

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

In the Matter of the Fiscal Year 2018–2019

Cannabis Business Tax Appeal by:

NATASHA KHALLOUF, Appellant.

OAH No. 2022100577

REPORT AND RECOMMENDATION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 7, 2022, by videoconference.

Deputy County Counsel Kristin Horrell represented Sonoma County Auditor, Controller, Treasurer, and Tax Collector Erick Roeser.

Cannabis business operator Natasha Khallouf represented herself.

The matter was submitted for decision on December 7, 2022.

FACTUAL FINDINGS

1. Agricola Enterprises, LLC, owns real property in Sonoma County where it cultivates cannabis outdoors. Natasha Khallouf is the operator of Agricola Enterprises.

2. On January 31, 2019, Agricola Enterprises filed a cannabis business tax return with Sonoma County for the fiscal year beginning July 1, 2018, and ending June 30, 2019. Agricola Enterprises calculated and reported its total cannabis business tax due for the 2018–2019 fiscal year as \$12,979.20.

3. With its return, Agricola Enterprises paid \$6,489.60, half its total tax for the 2018–2019 fiscal year. The other half of Agricola Enterprises’s 2018–2019 fiscal year cannabis business tax was due by April 30, 2019.

4. Agricola Enterprises did not pay any portion of this remaining tax until June 2019, and did not complete full payment of its 2018–2019 fiscal year cannabis business tax until November 2019.

5. By late November 2019, Agricola Enterprises had paid all its cannabis business tax for the 2018–2019 fiscal year, and had paid all interest calculated on its late tax payments by staff members in the office of the Sonoma County Auditor, Controller, Treasurer, and Tax Collector. These staff members calculated that Agricola Enterprises also owed Sonoma County late payment penalties totaling \$990.26.

6. On November 27, 2019, Khallouf appealed these late payment penalties. She did not contend that staff members had calculated the penalties incorrectly. Rather, she sought a penalty waiver for Agricola Enterprises, on the ground that Agricola Enterprises had experienced financial hardship during the 2018–2019 fiscal year because of significant changes Sonoma County had made in November 2018 to the County land use regulations governing Agricola Enterprises’s cannabis cultivation business.

7. Assistant Auditor, Controller, Treasurer, and Tax Collector Brooke Koop considered Khallouf’s appeal on January 28, 2020. Koop determined that any financial

hardship Agricola Enterprises had experienced during the 2018–2019 fiscal year was not a basis on which the Sonoma County Cannabis Business Tax Ordinance (Sonoma County Code, Chapter 35) permits the Auditor, Controller, Treasurer, and Tax Collector to waive penalties for late payment of cannabis business tax.

8. Agricola Enterprises paid the \$990.26 late payment penalty, but sought further review of Koop’s determination by the Board of Supervisors. The Board of Supervisors referred the appeal to the Office of Administrative Hearings for hearing.

9. At the hearing, Khallouf explained in greater detail the grounds for penalty waiver that she had summarized in her November 2019 appeal.

a. The real property where Agricola Enterprises cultivates cannabis is more than five but less than ten acres in area. When Agricola Enterprises acquired this real property and obtained its County permit to cultivate cannabis there, the minimum size for a cannabis cultivation operation was five acres.

b. In fall 2018, the Board of Supervisors amended the County’s land use regulations regarding cannabis cultivation. The amendment increased the minimum size for cannabis cultivation operations from five acres to ten acres. It allowed continuation of cannabis cultivation operations on smaller parcels that had received County permits before the change, but required conditional use permits for those cultivation operations.

c. This change in zoning regulation resulted in significant costs for Agricola Enterprises, to assemble and present to the County the information necessary to obtain a conditional use permit.

10. In addition to Khallouf, two other witnesses (Lindsey Renner and Ramon Garcia) testified about financial challenges since 2018 for businesses in Northern California who wish to cultivate, manufacture, and distribute cannabis lawfully. Together, Renner, Garcia, and Khallouf explained credibly and convincingly that financial circumstances for such businesses have been difficult and volatile for several years, and that the substantial tax burden that state and local government agencies have placed on cannabis businesses is restraining rather than promoting development of a lawful, regulated cannabis industry in the region.

11. Khallouf stated as well that she had experienced financial hardship in 2018 and 2019 because of a family member's significant health challenges. She had not included this ground in her written appeal because she considered it private, but had reconsidered its importance between her November 2019 appeal and the December 2022 hearing. Although Khallouf's testimony about this hardship is credible, no evidence addressed in detail how the family member's health problems impaired Agricola Enterprises's ability to pay its 2018–2019 fiscal year cannabis business tax on time between April and November 2019.

12. Accountant-Auditor II Komal Gill, a staff member in the office of the Sonoma County Auditor, Controller, Treasurer, and Tax Collector, testified regarding administration of the Cannabis Business Tax Ordinance. She noted that the ordinance includes a provision permitting the Auditor, Controller, Treasurer, and Tax Collector to waive penalties for late payment of cannabis business tax if the taxpayer's failure to pay on time was due to circumstances beyond the taxpayer's control. As examples of such circumstances, Gill mentioned death or serious illness. She testified credibly that the Auditor, Controller, Treasurer, and Tax Collector and his staff members have never

considered financial hardship as a circumstance beyond a taxpayer's control that would qualify the taxpayer for relief from a late payment penalty.

LEGAL CONCLUSIONS

1. The Board of Supervisors enacted the Sonoma County Cannabis Business Tax Ordinance in 2016, and has amended it several times. At all material times, the Cannabis Business Tax Ordinance required cannabis cultivators to pay an annual cannabis business tax. (Sonoma County Code, § 35-5.) The Cannabis Business Tax Ordinance permitted outdoor cannabis cultivators to pay in two installments, on dates the Auditor, Controller, Treasurer, and Tax Collector established for each fiscal year. (*Id.*, § 35-6, subd. (a)(1).) The matters stated in Findings 1 through 3 establish that cannabis business tax payments by Agricola Enterprises to the County of Sonoma were due on January 31, 2019, and April 30, 2019.

2. The Cannabis Business Tax Ordinance specifies penalties for late payment. Specifically, a penalty of 10 percent of the outstanding principal amount of tax becomes due if the taxpayer does not pay the tax on or before its due date, and an additional penalty of 10 percent of the outstanding principal amount of tax becomes due if the tax remains delinquent one month after its due date. (Sonoma County Code, § 35-11, subds. (a)(1), (a)(2).)

3. The Cannabis Business Tax Ordinance authorizes the Auditor, Controller, Treasurer, and Tax Collector to waive the late payment penalties described in Legal Conclusion 2 if the person owing tax:

provides evidence satisfactory to the treasurer-tax collector
that the failure to pay timely was due to circumstances

beyond the control of the person and occurred
notwithstanding the exercise of ordinary care and the
absence of willful neglect.

(Sonoma County Code, § 35-12.)¹ The Auditor, Controller, Treasurer, and Tax Collector may grant such a waiver only once in any 24-month period. (*Id.*)

4. If a taxpayer overpays cannabis business tax or related interest or penalties, the Cannabis Business Tax Ordinance entitles the taxpayer to a refund. (Sonoma County Code, § 35-14.)

5. The matters stated in Findings 4 and 5 and in Legal Conclusions 2, 3, and 4 establish that unless Agricola Enterprises deserves a penalty waiver under Sonoma County Code section 35-12, Agricola Enterprises correctly paid the County of Sonoma \$990.26 as a total late payment penalty for the 2018–2019 fiscal year. If Agricola Enterprises deserves a penalty waiver under Sonoma County Code section 35-12, the County of Sonoma owes Agricola Enterprises a \$990.26 refund. Khallouf bears the burden of proving, by a preponderance of evidence, that Agricola Enterprises qualifies for a late payment penalty waiver.

6. The matters summarized in Findings 9 and 10 establish that Agricola Enterprises operated in a difficult business environment during the 2018–2019 fiscal year, and that decisions by Sonoma County added to that difficulty. The matters stated

¹ The Board of Supervisors amended the Cannabis Business Tax Ordinance in 2022 to permit waivers of interest on late payments as well as waivers of penalty. The amendment retained the limit on waivers to one every 24 months.

in Finding 11 describe financial and emotional hardships during that same period for Khallouf. Nevertheless, taken together these matters do not establish that circumstances beyond its control made Agricola Enterprises unable to make timely payment of its second cannabis business tax installment for the 2018–2019 fiscal year. On this record, the Auditor, Controller, Treasurer, and Tax Collector did not err in determining that Sonoma County Code section 35-12 does not authorize the Auditor, Controller, Treasurer, and Tax Collector to waive late payment penalties.

RECOMMENDATION

The appeal by Natasha Khallouf of the late payment penalty totaling \$990.26 due from Agricola Enterprises, LLC, to the County of Sonoma because of late payment of cannabis business tax for the 2018–2019 fiscal year should be denied.

DATE: 12/13/2022

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings