



CR 103 Memorandum

Implementing Substitute House Bill (SHB) 1453 Regarding Medical Cannabis Patient Excise Tax Exemption

Date: September 11, 2024
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Background

Following the 2024 legislative session, [Substitute House Bill 1453 \(chapter 79, Laws of 2024\)](#) was signed by the Governor, and went into effect on June 6, 2024. The CR 101 was filed on April 24, 2024 ([WSR 24-10-042](#)), and 4 comments were received during the informal comment period following the filing of the CR 101 and ending May 29, 2024. Those comments are attached as Attachment A.

SHB 1453 provides an exemption to the 37% excise tax levied on all cannabis purchases in [RCW 69.50.375\(1\)](#) under the following conditions:

- 1) The sale is at a cannabis retailer holding a medical cannabis endorsement;
- 2) The sale is to a qualifying patient or designated provider issued a recognition card by the Department of Health;
- 3) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the Department of Health as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in WAC 246-70-040.

The excise tax exemption is currently in effect until June 30, 2029. Additionally, the Liquor & Cannabis Board (LCB) is required to provide a separate tax reporting line on the excise tax form for exemption amounts. Lastly, the retailers are instructed to preserve records in the form and manner required by the LCB.

In May, an [infographic](#) explaining the tax exemption was published, as was [interim guidance](#) for retailers on what records they should preserve following the June 6 effective date of SHB 1453 and before formal rules are in place. In July, [packaging approval guidance](#) was provided for medically compliant cannabis.

Stakeholder Engagement

The project team consists of representation from the Attorney General's Office, Enforcement & Education division, Licensing division, Finance division, and the Public Health Liaison. Two virtual stakeholder engagement sessions were held

Monday, June 3 and Thursday, June 6, 2024. [Draft rule language](#) was posted to the LCB website and sent out with the invitation to the stakeholder engagements via Gov delivery on May 29, 2024. Following the June 6 stakeholder engagement session, the [PowerPoint presentation](#) was posted to the rules webpage.

Following the stakeholder engagement sessions, feedback received was incorporated into the draft rule language.

During the second stakeholder engagement session, a question was presented regarding what the consequences would be for a retailer that failed to properly provide the excise tax exemption where it should have done so. The answer is provided in existing rule in [WAC 314-55-089\(4\)\(d\)](#) which states that “excise tax collected in error must either be returned to the customer(s) or remitted to the []LCB if returning to the customer(s) is not possible.” This rule applies to the question presented, and similarly, if a retailer fails to provide the excise tax exemption, they are collecting excise tax in error, and are subject to this provision of rule.

The CR 102 was filed on July 17, 2024 ([WSR 24-15-066](#)) with the proposed rule changes identified in the table below. Two written comments were submitted following the filing of the CR 102 and prior to the public hearing held on August 28, 2024. The comments were largely supportive and are responded to in detail in the Concise Explanatory Statement.

One person testified at the public hearing held on August 28, 2024. Based on the testimony provided, an additional provision reinforcing the statutory confidentiality and exemption from public disclosure of personally identifiable information of medical cannabis patients in [RCW 69.51A.230](#) is added.

Rule Necessity & Description of Rule Changes

Amendments to Existing Sections of Chapter 314-55 WAC			
WAC Section	Current Rule Language	Proposed New Language	Rule Necessity
314-55-083 Security and traceability requirements for cannabis licensees.	(4)(j) Cannabis excise tax records;	(4)(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090 ;	Adding language to state that the records newly required for retention in WAC 314-55-090 must also be kept up to date in the traceability system.
	Replaced instances of “WSLCB” with “LCB”		Consistent with WSR #24-16-064
314-55-087 Recordkeeping requirements for cannabis licensees.	New Rule Language		To understand the records for auditing the medical cannabis patient excise tax exemption, baseline records where the excise tax is collected must be preserved for use in comparison.
	(1)(r) Detailed sale records including but not limited to, date of sale, sale price, item sold, and taxes assessed;		

		New Rule Language	
		(1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;	Adding language to state that the records required in WAC 314-55-090 must be kept for five years, along with all other required records in WAC 314-55-087
		Replaced instances of “WSLCB” with “LCB”	Consistent with WSR #24-16-064
314-55-089 Tax and reporting requirements for cannabis licensees.	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be: [...] (b) Filed every month, including months with no activity or payment due;	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the LCB. The required monthly reports must be: [...] (b)(i) Filed every month, including months with no activity or payment due; (ii) <u>Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;</u>	Consistent with section (1)(2)(b) and (c), chapter 79, Laws of 2024, requiring the monthly payment reports to include records of total product sales and total sales where the excise tax is exempted is consistent with the requirements identified in WAC 314-55-090.
	(1)(c) Submitted, with payment due, to the WSLCB on or before the 20th day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) ...	(1)(c) Submitted, with payment due, to the LCB on or before the 20th day of each month, for the previous month. (For example, a report <u>summarizing</u> transactions for the month of January is due by February 20th.) ...	Replacing “listing” with “summarizing” to lighten the regulatory burden on licensees.
	(1)(e) All records must be maintained and available for review for a three-year period on licensed premises. (See WAC 314-55-087)	(1)(e) All records must be maintained and available for review for a <u>five</u> -year period on licensed premises. (See WAC 314-55-087)	Technical change for internal consistency. WAC 314-55-087(1) required records to be kept for five years. The reference to three years was a typographical error.
	(4)(b) A cannabis retailer licensee must collect from the buyer and remit to the WSLCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products.	(4)(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, <u>except as identified in WAC 314-55-090 and RCW 69.50.535(2).</u> (ii) <u>Records of medical patient cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and WAC 314-55-090.</u>	Reference added to WAC 314-55-090 and RCW 69.50.535(2), where the medical cannabis patient excise tax exemption are referenced, as well as cross-reference added to reinforce record retention requirements.

	(5) ... Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;	(5) ... Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to LCB;	Fixing an incorrect address and replacing with generic mailing instructions in case of future move of physical mailing address or Post Office Box.
	(5)(b) By paying through online access through the WSLCB traceability system; or	(5)(b) By paying through online access; or	Removing specific reference to the traceability system to allow for potential future changes in online payment systems.
	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR #24-16-064

WAC 314-55-090 Medical cannabis patient excise tax exemption		
Section	Proposed rule Language	Rule Necessity
(1)	Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:	Consistent with RCW 69.50.535(2)(a), proposed WAC 314-55-090(1) identifies the necessary criteria for eligibility to offer the excise tax exemption.
(1)(a)	The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;	Consistent with RCW 69.50.535(2)(a), the retailer offering the excise tax exemption must have a medical cannabis endorsement, and to have a medical cannabis endorsement, a retailer needs to satisfy the statutory requirements at RCW 69.50.375 and regulatory requirements of WAC 314-55-080.
(1)(b)	The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;	Consistent with section RCW 69.50.535(2)(a), which specifically states that the qualifying patient or designated provider must have been issued a recognition card, a recognition card can only be issued after a patient is entered into the database per RCW 69.51A.230(2).
(1)(c)	The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	Language is nearly identical with section RCW 69.50.535(2)(a).
(2)	Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):	Consistent with section RCW 69.50.535(2)(b), the LCB has the authority to identify what information retailers need to preserve to establish eligibility for the excise tax exemption.
(2)(a)	Date of sale;	To ensure that, if audited, LCB can confirm that the retailer held a medical cannabis endorsement at the time the sale occurred.
(2)(b)	From the recognition card:	To ensure that, if audited, LCB can confirm that the patient or the designated provider purchasing the cannabis satisfied the requirements of WAC 314-55-090(1)(b) and RCW 69.50.535(2)(a) at the time of purchase.
	(i) The unique patient identifier, and (ii) The effective date and expiration date of the recognition card;	
(2)(c)	Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	To ensure that, if audited, LCB can confirm that the cannabis product purchased meets the requirements of WAC 314-55-090(1)(c) and RCW 69.50.535(2)(a) at the time of purchase.

(2)(d)	Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.	To enable LCB to determine how much excise tax would have been collected had it not been exempted.
(3)	For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.	To clarify that the medical cannabis patient excise tax exemption is the exception to the general rule that the 37% excise tax shall be collected on all cannabis sales per RCW 69.50.535(1). In the event of a dispute, the burden shall be on the retailer to demonstrate that they correctly exempted the purchase from the excise tax, not on the LCB to demonstrate that the retailer was incorrect in doing so.
(4)	Definitions:	Definitions of terms used are provided, all from terms used in Chapter 69.51A RCW.
(4)(a)	"Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.	
(4)(b)	"Department" means the Washington state department of health.	
(4)(c)	"Designated provider" has the same meaning provided in RCW 69.51A.010.	
(4)(d)	"Qualifying patient" has the same meaning provided in RCW 69.51A.010.	
(4)(e)	"Recognition card" has the same meaning provided in RCW 69.51A.010.	
(4)(f)	"Unique patient identifier" refers to the randomly generated and unique identifying number described in RCW 69.51A.230.	
(4)(g)	"Unique product identifier" refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.	This is the only term without a definition in RCW 69.51A. This term is described and repeatedly referenced in WAC 314-55-083(4).
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Consistent with RCW 69.50.535(2)(a), identifies the expiration date of the medical cannabis patient excise tax exemption.

Variance between proposed rule (CR 102) and final rule:

The following change has been made to the proposed rule language (CR 102):

Section	Proposed Rule Language	Final Rule Language	Rule Necessity
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.	Responding to testimony received during public hearing held on August 28, 2024.
(6)	[N/A]	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Was previously at Subsection 5.

Rule Implementation (RCW 34.05.328(3)(a))

Informing and Educating Persons Impacted by the Rule (RCW 34.05.328(3)(b))

To help inform and educate persons impacted by the rule, the LCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB GovDelivery list;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.

Promoting and Assisting Voluntary Compliance (RCW 34.05.328(3)(c))

LCB will promote and assist voluntary compliance through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the LCB website.
- LCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing LCB Staff

Several LCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The LCB will also consider:

- Provision of internal and external training and education, as needed. potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

Rule Effectiveness Evaluation (RCW 34.05.328(3)(d))

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and the outcome;
- Monitoring the number of requests for rule language revisions or changes;

- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.