

**BEFORE THE
COUNTY OF SONOMA BOARD OF SUPERVISORS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

FY17-18 CBT APPEAL, DELROY ANDERSON,

Appellant.

Agency Case No. VCM17-0549/52

OAH No. 2021120879

PROPOSED DECISION

Michelle Dylan, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on March 17, 2022, by videoconference and telephone.

Deputy County Counsel Kristin Horrell represented respondent County of Sonoma.

There was no appearance by, or on behalf of, appellant Delroy Anderson.

The record was closed and the matter was submitted for decision on March 17, 2022.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Sonoma County voters approved Measure A to impose a cannabis business tax in March 2017. Measure A is codified in Chapter 35 of the Sonoma County Code.

2. Delroy Anderson (appellant) and Sepehr Homayoon appealed the determination of the Sonoma County Auditor-Controller-Treasurer-Tax Collector (Tax Collector) upholding taxes, penalties and interest in the amount of \$1,458,332.76 against them, to the Sonoma County Board of Supervisors (the Board) pursuant to Section 35-28 of the Sonoma County's Cannabis Business Tax Ordinance (Ordinance.) The Board appointed the Office of Administrative Hearings as referee for this appeal hearing.

3. Homayoon reached a settlement with the County of Sonoma (County) for \$210,000 and was dismissed from this action.

4. Appellant was properly served on January 31, 2022, with notice of this hearing as set on March 17, 2022, at 9:00 a.m., by videoconference and telephone. No appearance was made by or on behalf of appellant, and the hearing proceeded as a default hearing. The County permit inspector, an assistant tax collector, and the tax collector testified at hearing. The factual findings below are based on the testimony of those witnesses and the documentary evidence.

Evidence Presented

5. Appellant was the operator of a cannabis operation at the properties located in the unincorporated area of the County at 1645 and 1681 S. Wright Road, Santa Rosa, California, 95407 (APN 035-171-042-000 and 035-171-039-000) (the properties.) The properties are owned by Homayoon.

6. Cannabis operation at the properties was ongoing from at least July 1, 2017, through December 31, 2017.

7. On September 5, 2017, inspectors from Permit Sonoma's Code Enforcement Division (Permit Sonoma) conducted a site visit of the properties in response to a complaint of cannabis cultivation. The inspectors observed greenhouses that contained cannabis and evidence of lights and power to the greenhouses. Appellant also admitted to inspectors that the greenhouses were in use year-round. These factors indicated mixed light cultivation.¹

8. In the Fall of 2017, appellant submitted a Penalty Relief Application (PRA) to the County, stating that there was 35,000 square feet of outdoor cannabis cultivation at 1645 S. Wright Road. On December 29, 2017, appellant submitted two more PRAs to Permit Sonoma: one for 202,382 square feet at 1645 S. Wright Road and one for 155,839 square feet at 1681 S. Wright Road.

¹ According to Section 34-4 of the Ordinance, "Mixed light" means cultivation of cannabis in a greenhouse or other similar structure using natural light, light deprivation, and/or any combination of natural and supplemental artificial lighting.

9. During a site inspection of the properties on February 16, 2018, an inspector from Permit Sonoma observed that there was no longer cultivation on the properties and that all cannabis had been removed.

10. On March 21, 2018, in accordance with normal procedures, an inspector from Permit Sonoma calculated the square footage of the cannabis operations on the properties based on observations during the September 5, 2017 site visit and aerial footage of the properties taken in October of 2017. The square footage of the cannabis operations at the properties was verified by the inspector for a total of 309,995 square feet of mixed light cannabis operations.

11. The Tax Collector's Office taxes cannabis cultivation based on the square footage of the operation and the cannabis permit type, either outdoor cultivation, indoor cultivation, or mixed light cultivation. The Tax Collector's Office relies on Permit Sonoma's verification of the square footage and type of cannabis operation in determining the cannabis business tax.

12. The Tax Collector's Office imposed cannabis business taxes pursuant to the Ordinance, based on the 309,995 verified square footage of the cannabis operations at the mixed light rate for this square footage, which for Fiscal Year 2017-2018 was an annual rate of \$6.50 per square foot, for an amount of \$503,741.88 for Quarter 1 (July through September 2017) and \$503,741.88 for Quarter 2 (October through December 2017) of Fiscal Year 2017-2018.

13. The tax liability was assessed against appellant and Homayoon. Taxes are due for mixed light operations on or before the last day of the month following the close of each fiscal year quarter.

14. The taxes were not paid, and penalties and interest were imposed on the taxes due pursuant to the Ordinance. If taxes are delinquent, a 10 percent penalty is assessed after the first day due, and another 10 percent penalty is assessed after 30 days. The amount due accrues interest at 1.5 percent per month until it is paid in full. As of April 10, 2019, taxes for Quarter 1 were assessed at \$503,741.89, with two 10-percent penalties imposed, each amounting to \$50,374.19, and interest of \$136,010.31, for a total of \$740,500.58. As of the same date, taxes for Quarter 2 were assessed at \$503,741.389, with two 10-percent penalties imposed, each amounting to \$50,374.19, and interest of \$113,341.92 for a total of \$717,832.18. The total tax liability, including penalties and interest, for Quarter 1 and Quarter 2 amounted to \$1,458,332.76.

15. On April 11, 2019, Notices of Assessment for the imposition of cannabis business taxes were mailed to appellant and Homayoon, who both timely appealed the taxes due and requested an appeal hearing pursuant to Section 35-27 of the Ordinance.

16. On May 15, 2019, the Tax Collector heard one tax appeal for both appellant and Homayoon. Appellant and Homayoon had the same representative at the hearing.

17. Appellant requested that the tax for the period of July 1, 2017, through June 30, 2018, be reduced as he asserted that he cultivated much less than reported per the Penalty Relief Application, and that the operation type should be outdoor, not mixed light.

18. The Tax Collector, by a preponderance of the evidence, denied the appeal for a reduction in taxes assessed and upheld the taxes due for both appellant and Homayoon.

19. The Tax Collector's Findings of Fact and Determination found that appellant did not dispute cultivating cannabis during the relevant time period, and Permit Sonoma verified the size and operation type as 309,995 square feet of mixed light operation. Therefore, appellant did not qualify for a reduction of tax under the Ordinance, and he had a duty to remit the cannabis business tax pursuant to the Ordinance. The Tax Collector found that appellant had the burden of proving the Tax Collector's determination was incorrect and the burden to establish the correct tax liability, and since no documentary evidence was introduced by appellant to support a different square footage amount or a different type of cannabis being grown to support a different tax rate, that burden was not met.

20. Appellant failed to appear at the hearing held on March 17, 2022, or otherwise present any other admissible evidence.

LEGAL CONCLUSIONS

1. The County has the burden of proving by a preponderance of the evidence that the determination of the Tax Collector in upholding taxes of \$1,458,332.76 against appellant was correct. (Sonoma County Rules and Procedures for Administrative Hearings (Rules and Procedures) § 13, subd. (d); Ordinance, § 35-32.) The County has the initial burden of introducing evidence to establish the factual basis for its decision, that its actions were taken as part of staff's regular duties, and that they were following lawful procedures. (Rules and Procedures § 13, subd. (e)(i).)

Appellant has the burden of introducing sufficient evidence to demonstrate why the County's decision or action did not comply with applicable law or was unsupported by the relevant facts. (Rules and Procedures, § 13, subd. (e)(ii).)

2. Sonoma County voters approved Measure A to impose a cannabis business tax in March 2017. Measure A is codified in Chapter 35 of the Sonoma County Code.

3. Under Section 35-4 of the Ordinance: "Commercial cannabis business means any commercial cannabis business activity relating to cannabis, including but not limited to cultivation, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling . . . of cannabis and any ancillary products and accessories in the unincorporated area of the county, whether or not carried on for gain or profit."

4. Under Section 35-4 of the Ordinance, a person is deemed to be "engaged in business" within the County if they commence, conduct, operate, manage or carry on a cannabis business, "whether operating from a fixed location in the unincorporated area of the county or coming into the unincorporated area of the county from an outside location to engage in such activities." Appellant was "engaged in business" because he carried on the cannabis operation at the properties, which was in the unincorporated area of the County. Appellant did not dispute cultivating cannabis during the relevant time period at the tax appeal hearing before the Tax Collector.

5. Section 35-5 of the Ordinance provides that: "Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the county shall pay an annual commercial cannabis business tax." Since appellant was "engaged

in business” in commercial cannabis cultivation, he is required to pay an annual cannabis business tax.

6. According to Section 34-4 of the Ordinance, “‘Mixed light’ means cultivation of cannabis in a greenhouse or other similar structure using natural light, light deprivation, and/or any combination of natural and supplemental artificial lighting. . . ‘Outdoor’ means cultivation using no artificial lighting conducted in the ground or in containers.” The cannabis operations at the properties were verified as mixed light in accordance with Permit Sonoma’s standard practices and procedures based on the evidence of electricity to the greenhouses and the fact that they were in use year-round. Appellant failed to provide sufficient evidence that the cannabis operations at the properties were outdoor at the tax appeal hearing before the Tax Collector.

7. “‘Cannabis cultivation area’ means the total aggregate area(s) of cannabis cultivation on a single premise as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, as determined by the review authority.” (Ordinance, § 35-4.) Permit Sonoma verified the square footage of the property in accordance with its standard practices and procedures. Appellant failed to provide sufficient evidence that the square footage was verified incorrectly at the tax appeal hearing before the Tax Collector.

8. The commercial cannabis business tax on commercial cannabis cultivation is to be imposed on a square footage basis, and it is set at certain rates

depending on permit type. A small or medium mixed light operation² was taxed at \$6.50 in Fiscal Year 2017-2018. (Ordinance, § 35-5 (a)(4).) The Tax Collector's Office was following the provisions of the Ordinance when it imposed the total amount of cannabis business taxes for Quarter 1 and Quarter 2 of Fiscal Year 2017-2018 against appellant.

9. Section 35-6 of the Ordinance provides that for persons owing a commercial cannabis business tax other than on outdoor cultivation, the business tax "shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments" on or before the last day of the month following the close of each fiscal year quarter. The tax due shall be no less than the quarterly installment due. The taxes assessed against appellant and Homayoon were due quarterly since the cannabis operations at the properties were mixed light. Appellant and Homayoon failed to pay the cannabis business taxes in compliance with the due dates set forth in the Ordinance.

10. Section 35-11 of the Ordinance mandates that: "(a) Any person who fails or refuses to pay any commercial cannabis business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows: 1. A penalty equal to ten percent (10%) of the amount of the tax; and 2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to ten percent (10%) of the amount of the tax. 3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax until the balance is paid in full." The Tax Collector's Office was following the provisions of the

² More than 5000 square feet.

Ordinance when it imposed penalties and interest on the taxes when appellant failed to pay the cannabis business taxes required by the Ordinance's due dates.

Analysis

11. Permit Sonoma verified the square footage and type of cannabis operation at the properties in accordance with normal practices and procedures, and the Tax Collector's Office complied with the Ordinance when they assessed taxes, penalties and interest against appellant. Appellant failed to provide any evidence to support a different calculation of square footage, or a different tax rate based on the type of cannabis operation at the tax appeal hearing before the Tax Collector. Appellant failed to appear at this hearing. Thus, the Tax Collector's determination was proper, and appellant is liable for the total amount of the tax liability, plus penalties and interest, which is \$1,458,332.76. A settlement was reached with Homayoon for \$210,000, and the Tax Collector's Office staff has requested that the amount due from appellant be reduced by the amount of the settlement, for a total due of \$1,248,332.76.

ORDER

Appellant Delroy Anderson is ordered to pay taxes, penalties and interest in the amount of \$1,248,332.76 to the County of Sonoma. This amount shall be immediately due and payable upon service of the Decision upon appellant.

DATE: 04/13/2022

Michelle Dylan

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings