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September 9, 2019

To: UCCI Membership

Re: Clarification of County Cannabis Retailers' Occupation Tax Model Ordinance

United Counties Council of Illinois has received a handful of questions regarding the September deadline for passing and filing a certified copy of the model ordinance related to the County Cannabis Retailers' Occupation Tax. That deadline is based upon past experiences of legal counsel and how past legislative initiatives have been addressed. Public Act 101-0027 provides:

An ordinance or resolution imposing or discontinuing a tax under this Section or effecting a change in the rate thereof shall be adopted and a certified copy thereof filed with the Department [of Revenue] on or before the first day of June, whereupon the Department shall proceed to administer and enforce this Section as of the first day of September next following the adoption and filing.

As one can plainly see, no real deadlines take place until 2020. However, many parties who are following this legislation have inferred that a three-month period would be necessary between the adoption of an ordinance related to the tax and the Department of Revenue's ability to administer, enforce and collect the tax.

Bearing this new inferred timeline in mind, many interest groups have set new legislative goals for the upcoming veto session starting in October. One such legislative goal is to move up the timeline for which a municipality or county can impose a tax on cannabis products in the form of additional proposed legislation amending the date that the Department must administer and enforce the local tax to January 1, 2020. Based upon the three-month window in Public Act 101-0027, the prevailing wisdom is that counties should adopt their county cannabis tax ordinances and submit copies of the ordinances to the Department before the end of September in case the trailer legislation is successfully passed. Even if the legislation is amended to allow a tax to be imposed starting January of 2020, the Department of Revenue would still need a three-month period in order to begin collecting the tax in January of 2020.

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In other words, if one assumes the same three-month timeline provided for in Public Act 101-0027, a county must pass its county cannabis tax ordinance in September in order for it to be effective in January.

Additionally, UCCI has received inquiries regarding Section V of the County Cannabis Retailers' Occupation Tax Model Ordinance, which states: "This ordinance shall be in full force and effect from and after its passage and approval and publication as required by law..." This language is standard boilerplate for ordinances, both in the county and municipal context. Many statutes that provide for the adoption of an ordinance require publication either in a newspaper or in pamphlet form. Publishing an ordinance in pamphlet form generally consists of a copy of the ordinance being posted in a public location at the county building with a cover sheet reflecting the number and title of the ordinance and its passage and publication dates.

The statute related to the County Cannabis Retailers' Occupation Tax law does not provide for publication in a newspaper, or even publication by pamphlet form. However, it is our suggestion that all ordinances of significant substance be published in pamphlet form. Moreover, we would suggest that any county board that has further questions on the subject review Sections 5-29005 and 5-29006 of the Counties Code with their State's Attorney. These Sections of the Counties Code deal with a county's code of ordinances and regulations. Specifically, section 5-29005 provides that:

Where a county board authorizes a compilation and maintenance of a County Code, the county clerk shall record in a book used exclusively for that purpose, all ordinances passed by the county board. Immediately following each ordinance, the county clerk shall make a memorandum of the date of the passage and of the publication or posting where required, of the ordinance. This record and memorandum or certified copy thereof, shall be prima facia evidence of the contents, passage, and of publication or posting of ordinances. Such book or pamphlet shall not relieve a county board from publication of notices otherwise required by statute or order.¹

Similarly, Section 5-29006 provides:

The contents of county ordinances, the date of passage, and the date of publication or posting, where required, may be proved by the certificate of the county clerk. Whenever county ordinances are printed in book or pamphlet form, and purport to be published by authority of the county board, such book or pamphlet shall be prima facia evidence of the contents, passage, and legal

¹ 55 ILCS 5/5-29005.

publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts and administrative tribunals.²

These two sections reflect the significance and convenience afforded by publishing an ordinance in pamphlet form. In particular, the ability to use them easily in judicial and administrative proceedings. Thus, it is our recommendation that the County Cannabis Retailers' Occupation Tax Model Ordinance or a county's variation thereof be published in pamphlet form. Doing so will place the county in a better position to use its own ordinances in support of any arguments it may need to make should any subsequent legal or administrative challenges arise.

UCCI will continue to monitor legislation related to cannabis and keep you apprised of any developments related to the effective date of the tax and any changes that may be necessary to the Model Ordinances previously distributed by UCCI.

² 55 ILCS 5/5-29006