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ENGROSSED SUBSTITUTE SENATE BILL 5004

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State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Warnick, Conway, Das, King, Kuderer, Saldaña, and Wilson, C.)

READ FIRST TIME 02/19/21.

1 AN ACT Relating to providing a tax exemption for medical  
2 marijuana patients; amending RCW 69.50.535; creating a new section;  
3 and providing an effective date.

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

5 **Sec. 1.** RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each  
6 amended to read as follows:

7 (1)(a) There is levied and collected a marijuana excise tax equal  
8 to thirty-seven percent of the selling price on each retail sale in  
9 this state of marijuana concentrates, useable marijuana, and  
10 marijuana-infused products. This tax is separate and in addition to  
11 general state and local sales and use taxes that apply to retail  
12 sales of tangible personal property, and is not part of the total  
13 retail price to which general state and local sales and use taxes  
14 apply. The tax must be separately itemized from the state and local  
15 retail sales tax on the sales receipt provided to the buyer.

16 (b) The tax levied in this section must be reflected in the price  
17 list or quoted shelf price in the licensed marijuana retail store and  
18 in any advertising that includes prices for all useable marijuana,  
19 marijuana concentrates, or marijuana-infused products.

20 (2)(a) Until January 1, 2027, the tax levied by subsection (1) of  
21 this section does not apply to sales, by a marijuana retailer with a

1 medical marijuana endorsement to qualifying patients or designated  
2 providers who have been issued a recognition card, of marijuana  
3 concentrates, useable marijuana, or marijuana-infused products,  
4 identified by the department in rules adopted under RCW 69.50.375(4)  
5 in chapter 246-70 WAC as being compliant marijuana products.

6 (b) Each seller making exempt sales under this subsection (2)  
7 must maintain information establishing eligibility for the exemption  
8 in the form and manner required by the board.

9 (c) The board must provide a separate tax reporting line on the  
10 excise tax form for exemption amounts claimed under this subsection  
11 (2).

12 (3) All revenues collected from the marijuana excise tax imposed  
13 under this section must be deposited each day in the dedicated  
14 marijuana account.

15 ~~((3))~~ (4) The tax imposed in this section must be paid by the  
16 buyer to the seller. Each seller must collect from the buyer the full  
17 amount of the tax payable on each taxable sale. The tax collected as  
18 required by this section is deemed to be held in trust by the seller  
19 until paid to the board. If any seller fails to collect the tax  
20 imposed in this section or, having collected the tax, fails to pay it  
21 as prescribed by the board, whether such failure is the result of the  
22 seller's own acts or the result of acts or conditions beyond the  
23 seller's control, the seller is, nevertheless, personally liable to  
24 the state for the amount of the tax.

25 ~~((4))~~ (5) The definitions in this subsection apply throughout  
26 this section unless the context clearly requires otherwise.

27 ~~(a) ("Board" means the state liquor and cannabis board.~~

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

29 ~~((e))~~ (b) "Selling price" has the same meaning as in RCW  
30 82.08.010, except that when product is sold under circumstances where  
31 the total amount of consideration paid for the product is not  
32 indicative of its true value, "selling price" means the true value of  
33 the product sold.

34 ~~((d))~~ (c) "Product" means marijuana, marijuana concentrates,  
35 useable marijuana, and marijuana-infused products.

36 ~~((e))~~ (d) "True value" means market value based on sales at  
37 comparable locations in this state of the same or similar product of  
38 like quality and character sold under comparable conditions of sale  
39 to comparable purchasers. However, in the absence of such sales of  
40 the same or similar product, true value means the value of the

1 product sold as determined by all of the seller's direct and indirect  
2 costs attributable to the product.

3 ~~((+5))~~ (6)(a) The board must regularly review the tax level  
4 established under this section and make recommendations, in  
5 consultation with the department of revenue, to the legislature as  
6 appropriate regarding adjustments that would further the goal of  
7 discouraging use while undercutting illegal market prices.

8 (b) The ~~((state liquor and cannabis))~~ board must report, in  
9 compliance with RCW 43.01.036, to the appropriate committees of the  
10 legislature every two years. The report at a minimum must include the  
11 following:

12 (i) The specific recommendations required under (a) of this  
13 subsection;

14 (ii) A comparison of gross sales and tax collections prior to and  
15 after any marijuana tax change;

16 (iii) The increase or decrease in the volume of legal marijuana  
17 sold prior to and after any marijuana tax change;

18 (iv) Increases or decreases in the number of licensed marijuana  
19 producers, processors, and retailers;

20 (v) The number of illegal and noncompliant marijuana outlets the  
21 board requires to be closed;

22 (vi) Gross marijuana sales and tax collections in Oregon; and

23 (vii) The total amount of reported sales and use taxes exempted  
24 for qualifying patients. The department of revenue must provide the  
25 data of exempt amounts to the board.

26 (c) The board is not required to report to the legislature as  
27 required in (b) of this subsection after January 1, 2025.

28 ~~((+6))~~ (7) The legislature does not intend and does not  
29 authorize any person or entity to engage in activities or to conspire  
30 to engage in activities that would constitute per se violations of  
31 state and federal antitrust laws including, but not limited to,  
32 agreements among retailers as to the selling price of any goods sold.

33 NEW SECTION. **Sec. 2.** (1) The joint legislative audit and review  
34 committee must review the tax exemption under section 1 of this act  
35 to identify any changes in consumer behavior and determine whether  
36 the exemption results in an unanticipated decrease in state revenue.  
37 The review must include:

1 (a) An assessment of the amount of new qualifying patients or  
2 designated providers under RCW 69.51A.010 occurring after the  
3 effective date of this section as compared to prior years;

4 (b) Any changes in the amount of sales of tax-exempt products  
5 identified in section 1 of this act; and

6 (c) Any other information the joint legislative audit and review  
7 committee deems necessary to assess any changes in consumer behavior  
8 or revenue collections resulting from the tax exemption under section  
9 1 of this act.

10 (2) The joint legislative audit and review committee may access  
11 data from the department of revenue, the department of health, or any  
12 other state agency as necessary to complete its review of the tax  
13 exemption under section 1 of this act.

14 (3) The joint legislative audit and review committee must submit  
15 a report of its findings to the legislature by December 1, 2025.

16 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2023.

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