
SENATE BILL 5003

State of Washington

64th Legislature

2015 Regular Session

By Senators Hatfield, Rivers, and Hobbs

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

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

6 **Sec. 1.** RCW 69.50.535 and 2014 c 192 s 7 are each amended to
7 read as follows:

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

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

20 (3) There is levied and collected a marijuana excise tax equal to
21 ~~((twenty-five))~~ twenty-six percent of the selling price on each

1 retail sale in this state of marijuana concentrates, useable
2 marijuana, and marijuana-infused products. This tax is ((the
3 obligation of the licensed marijuana retailer, is)) separate and in
4 addition to general state and local sales and use taxes that apply to
5 retail sales of tangible personal property, and is not part of the
6 total retail price to which general state and local sales and use
7 taxes apply.

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

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

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

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

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

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

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

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

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

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

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

16 **Sec. 2.** RCW 69.50.334 and 2013 c 3 s 7 are each amended to read
17 as follows:

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

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

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

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

29 ((+1)) (2) An opportunity for a hearing may be provided to an
30 applicant for the reissuance of a license prior to the disposition of
31 the application, and if no opportunity for a prior hearing is
32 provided then an opportunity for a hearing to reconsider the
33 application must be provided the applicant.

34 ((+2)) (3) An opportunity for a hearing must be provided to a
35 licensee prior to a revocation or modification of any license and,
36 except as provided in subsection ((+4)) (6) of this section, prior
37 to the suspension of any license.

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

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

7 (~~(4)~~) (6) The state liquor control board may summarily suspend
8 a license for a period of up to one hundred eighty days without a
9 prior hearing if it finds that public health, safety, or welfare
10 imperatively require emergency action, and it incorporates a finding
11 to that effect in its order. Proceedings for revocation or other
12 action must be promptly instituted and determined. An administrative
13 law judge may extend the summary suspension period for up to one
14 calendar year from the first day of the initial summary suspension in
15 the event the proceedings for revocation or other action cannot be
16 completed during the initial one hundred eighty-day period due to
17 actions by the licensee. The state liquor control board's enforcement
18 division (~~shall~~) must complete a preliminary staff investigation of
19 the violation before requesting an emergency suspension by the state
20 liquor control board.

21 NEW SECTION. Sec. 3. A new section is added to chapter 69.50
22 RCW under the subchapter heading "Article V" to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of
8 the state government and its existing public institutions, and takes
9 effect July 1, 2015.

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