

**BOROUGH OF SUSSEX
COUNTY OF SUSSEX
ORDINANCE NO. 2023-32**

AN ORDINANCE TO AMEND SECTION CHAPTER 27, ENTITLED “CANNABIS TRANSFER TAX” OF THE CODE OF THE BOROUGH OF SUSSEX, COUNTY OF SUSSEX, STATE OF NEW JERSEY

BE IT RESOLVED by the Borough Council of the Borough of Sussex in the County of Sussex, as follows:

SECTION 1. Chapter 27, entitled “Cannabis Transfer Tax” of the Code of the Borough of Sussex is hereby deleted and replaced with the following:

§ 27-1. Purpose.

It is the purpose of this chapter to impose a transfer tax and user tax as permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16, *N.J.S.A. 24:6I-31 et seq.*) which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon such property/facility.

§ 27-2. Definitions.

"Cannabis" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis cultivator" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis establishment" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis items" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis retailer" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis wholesaler" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Consumer" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Premises" means the same as that term is defined in N.J.S.A. 24:6I-33.

"Cannabis manufacturer" means the same as that term is defined in N.J.S.A. 24:6I-33.

§ 27-3. Imposition, Collection of Tax.

a. Transfer tax.

(1) A transfer tax is imposed on receipts from each sale of:

- (a) cannabis by a cannabis cultivator to another cannabis cultivator;
- (b) cannabis items from one cannabis establishment to another cannabis establishment;
- (c) cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; and/or
- (d) any combination thereof.

(2) The following rates apply to the transfer tax:

- (a) 2% of the receipts from each sale by a cannabis cultivator;
- (b) 2% of the receipts from each sale by a cannabis manufacturer;
- (c) 1% of the receipts from each sale by a cannabis wholesaler; and
- (d) 2% of the receipts from each sale by a cannabis retailer.

b. User tax. There is hereby established in the Borough of Sussex a user tax, at the equivalent transfer tax rates, on any concurrent license holder, as permitted by Section 33 of P.L. 2021, c. 16 (N.J.S.A. 24:6I-46), operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed, pursuant to § 27-3a, from the license holder's establishment that is located in the Borough of Sussex to any of the other license holder's establishments, whether located in the Borough or another municipality.

c. Collection of tax by cannabis establishments.

- (1) The transfer tax or user tax shall be collected or paid and remitted to the Borough of Sussex by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item or from the consumer at the point of sale, on behalf of the Borough by the cannabis retailer selling the cannabis item to that consumer. The transfer tax or user tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable, or equivalent value of the transfer, for the cannabis or cannabis item.
- (2) Every cannabis establishment required to collect a transfer tax or user tax shall be personally liable for the transfer tax or user tax imposed, collected or required to be collected. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment or the consumer as if the transfer tax or user tax were a part of the sale and payable at the same time, or with respect to nonpayment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax were a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the Chief Financial Officer of the Borough shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.
- (3) No cannabis establishment required to collect a transfer tax or user tax shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer, or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.

d. Remittance of tax revenue; enforcement; record keeping; audits; appeals.

- (1) All revenues collected from a transfer tax or user shall be remitted to the Chief Financial Officer of the Borough of Sussex. The Chief Financial Officer shall collect and administer any transfer tax or user tax, and the Borough shall enforce the payment of delinquent taxes or transfer fees in the same manner as provided for municipal real property taxes.
- (2) In the event that the transfer tax or user tax is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year.
- (3) The Borough shall file in the office of its Tax Collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.
- (4) The Chief Financial Officer is charged with the administration and enforcement of the provisions of this section, and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this section, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this section. Should a cannabis establishment fail or refuse to provide adequate information to the Chief Financial Officer to determine the amount of tax due, the

Chief Financial Officer may use information provided to the Chief Financial Officer from other sources (e.g., the Commission or Department of Treasury) to determine the amount of tax liability.

- (5) Taxpayers liable for the transfer or user tax are required to keep such records as will enable the filing of true and accurate returns. Such records shall be preserved for a period of not less than three years from the filing date or due date, whichever is later, to enable the Chief Financial Officer or his/her designated agent to verify the correctness of the declarations or returns filed. If records are not available in the Borough to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Chief Financial Officer either by producing them at a location in the municipality or by paying for the expenses incurred by the Chief Financial Officer or his/her agent in traveling to the place where the records are regularly kept.
- (6) All cannabis establishments operating in the municipality are required to file a copy of their New Jersey transfer tax return with the Chief Financial Officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this section. Returns shall be filed and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A taxpayer who has overpaid the transfer tax, or who believes it is not liable for the tax, may file a written request on an amended tax return with the Chief Financial Officer for a refund or a credit of the tax. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the Chief Financial Officer within two years of the date of the payment.
- (7) The Chief Financial Officer may initiate an audit by means of an audit notice. If, as a result of an examination conducted by the Chief Financial Officer, a return has not been filed by a taxpayer or a return is found to be incorrect and transfer or user taxes are owed, the Chief Financial Officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.
- (8) Upon proposing an assessment, the Chief Financial Officer shall send the taxpayer an interim notice by certified mail, return receipt requested, which advises the taxpayer of additional taxes that are due. Should the taxpayer wish to dispute the assessment administratively by requesting a hearing with the Chief Financial Officer, it must do so within 30 days of the date of such interim notice. If, after the Chief Financial Officer sends an interim notice, a taxpayer fails to timely request a hearing with the Chief Financial Officer or requests a hearing and after conducting a hearing, the Chief Financial Officer determines that the taxes are due, the Chief Financial Officer shall send the taxpayer by certified mail, return receipt requested, a final notice. Should the taxpayer wish to dispute the assessment set forth in the final notice, it must initiate an appeal in the New Jersey Tax Court within 90 days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder.
- (9) Any taxpayer receiving an interim notice from the Chief Financial Officer may within 30 days after the date of an interim notice, request a hearing with the Chief Financial Officer. Any taxpayer failing to request a Chief Financial Officer's hearing in a timely manner waives the right to administratively contest any element of the assessment. The Chief Financial Officer shall accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with this section.
- (10) Any aggrieved taxpayer may, within 90 days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder, or publication of any

rule, regulation or policy of the Chief Financial Officer, appeal to the Tax Court pursuant to the jurisdiction granted by N.J.S.A. 2B:13-2a(3) to review actions or regulations of municipal officials by filing a complaint in accordance with the New Jersey Court Rule 8:3-1. The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a final decision of the Chief Financial Officer with respect to a determination of liability for the tax imposed by this section.

e. This Chapter shall be interpreted and administered in accordance with N.J.S.A. 40:48I-1, as the same may be amended, revised and/or supplemented from time to time.

SECTION 2. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4. This Ordinance shall take effect after publication and passage according to law.

Attest:

Antoinette Smith, Borough Clerk

Edward Meyer, Mayor

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance 2023-32 was introduced at a regular meeting of the Mayor and Council of the Borough of Sussex, Sussex County, New Jersey, held on November 21, 2023 and passed on first reading, and that such Ordinance was further considered for final passage and adoption at the regular meeting of the Mayor and Council to be held on December 5, 2023 at Borough Hall, 2 Main Street, in the Borough of Sussex at 7:00 p.m. and via the internet, and after all persons present were given the opportunity to be heard concerning the same, it was finally passed and adopted and will be in full force and effect according to law.

Antoinette Smith, RMC