S-0153.1

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**SENATE BILL 5003**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Hatfield, Rivers, and Hobbs

AN ACT Relating to the taxes payable on sales by licensed recreational marijuana producers, processors, and retailers; amending RCW 69.50.535 and 69.50.334; adding a new section to chapter 69.50 RCW; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 69.50.535 and 2014 c 192 s 7 are each amended to read as follows:

(1) There is levied and collected a marijuana excise tax equal to ((~~twenty-five~~))twenty-six percent of the selling price on each wholesale sale in this state of marijuana by a licensed marijuana producer to a licensed marijuana processor or another licensed marijuana producer. ((~~This tax is the obligation of the licensed marijuana producer.~~))

(2) There is levied and collected a marijuana excise tax equal to ((~~twenty-five~~))twenty-six percent of the selling price on each wholesale sale in this state of marijuana concentrates, useable marijuana, and marijuana-infused products by a licensed marijuana processor to a licensed marijuana retailer. ((~~This tax is the obligation of the licensed marijuana processor.~~))

(3) There is levied and collected a marijuana excise tax equal to ((~~twenty-five~~))twenty-six percent of the selling price on each retail sale in this state of marijuana concentrates, useable marijuana, and marijuana-infused products. This tax is ((~~the obligation of the licensed marijuana retailer, is~~)) separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply.

(4) All revenues collected from the marijuana excise taxes imposed under subsections (1) through (3) of this section ((~~shall~~))must be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the dedicated marijuana fund.

(5) The taxes imposed in this section must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable on each taxable sale. The taxes collected as required by this section are deemed to be held in trust by the seller until paid to the board. If any seller fails to collect the taxes imposed in this section, or having collected the tax, fails to pay it as prescribed by the board, whether such failure is the result of the seller's own acts, or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(6) The tax to be collected by the seller under this section must be stated separately from the selling price, and separately from any other tax collected from the buyer, in any sales invoice or other instrument of sale. For purposes of determining the tax due from the buyer under this section, it must be conclusively presumed that the selling price quoted in any price list, sales document, contract, or other agreement between the parties does not include the tax imposed under this section.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the Washington state liquor control board.

(b) "Retail sale" has the same meaning as in RCW 82.08.010.

(c) "Selling price" has the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value, "selling price" means the true value of the product sold as determined or agreed to by the board. For purposes of this subsection:

(i) "Product" means marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products; and

(ii) "True value" means market value based on sales at comparable locations in this state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. However, in the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributable to the product.

(d) "Wholesale sale" means any sale that is not a retail sale.

(8) The ((~~state liquor control~~)) board ((~~shall~~))must regularly review the tax levels established under this section and make recommendations to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

**Sec.**  RCW 69.50.334 and 2013 c 3 s 7 are each amended to read as follows:

(1) The action, order, or decision of the state liquor control board as to any of the following is an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW:

(a) Any denial of an application for the reissuance of a license to produce, process, or sell marijuana((~~, or as to~~));

(b) Any revocation, suspension, or modification of any license to produce, process, or sell marijuana((~~, shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW~~)); or

(c) The administrative review of a notice of unpaid trust fund taxes under section 3 of this act.

((~~(1)~~))(2) An opportunity for a hearing may be provided to an applicant for the reissuance of a license prior to the disposition of the application, and if no opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

((~~(2)~~))(3) An opportunity for a hearing must be provided to a licensee prior to a revocation or modification of any license and, except as provided in subsection ((~~(4)~~))(6) of this section, prior to the suspension of any license.

((~~(3) No hearing shall be required~~))(4) An opportunity for a hearing must be provided to any person issued a notice of unpaid trust fund taxes under section 3 of this act.

(5) A hearing may not be required under this section until demanded by the applicant or licensee or person issued a notice of unpaid trust fund taxes under section 3 of this act.

((~~(4)~~))(6) The state liquor control board may summarily suspend a license for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year from the first day of the initial summary suspension in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty-day period due to actions by the licensee. The state liquor control board's enforcement division ((~~shall~~))must complete a preliminary staff investigation of the violation before requesting an emergency suspension by the state liquor control board.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW under the subchapter heading "Article V" to read as follows:

(1) Whenever the board determines that a limited liability business entity has collected trust fund taxes and has failed to remit those taxes to the board and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the board may pursue collection of the entity's unpaid trust fund taxes, including penalties on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The board may presume that an entity is insolvent if the entity refuses to disclose to the board the nature of its assets and liabilities.

(2)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully failed to pay or to cause to be paid to the board the trust fund taxes due from the limited liability business entity.

(3)(a) Except as provided in this subsection (3)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the board during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the board but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the board.

(4) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes was due to reasons beyond their control as determined by the board by rule.

(5) Any person having been issued a notice of unpaid trust fund taxes under this section is entitled to an administrative hearing under RCW 69.50.334 and any such rules the board may adopt.

(6) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the Washington state liquor control board.

(b) "Chief executive" means: (i) For a corporation, the president; or (ii) for an entity or organization other than a corporation or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(c) "Chief financial officer" means: (i) For a corporation, the treasurer; or (ii) for an entity or organization other than a corporation or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(d) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(e) "Manager" has the same meaning as provided in RCW 25.15.005.

(f) "Member" has the same meaning as provided in RCW 25.15.005, except that the term only includes members of member-managed limited liability companies.

(g) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(h)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with unpaid trust fund tax liability.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (7)(h)(iii), "taxpayer" means a limited liability business entity with unpaid trust fund taxes.

(i) "Trust fund taxes" means taxes collected from buyers and deemed held in trust under RCW 69.50.535.

(j) "Willfully failed to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**