21-06 FINAL REPORT:
2021 TAX PREFERENCE PERFORMANCE REVIEWS
Medical Cannabis Tax Preferences

LEGISLATIVE AUDITOR'S CONCLUSION:

Seven medical cannabis tax preferences provide tax relief to patients and cooperatives. After 2019 statutory changes, it is unclear how pending taxpayer guidance may affect beneficiary savings.

December 2021

Executive Summary

Tax exemptions for medical cannabis

The 2015 Legislature enacted seven tax preferences for medical cannabis: six sales and use tax exemptions for medical cannabis patients and cooperatives, and a business and occupation (B&O) tax exemption for medical cannabis cooperatives.

The preferences vary in customer eligibility requirements, intended beneficiaries, and qualifying purchases and activities.

The preferences have no expiration date.

Estimated Biennial Beneficiary Savings
$4.9 Million
Tax Type
Business and Occupation Tax, Sales and Use Tax
Multiple RCWs
Applicable Statutes

Usage limited in part by availability of medically endorsed retailers

Six of the seven preferences require access to a retailer with a medical endorsement from the Liquor and Cannabis Board. Medical endorsement is voluntary for licensed retailers. Washington has 275 medically endorsed retailers in 32 counties. These retailers can register eligible customers in the medical cannabis authorization database and make tax-exempt sales. In fiscal year 2020, 205 retailers made tax-exempt sales. Some retailers, including medically endorsed retailers, offer retail discounts in lieu of the medical cannabis sales tax exemptions. It is unclear how often customers make purchases with discounts instead of the preferences.

Largest tax preference subject to updated guidance

Over 87% of beneficiary savings for the medical cannabis tax preferences have been realized under one retail sales tax preference. In 2019, the Legislature modified the tax preference to

refer to DOH-compliant products. It is unclear how pending taxpayer guidance will affect future beneficiary savings.

Recommendations

Legislative Auditor's Recommendation: Continue

The Legislature should continue the preferences because they provide tax relief to medical cannabis patients.

The Department of Revenue and the Department of Health should update guidance to reflect 2019 statutory changes.

You can find more information in Recommendations.

Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation with comment. Testimony suggests the state should consider reviewing the definitions and guidelines associated with medical cannabis. The Legislature may want to evaluate approaches used in other states, such as Colorado, and consider whether and to what extent Washington's laws can be altered to better meet patient needs. The Legislature may find that additional interventions may be needed to address the issues raised in testimony. These issues largely revolve around quality and price differentials between the regulated and unregulated market.

Committee Action to Distribute Report

On December 1, 2021 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with Legislative Auditor recommendations.

REVIEW DETAILS
1. Seven preferences for medical cannabis

Seven preferences provide tax relief for medical cannabis purchases and cooperatives

Six preferences provide exemptions from sales and use tax on retail purchases of cannabis and cannabis-based products, and one preference provides an exemption from the B&O tax for

medical cannabis cooperatives[1]. The preferences were enacted in 2015, and have no expiration date.

Three agencies are involved in medical cannabis regulation or taxation. The Department of Revenue (DOR) collects retail sales and use taxes and provides guidance to taxpayers. The Department of Health (DOH) administers the medical authorization database, licenses and regulates the medical cannabis consultant certificate, and establishes product quality standards for products that may be beneficial for medical use. The Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, and retailers, and collects the marijuana excise tax.

Preferences limited to certain retailers, customers, and products

When the 2015 Legislature created the preferences, it stated its intent to provide tax relief to medical cannabis patients and cooperatives under certain circumstances. The preferences vary in customer eligibility requirements, intended beneficiaries, and qualifying purchases and activities. See Section 3 for beneficiary savings for each preference.

Exhibit 1.1: Seven preferences provide exemptions to eligible cannabis sales and medical cannabis cooperatives

Preference name	Statutes (RCW)	Tax Type	Beneficiaries	Access to medically endorsed retailer required?	Registration in patient database required?	Qualifying activities
Medical Cannabis Sold to Qualifying Patients	82.08.9998(1)(a), 82.12.9998(1)(a)	Sales and use	Recognition cardholders	Yes, to purchase	Yes	Purchases of DOH-compliant products[2] (As of Jan. 1, 2020. Previously all cannabis products. See Section 3 for more detail)

[1]Medical cannabis cooperatives allow up to four medical cannabis patients or their designated provider to grow cannabis for the patients' personal use.

[2]Products that meet DOH standards (Chapter 246-70 WAC) for certain heavy metals and pesticides.

Preference name	Statutes (RCW)	Tax Type	Beneficiaries	Access to medically endorsed retailer required?	Registration in patient database required?	Qualifying activities
Low THC Products Sold to Qualifying Patients	82.08.9998(1)(b), 82.12.9998(1)(b)	Sales and use	Recognition cardholders	Yes, to purchase	Yes	Purchases of products less than or equal to 0.3% THC
Cannabis with Low THC High CBD Ratio	82.08.9998(1)(c), 82.12.9998(1)(c)	Sales and use	All customers	Yes, to purchase	No	Purchases of DOH-compliant products appropriately labeled as Low THC, High CBD Ratio
Topical THC Sales by Health Care Professionals	82.08.9998(1)(d), 82.12.9998(1)(d)	Sales and use	All customers	No	No	Purchases of topical products with less than or equal to 0.3% THC from health care professionals
Medical Cannabis Produced and Used by Cooperative Members	82.08.9998(1)(e)(i), 82.12.9998(1)(e)(i)	Sales and use	Members of cooperatives	Yes, to register in patient database	Yes	Transfers of cannabis products between members of the same cooperative
Resources and Labor Contributed by Medical Cannabis Cooperative Members	82.08.9998(1)(e)(ii), 82.12.9998(1)(e)(ii)	Sales and use	Cooperatives	Yes, to register in patient database	Yes	Contributions of resources and labor by members to their own cooperative
Cannabis Cooperatives	82.04.756	B&O	Cooperatives	Yes, to register in patient database	Yes	Operations of cooperatives

Source: JLARC staff analysis.

Licensed retailers may receive medical endorsements from the Liquor and Cannabis Board

Licensed retailers may request a medical endorsement from LCB. To hold an endorsement in good standing (WAC 314-55-080), a retailer must, among other requirements:

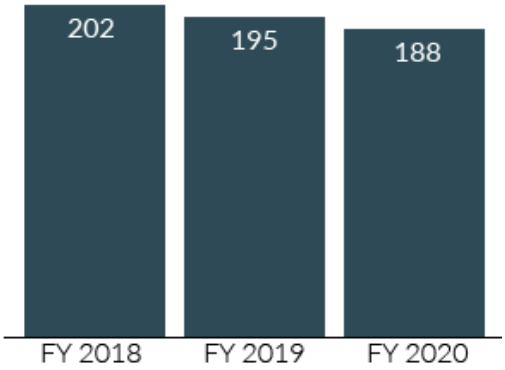
- Employ a cannabis consultant certified by DOH.
- Demonstrate the ability to register patients in the medical cannabis patient database.
- Issue recognition cards to registered patients and their providers.
- Carry a representative assortment of cannabis products for registered patients and designated providers.

While all requirements are subject to enforcement, LCB states it only enforces the requirement to employ certified consultants.

Patients and their designated providers may register as recognition cardholders

Five of the preferences are restricted to patients registered in the medical cannabis authorization database or their designated provider. Collectively, these people are called "recognition cardholders," because they are issued a recognition card when they register in the database. To register, patients or designated providers must visit a medically endorsed retailer and request registration from a certified consultant.

Exhibit 1.2 Number of retailers issuing recognition cards declining



Source: JLARC staff analysis of Department of Health data.

The number of retailers issuing cards and the number of cards issued have declined in the past three years. According to state agency staff and stakeholders, the reason for this decline is unknown.

Two preferences are available to all customers. These apply to products that do not have significant psychoactive effects due to their low concentrations of THC[3].

[3]The principal psychoactive compound in cannabis.

Three preferences are available to cooperatives and their members. Medical cannabis cooperatives allow up to four medical cannabis patients or their designated providers to grow cannabis for the patients' personal use. To register in a cooperative, a patient or designated provider must obtain a recognition card through a medically endorsed retailer. There are currently 12 cooperatives in six counties.

Department of Health's compliant product standards apply to two preferences

Two preferences apply to sales of products that meet DOH's compliant product standards. These standards are optional criteria that cannabis producers and processors test their products against, in addition to the LCB standards for all cannabis products. Current DOH standards establish maximum allowable levels for certain heavy metals and pesticides which are not included in the LCB testing standards. The compliant product standards are intended to provide quality assurances for products that may be used to address medical conditions.

DOH-compliant products fall into three categories: General Use, High THC, and High CBD Low THC Ratio.

Exhibit 1.3: DOH-compliant products fall into three categories

Product Category	Eligible Product Types	Eligible Retailers	Eligible Customers
GENERAL USE	May be of any product type allowed by LCB. No more than 10 mg THC per serving.	Any licensed retailer	Adults 21+ and recognition cardholders
HIGH CBD LOW THC RATIO	**Concentrates**: No more than 2% THC, and a ratio of at least 25:1 CBD:THC **Edibles**: No more than 2 mg THC per serving, and a ratio of at least 5:1 CBD:THC **Topicals**: A ratio of at least 5:1 CBD:THC	Any licensed retailer	Adults 21+ and recognition cardholders
HIGH THC	Only capsules, tablets, tinctures, transdermal patches, and suppositories. May be up to 50 mg THC per serving.	Only medically endorsed retailers	Recognition cardholders only

Source: JLARC analysis of Chapter 246-70 WAC.

REVIEW DETAILS
2. Retailer availability limits use

Availability of medically endorsed retailers is one factor that limits preference use

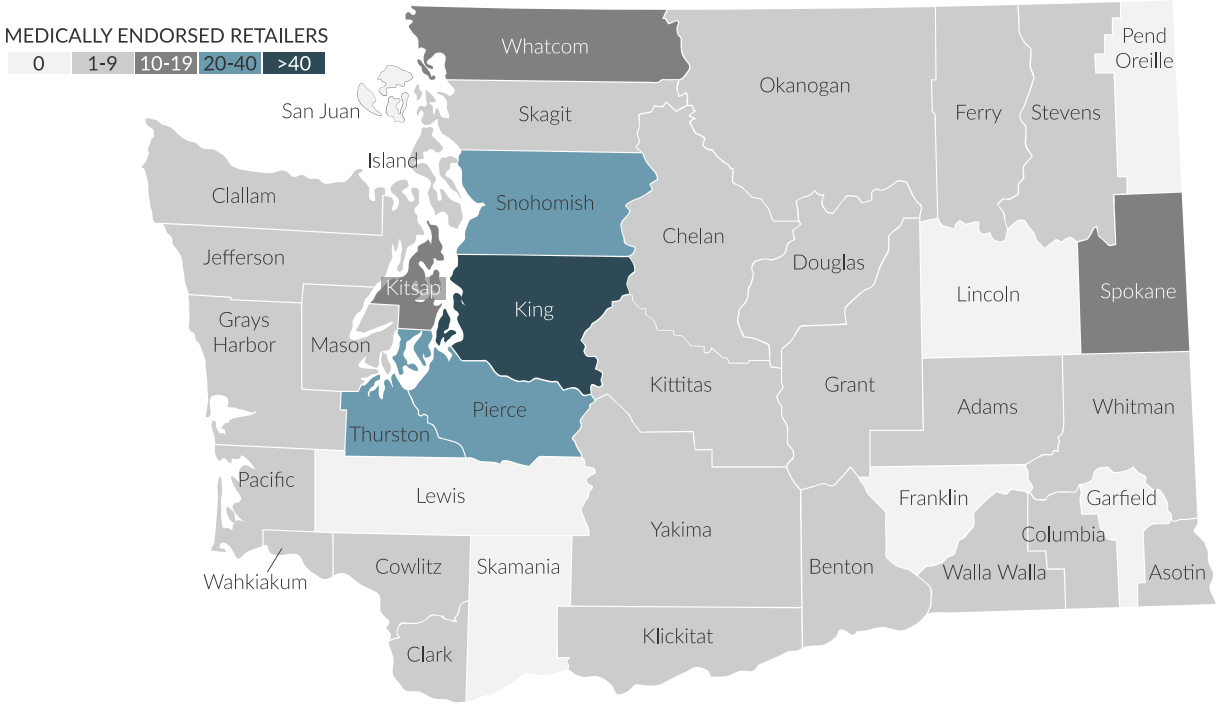
Six of the seven preferences require access to a medically endorsed retailer

Six of the seven preferences apply to sales by medically endorsed retailers[4]. Cannabis retailers are not required to obtain a medical endorsement, which means these preferences may not be available to eligible customers at all retail locations.

Medically endorsed retailers are located in 32 of 39 counties

There are 510 licensed cannabis retailers in 38 counties. Of these, 275 retailers (54%) have medical endorsements. Seven counties have no medically endorsed retailers.

Exhibit 2.1: 32 of 39 counties have medically endorsed retailers



Source: JLARC staff analysis of Marijuana Traceability Database and Liquor and Cannabis Board data.

Of the 275 currently medically endorsed retailers, 188 issued recognition cards in fiscal year 2020 to patients or their designated providers. This includes the re-issuance of lost or expired cards.

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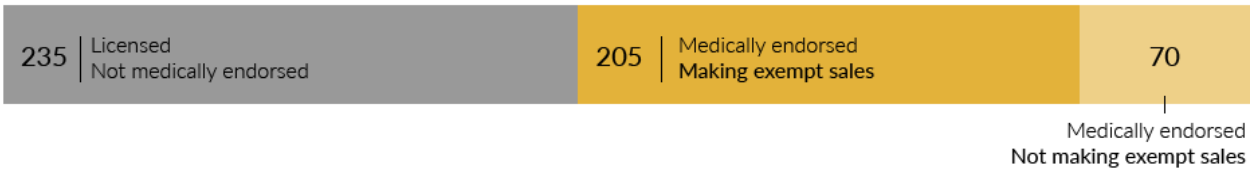
[4]Cannabis retailers meeting certain requirements may be endorsed by the Liquor and Cannabis Board.

205 endorsed retailers made tax-exempt sales in calendar year 2020. Of Washington's 38 counties with licensed retailers, 32 counties had a retailer making tax-exempt sales.

Further information about retailers and cooperatives in each county is available in the appendix.

Exhibit 2.2: 205 of Washington's 510 licensed cannabis retailers made tax exempt sales in 2020



Source: JLARC staff analysis of the Liquor and Cannabis Board's Marijuana Traceability Database.

Some retailers offer discounts in lieu of sales tax preferences

Department of Revenue (DOR) audit records and stakeholder interviews indicate that some retailers, including those without medical cannabis endorsements, offer discounts to recognition cardholders for purchases eligible for tax preferences. These are discounts to the retail sales prices, upon which sales and use tax is still collected. However, purchases from medically endorsed retailers qualify for a sales tax exemption, and should not be taxed. Patients paying sales and use tax on some of these purchases may be eligible to request refunds from the retailers or DOR, in accordance with WAC 458-20-229, if they believe the sales tax was paid in error.

Some retailers indicated they provide a discount in lieu of the tax preference due to discomfort with handling medical records, the cost of required equipment, and retention of qualified cannabis consultants required for a medical endorsement. It is unclear how many retailers offer discounts rather than make tax-exempt sales and the total value of discounts offered is unknown.

REVIEW DETAILS

3. 2019 change could affect savings

Beneficiaries will save an estimated $4.9 million in the 2021-23 biennium. Most savings are realized under a recently modified preference for which guidance is not yet updated.

Beneficiary savings in fiscal year 2020 for all seven tax preferences are $1.79 million. Over 87% of the beneficiary savings were realized under a single preference: Medical Cannabis Sold to Qualifying Patients.

Exhibit 3.1 One preference accounts for over 87% of FY 2020 beneficiary savings

Preference Name	Beneficiary Savings, FY 2020
Medical Cannabis Sold to Qualifying Patients	$1.57 million
Low THC Products Sold to Qualifying Patients	$83,000
Cannabis with Low THC High CBD Ratio	$113,000
Topical THC Sales by Health Care Professionals	Confidential[5]
Medical Cannabis Produced and Used by Cooperative Members	$8,400
Resources and Labor Contributed by Medical Cannabis Cooperative Members	$16,200
Cannabis Cooperatives	$800
Total	**$1.79 million**

Source: JLARC staff analysis of Department of Revenue deduction data.

2019 statute changed products eligible for the Medical Cannabis Sold to Qualifying Patients sales tax exemption, which has the greatest beneficiary savings. Future savings could be affected.

The 2019 Legislature passed the Marijuana Product Labeling Act (ESSB 5298). The bill restricts cannabis product labels from making medical claims, and clarifies that the Medical Cannabis Sold to Qualifying Patients preference applies specifically to sales of products that meet the Department of Health's (DOH) compliant product standards[6]. This legislation altered the language of the cannabis tax preference with the highest beneficiary savings, potentially affecting its use.

Preference previously applied to all recognition cardholder purchases

Prior to the 2019 statutory change, the Medical Cannabis Sold to Qualifying Patients sales tax exemption applied to all purchases made by recognition cardholders[7] of cannabis products identified by DOH as beneficial for medical use.

DOH determined in 2015 that because cannabis is federally classified as a Schedule 1 controlled substance, there was insufficient evidence to identify particular products as beneficial for medical use. Due to this lack of evidence, DOH deferred to patients and their healthcare

[5]Three or fewer taxpayers deducted sales under this preference and beneficiary savings are confidential.

[6]Standards that test cannabis products for certain heavy metals and pesticides.

[7]Medical cannabis patients or their designated providers who are registered in the medical cannabis authorization database.

providers to determine which products are medically beneficial. A 2016 Department of Revenue (DOR) Special Notice to taxpayers indicated that all cannabis products purchased by recognition cardholders from medically endorsed retailers were presumed to be medically beneficial and exempt from sales and use tax under this preference.

Preference administration has not changed

Effective January 1, 2020, the Marijuana Product Labeling Act specified that the preference applies to products meeting DOH's compliant product standards. Statute[8] requires medically endorsed retailers to carry a representative assortment of DOH-compliant products. The Liquor and Cannabis Board (LCB) stated that this requirement has not been enforced. Beneficiary savings in fiscal year 2020 for purchases of products labeled as DOH-compliant were $6,895, which is less than 1% of the $1.57 million of claimed sales tax savings that year.

DOH and DOR have not updated guidance to medically endorsed retailers or the public since the 2019 statutory change. Medically endorsed retailers have continued not to collect sales tax on purchases by recognition cardholders, regardless of the products' compliance with DOH standards. DOR stated that it is working with DOH, and DOH is in the process of updating public guidance for compliant cannabis products.

Future biennial savings estimated to be $4.9 million

The estimates of future beneficiary savings shown below assumes there is no change in guidance for the Medical Cannabis Sold to Qualifying Patients preference. However, if new guidance limits qualifying purchases, future savings could be affected.

Exhibit 3.2: Estimates of beneficiary savings

Biennium	Fiscal Year	Estimated Beneficiary Savings
2017-2019 *7/1/17 - 6/30/19*	2018	$1,412,516
	2019	$1,486,019
2019-21 *7/1/19-6/30/21*	2020	$1,794,019
	2021	$2,022,628
2021-23 *7/1/21-6/30/23*	2022	$2,280,964
	2023	$2,572,996
	2021-23 Biennium	$4,853,961

Source: JLARC analysis of Department of Revenue and Liquor and Cannabis Board data.

[8]RCW 69.50.375

REVIEW DETAILS
4. Optional database registration unique to WA

Optional registration in the patient database sets these preferences apart from other preferences and states

Preferences for other medical necessities do not require beneficiaries to register in a database

A 2013 JLARC report reviewed retail sales and use tax exemptions for medical necessities. Medical necessities are medical products the Legislature defined as necessary for health, or products that health professionals recommend or order for patients. This includes menstrual products, insulin, and dialysis equipment.

Five of the seven medical cannabis tax preferences require beneficiaries to register in the medical cannabis patient database. Tax preferences for other medical necessities may require prescriptions or authorizations from healthcare provider, but none require beneficiaries to register in a database.

Patients who are not registered in the database may purchase most cannabis products, but are ineligible for the tax preferences that require registration. It is unknown how many patients with medical cannabis authorizations from their health care provider do not register in the database.

Unlike peer states, patient database registration is optional in Washington

JLARC staff identified eleven other states[9] that allow sales of medical and recreational cannabis.

The eleven peer states either do not tax medical cannabis or tax it at a lower rate than recreational cannabis. These states also vary in credentialing requirements for cannabis retailers. Some states require medical retailers to serve only verified medical customers, or may restrict certain types of products to verified medical patients. Others allow for recreational and medical sales in the same location, but may require inventories and points-of-sale to be separate.

Most of these states require medical cannabis patients to register in a database as a condition of eligibility for medical cannabis tax preferences. Washington is the only state in which database registration in a patient database is optional. Patients who are not registered in Washington's database are unable to claim five of the seven tax preferences.

[9] Alaska, Arizona, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, and Oregon.

REVIEW DETAILS
5. Applicable statutes

RCW 82.04.756, RCW 82.08.9998, RCW 82.12.9998

Exemptions - Marijuana cooperatives

RCW 82.04.756

(1) This chapter does not apply to any cooperative in respect to growing marijuana, or manufacturing marijuana concentrates, useable marijuana, or marijuana-infused products, as those terms are defined in RCW 69.50.101.

(2) The tax preference authorized in this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.

Exemptions - Marijuana concentrates, useable marijuana, or marijuana-infused products - Products containing low amounts of THC

RCW 82.08.9998

(1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health in rules adopted under RCW 69.50.375(4) in chapter 246-70 WAC as being a compliant marijuana product, by marijuana retailers with medical marijuana endorsements to qualifying patients or designated providers who have been issued recognition cards;

(b) Sales of products containing THC with a THC concentration of 0.3 percent or less to qualifying patients or designated providers who have been issued recognition cards by marijuana retailers with medical marijuana endorsements;

(c) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, by marijuana retailers with medical marijuana endorsements, to any person;

(d) Sales of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by health care professionals under RCW 69.51A.280;

(e)(i) Marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less produced by a cooperative and provided to its members; and

(ii) Any nonmonetary resources and labor contributed by an individual member of the cooperative in which the individual is a member. However, nothing in this subsection (1)(e) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.08.020 on any purchase of property or services contributed to the cooperative.

(2) Each seller making exempt sales under subsection (1) of this section must maintain information establishing eligibility for the exemption in the form and manner required by the department.

(3) The department must provide a separate tax reporting line for exemption amounts claimed under this section.

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

(a) "Cooperative" means a cooperative authorized by and operating in compliance with RCW 69.51A.250.

(b) "Marijuana retailer with a medical marijuana endorsement" means a marijuana retailer permitted under RCW 69.50.375 to sell marijuana for medical use to qualifying patients and designated providers.

(c) "Products containing THC with a THC concentration of 0.3 percent or less" means all products containing THC with a THC concentration not exceeding 0.3 percent and that, when used as intended, are inhalable, ingestible, or absorbable.

(d) "THC concentration," "marijuana," "marijuana concentrates," "useable marijuana," "marijuana retailer," and "marijuana-infused products" have the same meanings as provided in RCW 69.50.101 and the terms "qualifying patients," "designated providers," and "recognition card" have the same meaning as provided in RCW 69.51A.010.

Exemptions - Marijuana concentrates, useable marijuana, or marijuana-infused products - Products containing low amounts of THC

RCW 82.12.9998

(1) The tax levied by RCW 82.12.020 does not apply to:

(a) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health in rules adopted under RCW 69.50.375(4) in chapter 246-70 WAC as being a compliant marijuana product, by marijuana retailers with medical marijuana endorsements to qualifying patients or designated providers who have been issued recognition cards;

(b) Sales of products containing THC with a THC concentration of 0.3 percent or less to qualifying patients or designated providers who have been issued recognition cards by marijuana retailers with medical marijuana endorsements;

(c) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, by marijuana retailers with medical marijuana endorsements, to any person;

(d) Sales of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by health care professionals under RCW 69.51A.280;

(e)(i) Marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less produced by a cooperative and provided to its members; and

(ii) Any nonmonetary resources and labor contributed by an individual member of the cooperative in which the individual is a member. However, nothing in this subsection (1)(e) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.08.020 on any purchase of property or services contributed to the cooperative.

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(a) "Cooperative" means a cooperative authorized by and operating in compliance with RCW 69.51A.250.

(b) "Marijuana retailer with a medical marijuana endorsement" means a marijuana retailer permitted under RCW 69.50.375 to sell marijuana for medical use to qualifying patients and designated providers.

(c) "Products containing THC with a THC concentration of 0.3 percent or less" means all products containing THC with a THC concentration not exceeding 0.3 percent and that, when used as intended, are inhalable, ingestible, or absorbable.

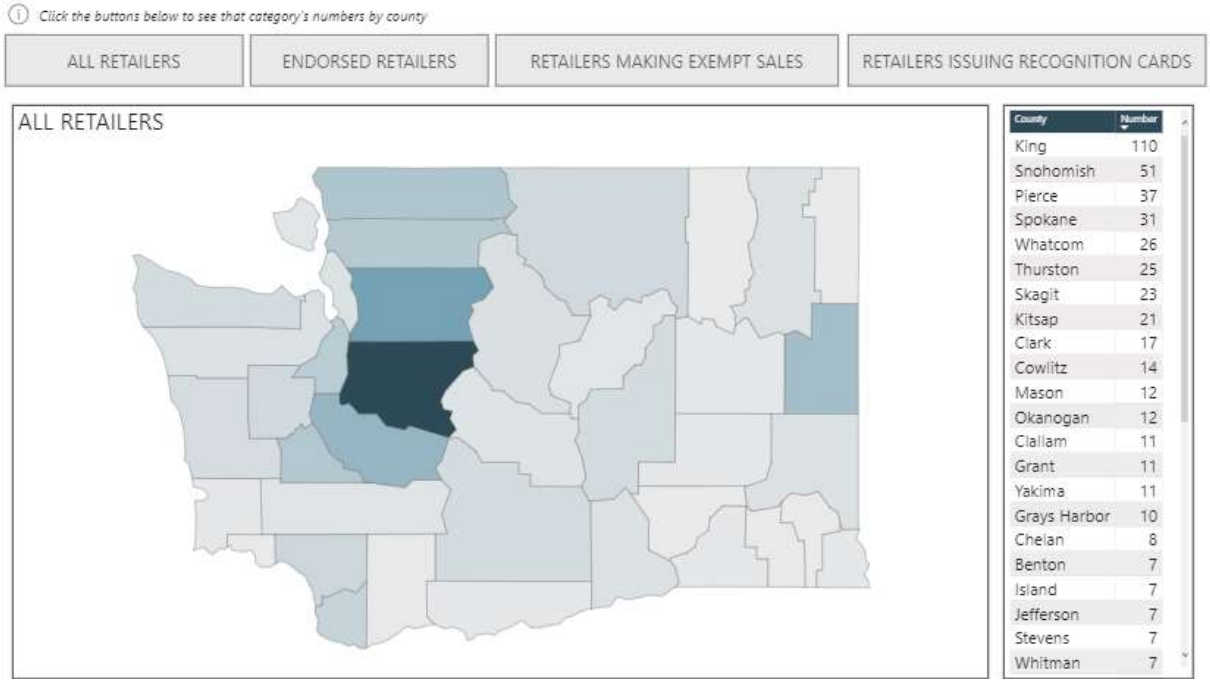
(d) "THC concentration," "marijuana," "marijuana concentrates," "useable marijuana," "marijuana retailer," and "marijuana-infused products" have the same meanings as provided in RCW 69.50.101 and the terms "qualifying patients," "designated providers," and "recognition card" have the same meaning as provided in RCW 69.51A.010.

REVIEW DETAILS
Appendix A: Retailers by county

Interactive map of retailers and cooperatives by county

The Liquor and Cannabis Board's Marijuana Traceability Database tracks cannabis sales, licensee status, and cooperatives. The Department of Health collects data about recognition cards issued by medically endorsed retailers. The interactive map below provides additional information about retailers and cooperatives in each county.

Exhibit A1: Interactive map of retailers and cooperatives by county
Click image to go to interactive map



Source: JLARC staff analysis of Liquor and Cannabis Board and Department of Health data.

RECOMMENDATIONS & RESPONSES
Legislative Auditor's Recommendation

Legislative Auditor recommends continuing the preferences.

The Legislature should continue the preferences because they provide tax relief to medical cannabis patients.

The Department of Revenue and the Department of Health should update guidance to reflect 2019 statutory changes.

Legislation Required: No

Fiscal Impact: None

RECOMMENDATIONS & RESPONSES
Letter from Commission Chair

State of Washington

Citizen Commission for Performance Measurement of Tax Preferences

COMMISSION MEMBERS

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October 27, 2021

The Honorable Senator Christine Rolfes
The Honorable Senator Lynda Wilson
The Honorable Senator Mark Mullet
The Honorable Senator Perry Dozier
The Honorable Senator Annette Cleveland
The Honorable Senator Ron Muzzall
The Honorable Senator Reuven Carlyle
The Honorable Senator Doug Ericksen
The Honorable Senator Karen Keiser
The Honorable Senator Curtis King
The Honorable Representative Timm Ormsby
The Honorable Representative Drew Stokesbary
The Honorable Representative Noel Frame
The Honorable Representative Ed Orcutt
The Honorable Representative Cindy Ryu
The Honorable Representative Bill Jenkin
The Honorable Representative Eileen Cody
The Honorable Representative Joe Schmick
The Honorable Representative Joe Fitzgibbon
The Honorable Representative Mary Dye
The Honorable Representative Shelly Kloba
The Honorable Representative Drew MacEwen

Re: 2021 Tax Preference

Dear Senators and Representatives:

I am pleased to forward to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences **unanimously adopted for this year's review of tax preferences**. Our comments are informed by JLARC staff work, public testimony and our professional knowledge of Washington's tax structure.

The Citizen Commission consists of five voting members, appointed by each of thefour caucuses and the Governor's office and represent a broad range of ideologies and professional backgrounds. Members include a retired tax attorney and CPA, a Seattle University law professor, the president of the Edmonds Education Association, a University of Washington public policy professor, and myself, the Chief Economist at Avista. Notably, reviews this year included:

Four preferences in which the Legislative Auditor recommended legislative action:

- A review of a preference for Manufacturers' Deferral, in which the Legislative Auditor concluded that "*Four businesses used the tax deferral and met job goals through temporary construction work rather than permanent manufacturing jobs. Businesses likely would have built the facilities without the deferral. To increase manufacturing jobs or training, the Legislature should consider modifying the deferral program.*"
- A review of a Reduced B&O Rate for Printing and Publishing Newspapers, in which the Legislative Auditor concluded that "*The preference provides tax relief to newspaper printers and publishers and saves these businesses money. However, the newspaper industry continues to lose revenue and jobs as it seeks to stabilize financially.*"

RECOMMENDATIONS & RESPONSES
Letter from Commission Chair

- A review of seven preferences for Medical Cannabis, in which the Legislative Auditor concluded that "*Seven medical cannabis tax preferences provide tax relief to patients and cooperatives. After 2019 statutory changes, it is unclear how pending taxpayer guidance may affect beneficiary savings.*"
- An exemption for the Washington Health Benefit Exchange, in which the Legislative Auditor concluded that "*The preference reduces the Exchange's administrative costs by $1 million per year, allowing it to maximize its funding for operating a health insurance marketplace. The Legislature should extend the July 2023 expiration date or make the preference permanent.*"

Recommendations to allow one preference to expire and to clarify the intent of another

- A review of a Credit for Renewable Energy Program Payments, in which the Legislative Auditor concluded that "*The tax credit program increased Washington's solar capacity and met its solar-related employment target. It did not broaden low-income participation. Solar installations have continued after the program reached its funding limit.*"
- An exemption for Nonprofit Outpatient Dialysis Facilities, in which the Legislative Auditor concluded that "*Preference provides tax relief to nonprofit outpatient dialysis facilities, which outperform for-profit counterparts on two standard measures. Legislature should clarify its intent.*"

One recommendation implemented during the 2021 session

- During the 2021 session, the Legislature amended chapter 84.25 RCW, related to a Targeted Urban Area Exemption to change the population criteria and extend the expiration date, in response to the Legislative Auditor's recommendation.

The full text of the Commission's recommendations is included below and will be added to JLARC's proposed final report in December. Summaries of the JLARC staff's analysis and recommendations and brief video summaries of each preference are available here.

As Chair of the Citizen Commission, I would be pleased to discuss the Commission's position and comments with you and any interested legislators. These reviews provide valuable information as the Legislature considers whether individual preferences are meeting policy objectives. Please feel free to contact me (grant.forsyth@leg.wa.gov) or the Legislative Auditor, Keenan Konopaski (keenan.konopaski@leg.wa.gov or 360-786-5187).

Sincerely,

Grant D. Forsyth

Grant D. Forsyth, Chair
Citizen Commission for Performance Measurement of Tax Preferences

RECOMMENDATIONS & RESPONSES

Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation with comment. Testimony suggests the state should consider reviewing the definitions and guidelines associated with medical cannabis. The Legislature may want to evaluate approaches used in other states, such as Colorado, and consider whether and to what extent Washington's laws can be altered to better meet patient needs. The Legislature may find that additional interventions may be needed to address the issues raised in testimony. These issues largely revolve around quality and price differentials between the regulated and unregulated market.

LCB Response

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Washington State
Liquor and Cannabis Board

September 13, 2021

Keenan Konopaski
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PO Box 40910
Olympia, WA 98504-0910

Re: JLARC Review – Medical Cannabis Tax Review – Request for Formal Response

Dear Mr. Konopaski,

The Liquor and Cannabis Board appreciates the opportunity to participate in the JLARC review of the medical cannabis tax preference. The LCB supports the goal of improving patient access to medical cannabis. While direct responsibility for administering this sales tax preference falls to the Department of Revenue and the Department of Health, the LCB supports the recommendation to continue the tax preference.

Sincerely,

DocuSigned by:
Rick Garza
56C9C82B44E2420...
Rick Garza
Director

cc: Toni Hood, LCB Deputy Director
Jim Morgan, LCB CFO

PO Box 43080, Olympia WA 98504-3088, (360) 664-1600
lcb.wa.gov

RECOMMENDATIONS & RESPONSES
DOR & OFM Response

STATE OF WASHINGTON

September 7, 2021

TO: Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: David Schumacher, Director
Office of Financial Management

Vikki Smith, Director
Department of Revenue

SUBJECT: JLARC PRELIMINARY REPORT ON 2021 TAX PREFERENCE PERFORMANCE REVIEWS

The Office of Financial Management and the Department of Revenue have reviewed the Joint Legislative Audit and Review Committee's (JLARC) preliminary report on the 2021 tax preference performance reviews.

We appreciate the thorough analysis of JLARC and the detailed review provided by the Citizen Commission for Performance Measurement of Tax Preferences. A system that provides for a continuous review of the state tax preferences is critical to ensure that the state of Washington maintains a fair and equitable tax system.

We have no specific comments on the following reports:

- Health Benefit Exchange
- Manufacturer's Deferral
- Newspapers
- Nonprofit Kidney Dialysis
- Credit for Renewable Energy Program Payments
- Targeted Urban Area Exemption

We continue to support the recommendations of JLARC for the inclusion of performance statements and specific public policy objectives for all tax preferences where they don't exist in statute today to clarify intent.

As you requested, here is the Department of Revenue's response on the recommendation provided in the Medical Cannabis Report.

RECOMMENDATION	AGENCY POSITION	COMMENTS
The Department of Revenue and the Department of Health should update guidance to reflect 2019 statutory changes.	Concur	The Department of Revenue concurs with this recommendation. However, we must wait to publish guidance until the Department of Health (DOH) has provided its guidance. We have worked with DOH and learned it is in the process of updating its public guidance concerning compliant marijuana products. DOH is the authorized agency that determines which products are compliant marijuana products that would qualify for the preference. Once updated guidance has been provided by DOH, the Department of Revenue will update the Sales and Use Tax Exemptions for Marijuana Retailers with a Medical Endorsement special notice that was originally published May 6, 2016, consistent with the DOH guidance.

Thank you again for the opportunity to review this preliminary report.

RECOMMENDATIONS & RESPONSES
DOH Response

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

PO Box 47890 • Olympia, Washington 98504-7890
Tel:360-236-4030 • 711 Washington State Relay

September 14, 2021

TO: Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Christie Spice, Acting Assistant Secretary
Health Systems Quality Assurance Division

SUBJECT: JLARC Report of the Medical Cannabis Tax Preference Review

The Department of Health (department) has reviewed the Joint Legislative Audit and Review Committee's (JLARC) report of the 2021 tax preference performance reviews. We appreciate the thorough analysis of JLARC and the detailed review provided by the Citizen Commission for Performance Measurement of Tax Preferences. The state of Washington must maintain a fair and equitable tax system and continual reviews of tax preferences are critical to ensure equity is maintained.

We concur with the recommendations JLARC made to the Legislature to continue the preferences because they provide tax relief to medical cannabis patients. We also concur with the recommendation that that the Department of Health and the Department of Revenue update guidance to reflect the 2019 statutory changes. The department is in the process of issuing an interpretive statement to clarify that "compliant product" for purposes of RCW 82.08.9888(1)(a) and 82.12.9998(1)(a) refers to any cannabis products that may be "beneficial for medical use." The department will amend chapter 246-70 WAC to further clarify this requirement.

Thank you for the opportunity to review and provide comment on this JLARC report.

cc: Kristina White, Internal Auditor, Department of Health
Martin Pittioni, Director, Office of Health Professions, Department of Health
Blake Maresh, Deputy Director, Office of Health Professions, Department of Health
Allyson Clayborn, Program Manager, Office of Health Professions, Department of Health

MORE ABOUT THIS REVIEW
Study questions

Click image to view PDF of proposed study questions.

Washington JLARC

PROPOSED STUDY QUESTIONS
2021 Medical Marijuana Tax Preference Reviews

State of Washington Joint Legislative Audit and Review Committee — December 2020

JLARC will review seven tax preferences for medical marijuana

The 2006 Legislature directed JLARC staff to conduct performance audits of tax preferences. These preferences are included in the 10-year review schedule set by the Citizen Commission for Performance Measurement of Tax Preferences.

Washington voters passed Initiative 692 in 1998, which allowed for the medical use of marijuana. In 2012, Washington voters passed Initiative 502, which allowed for the production, processing, sale, and consumption of recreational marijuana in a highly regulated marketplace. The 2015 Legislature passed legislation which merged the medical market with the recreational market and revised how marijuana is taxed.

This legislation established seven tax preferences intended to provide tax relief to qualifying patients and their designated providers when purchasing or obtaining marijuana for medical use. The Legislature recognized a similarity to drugs and supplements prescribed by health care professionals, which are not subject to sales tax.

A separate tax preference for medical marijuana, because it does not qualify for the exemption for prescription drugs

The Legislature found that an authorization for the medical use of marijuana is different from a prescription. Both prescription drugs and the medical use of marijuana require oversight by a medical professional. However, statute specifies that a medical authorization is not a prescription. A prescription is an "order", whereas an authorization for medical marijuana is a formalized statement of professional opinion regarding marijuana. As a result, prescription drug tax preferences do not extend to medical marijuana.

This study will address the following questions:

1. To what extent has each tax preference been used?
2. How do these preferences compare to preferences for other medical necessities?
3. How does taxation of medical marijuana in Washington compare to tax policy in other states?

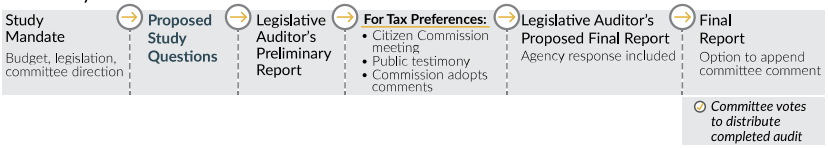
Study Timeframe

Preliminary Report: July 2021 **Proposed Final Report:** December 2021

Study Team

Team Lead	Scott Hancock	(360) 786-6193	scott.hancock@leg.wa.gov
Research Analyst	Rachel Murata	(360) 786-5293	rachel.murata@leg.wa.gov
Project Coordinator	Eric Thomas	(360) 786-5182	eric.thomas@leg.wa.gov
Legislative Auditor	Keenan Konopaski	(360) 786-5187	keenan.konopaski@leg.wa.gov

JLARC Study Process



JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE
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Washington Joint Legislative Audit and Review Committee

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