
HOUSE BILL 1334

State of Washington

64th Legislature

2015 Regular Session

By Representatives Condotta and Vick

Read first time 01/19/15. Referred to Committee on Commerce & Gaming.

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 percent of the selling price on each wholesale sale in
10 this state of marijuana by a licensed marijuana producer to a
11 licensed marijuana processor or another licensed marijuana producer.
12 (~~This tax is the obligation of the licensed marijuana producer.~~)

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

19 (3) There is levied and collected a marijuana excise tax equal to
20 twenty-five percent of the selling price on each retail sale in this
21 state of marijuana concentrates, useable marijuana, and marijuana-

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

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

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

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

30 (7) For purposes of this section, the following definitions
31 apply:

32 (a) "Board" means the liquor control board.

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

34 (c) "Selling price" has the same meaning as in RCW 82.08.010,
35 except that when product is sold under circumstances where the total
36 amount of consideration paid for the product is not indicative of its
37 true value, "selling price" means the true value of the product sold
38 as determined or agreed to by the board. For purposes of this
39 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 board must regularly review the tax levels established
12 under this section and make recommendations to the legislature as
13 appropriate regarding adjustments that would further the goal of
14 discouraging use while undercutting illegal market prices.

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

17 The action, order, or decision of the state liquor control board
18 as to any denial of an application for the reissuance of a license to
19 produce, process, or sell marijuana, or as to any revocation,
20 suspension, or modification of any license to produce, process, or
21 sell marijuana, (~~shall~~) or as to the administrative review of a
22 notice of unpaid trust fund taxes under section 3 of this act, must
23 be an adjudicative proceeding and subject to the applicable
24 provisions of chapter 34.05 RCW.

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

30 (2) An opportunity for a hearing must be provided to a licensee
31 prior to a revocation or modification of any license and, except as
32 provided in subsection (~~(4)~~) (5) of this section, prior to the
33 suspension of any license.

34 (3) An opportunity for a hearing must be provided to any person
35 issued a notice of unpaid trust fund taxes under section 3 of this
36 act.

37 (4) No hearing (~~shall~~) may be required under this section until
38 demanding by the applicant (~~or~~), licensee, or person issued a notice
39 of unpaid trust fund taxes under section 3 of this act.

1 (~~(4)~~) (5) The state liquor control board may summarily suspend
2 a license for a period of up to one hundred eighty days without a
3 prior hearing if it finds that public health, safety, or welfare
4 imperatively require emergency action, and it incorporates a finding
5 to that effect in its order. Proceedings for revocation or other
6 action must be promptly instituted and determined. An administrative
7 law judge may extend the summary suspension period for up to one
8 calendar year from the first day of the initial summary suspension in
9 the event the proceedings for revocation or other action cannot be
10 completed during the initial one hundred eighty-day period due to
11 actions by the licensee. The state liquor control board's enforcement
12 division (~~(shall)~~) must complete a preliminary staff investigation of
13 the violation before requesting an emergency suspension by the state
14 liquor control board.

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

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

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

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

37 (3)(a) Except as provided in this subsection (3)(a), a
38 responsible individual who is the current or a former chief executive
39 or chief financial officer is liable under this section only for

1 trust fund tax liability accrued during the period that he or she was
2 the chief executive or chief financial officer. However, if the
3 responsible individual had the responsibility or duty to remit
4 payment of the limited liability business entity's trust fund taxes
5 to the board during any period of time that the person was not the
6 chief executive or chief financial officer, that individual is also
7 liable for trust fund tax liability that became due during the period
8 that he or she had the duty to remit payment of the limited liability
9 business entity's taxes to the board but was not the chief executive
10 or chief financial officer.

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

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

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

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

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

28 (a) "Board" means the liquor control board.

29 (b) "Chief executive" means: The president of a corporation; or
30 for other entities or organizations other than corporations or if the
31 corporation does not have a president as one of its officers, the
32 highest ranking executive manager or administrator in charge of the
33 management of the company or organization.

34 (c) "Chief financial officer" means: The treasurer of a
35 corporation; or for entities or organizations other than corporations
36 or if a corporation does not have a treasurer as one of its officers,
37 the highest senior manager who is responsible for overseeing the
38 financial activities of the entire company or organization.

39 (d) "Limited liability business entity" means a type of business
40 entity that generally shields its owners from personal liability for

1 the debts, obligations, and liabilities of the entity, or a business
2 entity that is managed or owned in whole or in part by an entity that
3 generally shields its owners from personal liability for the debts,
4 obligations, and liabilities of the entity. Limited liability
5 business entities include corporations, limited liability companies,
6 limited liability partnerships, trusts, general partnerships and
7 joint ventures in which one or more of the partners or parties are
8 also limited liability business entities, and limited partnerships in
9 which one or more of the general partners are also limited liability
10 business entities.

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

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

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

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

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

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

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

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

38 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect July 1, 2015.

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