



# Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

ISSUED JUNE 12, 2014

## Recreational and Medical Marijuana – Repeal and Clarification of Excise Tax Deductions, Exemptions, and Preferential Rates

Effective June 12, 2014, recreational and medical marijuana producers, processors, retailers, and businesses that provide services to marijuana businesses are excluded from certain business and occupation (B&O) tax deductions, exemptions, and preferential rates; retail sales and use tax exemptions; and other excise tax exemptions and deductions. In addition, sales of marijuana to consumers are not eligible for any retail sales tax or use tax exemptions. (See [Senate Bill \(SB\) 6505 \[Chapter 140, Laws of 2014\]](#).)

**Property Tax Exemptions:** For information about property tax exemptions affected by SB 6505, please see our [Property Tax Special Notice – 2014 Legislative Updates: Current Use, Marijuana, and Designated Forest Land Legislation](#).

**Note:** For purposes of this notice the term “marijuana” is used to refer to marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, as those terms are defined under [RCW 69.50.101](#) and [Engrossed Substitute House Bill \(ESHB\) 2304 \(Chapter 192, Laws of 2014\)](#).

### Do Any Excise Tax Deductions, Exemptions, or Preferential Rates Apply to Marijuana Before June 12, 2014?

Before June 12, 2014, businesses producing, processing, and selling marijuana and businesses that provide services to marijuana businesses may qualify for tax deductions and exemptions discussed below, if a business otherwise meets the specific requirements of that deduction or exemption.

SB 6505 also clarified that marijuana did not qualify for certain tax deductions, exemptions, or preferential rates before June 12, 2014. This special notice will specifically state when a tax deduction, exemption, or preferential rate listed in this notice does not apply before June 12, 2014.

**Quick Reference Table:** At the end of this notice is a table that lists the excise tax deductions, exemptions, and preferential rates in this notice by RCW and states if they applied before June 12, 2014.

## Marijuana Producers:

### **Marijuana Producers are Not Farmers and Marijuana is Not an Agricultural Product:**

Marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are excluded from the definition of an “agricultural product” under [RCW 82.04.213](#). Since these products are not agricultural products, marijuana producers (growers) are not farmers.

### **B&O Tax Deductions and Exemptions:**

Marijuana producers do not qualify for the B&O tax exemption for wholesale sales of agricultural products by farmers. Marijuana producers must pay wholesaling B&O tax on their wholesale sales of marijuana. [RCW 82.04.330](#).

Businesses cannot take the following B&O tax deductions and exemptions when performing these services for, or making sales to, marijuana producers:

- Wholesale sales to farmers of seed conditioned for use in planting and conditioning seed for planting owned by others. [RCW 82.04.331](#). This includes tax periods prior to June 12, 2014 as SB 6505 merely clarified that businesses do not qualify for this exemption.
- Receiving, washing, sorting, and packing of fresh perishable horticultural products for a farmer. [RCW 82.04.4287](#).
- Interest received from loans to farmers. [RCW 82.04.4294](#).
- Performing custom farming services, farm management services, and contract labor services for a farmer. [RCW 82.04.625](#).

Businesses must pay B&O tax on the gross income received from the sale of these goods and services when sold to marijuana producers. When performing these activities for marijuana producers, these activities may be considered a retail sale subject to retail sales tax.

### **Retail Sales Tax and Use Tax Exemptions:**

Marijuana producers do not qualify for the following retail sales tax and use tax exemptions:

- The leveling of land used for farming or agriculture. [RCW 82.04.050\(2\)\(b\)](#).
- Horticultural services provided to farmers. [RCW 82.04.050\(3\)\(e\)](#).
- Sales of seeds, seedlings, fertilizer, chemical sprays and washes, spray materials (pesticides), and agents for enhanced pollination. [RCW 82.04.050\(11\)](#).
- Auction sales of personal property that has been used in conducting a farm activity. [RCW 82.08.0257](#) and [RCW 82.12.0258](#).
- Sales of machinery and implements, parts for machinery and implements, and labor for repair of machinery and implements to nonresident farmers. [RCW 82.08.0268](#).
- The constructing, repairing, decorating, or improving of buildings or other structures used as agricultural employee housing. [RCW 82.08.02745](#) and [RCW 82.12.02685](#).
- The leasing of irrigation equipment. [RCW 82.08.0288](#) and [RCW 82.12.0283](#).
- Sales to farmers of replacement parts for qualifying machinery and equipment. [RCW 82.08.855](#) and [RCW 82.12.855](#).
- Sales of diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for agricultural purposes. [RCW 82.08.865](#) and [RCW 82.12.865](#).

Marijuana producers must pay retail sales tax or use tax on their purchases of these goods and services.

Businesses that pack marijuana do not qualify for the sales tax exemption on purchases of materials and supplies directly used in the packing of fresh perishable horticultural products. Businesses must pay retail sales tax or use tax on materials and supplies directly used in the packing of marijuana for marijuana producers. [RCW 82.08.0311](#) and [RCW 82.12.0311](#).

#### **Motor Vehicle Sales and Lease Tax Exemption:**

Marijuana producers must pay retail sales tax plus this additional 0.3% motor vehicle sales and lease tax on all purchases and leases of motor vehicles. While sales of farm tractors and farm vehicles are exempt from the additional 0.3% motor vehicle sales and lease tax, marijuana producers do not qualify for this exemption. [RCW 82.08.020\(4\)](#).

#### **Public Utility Tax (PUT) Deduction and Exemption:**

Businesses that sell services to marijuana producers cannot take the following PUT deduction and exemption when provided to marijuana producers:

- The deduction from gross income received from the distribution of water through an irrigation system. [RCW 82.16.050\(7\)](#).
- The exemption for gross income received from hauling agricultural products or farm machinery or equipment for a farmer or for a person performing custom farming services. [RCW 82.16.300](#).

Businesses must pay PUT on the gross income received from providing these services to marijuana producers.

#### **Leasehold Excise Tax (LET) Credit on Product Leases:**

Property used in the production of marijuana does not qualify for the LET credit on a product lease as this property is excluded from the definition of a "product lease." [RCW 82.29A.120](#) and [RCW 82.29A.020\(3\)](#).

## **Marijuana Processors:**

#### **Manufacturers' Machinery and Equipment Sales and Use Tax (M&E) Exemption:**

Marijuana processors must pay retail sales tax or use tax on all purchases of machinery and equipment used in the manufacturing, research and development, or testing of marijuana, useable marijuana, or marijuana-infused products, including marijuana concentrates. Marijuana businesses that perform these activities are not eligible for the M&E exemption. [RCW 82.08.02565](#) and [RCW 82.12.02565](#).

#### **Marijuana, Useable Marijuana, and Marijuana-Infused Products, Including Marijuana Concentrates are not Fresh Fruits or Vegetables or Dairy Products:**

Marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are not fresh fruits or vegetables or dairy products for purposes of the B&O tax. This means marijuana processors do not qualify for the B&O tax exemptions or preferential rates for businesses that process fresh fruits or vegetables or dairy products. [RCW 82.04.260](#), [RCW 82.04.4266](#), and [RCW 82.04.4268](#).

This includes tax periods prior to June 12, 2014 as SB 6505 merely clarified that marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are not fresh fruits or vegetables or dairy products.

## **Marijuana Retailers:**

### **Marijuana Retailers Must Collect Retail Sales Tax on All Sales of Marijuana:**

Marijuana retailers must collect and remit retail sales tax on sales of useable marijuana, and marijuana-infused products, and marijuana concentrates to consumers.

#### **Marijuana is not a Prescription Drug:**

Whether sold for recreational or medical purposes, sales of marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates are not prescription drugs since they cannot be legally prescribed. Therefore, these products do not qualify for the sales and use tax exemption for prescription drugs. [RCW 82.08.0281](#) and [RCW 82.12.0275](#).

This includes sales prior to June 12, 2014, as SB 6505 merely clarified that marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are not drugs for purposes of this exemption. (See our [Special Notice – Sales of Medical Cannabis Remain Subject to Sales Tax](#).)

#### **Marijuana is not a Food or Food Ingredient:**

Marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are not food or food ingredients for purposes of retail sales tax and use tax. Therefore, these products do not qualify for the sales and use tax exemption for food and food ingredients. [RCW 82.08.0293](#) and [RCW 82.12.0293](#).

This includes sales prior to June 12, 2014, as SB 6505 merely clarified that marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are not food or food ingredients for purposes of this exemption.

#### **Nonresidents Must Pay Retail Sales Tax on Purchases of Marijuana:**

Marijuana sales to nonresidents are subject to retail sales tax. Sales of marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are excluded from the limited nonresident sales tax exemption. [RCW 82.08.0273](#).

This includes sales prior to June 12, 2014, as SB 6505 merely clarified that marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are excluded from this limited exemption since these products cannot be legally transported outside of this state.

## **Warehouses and Distribution Centers:**

### **Marijuana is not a “Finished Good” for Purposes of the Warehouse Remittance Incentive:**

Marijuana, useable marijuana, and marijuana-infused products, including marijuana concentrates, are excluded from the definition of a finished good for purposes of determining if a business would qualify for the warehouse tax remittance incentive. [RCW 82.08.820](#).

## **Industrial Hemp:**

### **Industrial Hemp Can Qualify for Tax Exemptions or Deductions:**

The production, processing, and sale of industrial hemp (with a THC concentration of 0.3% or less on a dry weight basis) remain eligible for tax exemptions and deductions provided industrial hemp is not defined as marijuana under [RCW 69.50.101](#).

**Additional Resources:**

To help educate businesses producing, processing, and selling marijuana about the taxes these businesses owe, the Department has created fact sheets for:

- Marijuana Producers
- Marijuana Processors
- Marijuana Retailers

To view these fact sheets, visit us at: <http://dor.wa.gov/marijuana>.

**Quick Reference Table:**

This table lists the exemptions, deductions, and preferential rates by RCW which are affected by SB 6505 and states if they apply before June 12, 2014.

<b>B&amp;O Tax Exemptions, Deductions, and Preferential Rates:</b>	
<b>RCW(s):</b>	<b>Applies Before June 12, 2014?</b>
<a href="#">RCW 82.04.260</a>	No
<a href="#">RCW 82.04.330</a>	Yes
<a href="#">RCW 82.04.331</a>	No
<a href="#">RCW 82.04.4266</a>	No
<a href="#">RCW 82.04.4268</a>	No
<a href="#">RCW 82.04.4287</a>	Yes
<a href="#">RCW 82.04.4294</a>	Yes
<a href="#">RCW 82.04.625</a>	Yes

<b>Leasehold Excise Tax (LET) Credit on Product Leases:</b>	
<b>RCW(s):</b>	<b>Applies Before June 12, 2014?</b>
<a href="#">RCW 82.29A.120</a> & <a href="#">RCW 82.29A.020(3)</a>	Yes

<b>Public Utility Tax (PUT) Deductions and Exemptions:</b>	
<b>RCW(s):</b>	<b>Applies Before June 12, 2014?</b>
<a href="#">RCW 82.16.050(7)</a>	Yes
<a href="#">RCW 82.16.300</a>	Yes

<b>Retail Sales Tax and Use Tax Exemptions:</b>	
<b>RCW(s):</b>	<b>Applies Before June 12, 2014?</b>
<a href="#">RCW 82.04.050(2)(b)</a>	Yes
<a href="#">RCW 82.04.050(3)(e)</a>	Yes
<a href="#">RCW 82.04.050(11)</a>	Yes
<a href="#">RCW 82.08.020(4)</a>	Yes
<a href="#">RCW 82.08.02565</a> & <a href="#">RCW 82.12.02565</a>	Yes
<a href="#">RCW 82.08.0257</a> & <a href="#">RCW 82.12.0258</a>	Yes
<a href="#">RCW 82.08.0268</a>	Yes
<a href="#">RCW 82.08.0273</a>	No
<a href="#">RCW 82.08.02745</a> & <a href="#">RCW 82.12.02685</a>	Yes
<a href="#">RCW 82.08.0281</a> & <a href="#">RCW 82.12.0275</a>	No
<a href="#">RCW 82.08.0288</a> & <a href="#">RCW 82.12.0283</a>	Yes
<a href="#">RCW 82.08.0293</a> & <a href="#">RCW 82.12.0293</a>	No
<a href="#">RCW 82.08.0311</a> & <a href="#">RCW 82.12.0311</a>	Yes
<a href="#">RCW 82.08.855</a> & <a href="#">RCW 82.12.855</a>	Yes
<a href="#">RCW 82.08.865</a> & <a href="#">RCW 82.12.865</a>	Yes
<a href="#">RCW 82.08.820</a>	Yes