No. 1018452

SUPREME COURT
OF THE STATE OF WASHINGTON

ENVOLVE PHARMACY SOLUTIONS, INC.,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE

Appellant.

ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION I

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

RCW 82.04.320 provides an exemption from business and occupation ("B&O") tax for "any person in respect to insurance business upon which a tax based on gross premiums is paid." The Court of Appeals correctly applied the plain language of the statute to undisputed facts. Its decision is also consistent with this Court's precedent, as well as the Department of Revenue's historic administration of the statute.

The Court of Appeals interpreted the term "insurance business" in RCW 82.04.320 to conclude that where activities are required to be performed as part of an insurance contract, they are part of the "insurance business."[1] As this Court has recognized in another context, the business of insurance includes more than just the issuance of policies and collection of premiums. It also includes activities needed to administer the contract and provide benefits to the insureds, including benefit

[1] *Envolve Pharmacy Solutions, Inc. v. Dep't of Revenue*, No. 83563-7-I (Wn. App. Feb. 27, 2023) ("Opinion" or "Op.") at 14.

management services such as claims processing.[2] Consistent with this interpretation, the Department recognized for almost 30 years that the term "insurance business" in RCW 82.04.320 includes all activities that are "functionally related" to insurance administration, during which time the Legislature never amended the statute.

In trying to manufacture a conflict between the Court of Appeals' Opinion and this Court's decision in *Armstrong v. State*, 61 Wn.2d 116, 377 P.2d 409 (1962), the Department mischaracterizes the holding in *Armstrong*. In *Armstrong*, the Court analyzed only whether a proviso in RCW 82.04.320 excluding independent insurance agents from the exemption was constitutional on equal protection grounds. *Id.* at 121-22. In upholding the proviso, this Court noted that the Legislature has

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[2] *See Kruger Clinic Orthopaedics, L.L.C. v. Regence BlueShield*, 157 Wn.2d 290, 301, 138 P.3d 936 (2006) ("the actual performance of an insurance contract [between insurer and insured] is an essential part of the 'business of insurance.'") (internal quotations omitted; brackets in original).

wide latitude in formulating classifications for excise tax purposes and that the Legislature could have a rational basis for taxing independent agents differently from others in the insurance business. *Id*. at 121.

Armstrong did not hold that the insurance business exemption was limited to taxpayers that paid premiums tax themselves. Nor did it hold that the scope of the term "insurance business" excludes activities performed under an insurance contract, as the Department asserts. Indeed, if the Department's reading of the statute were correct, there would be no need for the proviso regarding independent insurance agents addressed in *Armstrong* in the first place.

By reaffirming the Department's long-standing administration of the statute, this case does not involve an issue of substantial public interest that should be determined by this Court. If the Department now believes after many years of consistent administration that the structure of the statute should

be changed, its remedy is with the Legislature, not this Court.[3] Accordingly, the Court should deny review.

II. RESTATEMENT OF THE ISSUES

Review is not appropriate under RAP 13.4(b)(1) or (4) because the Court of Appeals' Opinion is not in conflict with any decision of this Court and the issue presented is not of substantial public interest. If, however, this Court were to grant review, the issue would be whether Envolve is exempt from B&O tax for performing business activities "in respect to insurance business," where: (i) Envolve performed pharmacy benefit activities required to be performed under insurance regulations on behalf of a health plan; and (ii) a tax based on gross premiums is paid on that business.

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[3] *See Armstrong*, 61 Wn.2d at 120–21 ("It is not the function of this Court to consider the propriety or justness of the tax. . . . A state legislature has very broad discretion in making classifications in the exercise of its taxing powers," which discretion is "subject to revision only by legislative action") (citations and quotations omitted).

III. STATEMENT OF THE CASE

A. Envolve's Pharmacy Benefit Management Activities.

1. Washington Healthcare Authority Contract

In July 2012, the Washington Health Care Authority ("HCA") contracted with Coordinated Care,[4] an affiliate of Envolve, to manage part of Washington's Medicaid health insurance programs (the "HCA Contract"). CP 375. Coordinated Care receives a monthly premium per enrollee from HCA in exchange for providing health care coverage to enrollees. CP 416. Coordinated Care pays premium tax on these amounts to the Washington Office of the Insurance Commissioner. CP 650; *see also* CP 637-48.

Under the HCA Contract, Coordinated Care must maintain a network of pharmacies which provide pharmacy services to enrollees. CP 422-28. The HCA Contract also requires that

[4] Another affiliate, Coordinated Care of Washington, took over the HCA Contract in 2014. The performance of the HCA Contract and remained the same. For purposes of this brief, the term "Coordinated Care" refers to both Coordinated Care Corporation and Coordinated Care of Washington.

Coordinated Care perform activities associated with the pharmacy benefits provided to enrollees (collectively referred to as "PBM Services"), such as: processing and paying claims to pharmacies for drugs dispensed to enrollees; maintaining a list of prescription drugs covered under the pharmacy benefit; and conducting drug utilization reviews. CP 439, 449, 456-62.

2. Envolve Pharmacy Benefit Management Agreement

Coordinated Care contracted with Envolve, its pharmacy benefit management affiliate, to fulfill its pharmacy benefit obligations under the HCA Contract. The Pharmacy Benefit Management Services Agreement ("PBM Agreement"), CP 586, between Envolve and Coordinated Care requires Envolve to manage the availability and payment of enrollees' pharmacy benefits on behalf of Coordinated Care. CP 653. Coordinated Care relied on Envolve to manage the pharmacy benefits to Coordinated Care's enrollees. CP 652-53. The PBM Services performed for Coordinated Care were Envolve's only relevant

business activities in Washington during the tax periods at issue. CP 653.

All of the PBM Services provided by Envolve under the PBM Agreement are insurance business activities required under the HCA Contract between Coordinated Care and the HCA. *Compare* HCA Contract, CP 375, *with* PMB Agreement, CP 586. Specifically, the PBM Services that Envolve is required to provide on behalf of Coordinated Care include:

- Administering and determining the eligibility of persons enrolled in Coordinated Care's health plan ("enrollees");
- Coordination of benefits; verification of coverage; and record keeping;
- Maintaining a network of pharmacies ("Network Pharmacies") that agree to provide pharmacy services to enrollees under the terms of Envolve's claims process;
- Auditing and credentialing Network Pharmacies to ensure compliance with the HCA Contract and federal, state, and local laws;
- Selecting Network Pharmacies at locations and in sufficient number to ensure reasonable access for enrollees;
- Processing claims from Network Pharmacies, which includes applying Envolve's concurrent drug utilization review services;

- Providing a prior authorization and step therapy program;
- Managing a prescription drug formulary (list of preferred prescription drugs) and collecting rebates from pharmaceutical suppliers on behalf of Coordinated Care; and
- Providing a 24-hour a day, 7 day a week toll-free telephone line for inquiries regarding the PBM Services provided by Envolve.

CP 653-54.

None of Envolve's activities involve the provision of health care services. CP 653-54. Envolve is not licensed as a pharmacy in Washington and does not provide pharmacy services and/or mail-order pharmacy services to Coordinated Care in Washington. *Id*. ¶ 8. Enrollees fulfill prescription drug orders at Network Pharmacies, not through Envolve. *Id.* ¶ 9. The Network Pharmacies then compound or purchase prescription drugs and deliver the prescription drugs directly to enrollees. *Id.* ¶ 10. Envolve does not purchase prescription drugs from Network Pharmacies or deliver prescription drugs to enrollees. *Id*. ¶ 11. The Network Pharmacy files a claim for the services and prescription drugs provide to enrollees, which Envolve then

processes and arranges for payment on Coordinated Care's behalf. *Id.* ¶ 12.

B. Administrative Background

1. Department Letter Ruling and Audit

When Coordinated Care began operating in Washington in 2012, its parent company, Centene Corporation, requested a letter ruling on behalf of its subsidiaries from the Department. CP 340. Specifically, Centene requested confirmation that the amounts Coordinated Care passed on to its affiliates as part of the fulfillment of its contract with HCA were exempt under RCW 82.04.32, along with the amounts that Coordinated Care received from HCA under the Contract. *Id*. In response, the Department issued a letter ruling stating:

> Because the affiliates do not pay a premiums tax, they ***can*** qualify for the B&O exemption only if they are providing services that are functionally related to Coordinated Care's insurance business. ***Functionally related services are those activities incidental to accomplishing the insurance function.*** Services performed are considered functionally related if they relate exclusively to the insurance business that pays the premium taxes.

> Thus, ***if an affiliate is providing administrative, legal, or other services functionally related*** to Coordinated Care's insurance business, the amounts the affiliate receives from Coordinated Care for those services ***will be exempt from B&O tax*** to the extent that Coordinated Care paid the premiums tax to Washington State.

CP 338 (emphasis added).

Envolve relied on the Letter Ruling and filed amended returns with the Department, requesting refunds of previously paid B&O tax for the period of July 1, 2012 through September 30, 2013. CP 299; CP 211. The Department denied Envolve's refund request and issued two assessments—one for the period January 1, 2010 through December 31, 2014, and the other for the period January 1, 2015 through June 30, 2015. CP 299. In denying the refund request, the auditor asserted that: (i) some of the amounts Envolve received from Coordinated Care were not for functionally related insurance services; and (ii) Envolve did not provide an allocation of the amounts that were received for those services the auditor agreed were functionally related to insurance. CP 319-20.

2. Department Administrative Review

Envolve petitioned for review by Department's Administrative Review and Hearings Division ("ARHD"). At the ARHD level, the Department found that Envolve was engaged in some activities that were functionally related to insurance (and therefore qualified as tax-exempt "insurance business" under RCW 82.04.320) and some services that were not:

> In this case, it appears that Taxpayer is engaged in certain "general administrative services" like "accounting, personnel and data processing" that are functionally related to Affiliate MCO's insurance business. See 9 WTD at 297-98. *In particular, Taxpayer's administration of eligibility management services, claim processing, claims adjudication, benefit coordination, coverage verification, and recordkeeping services are all "general administrative services" that are similar to the "functionally related" services in Determination 88-311A, 2 WTD 293.*
>
> However, Taxpayer is also engaged in a number of activities that do not appear to be "functionally related" to Affiliate MCO's "insurance business," in that they are not "activities incidental to accomplishing the insurance function." *The activities that are not "functionally related" include: maintaining a network of pharmacy contacts;*

> *credentialing of network pharmacies; selecting network pharmacies; drug utilization review services; quality improvement; managing the prescription drug formulary; collecting rebates from pharmaceutical manufacturers; and maintaining information data systems.*

CP 304 (emphasis added).

The Determination provided no explanation for why some of Envolve's activities were "incidental to accomplishing the insurance function" and why some were not, even though all of them are required to be performed under the HCA Contract and the insurance regulations. *Id.* On reconsideration, the Department affirmed the Audit Division's assessment. CP 308.

3. Board of Tax Appeals Proceeding

After the Department issued its final decision, Envolve filed a notice of appeal with the Board of Tax Appeals, asserting that the amounts it received were for services functionally related to Coordinated Care's insurance business under both the 2013 Letter Ruling and the Department's published determination, Determination 88-311A, 9 WTD 293 (1990). CP 1287-88.

In September 2020, Envolve and the Department filed cross-motions for summary judgment with the Board of Tax Appeals on the issue of whether the B&O tax applied to amounts Envolve received from Coordinated Care for PBM Services under RCW 82.04.320. CP 11. The Department's arguments primarily revolved around its assertion that the prior precedent related to the insurance business exemption was incorrect and that Envolve could not qualify for the exemption because it was not an insurance company that paid premiums tax. CP 26.

The Board of Tax Appeals issued a decision in February 2021, finding that Envolve was entitled to rely on the Department's prior precedent that any activities that were "functionally related" to insurance qualified as "insurance business" activities exempt from B&O tax under RCW 82.04.320. CP 59. However, the Board reasoned that Envolve actually provides "pharmacy services," which the Board asserted are "healthcare services, and not within the definition of insurance, and not covered by the functionally related test." *Id*.

Because the Board believed that Envolve had already received the exemption for the activities that were acknowledged to be functionally related, it granted summary judgment to the Department. CP 58-60.

Envolve filed a motion for reconsideration, pointing out that it did not provide pharmacy services to Coordinated Care and that it was not licensed to provide pharmacy services in Washington. CP 33. Envolve also pointed out that the Board's decision was contrary to its prior decision in *Wellpartner v. Dep't of Revenue*, BTA Dkt. 10-228 (2011), where the Board held that a pharmacy benefit manager is "engaged in insurance administration activity. ***It is not providing a health care service*** to the enrollees of the [health plan]." (emphasis added). CP 34.

The Board of Tax Appeals issued a Corrected Final Decision on March 23, 2021, refusing to reconsider its conclusion and merely amending Conclusion of Law No. 7 to add the term "benefit management" between the words

"pharmacy" and "service." CP 26. The rest of the decision remained the same, and the Board dismissed Envolve's appeal.

C. Judicial Review

On review before King County Superior Court, the Department did not defend the Board's conclusion that Envolve's pharmacy benefit management services are health care services. Instead, the Department maintained that its prior administration of the statute was erroneous, and that the Board's decision should be upheld on the ground that Envolve was not an insurance company that paid premiums tax. CP 1397-98. The Superior Court reversed the Board's order, holding that: (i) the Department's prior administration of the statute was consistent with the statutory language; and (ii) Envolve's activities were insurance business activities exempt under RCW 82.04.320. CP 1440.

The Department then filed an appeal with the Court of Appeals seeking a reversal of the Superior Court's order. The Court of Appeals affirmed, holding that Envolve's activities

qualified as insurance business upon which a premiums tax had been paid. Op. at 11-13.

IV. REASONS TO DECLINE REVIEW

This case does not satisfy the criteria set forth in RAP 13.4(b) for this Court's review. The Court of Appeals applied the plain language of the statute to the particular facts of this case, consistent with this Court's decisions. Moreover, by reaffirming the validity of the framework that the Department used to administer the statute for almost 30 years, in which the Legislature silently acquiesced, the Court of Appeals' Opinion does not create an issue of substantial public interest that should be determined by this Court.

A. The Court of Appeals Correctly Applied the Plain Language of RCW 82.04.320 to Envolve's Facts Consistent with the Statute's Historical Treatment

The Department's criticisms of the Court of Appeals' Opinion are largely based on the false premise that Envolve cannot qualify for the exemption on its own because the term "insurance business" is limited to insurance companies that issue

contracts and pay premiums tax on the premiums they collect. *See* Petition for Review ("Pet.") at 12 (equating "insurance business" with an insurance company that issues policies regulated by insurance statutes).

In its Opinion, the Court of Appeals correctly observed that the Department's position conflicts with the plain language of the statute, as the exemption applies to "any person in respect to insurance business upon which a tax based on gross premiums is paid to the state." Op. at 11 (*citing* RCW 82.04.320) (underlining in original). The statute does not require that the entity claiming the exemption must be the same entity that paid the premiums tax. *Id*.

The Court of Appeals based its decision on the holding that a "fair reading of 'insurance business' in RCW 82.04.320 includes more than the administrative task of issuing contracts and collecting premiums." Op. at 12. This holding is consistent with the Washington insurance statutes broadly defining "insurance transaction" to include the "transaction of matters

subsequent to the execution of the contract and arising out of it." RCW 48.01.060. Moreover, it is consistent with this Court's decision in *Kruger Clinic Orthopaedics*, 157 Wn.2d at 302, which held that regulation of health carrier's contracts with providers is part of the business of insurance.

The holding is also consistent with the Department's administration of the statute for almost 30 years. In asserting that the Court of Appeals' Opinion radically expands the exemption beyond its historic roots,[5] the Department ignores both its own internal contemporaneous analysis of Determination 88-311A and the holding in *Factory Mutual Engineering Ass'n v. State*, No. 15195-2-II, 70 Wn. App. 1057, 1993 WL 13142655 (July 19, 1993), which reached almost exactly the same conclusion as the Court of Appeals reached in *Envolve*.

First, the Department claims Determination 88-311A was narrowly applied to insurance companies that paid premiums.

[5] Pet. at 28.

Pet. at 20. But that is simply incorrect. Shortly after issuing Determination 88-311A, the Department's Interpretations and Appeals Division sent the Department's Audit Division a memo clarifying the application of Determination 88-311A to non-insurance affiliates:

> It is the position of the Interpretation and Appeals Division that the "functionally related," test articulated in Final Det. No. 88-311A and Final Det. No. 89-259A does not require that the affiliate receiving the services be an insurance company actually selling insurance. Services to an affiliate are functionally related if the business of the affiliate exists to further the insurance function of an insurance selling company within the affiliated group of companies.
>
> If you recall, an affiliate for purposes of applying the test is any company which is majority owned or controlled by a common parent or owner. The purpose behind the test is to read the exemption from the B&O tax for insurance business to include all activities of an affiliated group of companies which are an integral part of the insurance sales business. The exemption should not be denied just because an insurance company chooses to conduct the various aspects of its insurance business activities through different affiliated legal entities.

CP 371 (underlining in original). The Department reaffirmed this reading in 2005 when it issued Determination 05-0341, ruling that the B&O tax deduction in RCW 82.04.320 is not limited to only companies licensed to sell insurance. CP 372. Therefore, the Department's claim that whether the taxpayer was an insurance company is an important distinction in Determination 88-311A is simply false.

Moreover, as noted above, this is not the first time that the Department has litigated whether the exemption is limited to insurance companies that pay premiums tax. In the early 1990s, the Department assessed an insurance company affiliate on the ground that the exemption was limited to insurance companies that paid premiums tax. CP 361 (*Factory Mutual*, Slip Op. at 8). The taxpayer challenged the assessment, and the Court of Appeals ruled in favor of the taxpayer, rejecting the Department's argument that the exemption was limited to insurance companies that pay premiums tax. CP 365 (*Factory Mutual*, Slip Op. at 12). The Court of Appeals also held that

activities such as claims investigation, defending claims, and making payments "are all part of the 'insurance business.'" CP 362 (*Factory Mutual*, Slip Op. at 9). The Department petitioned for review of the *Factory Mutual* Court of Appeals decision, and this Court denied review. *See Factory Mutual Eng'g Ass'n v. Dep't of Revenue*, 123 Wn.2d 1017, 871 P.2d 600 (1994) (denying review).

While *Factory Mutual* was an unpublished decision, the Department's administration of the statute was consistent with the holding in *Factory Mutual* for decades—until its attempt to relitigate the issue in this case. Therefore, the Department's claim that the Court of Appeals' Opinion represents a radical expansion of the exemption warranting review by this Court is without merit.

B. No Conflict Exists with a Decision of This Court

RAP 13.4(b)(1) requires a showing of an actual conflict between the Court of Appeals' Opinion and a decision of this Court. *Cf. Buchsieb/Dandard, Inc. v. Skagit Cty*, 99 Wn.2d 577,

580, 663 P.2d 487 (1983) (granting discretionary review to determine whether Court of Appeals decision conflicted with Supreme Court decision). No such conflict exists.

1. The Opinion does not conflict with the holding in *Armstrong*.

The Department's petition fails to identify any actual conflict between the Opinion and this Court's decision in *Armstrong*. *See* Pet. at 17-19. That is because no such conflict exists. The only holding in *Armstrong* was that the proviso expressly excluding independent insurance agents from the scope of the "insurance business" exemption did not violate equal protection clauses of the state and federal constitutions. *Armstrong*, 61 Wn.2d at 121. In upholding the proviso, the Court stated:

> The legislative decision to consider the gross premium tax the exclusive tax on insurance company operations … does not mean that it is necessary to grant an exemption to general agents who are in business for themselves.

See Pet. at 18 (*citing Armstrong*, 61 Wn.2d at 121-22).

The Department argues that this statement somehow conflicts with the Court of Appeals' conclusion that the statute does not require the person claiming the exemption to have paid the tax on insurance premiums. Pet. at 17-19. But the *Armstrong* Court's statement is a straight-forward acknowledgment that the Legislature had sufficient grounds to tax independent agents selling insurance policies differently from the insurance companies themselves. As the Court of Appeals correctly observed, the holding in *Armstrong* provides no insight into the precise scope of the term "insurance business on which a tax based on gross premiums is paid to the state." Op. at 15.

Moreover, the proviso at issue in *Armstrong* would be redundant and superfluous if insurance agents and brokers—who are not insurance companies and do not pay premiums tax—did not fall within the scope of the exemption in the first place. *See Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 788, 638 P.2d 1213 (1982) ("It is a well-established principle of statutory construction that provisos and exceptions remove

something from the enacting clause that would otherwise be contained therein.") The Opinion presents no actual conflict with the holding in *Armstrong*.

2. The Opinion is consistent with the "underlying principle" of *Washington Sav-Mor Oil* and *Rena-Ware*.

The Department also asserts that the Opinion conflicts with "the *underlying principle of Washington Sav-Mor Oil, Rena-Ware, etc.*" Pet. At 25 (italics in original). Those cases merely stand for the long-established principle that each entity is separately classified under Washington tax law based on the entity's business activities, and taxpayers cannot pierce the corporate veil to avoid tax. *Washington Sav-Mor Oil Co. v. Tax Commission*, 58 Wn.2d 518, 523, 364 P.2d 440 (1961) ("The appellant asks us to disregard its separate existence, not in order to prevent fraud or injustice, but in order to gain advantage. This we cannot do."); *Ren-Ware Distributors, Inc. v. State*, 77 Wn.2d 514, 518, 463 P.2d 622 (1970) ("For purposes of the taxing statutes, [the related companies] are separate entities. Mere

common ownership of stock, the same officers, employees, etc., does not justify disregarding the separate corporate identities unless a fraud is being worked upon a third person."). Envolve has never sought to disregard its corporate structure, and the Court of Appeals' Opinion does not do so, either.

As discussed above, the Court of Appeals' Opinion was based on the application of the statute to Envolve's activities, not its affiliate, as the Department claims. Op. at 14. Therefore, the Opinion is consistent with the underlying principle in *Sav-Mor Oil* and *Rena-Ware* that each entity is a separate taxpayer, even if owned by a common parent. *Id*. Accordingly, there is no conflict with these decision warranting review.

3. This Court's decision in *Supply Laundry* has no relation to the issues in this case.

Contrary to the Department's assertion, this Court's decision in *Supply Laundry Co. v. Jenner*, 178 Wash. 72, 34 P.2d 363 (1934), has no relationship to the issues presented in this case. *Supply Laundry* involved an equal protection challenge to a different B&O tax that was in place in 1933, prior to

Washington's current B&O tax, which was adopted in 1935. *See Supply Laundry*, 178 Wash. at 75. The taxpayers also asserted "that taxing an insurance agent is equivalent to double taxation of insurance premiums, and therefore unlawful." *Id*. at 77. This Court held that double taxation is not necessarily unlawful, as there is no constitutional prohibition against it in Washington. *Id*. at 79. However, the Court went on to note: "While the Legislature may take that element into consideration in differentiating between classes of individuals, it may also disregard it in cases where, in its judgment, other considerations outweigh it." *Id*.

The Department uses *Supply Laundry* to contend that the "Legislature is the proper body to consider policy arguments like a perceived 'double taxation' of HMOs and their affiliates." Pet. at 27. But Envolve has never argued the unfairness of double taxation in this case. Rather, it has only asked the courts to apply RCW 82.04.320 as the Legislature wrote it—which both the Superior Court and the Court of Appeals have done. Moreover,

the Department's argument highlights that it was the Legislature that made the policy choice regarding exemption of "insurance business upon which a tax based on gross premiums is paid" through its wording of the statute, not the Court of Appeals. This is reinforced by the fact that the Legislature did not act to refute the Department's long-standing application of the exemption to affiliates performing insurance business activities on which premiums tax was paid, despite having nearly 30 years to do so. *See In re Lloyd's Estate*, 53 Wn.2d 196, 199, 332 P.2d 44 (1958) ("The tax commission has interpreted the pertinent statutes in a consistent manner for twenty-three years. We believe that it is significant that during that time the Legislature has not amended the statute but in effect has acquiesced in the administration of it by the tax commission.").

The Court of Appeals' reading of the statute was not based on a finding that double taxation violated the Washington Constitution. Op. at 13. As such, there is no conflict with this

Court's holding in *Supply Laundry*. Accordingly, this case does not present any grounds for review under RAP 13.4(b)(1).

C. The Court of Appeals' Reaffirmance of the Department's Decades-Long Administration of the Statute Does Not Present an Issue of Substantial Public Interest That Should Be Decided by This Court.

As shown above, the Opinion simply reaffirms the Department's long-standing administration of the statute. Such a holding does not create an issue of substantial public importance that should be decided by this Court. If the Department now believes the structure of the exemption—as it has long been understood and applied—is flawed, the appropriate remedy is with the Legislature, not this Court:

> As a general rule, where a statute has been left unchanged by the legislature for a significant period of time, the more appropriate method to change the interpretation or application of a statute is by amendment or revision of the statute, rather than a new agency interpretation.

Dot Foods, Inc. v. Dep't of Revenue, 166 Wn. 2d 912, 922, 215 P.3d 185 (2009).

Accordingly, review is not appropriate under RAP 13.4(b)(4) either.

V. CONCLUSION

The Court of Appeals applied a sensible, plain-language reading of the statute to undisputed facts, in line with almost 30 years of administration of the insurance business exemption by the Department. In reaffirming the Department's long-standing interpretation of the statute, the Court of Appeals' Opinion is consistent with the decisions of this Court and does not raise any issues of substantial public importance that should be decided by this Court. No further review is warranted under RAP 13.4(b).

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This document contains 4,669 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted May 30, 2023,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on May 30, 2023, I caused the foregoing Answer to Petition for Review to be filed with the Supreme Court of the State of Washington, and caused a true and correct copy of same to be served upon the following parties as indicated below:

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LANE POWELL PC

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Transmittal Information

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Appellate Court Case Number:	101,845-2
Appellate Court Case Title:	Envolve Pharmacy Solutions, Inc. v. State of WA, Dept. of Revenue

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