next steps forward for legacy producing communities.

### **Proposed Cannabis Tax Reform Provisions**

In the midst of this crisis, the proposed elimination of the \$161/pound weight-based cultivation tax will have a material and positive impact for cannabis farmers who, in many cases, are paying an effective wholesale tax rate of 50% on pounds of cannabis which are selling for \$200 or less. In addition to providing short-term relief, we appreciate the decision to eliminate the cultivation tax permanently, rather than on a short-term basis. As we have communicated in previous letters and committee testimony, there are a number of reasons why a farm-based tax on an agricultural product is both unwise and inequitable, and the proposed elimination of the cultivation tax would result in a considerably fairer and more streamlined tax framework for small producers.

In addition to the elimination of the cultivation tax, we also support other amendments to the trailer bill's tax policy following the Governor's initial May proposal, including removing discretion for the excise tax to increase above 15% before 2025, removing the automatic excise tax increase to 19% in 2025, providing a 20% vendor compensation tax rebate for social equity retailers, and establishing a \$10,000 tax credit for social equity operators. In conjunction with the elimination of the cultivation tax, these amendments establish a tax reform package which is broadly beneficial, and which includes specific benefits for social equity operators who have been impacted by the War on Drugs.

### **Applicability of Cultivation Tax Following July 1, 2022**

Additionally, we would like to comment on technical provisions related to the applicability of the cultivation tax following July 1, 2022. If AB/SB 195 is approved and cultivation tax is eliminated as of July 1, 2022, we anticipate significant confusion regarding whether cultivation tax is applicable to cannabis products which have not yet been transferred to retail.

As written, we are concerned that AB/SB 195 will add to, rather than clarify, this confusion. Specifically, a non-technical reading of Revenue and Tax Code 34012(a)(2) appears to suggest that cultivation tax is due on cannabis which was transferred from a cultivator to a distributor 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.*

On a more technical reading, however, it is clear that this section - as well as the preceding section, R+T 34012(a)(1) - imposes a cultivation tax exclusively on cannabis that is harvested and “enters the commercial market” prior to 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.*

In turn, R+T 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.*

Considering the likelihood for substantial confusion in the supply chain around these provisions, we suggest that, if AB/SB 195 is signed into law, CDTFA provide written guidance by July 1 that clarifies that cultivation tax is not due to the state on product which did not complete quality assurance and testing prior to July 1, as this product did not “enter the commercial market” prior to the elimination of the cultivation tax.

**Steps Forward for Legacy Cannabis Producers**

In order for small and craft producers to survive within a market increasingly characterized by commodity-scale production, statewide policies need to offer these producers diversified pathways to market. A mature and robust California cannabis market will include direct access to the full spectrum of products that consumers demand, including the differentiated craft products for which our legacy, small-batch producers are globally renowned.

Just as California’s artisanal wine producers have advanced our state’s global reputation for craft agricultural products, so too can our small-batch cannabis producers help to ensure that California cannabis is synonymous with excellence.

We look forward to working with the Legislature and Governor’s Administration to advance policy that enables California’s craft cannabis producers not only to survive, but to lead in establishing a global market for craft cannabis.

Thank you for your consideration,



Genine Coleman  
Executive Director  
Origins Council



Natalynne DeLapp  
Executive Director  
Humboldt County Growers Alliance



Oliver Bates  
President  
Big Sur Farmers Association



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Joanna Cedar  
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