



## CR 102 Memorandum

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

Date: July 17, 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.

#### 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 scheduled for 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 WSLCB 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.

## **PART 1: Proposed New Rule Language – WAC 314-55-090 – Medical Cannabis Patient Excise Tax Exemption**

### Section 1: Prerequisites for Excise Tax Exemption

Consistent with section 1(2)(a), chapter 79, Laws of 2024, the prerequisites for offering the excise tax exemption are identified. While the bill language says that a retailer must have a medical cannabis endorsement, because [RCW 69.50.375](#) and [WAC 314-55-080](#) identify the requirements for holding that endorsement, specific reference is made to them. Otherwise, the rule language closely mirrors the bill language.

### Section 2: Record Requirements

Consistent with section 1(2)(b), chapter 79, Laws of 2024, the LCB has the authority to identify what information retailers need to preserve in the event of future audits to establish that each sale to which the excise tax is exempted qualifies for the excise tax exemption. As such, and identified in more detail in the table below, the following data points are required to be preserved for each sale where the excise tax is exempted:

- Date of sale;
- From the patient recognition card, the unique patient identifier and the effective and expiration dates of the recognition card;
- Stock keeping unit (SKU) or unique product identifier of the cannabis product to which the excise tax is being exempted from; and
- Sales price of the item(s) to which the excise tax is being exempted from.

Each of these items is necessary to establish that the prerequisites identified in section 1 above are satisfied, except for the sales price, which is required to determine how much tax is being exempted.

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### Section 3: Taxability Presumption

RCW 69.50.535(1) identifies the collection of the 37% excise tax as the default. The very name and phrasing used in this legislation of an “exemption” indicates that this is the exception, not the rule. Therefore, it follows that the party claiming the exception should, in the event of a dispute, bear the burden of demonstrating that the exception applies, rather than the LCB bear the burden of demonstrating that the general rule applies. As such, this section makes clear that the burden is on the retailer to preserve the required records demonstrating the propriety of every single excise tax exemption that is provided. In the event of a dispute, if a retailer is unable to produce the required documentation, the default presumption of RCW 69.50.535(1), that a 37% excise tax shall be collected, applies. Consistent with other instances where a retailer fails to properly pay its excise taxes, the same principles apply here, including any penalties.

### Section 4: Definitions

The terms defined are mostly taken directly from RCW 69.51A, and more specifically from the definitions identified in [RCW 69.51A.010](#). The exceptions are for “department” which refers to the Washington State Department of Health, “unique patient identifier” which refers to the randomly generated and unique identifying number placed on recognition cards as described in [RCW 69.51A.230](#), and “unique product identifier”, referring to the product identifier used consistent with LCB’s traceability requirements identified in [WAC 314-55-083\(4\)](#).

### Section 5: Statutory Expiration Date

As specified in section 1(2)(a), chapter 79, Laws of 2024, this excise tax exemption is scheduled to expire on June 30, 2029.

## **PART 2: Changes to Existing Parts of Chapter 314-55 WAC**

Other than cross-references to the new rule at WAC 314-55-090, and changing the acronym “WSLCB” to “LCB” consistent with [WSR #24-11-037](#), the following additional changes were made:

WAC 314-55-087(1)(r) – adding a requirement to keep detailed sale records including but not limited to, date of sale, sale price, item sold and taxes assessed. This record-keeping requirement is added to sales records regardless of whether excise taxes or collected to provide a baseline to understand the records provided where excise taxes are exempted. To understand how the records provided reflect an exempted excise tax, records need to be provided that demonstrate where an excise tax is not exempted.

WAC 314-55-089(1)(c) – replacing “listing” with “summarizing”. This reflects a relaxing of record requirements to ease some regulatory burden on licensees and is provided to reflect business records needed and preserved by licensees. Considering increasing

record requirements issued as part of this rulemaking, this was viewed as a likely desirable reprieve.

WAC 314-55-089(1)(e) – changing three years to five years. This rule explicitly cites WAC 314-55-087, which requires all records to be preserved for five years, and the use of the word “three” was a typographical error that needed to be addressed.

WAC 314-55-089(5) – removing the mailing address and the reference to paying online “through the traceability system.” These changes are being done to provide greater flexibility for future potential payment system modernization. The PO box mail address identified currently is out of date, and rather than replace it with another one that may become out of date at some point in the future, leaving the language to simply state that it should be mailed to the LCB allows licensees to find LCB’s mailing address and mail it themselves.

The reference to paying through the traceability system specifically is removed to allow for future potential modernization of the traceability system, and a future potential modernization of the tax payment system.

### **Estimated Costs of Compliance**

Under the Regulatory Fairness Act (RFA) in chapter 19.85 RCW, agencies are required to consider the costs that complying with the proposed rules will impose on businesses, unless the proposed rules are subject to an exemption to this requirement. The CR 102 form describes these exemptions in more detail. None of the exemptions apply to this rulemaking.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This estimate is a very generous estimate for costs affiliated with any additional required record-keeping and additional time that will accommodate any sale where the excise tax will be exempted under the new rule. This cost was estimated to be \$2,000.00. This is well below the minor cost calculated to be \$3,940.88, which is explained in great deal in the Small Business Economic Impact Statement (SBEIS) section of the CR 102 form filed today.

### **Rule Necessity**

These rule changes are needed to implement the language in SHB 1453 and provide internal consistency with other sections of chapter 314-55 WAC. The rule necessity for each individual change is identified in the explanation above and the tables provided below.

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## Description of Rule Changes

<b>WAC 314-55-090 Medical cannabis patient excise tax exemption</b>		
<b>Section</b>	<b>Proposed rule Language</b>	<b>Rule Necessity</b>
(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 section (1)(2)(a), chapter 79, Laws of 2024, 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 section (1)(2)(a), chapter 79, Laws of 2024, 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 (1)(2)(a), chapter 79, Laws of 2024, 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 (1)(2)(a), chapter 79, Laws of 2024.
(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 1(2)(b), chapter 79, Laws of 2024, 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 section 1(2)(a), chapter 79, Laws of 2024 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 section 1(2)(a), chapter 79, Laws of 2024 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 section 1(2)(a), chapter 79, Laws of 2024, identifies the expiration date of the medical cannabis patient excise tax exemption.

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, <u>including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;</u>	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 <a href="#">WSR #24-11-037</a>
314-55-087  Recordkeeping requirements for cannabis licensees.	<b>New Rule Language</b>		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;		
<b>New Rule Language</b>			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.
(1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;			

	Replaced instances of “WSLCB” with “LCB”		Consistent with <a href="#">WSR #24-11-037</a>
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-year</u> 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 <a href="#">WSR #24-11-037</a>

**Attachments:**

Attachment A: CR 101 Informal Comment Table

Attachment B: Stakeholder Engagement PowerPoint

Attachment C: Stakeholder Engagement Session Teams Chat Logs

Attachment D: Post Stakeholder Engagement Comments

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