



Cannabis Excise Tax Exemption

House Regulated Substances & Gaming Committee

September 17, 2024

Justin Nordhorn, Director of Policy and External Affairs



Cannabis Tax Overview

- RCW 69.50.535 sets an excise tax on the sale of legal cannabis in Washington State.
- The rate is 37% of the sales price, and the law states that buyers must pay the full amount of the tax on each purchase.
- The Washington State Liquor and Cannabis Board collects the excise tax, and the retail sales tax is collected by the Department of Revenue.
- HB 1453 (2024) provide a cannabis excise tax exemption for qualifying medical cannabis patients.



Medical Cannabis Background

- The Legislature passed SB 5052 in 2015, which among other provisions created a medical cannabis system including a database of authorized patients and standards for the production and sale of medical cannabis.
- The Department of Health (DOH) maintains the Medical Cannabis Authorization Database, which authorizes patients to buy more cannabis products than non-medical patients.
- Patients must have an authorization form from their medical provider and suffer from one or more listed conditions to qualify for being added to the DOH database registry.



SHB 1453 Overview

Provides an exemption to the 37% excise tax 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 for cannabis 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.

Effective date: June 06, 2024

The excise tax exemption is currently in effect until June 30, 2029.



SHB 1453 Rulemaking

- Rulemaking could not be completed by the effective date of the legislation.
- Rulemaking began with the CR 101 filing on April 24, 2024.
- LCB received 4 comments during the informal comment period ending May 29, 2024.
- Stakeholder draft rule engagement sessions:
 - 2-hour sessions each
 - June 03, 2024 10:00AM – 12:00 PM
 - June 06, 2024 1:00PM to 3:00PM
- LCB provided guidance via infographic, FAQ and a formal guidance document up to June 06, 2024.

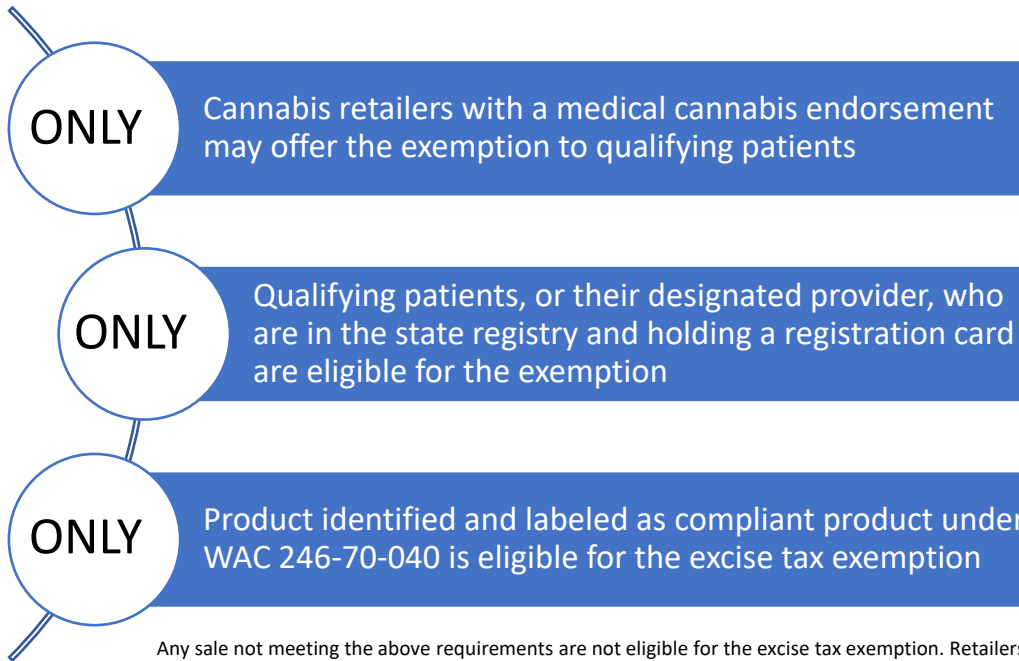


Cannabis Excise Tax Exemption

HB 1453

How it works:

All 3 criteria must be met before a medically endorsed retailer can provide the 37% excise tax exemption to a qualifying patient.



Tax exemptions are only effective until June 30, 2029

Any sale not meeting the above requirements are not eligible for the excise tax exemption. Retailers are required to maintain information establishing eligibility for the exemption. Retailers providing excise tax exemptions out of compliance with the requirements are liable for remitting the full 37% excise tax amount to the state for ineligible sales.



FAQs related to HB 1453 and RCW 69.50.535

Q. As a cannabis retailer can I offer the 37% excise tax exemption to patients even if I do not have a medical cannabis endorsement?

A. No, only those retailers holding a medical cannabis endorsement may participate in providing the 37% excise tax exemption.

Q. If a customer indicates they consume cannabis for medical purposes, can the medically endorsed store provide the tax exemption to the person?

A. No. The 37% cannabis excise tax exemption may only be offered to medical cannabis patients and designated providers who have been entered into the State Department of Health registry, and who hold a valid recognition card.

Q. Can a cannabis retailer with a medical endorsement provide the 37% excise tax exemption on all products a registered patient purchases?

A. No. The excise tax exemption may only be applied to medically compliant product as defined in WAC 246-70-040 which has also been appropriately labeled in compliance with the rule.

Q. When can a cannabis retailer with a medical endorsement begin to provide the 37% excise tax exemption to registered medical cannabis patients purchasing qualifying products?

A. As HB 1453 is effective June 06, 2024, cannabis retailers with a medical endorsement may begin providing the tax exemption on medically compliant product specified in WAC 246-70-040. Until more specific rules are developed and adopted, retailers must be able to maintain information that the sales exemptions were conducted only on eligible sales. Licensees will be responsible to submit the 37% excise tax to the state on any sale not meeting eligibility for the exemption. Licensee will have to maintain records of the validity of the exemption.



Guidance for Cannabis Licensees



Washington State
Liquor and Cannabis Board

Cannabis Excise Tax Exemption Guidance

Title: Substitute House Bill (SHB) 1453 Cannabis Excise Tax Exemption

Number: GD24-01

Laws: [RCW 69.50.535](#)

Rules: [WAC 314-55-083](#); [WAC 314-55-087](#); [WAC 314-55-089](#);

Resources: [House Bill \(SHB\) 1453](#); [WAC 246-70-040](#)

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Effective Date: June 06, 2024

Requested By: Cannabis Stakeholders

Purpose: This document provides guidance on record keeping for cannabis retail licensees with a medical cannabis endorsement when providing the 37% cannabis excise tax exemption for qualifying sales before LCB rulemaking is complete.



Guidance for Cannabis Licensees

Retailers providing the medical cannabis excise tax exemption should keep the following records for every sale where the medical cannabis excise tax exemption is being provided:

- 1) Date of sale,
- 2) Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the Department of Health as a medically compliant cannabis product in chapter WAC 246-70-040,
- 3) Unique identifying authorization card number of the qualifying patient making the purchase,
- 4) Stock keeping unit (SKU) of cannabis concentrates, useable cannabis, or cannabis infused products identified by the department as a compliant cannabis product in WAC 246-70-040 and tested to the standards in WAC 246-70-040.



Guidance for Cannabis Licensees

Other documentation (recommendations):

- The licensee should have a monthly sales/tax report from their point-of-sale system summarizing total cannabis product sold, total medical cannabis product sold, collected and calculated cannabis excise tax to support their monthly sales/tax report submitted to the LCB.
- The retail licensee should maintain the COAs for the medically compliant product sales demonstrating the product meet Department of Health testing standard for the medically compliant product.
- Licensee will need to enter excise tax information into CCRS, in accordance with WAC 314-55-083(4).



Rulemaking Timeline

- CR 101 was filed on April 24, 2024
- CR 102 was filed on July 17, 2024
- Public hearing occurred August 28, 2024
- CR 103 presented and approved by the Board on September 11, 2024
- CR 103 filed with the Code Reviser the same day
- Rules become effective October 12, 2024 (31 days after filing)



Rulemaking Highlights

- A new section was created for medical cannabis patient excise tax exemption (WAC 314-55-090)
- Modified three other WAC rules to support the new section which includes
 - Added traceability requirements
 - Record keeping requirements
 - Tax and reporting requirements
 - Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535 and WAC 314-55-090
- Public comments were generally supportive, with one suggestion to include a reference to confidentiality provisions of RCW 69.51A.230. A change was made for the CR 103 to include the suggested language.



Oversight

- Primary oversight will occur through financial audits conducted by LCB finance division auditors.
- For best results, auditors will need to work with the Department of Health (DOH) for cross referencing the medical database card numbers (no personally identifying information), in line with the current interactions between DOH and Department of Revenue for sales tax exemptions.



Challenges

- An initial challenge encountered relates to limitations on information sharing with DOH, due to a missing allowance for LCB in RCW 69.51A.230
 - DOR has specific language in this RCW allowing information sharing with DOH.
 - As LCB does not have this same provision, information sharing is limited.
- Medically compliant product packaging updates.
- Accountability is on the retailers charged with proper tax collection and remittance.

Traceability

House Regulated Substances & Gaming Committee

September 17, 2024

Marc Webster, Legislative Director



Traceability Overview

- RCW 69.50.342 and 69.50.345 grants broad authority to the Board to implement the I-502 system, including requirements on producers, processors, and retailers that help reduce diversion/inversion.
- WAC 314.55.083 is much more specific and sets out requirements for traceability that licensees must follow.
- The LCB has had three traceability systems, the first two from outside vendors, and the current system developed in-house.



HB 2320

- The “High THC Bill” or HB 2320 (2024, Rep. Davis) tasks the LCB with using the CCRS (Cannabis Central Reporting System) to answer three questions about the legal cannabis market:
 - (a) The amount of products being sold in the following categories: Usable cannabis, cannabis concentrates, and cannabisinfused products;
 - (b) The average THC concentration in usable cannabis and cannabis concentrates, and the average milligrams of THC per unit in cannabis-infused products; and
 - (c) The range of THC concentration in usable cannabis and cannabis concentrates.
- We will begin data collection in December of 2024 and report findings to the Legislature in November of 2025.



Next Generation Traceability

- While the current system has its benefits, the LCB is beginning the process of envisioning a new traceability system
- LCB budget request to begin development
 - Initial step is stakeholder outreach
 - Feasibility study to follow
 - Integration with Systems Modernization Project



Questions

- What does traceability look like in a federally-legal system/interstate commerce?
- How best do we balance ease of use/licensee burden with regulatory interests/public safety?
- What are the most important uses of a traceability system?



LCB Cannabis Testing

House Regulated Substances and Gaming Committee

Captain Matt Murphy

LCB Enforcement and Education Division – Cannabis
Unit



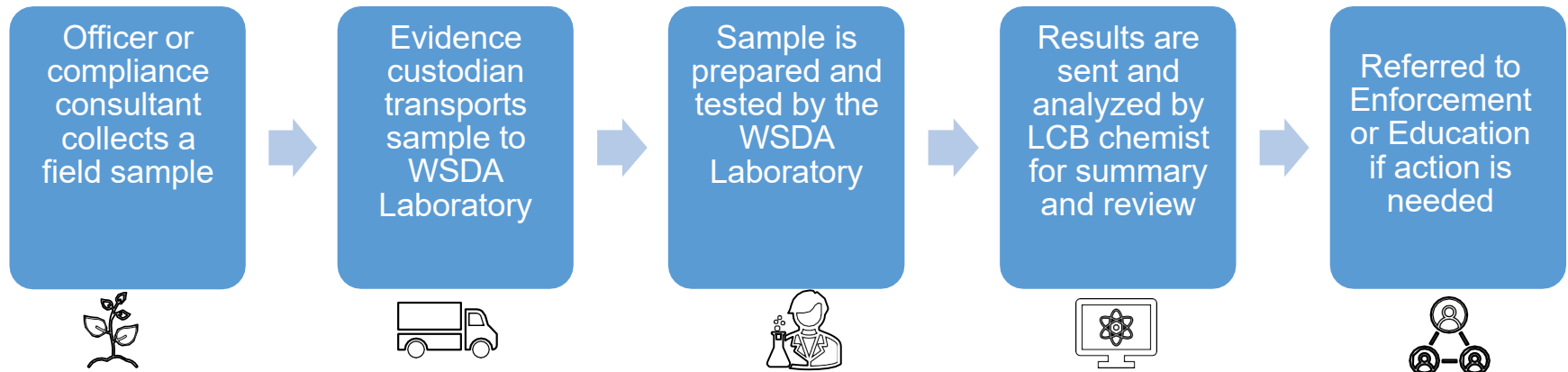
LCB Cannabis Testing Pathways

- Compliance Consultant Sampling (ongoing), Testing at WSDA Laboratory
- Officer Sampling (complaints/investigations), Testing at WSDA Laboratory
- Licensee Sampling, Testing at Certified Labs



Cannabis Samples taken by LCB

The LCB holds a contract with the WSDA to conduct testing of cannabis and cannabis products and provide technical consultation pursuant to the requirements of RCW 69.50 and WAC 314-55 including but not limited to WAC 314-55-084 relating to the use or presence of pesticides or pesticide residues on cannabis or cannabis products.





Lab Testing Summary

2022

- Complaint/Investigative: 131 samples
- Random: 595 samples total

2023

- Complaint/Investigative: 166 samples
- Random: 419 samples

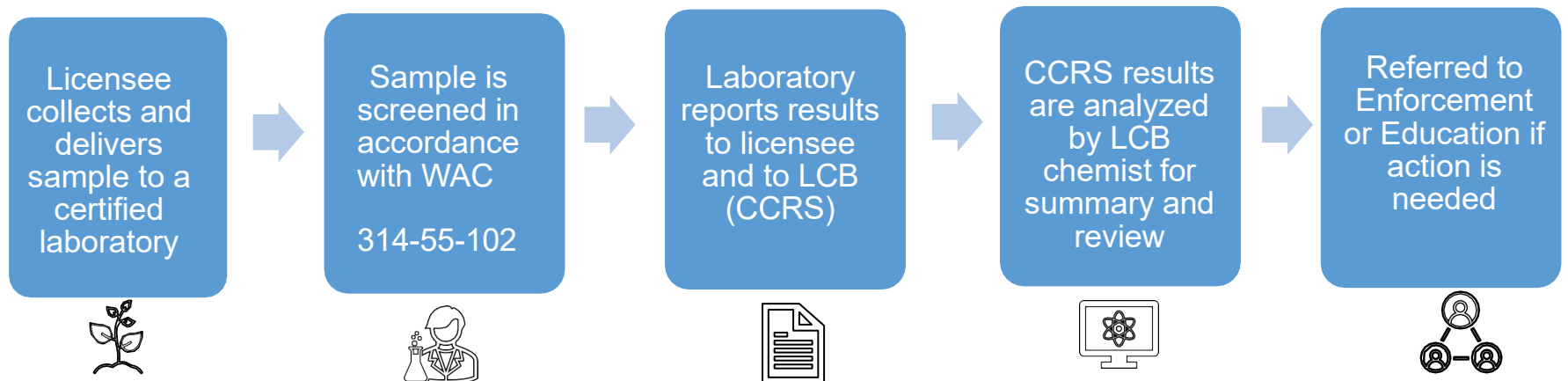
2024

- Complaint/Investigative: 237 samples



Cannabis Quality Control Testing

[RCW 69.50.348](#) On a schedule determined by the board, every licensed cannabis producer and processor must submit representative samples of cannabis, useable cannabis, or cannabis-infused products produced or processed by the licensee to an independent, third-party testing laboratory. The purpose of testing representative samples is to certify compliance with quality assurance and product standards adopted by the board under [RCW 69.50.342](#) or the department of health under [RCW 69.50.375](#). In conducting tests of cannabis product samples, testing laboratories must adhere to laboratory quality standards adopted by the state department of agriculture under chapter [15.150](#) RCW. Any sample remaining after testing shall be destroyed by the laboratory or returned to the licensee submitting the sample.





Okanogan County DDE Summary

- In April 2023, LCB Enforcement and Education Division identified a pattern of pesticide testing failures that pointed to product contamination in a specific region of the state (Okanogan County).
- This was a result of random testing of cannabis products. Testing results showed detectable levels of dichlorodiphenyldichloroethylene (DDE), some above action levels.
- DDE is a remnant product of 1,1,1-trichloro-2,2-bis(p-chlorophenyl)ethane (DDT); a pesticide that was outlawed in the United States in 1973. LCB took action to ensure public safety and health



DDE Cont...

- **April 2023**, notified 18 licensed cannabis locations in the Okanogan County area about DDE concerns.
- **April 2023**, placed 5 licensed cannabis locations on administrative hold based on random sample results that showed evidence of detectable levels of DDE and above action levels.
- **April 2023**, all 5 licensed cannabis locations conducted volunteer initiated cannabis recalls.
- **July 2023**, all five 5 licensed cannabis locations were released from full administrative holds after follow up tests were completed.
- **January 2023 to December 2023**, 122 cannabis samples were collected for testing.
 - 15 of 18 locations had samples available for testing.
 - 90 of the 122 samples resulted in detectable levels of DDE.
 - 58 of the 90 samples resulted in detectable levels above DDE action levels.
 - Average results of DDE levels were 0.71 ppm.
 - Highest detectable level of DDE was 4.6 ppm.



DDE Cont...

April to Dec. 2023, 28 complaints were generated related to the DDE investigations.

- 8 of the 28 complaints were substantiated.
 - Substantiated based on traceability violations WAC 314-55-083:
- 20 of the 28 complaints were unsubstantiated.
 - Unsubstantiated based on “intentional” use of unauthorized pesticides under WAC 314-55-521:

April to December 2023, 9 actions were taken.

- 4 Administrative Violation Notices (AVN).
 - 4 violations for traceability from DDE investigations.
- 1 Written Warning issued.
 - 1 violation for records related to traceability.
- 4 Notices to Correct (NTC) issued.
 - 4 NTC’s for traceability.



Partnerships During DDE Investigations

Department of Ecology (DOE)

- Consultation during discovery and evaluation of test results
- Due to identified soil concerns, DOE produced a 364 page [Department of Ecology DDE report.pdf](#) (Fall 2023)
- Soil Sampling
- Identified path forward with area licensees to continue studying area soil
 - [DDT Soil Remediation Pilot for Cannabis Farms in Okanogan County \(wa.gov\)](#)

Washington State Department of Agriculture

- Consultation during investigations
- Conducted testing for cannabis samples
- Water testing
- Grant program to reimburse licensees for new soil



DDE Lessons

Lessons Learned

- Understanding of lab limitation for testing
- Understanding of timing of test results
- Need for lab capacity
- Supports assigning a dedicated project manager during similar projects
- Data availability limitations for traceability investigations, recalls, and product tracking
- Supports need for continued random testing
- Need for a recall procedure (in review now)

Items to Note

- Current rule process to require heavy metal testing
- Current discussion with university labs for increased lab capacity
- Developing scope/requirements for traceability system



Washington State Liquor and Cannabis Board

Thank you