

FILED  
COURT OF APPEALS  
DIVISION II

09 DEC 15 AM 11:09

NO. 39457-0-II

STATE OF WASHINGTON  
BY                       
DEPUTY

---

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

---

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, d/b/a  
ISLAND HOSPITAL,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

---

**RESPONDENT'S BRIEF**

---

ROBERT M. MCKENNA  
Attorney General

PETER B. GONICK, WSBA No. 25616  
DAVID M. HANKINS, WSBA No. 19194  
Assistant Attorneys General  
7141 Cleanwater Drive SW  
PO Box 40123  
Olympia, WA 98504-0123

**ORIGINAL**

PM 12-14-09

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF THE ISSUES.....	1
III.	COUNTERSTATEMENT OF THE CASE .....	2
	A. Factual Statement.....	2
	B. Procedural History .....	5
IV.	SUMMARY OF ARGUMENT.....	6
V.	ARGUMENT .....	6
	A. Standard Of Review.....	6
	B. The B&O Tax Generally.....	7
	C. Medicare Co-Payments And Deductibles Are Taxable.....	8
	1. The Hospital is not entitled to the deduction because monies received from patients and patients’ private insurers are not monies “received from the United States or any instrumentality thereof.” .....	8
	2. Legislative history of the deduction and rules of statutory construction show that the deduction applies only to governmental payments. ....	14
	3. Legislative amendments after the tax period demonstrate the taxability of Medicare deductibles and co-insurance payments.....	16
	4. Island Hospital’s interpretation leads to absurd results.....	21
	D. Island Hospital Is Not Entitled To Attorney Fees.....	22
VI.	CONCLUSION .....	25

APPENDICES:

- Appendix 1 - RCW 82.04.4297 (2000)
- Appendix 2 - *United States v. City of Spokane*, 918 F.2d 84 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991)
- Appendix 3 - *Webster's Third New International Dictionary* 1172 (1981)
- Appendix 4 - *American Heritage Dictionary* 908 (4<sup>th</sup> Ed. 2000)
- Appendix 5 - *Black's Law Dictionary* 814 (8<sup>th</sup> Ed. 2004)
- Appendix 6 - Laws of 1979, 1<sup>st</sup> Ex. Sess., ch. 196
- Appendix 7 - Final Bill Report on Substitute H.B. 302, 46th Leg, 1st Ex. Sess (Wash. 1979)
- Appendix 8 - Laws of 2001, 2d Sp. Sess., ch. 23
- Appendix 9 - Final Bill Report on Substitute H.B. 1624, 57th Leg., 2d Sp. Sess. (Wash. 2001)
- Appendix 10 - RCW 82.04.4311 (2002)
- Appendix 11 - Final Bill Report on H.B. 2732, 57th Leg., Reg. Sess. (Wash. 2002)

## TABLE OF AUTHORITIES

### Cases

<i>City of Seattle v. Winebrenner</i> , 2009 WL 3465931 (Wash. Supreme Ct., Oct. 29, 2009).....	21
<i>Dep't of Ecology v. Campbell &amp; Gwinn, L.L.C.</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	21
<i>Group Health Coop. v. Washington State Tax Comm'n</i> , 72 Wn.2d 422, 433 P.2d 201 (1967).....	8, 15
<i>Homestreet, Inc. v. Dep't of Revenue</i> , 166 Wn.2d 444, 210 P.3d 297 (2009).....	21
<i>Just Dirt, Inc. v. Knight Excavating Inc.</i> , 138 Wn. App. 409, 157 P.3d 431 (2007).....	23
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 50 P.3d 638 (2002).....	21
<i>McAvoy v. Weber</i> , 198 Wash. 370, 88 P.2d 448 (1939) .....	9
<i>Post v. City of Tacoma</i> , __ Wn.2d ___, 217 P.3d 1179 (Oct. 15, 2009).....	21
<i>Simpson Inv. Co. v. Dep't of Revenue</i> , 141 Wn.2d 139, 3 P.3d 741 (2000).....	7
<i>State v. Glas</i> , 106 Wn. App. 895, 27 P.3d 216 (2001), <i>rev'd on other grounds</i> , 147 Wn.2d 410, 54 P.3d. 147 (2002).....	10
<i>Tingey v. Haisch</i> , 159 Wn.2d 652, 152 P.3d 1020 (2007).....	21
<i>Union Elevator &amp; Warehouse Co., Inc. v. Dep't of Transp.</i> , 144 Wn. App. 593, 183 P.3d 1097 (2008).....	24

<i>Union Elevator &amp; Warehouse Co., Inc. v. Dep't of Transp.</i> , 152 Wn. App. 199, 215 P.3d 257 (2009).....	23
<i>United Parcel Serv., Inc. v. Dep't of Revenue</i> , 102 Wn.2d 355, 687 P.2d 186 (1984).....	7
<i>United States v. City of Spokane</i> , 918 F.2d 84 (9th Cir. 1990), <i>cert. denied</i> , 501 U.S. 1250 (1991).....	9
<i>Wagner v. Foote</i> , 128 Wn.2d 408, 908 P.2d 884 (1996).....	23
<i>Whidbey General Hosp. v. Dep't of Revenue</i> , 143 Wn. App. 620, 180 P.3d 796 (2008).....	23
<i>Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.</i> , 134 Wn.2d 692, 952 P.2d 590 (1998).....	23

**Statutes**

Laws of 1979, 1 <sup>st</sup> Ex. Sess., ch. 196, § 5 .....	14, 15
Laws of 2001, 2d Sp. Sess., ch. 23, § 1 .....	17, 18
Laws of 2001, 2d Sp. Sess., ch. 23, § 2 .....	17, 18
Laws of 2002, ch. 314, § 1 .....	22
Laws of 2002, ch. 314, § 2 .....	19
Laws of 2002, ch. 314, § 4 .....	20
RCW 4.84.340(5).....	24
RCW 4.84.350 .....	24
RCW 34.05.570(1)(a) .....	7
RCW 34.05.570(3)(d) .....	7
RCW 82.03.180 .....	6

RCW 82.04.220 .....	7
RCW 82.04.4297 .....	passim
RCW 82.04.4297 (2000).....	8, 12
RCW 82.04.430(16).....	14
RCW 82.04.430(8).....	15
RCW 82.04.4311 (2002).....	19, 20
RCW 82.04.4311(1).....	19

**Rules**

RAP 18.1 .....	22, 23
----------------	--------

**Regulations**

42 C.F.R. 413.89 .....	13
42 C.F.R. 413.89(h) .....	4, 13

**Dictionaries**

<i>American Heritage Dictionary</i> 908 (4 <sup>th</sup> Ed. 2000) .....	11
<i>Black's Law Dictionary</i> 814 (8 <sup>th</sup> Ed. 2004) .....	11
<i>Webster's Third New International Dictionary</i> 1172 (1981) .....	11
<i>Webster's Third New International Dictionary</i> 1172 (2002) .....	10

**Other Authorities**

Final Bill Report on H.B. 2732, 57th Leg., Reg. Sess. (Wash. 2002) .....	20
Final Bill Report on Substitute H.B. 1624, 57th Leg., 2d Sp. Sess. (Wash. 2001).....	18

Final Bill Report on Substitute H.B. 302, 46th Leg, 1st Ex. Sess  
(Wash. 1979)..... 15

H.B. 2732, 57th Leg., Reg. Sess. (Wash. 2002) ..... 19

Substitute H.B. 1624, 57th Leg., 2d Sp. Sess. (Wash. 2001)..... 17

## **I. INTRODUCTION**

This Court should affirm the Board of Tax Appeals (“Board”) and Thurston County Superior Court because they correctly held that Skagit County Public Hospital District No. 2 dba Island Hospital (“Island Hospital”) was not entitled to a deduction from revenue subject to business and occupation (B&O) tax for money received as payment for Medicare copayments and deductibles. Island Hospital claims that such revenue is entitled to a deduction from B&O tax set forth at RCW 82.04.4297, which allows certain hospitals to deduct from taxable income money “received from the United States or any instrumentality thereof.” The Board and the Thurston County Superior Court correctly held that money received from patients or private insurance companies was not money received “from the United States or any instrumentality thereof.”

## **II. COUNTERSTATEMENT OF THE ISSUES**

Washington’s business and occupation tax applies to all gross income of a business unless an exemption or deduction applies. The Legislature has provided a deduction for certain hospitals for monies “received from the United States or any instrumentality thereof.” Do payments received not from the United States, but from patients or their insurers, who satisfy patients’ personal obligations to pay a Medicare copayment or deductible, qualify for this deduction?

### III. COUNTERSTATEMENT OF THE CASE

#### A. Factual Statement

The relevant facts in this case are undisputed. Island Hospital provides medical services to patients, some of whom are insured under the federal Medicare program. BTA Doc. 252.<sup>1</sup> Island Hospital bills Medicare for services provided, and after receiving payment from Medicare, the hospital sends a statement to the patient or the patient's supplemental insurance for any copayment or deductible owing. BTA Doc. 290-91. Generally, Island Hospital receives payments for these copayments and deductibles from the patient or the patient's supplemental insurance provider. BTA Doc. 252, 276. The only revenue at issue in this case is these payments for Medicare patient copayments or deductibles. BTA Doc. 252, 276, 286-87, 296.

Undisputed facts in the record show that it is the patient's responsibility to pay the copayment or deductible. BTA Doc. 296 (answer to interrogatory that generally Medicare deductibles and copayments are received from Medicare beneficiaries); BTA Doc. 299 (form signed by patients agreeing "I am financially responsible to the hospital for charges not paid under this agreement"); BTA Doc. 287-89, 293 (deposition

---

<sup>1</sup> The appellate record in this case consists of Clerk's Papers and the administrative record at the Board of Tax Appeals. The Department of Revenue will refer to "CP" when citing to Clerk's Papers and to "BTA Doc." when referring to the administrative record.

testimony that Medicare copayments and deductibles are billed to patient and consent form applies to Medicare patients); BTA Doc. 304-05 (deposition testimony that “[t]hey have some co-payments and deductibles that are the responsibility of the patient.”) Island Hospital treats its collection of Medicare deductibles and co-insurance the same way it treats the collection of deductibles and co-insurance of private insurance companies. BTA Doc. 283.

There is no evidence in the record that documents provided to patients, such as billing statements or consent forms, indicated in any way that Medicare was responsible for the copayment or deductible or that the patient was satisfying an obligation of the Medicare program. *See generally* BTA Doc. 287-89, 293, 299, 305-06. Rather, the documents indicate that the amounts due are the patient’s obligation and are owing to Island Hospital. *Id.*

Island Hospital’s discussion of the Medicare program is not fully accurate. The great majority of Island Hospital’s citations to the record are not to evidence, but to argument or the Board’s order, which was decided on summary judgment and therefore contained no findings of

fact.<sup>2</sup> Thus, there is no factual evidence in the record that payments received from patients to pay a copayment or deductible are “Medicare payments,” (App. Br. at 3); that Medicare regulations and billing instructions are designed to lead to “total recovery” of Medicare cost (App. Br. at 3); that Medicare “directs” its beneficiaries to pay copayments or deductibles (App. Br. at 4); or that supplemental health insurance is sold by “Medicare-contracted” insurance companies (App. Br. at 4).

Furthermore, Medicare does not reimburse Island Hospital for all uncollected Medicare copayments and deductibles, as Island Hospital suggests. App. Br. at 4. Only a small portion of these deductibles and co-insurance payments became “bad debt” for which the hospital sought payment from Medicare. BTA Doc. 309, 311-15, 318-19, 323-24. Provided that Island Hospital had complied with Medicare regulations and had first sought payment from patients, Medicare paid only a portion of the “bad debt” from Medicare deductibles and co-insurance payments owed to Island Hospital. BTA Doc. 156-57, 296. *See also* 42 C.F.R. 413.89(h) (limiting payment by Medicare of bad debt by varying

---

<sup>2</sup> *E.g.*, App. Br. at 3 (first paragraph of Statement of the Case citing to Board decision and Island Hospital’s own answer to interrogatory; second paragraph, first sentence citing to Board decision and counsel’s argument at superior court; second paragraph, second sentence citing to Board decision, argument of counsel at superior court and one page of deposition testimony).

percentages based on year). Therefore, Medicare was not responsible for all copayments and deductibles but paid only a portion of the amount of deductibles and only if the hospital had made efforts to first collect those deductibles from patients. The Department of Revenue (“Department”) did not assess B&O tax on these payments from Medicare because, unlike payments from patients or private insurance companies, these payments are received from the United States.

**B. Procedural History**

Pursuant to an audit, the Department determined that Island Hospital had not reported nor paid tax on income received from patients and supplemental insurance companies for the period January 1, 1997, through June 30, 2000 (the “tax period”). BTA Doc. 256-57. The Department assessed Island Hospital, and upheld the assessment in an administrative review process. BTA Doc. 255-71. Island Hospital appealed to the Board, which affirmed the assessment, reasoning that “Medicare patients and their insurers are not agents or instrumentalities of the federal government (Medicare) under RCW 82.04.4297. . . . The patients’ insurers are making payment on behalf of the patient (patients voluntarily pay for supplemental insurance policies with their funds), not Medicare.” BTA Doc. 48. Island Hospital appealed the Board’s decision

to Thurston County Superior Court, which affirmed the Board’s decision.  
CP 108.

#### **IV. SUMMARY OF ARGUMENT**

Island Hospital may not deduct income received from patients and private insurance companies paying Medicare copayment and deductibles. The plain language of the statutory deduction applies only to monies received directly from the United States or an “instrumentality thereof.” The ordinary meaning of an instrumentality of the government, the accepted meaning of the phrase in case law, and the structure of the deduction all show that payments received from patients or private insurance companies to pay copayments or deductibles do not qualify for the deduction.

Legislative history of the deduction and subsequent statutory amendments confirm that patients and private insurance companies are not “instrumentalities” of the federal government. Finally, Island Hospital’s expansive definition of the term “instrumentality” absurdly robs the phrase of any meaning and leads to an incongruous statutory scheme.

#### **V. ARGUMENT**

##### **A. Standard Of Review**

The Administrative Procedure Act (APA) governs judicial review of a Board of Tax Appeal’s decision. RCW 82.03.180. “The burden of

demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a).

The court reviews the Board’s legal conclusions under the error of law standard. RCW 34.05.570(3)(d). Since the Board decided this matter on summary judgment and did not enter findings of fact, the Court’s review is limited to whether the Board erroneously interpreted or applied the law.

**B. The B&O Tax Generally**

The B&O tax is imposed on every person “for the act or privilege of engaging in business activities” and applies to the “gross income of the business.” RCW 82.04.220. The “legislature intended to impose the business and occupation tax upon virtually all business activities carried on within the state.” *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000). As a result, unless an exemption or deduction applies, a taxpayer owes B&O tax on all income received for the rendition of services, including services related to health care. Tax deduction statutes are narrowly construed. *United Parcel Serv., Inc. v. Dep’t of Revenue*, 102 Wn.2d 355, 360, 687 P.2d 186 (1984). Any ambiguity in such a statute is construed strictly, but fairly, against the taxpayer. *Group Health Coop. v. Washington State Tax Comm’n*, 72

Wn.2d 422, 429, 433 P.2d 201 (1967). The taxpayer has the burden of proving that it qualifies for a tax deduction. *Id.* at 429.

**C. Medicare Co-Payments And Deductibles Are Taxable**

Island Hospital argues that the B&O tax deduction set forth at RCW 82.04.4297 should apply in this case. Island Hospital improperly stretches the statutory language, “monies received from the United States or any instrumentality thereof” in an attempt to apply it to payments received not from the United States, but from patients and patients’ private insurance providers. Accordingly, Island Hospital has failed to meet its burden to show that the Board erroneously interpreted or applied the law.

**1. The Hospital is not entitled to the deduction because monies received from patients and patients’ private insurers are not monies “received from the United States or any instrumentality thereof.”**

At all times during the tax period, Island Hospital was entitled to deduct from its taxable gross income money “received from the United States or any instrumentality thereof . . . as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization . . . .” RCW 82.04.4297 (2000) (Attached as Appendix 1).<sup>3</sup> It is undisputed that the revenue at issue in this appeal was received from patients and private insurance companies – not from the

---

<sup>3</sup> As discussed below, the statute was amended after the tax period at issue here.

United States or the Medicare program. Thus, applying a common understanding of the words of the statute, the Hospital's revenue does not qualify for the deduction.

Island Hospital argues that patients and private insurance companies become instrumentalities of the United States when paying Medicare copayments and deductibles. Case law discussing instrumentalities of the federal government for tax purposes, the plain words of the deduction, and the structure of the statute all show that patients and their insurance carriers are not instrumentalities of the United States.

Several cases address the issue of what is an "instrumentality" of the United States for tax purposes in other contexts. For example, in *United States v. City of Spokane*, 918 F.2d 84 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991), the court held that the American Red Cross was an "instrumentality" of the federal government because it was created to carry out functions of the government itself and was virtually an arm of the government. *Id.* at 88. (Attached as Appendix 2). The court thus distinguished the Red Cross from mere contractors that were hired to act as agents of the government. *Id.* See also *McAvoy v. Weber*, 198 Wash. 370, 88 P.2d 448 (1939) (Home Owners' Loan Corporation was an "instrumentality" of the federal government where it was created by

federal statute, the act authorizing its creation specifically stated that it “shall be an instrumentality of the United States,” the act required that it be under the direction of a federal agency and operated by the federal agency under such rules and regulations as the agency may prescribe, and all of the capital stock of the corporation was owned by the United States).

While these cases address the term “instrumentality of the United States” for purposes of tax immunity, this well-developed legal term sheds light on what the Legislature meant when using the phrase. These cases discussing “instrumentalities” of the United States for tax purposes are also consistent with the dictionary definition of “instrumentality,” which includes “a part, organ, or subsidiary branch esp. of a governing body <the judicial *instrumentalities* of the federal government>.” *Webster’s Third New International Dictionary* 1172 (2002).<sup>4</sup> In every dictionary definition of “instrumentality” cited in its brief, Island Hospital omits language that

---

<sup>4</sup> The full definition is:

1: the quality or state of being instrumental: a condition of serving as an intermediary <the agreement was reached through the ~ of the governor > 2a: something by which an end is achieved: MEANS <precious metals purified through the ~ of heat> b: something that serves as an intermediary or agent through which one or more functions of a controlling force are carried out: a part, organ, or subsidiary branch esp. of a governing body <the judicial *instrumentalities* of the federal government>.

*Webster’s Third New International Dictionary* 1172 (2002). *Webster’s Third New International Dictionary* is generally the dictionary used by Washington courts. *State v. Glas*, 106 Wn. App. 895, 905, 27 P.3d 216 (2001), *rev’d on other grounds*, 147 Wn.2d 410, 54 P.3d. 147 (2002).

specifically addresses an “instrumentality” of a government or governing body:

- From *Webster’s Third New International Dictionary* definition, Island Hospital omits “a part, organ, or subsidiary branch esp. of a governing body <the judicial *instrumentalities* of the federal government>.” *Webster’s Third New International Dictionary* 1172 (1981) (attached as Appendix 3) (quoted by Island Hospital at App. Br. at 8).
- From the *American Heritage Dictionary*, Island Hospital omits, “3. A subsidiary branch, as of a government, by means of which functions or policies are carried out.” *American Heritage Dictionary* 908 (4<sup>th</sup> Ed. 2000) (attached as Appendix 4) (quoted by Island Hospital at App. Br. at 8-9).
- From the end of the *Black’s Law Dictionary* definition, Island Hospital omits, “. . ., such as a branch of a governing body.” *Black’s Law Dictionary* 814 (8<sup>th</sup> Ed. 2004) (attached as Appendix 5) (quoted by Island Hospital at App. Br. at 9).

As these dictionary definitions and the cases cited above show, an instrumentality of a government is not merely something that assists a government purpose, but must be more closely associated with the government itself so as to be considered a part of it.

These dictionary and case law definitions are also consistent with the statutory deduction as a whole. The deduction applies to “amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof . . . .” RCW 82.04.4297 (2000). The parallel language involving payments from the state shows that the deduction was designed to apply to monies received from governments and governmental agencies. Otherwise, the deduction would absurdly allow deductibles and copayments for a federal insurance program to qualify, but not deductibles and copayments for a state insurance program.

In the present case, patients and patients’ private insurers are not carrying out government functions when making payments to the hospital. As the Board recognized, they are simply paying a bill to satisfy the patient’s financial obligation to the hospital. The record before the Board includes deposition testimony and answers to interrogatories in which Island Hospital admits that the patient copayments and deductibles are the responsibility of patients and the vast majority of these payments come from patients or patients’ private, supplemental insurance companies. Board Doc. 287-89, 296, 299, 304-05. There is no indication that patients or patients’ insurers were carrying out government functions or even acting under the direction of the government.

Island Hospital makes much of the fact that insurance providers must comply with Medicare regulations when offering supplemental insurance to cover Medicare copayments and deductibles. App. Br. at 11-13. Island Hospital mistakenly asserts that these regulations essentially make insurance companies agents of the Medicare program, rather than simply being regulated by Medicare. But the Medicare program does not contract with these insurance companies for payment of copayments and deductibles; the patients do. Island Hospital's argument would absurdly make any business operating in a highly regulated industry an agent of the government.

Nor does the process by which the hospital can recover "bad debt" transform patients and their insurers into instrumentalities of the United States. Medicare does not simply agree to pay patient copayments and deductibles. Rather, the hospital is required to engage in collection efforts and only if those efforts fail does Medicare make any payments. 42 C.F.R. 413.89. Medicare does not cover all of this "bad debt" but determines a set percentage that it will pay. 42 C.F.R. 413.89(h) (limiting coverage of bad debt by varying percentages depending on year); BTA Doc. 154-505, 296. The overwhelming majority of patient co-payments and deductibles are paid by patients or their private insurers. *Id.* As the Board properly concluded, when the private insurers make a payment,

they do so not because of any governmental requirement but because they have contracted with the patient to make the payments.

Under these circumstances, it stretches reason to suggest that Medicare is responsible for the patient co-payments and deductibles. The “bad debt” reimbursement by Medicare is simply a feature of the Medicare program, not an admission that Medicare is responsible for all patient co-payments and deductibles. This feature does not make patients into instrumentalities of the federal government. Accordingly, payments from patients and their insurers are not entitled to the deduction set forth at RCW 82.04.4297.

**2. Legislative history of the deduction and rules of statutory construction show that the deduction applies only to governmental payments.**

Even if this Court were to determine that the language of the deduction is ambiguous, the legislative history of the deduction reinforces the conclusion that the deduction applies only to governmental payments.<sup>5</sup> The deduction for amounts received “from the United States or any instrumentality thereof” was originally enacted in 1979. Laws of 1979, 1<sup>st</sup> Ex. Sess., ch. 196, § 5 (former RCW 82.04.430(16), now codified at RCW

---

<sup>5</sup> Although Island Hospital refers to “legislative history” of the deduction in its argument heading, it does not cite or discuss any legislative history of the actual deduction in effect during the tax period, but discusses only later amendments of the deduction. App. Br. at 13-15. As shown below, to the extent that later amendments to the statute show anything about the meaning of the deduction during the tax period, those amendments show exactly the opposite of what Island Hospital argues.

82.04.4297) (attached as Appendix 6). The final bill report for this enactment describes the added language as “[a]mounts received from the United States or any governmental unit.” Final Bill Report, Substitute H.B. 302 (attached as Appendix 7). Giving further indication of what the Legislature meant in using the term “instrumentality,” the law at that time exempted from B&O tax compensation for services rendered to patients by hospitals operated “by the United States or any of its instrumentalities.” Laws of 1979, 1<sup>st</sup> Ex. Sess., ch. 196, § 5 (former RCW 82.04.430(8)). Island Hospital’s expansive interpretation of “instrumentality” would make any hospital that accepted Medicare patients into “instrumentalities” of the United States, contrary to the obvious meaning of this other exemption.

Furthermore, courts construe ambiguous tax deductions strictly, but fairly, against a taxpayer. *Group Health Coop. v. Washington State Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967). Thus, even if the Court finds the language of the statute ambiguous, the court should strictly construe the deduction against the taxpayer.

The plain meaning of the deduction, the application of the deduction to state payments, case law addressing what is an “instrumentality” of the United States, dictionary definitions, rules of statutory construction and legislative history all show that payments from

patients and private insurance companies are not included within the deduction set forth at RCW 82.04.4297. As shown below, subsequent amendments to the statute further reinforce this conclusion.

**3. Legislative amendments after the tax period demonstrate the taxability of Medicare deductibles and co-insurance payments.**

Island Hospital argues that subsequent legislation demonstrates that Medicare deductibles and co-insurance payments received from patients or their insurance companies are entitled to the tax deduction set forth at RCW 82.04.4297. App. Br. at 13-16. Unlike legislative history of the original legislation, subsequent amendments do not necessarily show the intent of the original legislation. However, even if the Court considers later amendments to the statute, such amendments show that later legislatures read the deduction exactly as the Department does in this case.

During the tax period, RCW 82.04.4297 provided:

In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan.

The statute was amended effective July 13, 2001, adding the following language:

For purposes of this section, “amounts received from” includes amounts received by a health or social welfare organization that is a nonprofit hospital or public hospital from a managed care organization or other entity that is under contract to manage health care benefits for the federal medicare program authorized under Title XVIII of the federal social security act; for a medical assistance, children’s health, or other program authorized under chapter 74.09 RCW; or for the state of Washington basic health plan authorized under chapter 70.47 RCW, to the extent that these amounts are received as compensation for health care services within the scope of benefits covered by the pertinent government health care program.

Laws of 2001, 2d Sp. Sess., ch. 23, § 2 (Substitute H.B. 1624)

(attached as Appendix 8). The stated purpose of this amendment was to preserve and enhance the government’s purchasing power of health care services in light of changes in the way that Medicare and other government programs provided health care benefits. Laws of 2001, 2d Sp. Sess., ch. 23, § 1.

These government programs had changed from simply paying hospitals for services to encouraging beneficiaries to participate in government-funded managed care programs, operated by intermediaries (such as Group Health) between government entities and hospitals. *Id.* The Legislature concluded that even though these intermediaries were acting on behalf of the government, and paying for services with money they received from the government, the payments to hospitals from the intermediaries would not be entitled to the existing deduction because the

payments were not received directly from the government. *Id.*; Final Bill Report, Substitute H.B. 1624 (describing the statute before amendment as allowing deduction “only for payments made directly by federal, state, or local governments.”) (attached as Appendix 9). In order to maintain the government’s purchasing power with respect to health care services in light of these changes, the Legislature amended RCW 82.04.4297 to include in the deduction payments from managed-care organizations under contract with a governmental entity. Laws of 2001, 2d Sp. Sess., ch. 23, § 2.

If the deduction as it existed during the tax period applied to all payments associated with the Medicare program, as the hospital argues, this amendment would have been wholly unnecessary. Similarly, if the deduction as it existed during the tax period applied to payments made on behalf of the Medicare program, the amendment would have been wholly unnecessary. In contrast to the hospital’s rationale, the Legislature felt it necessary to specifically include managed-care organizations, even though these managed-care organizations were obviously operating on behalf of the Medicare program.

The deduction for governmental health care payments was amended yet again in the following legislative session. And yet again, the amendment is inconsistent with the hospital’s theory. The new

amendment deleted the language that had been added to RCW 82.04.4297 by the 2001 amendment and created a new section:

A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient co-payments or patient deductibles.

Laws of 2002, ch. 314, § 2 (H.B. 2732) (codified at RCW 82.04.4311 (2002))<sup>6</sup> (attached as Appendix 10)). Unlike the deduction set forth at RCW 82.04.4297, this deduction does not require that the money be received "from the United States or any instrumentality thereof." Rather, the language more broadly applies to amounts received as compensation for services "covered under the federal Medicare program . . ." RCW 82.04.4311 (2002). This broader language, unlike that in RCW 82.04.4297, arguably includes Medicare deductibles and co-insurance payments received from patients and insurance companies. Consistent with the language in RCW 82.04.4297 and the statute's purpose (increasing *governmental* purchasing power), the Legislature specifically excluded from the deduction patient deductibles and co-insurance

---

<sup>6</sup> This statute was amended in 2005, adding language not relevant to the issue presented. The operative language quoted above is now codified at RCW 82.04.4311(1).

payments.<sup>7</sup> RCW 82.04.4311 (2002) (“The deduction authorized by this section does not apply to amounts received from patient co-payments or patient deductibles.”) In adding the language specifically excluding patient copayments and deductibles, there is no indication from the statute or legislative history that the Legislature was removing a previously available deduction. Rather, patient copayments and deductibles have never been included in the tax deduction, and the change in statutory language necessitated the Legislature making it explicit in RCW 82.04.4311. Legislative history of this amendment, just like the legislative history of the 2001 amendment, shows that the deduction as it existed during the tax period applied only to payments “made directly by federal, state, or local governments.” Final Bill Report, H.B. 2732 (attached as Appendix 11).

---

<sup>7</sup> Accordingly, Island Hospital may not take advantage of this deduction even though it is retroactive to 1998. Laws of 2002, ch. 314, § 4. The revenue at issue in this case is solely payments for patient copayments and deductibles. At times, those payments were made by patients and at times the payments were made by a patient’s private insurance carrier. In either case, the payment was for the patient’s copayment or deductible. BTA Doc. 252 (Island Hospital’s Notice of Appeal to Board of Tax Appeals stating issue as “Did the DOR err in concluding that Medicare deductibles and co-payments paid to ISLAND by Medicare patients and their private insurance companies did not qualify for deduction under RCW 82.04.4297?”); BTA Doc. 276 (Island Hospital Answer to Interrogatory No. 7: “Island Hospital receives Medicare deductibles and co-payments either from the beneficiary (patient) or supplemental insurance.”); BTA Doc. 286-87, 296.

**4. Island Hospital's interpretation leads to absurd results.**

In construing statutes, the court seeks to harmonize the statutory scheme and give effect to all statutory language.<sup>8</sup> *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). The court avoids unlikely, absurd, or strained consequences when interpreting statutory language. *Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007). Island Hospital's interpretation would make the statutory scheme internally incongruous and lead to absurd results.

Under Island Hospital's interpretation, RCW 82.04.4297 allows a deduction for Medicare copayments and deductibles paid by patients. Yet after the statutory amendments discussed above, RCW 82.04.4311 specifically states that its deduction for monies received for services covered by the Medicare program does not apply to patient copayments or deductibles. Island Hospital's interpretation thus results in two different statutory deductions, each applicable by its terms to payments received under the Medicare program, but only one of which allows a deduction for

---

<sup>8</sup> Island Hospital argues that the Washington Supreme Court in *Homestreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009), discarded the longstanding principle that courts construe a statute in the context of related statutes and the statutory scheme as a whole. App. Br. at 7. While the court in *Homestreet* apparently concluded that the overall statutory scheme did not preclude its interpretation of the statute, it did not reject the rule of statutory construction. Decisions subsequent to the *Homestreet* opinion continue to apply this bedrock principle of statutory construction. E.g., *City of Seattle v. Winebrenner*, 2009 WL 3465931 at \*2 (Wash. Supreme Ct., Oct. 29, 2009); *Post v. City of Tacoma*, \_\_\_ Wn.2d \_\_\_, 217 P.3d 1179, 1184 (Oct. 15, 2009).

patient copayments and deductibles. This result is not only incongruous but contrary to the express intent of the Legislature in enacting RCW 82.04.4311. *See* Laws of 2002, ch. 314, § 1 (“the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program.”)

The hospital’s expansive reading of “instrumentality” to include any means to an end would also absurdly make federal instrumentalities out of virtually every person in this state who pays into the Medicare system through a payroll deduction or otherwise. The Department respectfully requests that this Court not endorse such an absurd result.

**D. Island Hospital Is Not Entitled To Attorney Fees**

If the Court affirms the Board of Tax Appeals, it need not reach the issue of Island Hospital’s request for costs and reasonable attorney fees. Nevertheless, the Department addresses Island Hospital’s request for costs and its reasonable attorney fees in its appeal.

Island Hospital fails to comply with RAP 18.1 by failing to cite any applicable authority supporting its request for attorney fees. Instead, Island Hospital cites only RAP 18.1 itself for support of its reasonable attorney fees. App. Br. at 17. A party seeking reasonable attorney fees must support its request by citing to authority and providing argument to

the court. *Just Dirt, Inc. v. Knight Excavating Inc.*, 138 Wn. App. 409, 420, 157 P.3d 431 (2007) (“Argument and citation to authority are required . . . to advise us of the appropriate grounds for an award of attorney fees as costs.”) (quoting *Wilson Court Ltd. P’ship v. Tony Maroni’s, Inc.*, 134 Wn.2d 692, 710, n.4, 952 P.2d 590 (1998)). Because it failed to cite to any applicable law creating a right to recover attorney fees, Island Hospital’s request for attorney fees should be denied. *See also Whidbey General Hosp. v. Dep’t of Revenue*, 143 Wn. App. 620, 637, 180 P.3d 796 (2008) (Hospital’s request for attorney fees denied because it failed to cite applicable law and devote a section of its brief to the request for attorney fees).

Under Washington law, “a court has no power to award attorney fees in the absence of contract, statute, or recognized ground of equity providing for attorney fees.” *Union Elevator & Warehouse Co., Inc. v. Dep’t of Transp.*, 152 Wn. App. 199, 208, 215 P.3d 257 (2009) (citing *Wagner v. Foote*, 128 Wn.2d 408, 416, 908 P.2d 884 (1996)). Even though Island Hospital fails to cite to any applicable authority authorizing an award of attorneys fees in its opening brief, as required by RAP 18.1, it might seek to rely on the Equal Access to Justice Act (“EAJA”) in its

Reply.<sup>9</sup> That statute provides, “[A] court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys’ fees, unless the court finds that the agency action was substantially justified.” RCW 4.84.350. The requirements of “judicial review of an agency action” would be met in this case. However, Island Hospital must also demonstrate that it is a “qualified party that prevails.” Island Hospital has not prevailed in this matter; additionally it must establish that it is a “qualified party” as defined under RCW 4.84.340(5). Even if it were to qualify, Island Hospital would still not be eligible for an award of attorney fees and costs, if the court “finds that the agency action was substantially justified.” Here, the Department must demonstrate that its position is reasonable in law and fact. *Union Elevator & Warehouse Co., Inc. v. Dep’t of Transp.*, 144 Wn. App. 593, 608, 183 P.3d 1097 (2008). The Department’s interpretation of the statute denying Island Hospital the deduction for co-payments is reasonable in law and fact, in light of the fact that a unanimous Board of Tax Appeals and three different Superior Court Judges ruled in favor of the Department on this issue. CP 107-08 (Order on Petition for Judicial Review (May 29, 2009) (McPhee, J.)); *St. Joseph General Hospital v. Dep’t of Revenue*, Thurston

---

<sup>9</sup> Island Hospital cited the EAJA, RCW 4.84.350, in its Petition for Judicial Review before the Superior Court. CP 8. However, nowhere in its briefing before the Superior Court did it devote a section of its brief to a request for attorney fees. See CP 38-49; 98-106.

Cy. Super. Ct. No. 08-2-02054-9, Order on Petition for Judicial Review (June 8, 2009) (Hicks, J.); *Skagit County Public Hospital Dist. No. 1 dba Skagit Valley Medical Center v. Dep't of Revenue*, Thurston Cy. Super. Ct. No. 08-2-02527-3, Order on Petition for Judicial Review (July 10, 2009) (Murphy, J.). The Department's action was substantially justified and attorney fees and costs should not be awarded to Island Hospital under the EAJA.

## VI. CONCLUSION

Hospital patients who pay their own bills are not instrumentalities of the federal government. Nor are patients' insurance companies that make payments on behalf of the patients instrumentalities of the federal government. Accordingly, Island Hospital is not entitled to a deduction from gross income that applies only to monies received "from the United

///

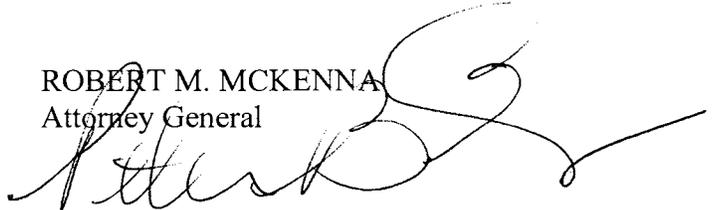
///

///

States or any instrumentality thereof.” The Department respectfully requests that this Court affirm the decisions of the Superior Court and Board of Tax Appeals.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2009.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in black ink, appearing to read "Peter B. Gonick", written over the typed name of Peter B. Gonick.

PETER B. GONICK, WSBA #25616  
DAVID M. HANKINS, WSBA #19194  
Assistant Attorneys General  
Attorneys for Respondent

# APPENDIX 1

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.04.4295 Deductions—Manufacturing activities completed outside the United States.** In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if:

- (1) Any additional processing of such articles in this state consists of minor final assembly only; and
- (2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; and
- (3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and
- (4) The articles are sold and shipped outside the state. [1980 c 37 § 15. Formerly RCW 82.04.430(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes.** In computing tax there may be deducted from the measure of tax that portion of amounts received by any funeral home licensed to do business in this state which is received as reimbursements for expenditures (for goods supplied or services rendered by a person not employed by or affiliated or associated with the funeral home) and advanced by such funeral home as an accommodation to the persons paying for a funeral, so long as such expenditures and advances are billed to the persons paying for the funeral at only the exact cost thereof and are separately itemized in the billing statement delivered to such persons. [1980 c 37 § 16. Formerly RCW 82.04.430(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception.** In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. [1988 c 67 § 1, 1980 c 37 § 17. Formerly RCW 82.04.430(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

*"Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined: RCW 82.04.431.*

**82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations.** (1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

(a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

(b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

(c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

(2) For the purposes of this section "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

(3) To qualify for the deductions under this section:

(a) The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

(b) Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;

(c) Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members. [1980 c 37 § 18. Formerly RCW 82.04.430(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.04.431 "Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined.** (1) For the purposes of RCW 82.04.4297, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

# APPENDIX 2

Westlaw.

Page 1

918 F.2d 84  
(Cite as: 918 F.2d 84)

**H**

United States Court of Appeals,  
Ninth Circuit.  
UNITED STATES of America, Plaintiff-Appellee,  
v.  
CITY OF SPOKANE, Defendant-Appellant.  
No. 90-35118.

Argued and Submitted Oct. 5, 1990.  
Decided Oct. 31, 1990.

As Amended on Grant of Appellee's Motion For  
Clarification Nov. 27, 1990.

United States brought action against city to preclude its collection of tax on lawfully conducted gambling activities of local unit of Red Cross and to recover back taxes. The United States District Court for the Eastern District of Washington, Justin L. Quackenbush, Chief Judge, 734 F.Supp. 919, granted summary judgment in favor of United States, and city appealed. The Court of Appeals, Fernandez, Circuit Judge, held that: (1) Red Cross was instrumentality of United States that was immune from local taxation, and (2) city had to return taxes collected.

Affirmed.

West Headnotes

**[1] Federal Courts 170B ⚡776**

170B Federal Courts  
170BVIII Courts of Appeals  
170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)1 In General  
170Bk776 k. Trial De Novo. Most  
Cited Cases  
Grant of summary judgment is reviewed de novo.

**[2] Federal Courts 170B ⚡776**

170B Federal Courts  
170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)1 In General  
170Bk776 k. Trial De Novo. Most  
Cited Cases

**Federal Courts 170B ⚡850.1**

170B Federal Courts  
170BVIII Courts of Appeals  
170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)5 Questions of Fact, Verdicts  
and Findings

170Bk850 Clearly Erroneous Findings  
of Court or Jury in General

170Bk850.1 k. In General. Most  
Cited Cases

(Formerly 170Bk850)

On constitutional questions, Court of Appeals reviews findings of fact for clear error, and mixed questions of fact and law de novo.

**[3] Federal Courts 170B ⚡776**

170B Federal Courts  
170BVIII Courts of Appeals  
170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)1 In General  
170Bk776 k. Trial De Novo. Most  
Cited Cases  
Questions of law are reviewed de novo.

**[4] Taxation 371 ⚡2006**

371 Taxation  
3711 In General  
371k2004 Power of State  
371k2006 k. United States Entities, Property, and Securities. Most Cited Cases  
(Formerly 371k5)  
No state can impose tax upon instrumentality of United States Government.

**[5] Taxation 371 ⚡2006**

371 Taxation

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

918 F.2d 84  
(Cite as: 918 F.2d 84)

371I In General  
371k2004 Power of State  
371k2006 k. United States Entities, Property, and Securities. Most Cited Cases  
(Formerly 371k6)

Red Cross was instrumentality of United States that was immune from state and local taxation on lawfully conducted gambling activities despite city's reference to fact that Red Cross was not considered agency for purposes of Freedom of Information Act. 5 U.S.C.A. § 552.

[6] Courts 106 ⇨ 100(1)

106 Courts  
106II Establishment, Organization, and Procedure  
106II(H) Effect of Reversal or Overruling  
106k100 In General  
106k100(1) k. In General; Retroactive or Prospective Operation. Most Cited Cases  
Court of Appeals' decision striking down city's tax on Red Cross' lawfully conducted gambling activities could be applied retroactively; decision did not establish new principle of law but merely restated fundamental principle that precluded taxation of United States governmental functions, and retroactive application would foster respect for such principle and would not result in inequity even though city might have already used some tax money.

[7] Taxation 371 ⇨ 3555

371 Taxation  
371VIII Income Taxes  
371VIII(H) Payment  
371k3555 k. Refunding Taxes Paid. Most Cited Cases  
(Formerly 371k1097)  
City that improperly taxed Red Cross' lawfully conducted gambling activities had to return taxes collected.  
\*85 Laurie Flinn Connelly and Michael A. Nelson, Asst. City Attys., Spokane, Wash., for defendant-appellant.

Gary R. Allen, David English Carmack, and Kenneth W. Rosenberg, Attys., Tax Div., U.S. Dept. of Justice, Washington, D.C., for plaintiff-appellee.

Appeal from the United States District Court for the Eastern District of Washington.

Before SKOPIL, O'SCANNLAIN and FERNANDEZ, Circuit Judges.

FERNANDEZ, Circuit Judge:

The United States brought this action against the City of Spokane ("the City") and Spokane's Manager of Finance, Peter Fortin, to preclude the collection of a tax on the gambling proceeds of a local unit of the American National Red Cross, and to recover back taxes, together with interest. The district court granted summary judgment in favor of the United States<sup>FN1</sup> and the City appealed. We affirm.

FN1. *United States v. City of Spokane*, 734 F.Supp. 919 (E.D.Wash.1989).

#### BACKGROUND

The American National Red Cross is a unique charitable institution. It was created by the United States to perform such exceedingly important public functions as aiding "the sick and wounded of Armed Forces in time of war," and carrying on "a system of national and international relief in time of peace" to mitigate "the sufferings caused by pestilence, famine, fire, floods, and other great national calamities...." 36 U.S.C. § 3. Eight of its fifty governors are appointed by the President of the United States and one of those eight acts as the principal officer of the corporation. 36 U.S.C. § 5(a). While the organization must support itself from public donations and other sources, the United States does supply it with a permanent headquarters\*86 building. 36 U.S.C. § 13. The financial reports of the organization are audited by the Department of De-

918 F.2d 84  
(Cite as: 918 F.2d 84)

fense. 36 U.S.C. § 6.

The Inland Northwest Chapter of the American National Red Cross has been a chartered local organization since 1914. As such it is a local unit of the American National Red Cross. 36 U.S.C. § 4a. We will hereafter refer to the American National Red Cross as the "Red Cross" and the Chapter as the "INC" However, since the INC is a unit of the Red Cross, what we say about the rights and duties of the Red Cross also applies to the INC.

The State of Washington authorizes bona fide charitable or non-profit organizations to conduct bingo, pull-tab, and punchboard games. Wash.Rev.Code § 9.46.0311 (1988).<sup>FN2</sup> The Red Cross is an organization that comes within that definition. Wash.Rev.Code § 9.46.0209. At the same time, the State of Washington authorizes cities to tax certain of the proceeds of those gambling activities—Wash.Rev.Code § 9.46.110—and since 1982 the City has levied a gambling tax upon the INC. Spokane, Wash.Ord. § 8.40.020 (1982).

FN2. The citations to the Washington Code are to the current version of that law. Earlier versions were to the same effect, as far as the issues on this appeal are concerned.

For some time, the INC paid that tax without apparent protest, but in February of 1986 it did protest and requested a refund of all gambling taxes paid since July 1, 1980. The request was denied. The United States then brought this action to obtain the refund, with interest, and to enjoin any further levies.

Cross motions for summary judgment were filed, and the district court ultimately entered a judgment which required the disgorgement of prior exactions by the City, together with prejudgment interest from the date of the demand for refund. The district court further directed that the City cease further imposition of the tax. This appeal followed.

#### JURISDICTION AND STANDARD OF REVIEW

The district court had jurisdiction pursuant to 28 U.S.C. § 1331, and we have jurisdiction pursuant to 28 U.S.C. § 1291.

[1][2][3] We review the grant of summary judgment de novo. *Kruso v. International Tel. & Tel.*, 872 F.2d 1416, 1421 (9th Cir.1989), *cert. denied*, 496 U.S. 937, 110 S.Ct. 3217, 110 L.Ed.2d 664 (1990). On constitutional questions, this court reviews findings of fact for clear error, and mixed questions of fact and law de novo. *State of Nevada Employees Ass'n Inc. v. Keating*, 903 F.2d 1223, 1226 (9th Cir.1990); *La Duke v. Nelson*, 762 F.2d 1318, 1322 (1985), *modified*, 796 F.2d 309 (9th Cir.1986). Questions of law are reviewed de novo. *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

#### DISCUSSION

Two major issues confront us. First, is the Red Cross an instrumentality of the United States which is immune from this kind of taxation? Second, if it is, should the INC have been granted a refund of the back taxes? We will discuss each of these issues in turn.

##### A. *The Red Cross Is Immune from This Tax*

[4][5] One of the hoariest principles of federal-state governmental relations is that no state can impose a tax upon an instrumentality of the United States Government. As the Supreme Court, speaking through Chief Justice Marshall, eloquently stated in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431, 4 L.Ed. 579 (1819), that principle is bottomed upon certain important axioms:

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very

918 F.2d 84  
(Cite as: 918 F.2d 84)

Page 4

measures, is \*87 declared to be supreme over that which exerts the control, are propositions not to be denied.

Nor can it be said that a little taxation, or taxation of just one function or instrumentality, is proper. *M'Culloch* also dealt with those possibilities. The Court said:

We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give.

*M'Culloch*, 17 U.S. (4 Wheat.) at 430. The Court continued:

If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states.

*M'Culloch*, 17 U.S. (4 Wheat.) at 432.

Nothing could be more forcefully established, and while those principles alone do not demonstrate that the Red Cross is an instrumentality of the United States, there can be no doubt that it is. The Supreme Court made that clear in *Department of Employment v. United States*, 385 U.S. 355, 358, 87 S.Ct. 464, 467, 17 L.Ed.2d 414 (1966) where it said, "[W]e hold that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment."

At first blush that would appear to dispose of this issue, but the City claims that accretions to the *M'Culloch* doctrine make it inapplicable to the INC activities which were taxed here. That claim is based upon a misreading of the authorities.

The City first points to *Federal Land Bank v. Board of County Comm'rs*, 368 U.S. 146, 82 S.Ct. 282, 7 L.Ed.2d 199 (1961), a case in which the Supreme Court struck down a tax levy on the Federal Land Bank, an instrumentality of the United States. In so doing, the Court indicated that if the activity being performed is not within the authority granted to the instrumentality, for example if it were illegal, taxation may be appropriate. *Federal Land Bank*, 368 U.S. at 152-56, 82 S.Ct. at 287-89. That, however, has no application whatever to this case. There can be no doubt that the Red Cross can engage in activities designed to earn money. In fact, because it is not, for the most part, funded with tax dollars, it must engage in many fund raising activities if it is to survive. While we do not suggest that the Red Cross can engage in illegal activities in pursuit of its goals, there is nothing illegal about the gambling activities the INC engaged in here.

But the City claims that there is still another string to its bow, for some activities of agencies of the United States can be taxed. Here again, when gazing upon the authorities cited one must be purblind if one is to overlook the distinctions between those authorities and this case.

Thus, in *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155 (1937), a private independent corporation that had contracts with the United States complained about the taxation of its gross receipts. The Court declined to find that a tax on the private entity was a tax upon the government or its instrumentalities, even though the effect of the tax could, in theory, be felt by the government. *James*, 302 U.S. at 161, 58 S.Ct. at 221. That is not this case; the Red Cross is no mere private contractor, it is a United States instrumentality. The same analysis applies to *United States v. New Mexico*, 455 U.S. 720, 102 S.Ct. 1373, 71 L.Ed.2d 580

918 F.2d 84  
(Cite as: 918 F.2d 84)

(1982). There, too, a tax on the receipts of private contractors was attacked; there, too, the tax was sustained. The Court indicated \*88 that the mere fact that a contractor acts as an agent of the government does not mean that it is an agency or instrumentality of the government. It does not mean that the contractor stands in the government's shoes. 455 U.S. at 735-36, 102 S.Ct. at 1383. The entities in question were not so integrated into the structure of the government that its tax immunity devolved upon them. Rather, it was realistic to view them as the private entities they were—entities “independent of the United States.” 455 U.S. at 738, 102 S.Ct. at 1385. When dealing with entities of that stripe, it is necessary to be extremely careful about parsing their various activities when they claim that a tax falls directly on the United States. The same does not apply when one is dealing with an acknowledged government instrumentality such as the Red Cross. To do so in that instance would engage the courts in the unfit inquiry that *M'Culloch* warned against. 17 U.S. (4 Wheat.) at 430. Private independent contractors may be agencies because they act as agents. They are not to be confused with instrumentalities like the Red Cross which are agencies because they were created to carry out functions of the government itself and are, therefore, imbedded in the structure of the government to that extent. <sup>FN3</sup> As the Supreme Court has said, “both the President and Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the Government.” *Department of Employment*, 385 U.S. at 359-60, 87 S.Ct. at 467. The Court agreed with that characterization.

FN3. *California State Bd. of Equalization v. Sierra Summit, Inc.*, 490 U.S. 844, 109 S.Ct. 2228, 104 L.Ed.2d 910 (1989), and *Washington v. United States*, 460 U.S. 536, 103 S.Ct. 1344, 75 L.Ed.2d 264 (1983), which also uphold taxation of a bankruptcy trustee's sales and private construction contractors' income, respectively, apply the same principles and are to the same effect.

In a final bid to deflect the inexorable force of the law in this area, the City asserts that the Red Cross is not really a tax exempt instrumentality of the government, because we have said that it is not an agency for the purposes of the Freedom of Information Act. See *Irwin Memorial Blood Bank v. American Nat'l Red Cross*, 640 F.2d 1051, 1057 (9th Cir.1981). That is an astonishing proposition. It suggests that we, in effect, overturned *Department of Employment* when we decided *Irwin Memorial Blood Bank*. We did no such thing. What we did decide was that given the purposes and the background of the Freedom of Information Act, the Red Cross was not an agency within the meaning of that statute. To extrapolate from that holding to the area of the law which we must deal with here would be a serious logical and semantic error. It would insist that an entity incorporated by an act of Congress to carry out essentially public functions is not exempt from taxation as it struggles to accomplish those purposes. It would insist upon that even when the entity's activities are lawful, necessary and in pursuit of its duties as an instrumentality of the United States. It would insist upon that based on the fallacy that a word which has a meaning in one context must have the selfsame meaning when transplanted to an entirely different context. We must eschew that extrapolation.

It follows that the City improperly imposed the gambling tax upon INC.

#### B. *The City Must Disgorge the Taxes It Collected*

The City asserts that even if the tax is invalid, it should not be required to reimburse the INC for the taxes which have already been collected. Discussion of that claim requires analysis of two sub-issues. Should the decision here be given retroactive effect, and, if so, what remedy is proper?

While the issues sometimes seem to be entangled, the Supreme Court has recently been at some pains to untangle them. See *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 110 S.Ct. 2323, 110

918 F.2d 84  
(Cite as: 918 F.2d 84)

L.Ed.2d 148 (1990). In *American Trucking*, the Court pointed out that retroactivity must be decided by use of the analysis outlined in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971). That does not, however, answer the remedy \*89 question, a question usually left to the states themselves to work out. *American Trucking*, 110 S.Ct. at 2330. See also *Probe v. State Teachers' Retirement Sys.*, 780 F.2d 776, 782-84 (9th Cir.), cert. denied, 476 U.S. 1170, 106 S.Ct. 2891, 90 L.Ed.2d 978 (1986), where we, in effect, recognized and applied the distinctions.

[6] Because we need not consider the question of remedy if the effect of our decision is not retroactive, we will first consider retroactivity.<sup>FN4</sup>

FN4. There is much jurisprudential debate about the propriety of any such analysis in the area of the constitution. See *American Trucking*, 110 S.Ct. at 2343 (Scalia, J., concurring). We, of course, cannot enter the arena. We leave the battle to other gladiators.

Our retroactivity analysis must apply the three-part *Chevron Oil* test:

First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied ... or by deciding an issue of first impression whose resolution was not clearly foreshadowed.... Second, it has been stressed that "we must ... weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." ... Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision ... could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."

404 U.S. at 106-07, 92 S.Ct. at 355 (citations omit-

ted).

Our decision striking down this tax does not meet the tests of nonretroactivity. We overrule no precedent here and we do not decide an issue of first impression. As we have shown, our determination regarding the status of the Red Cross does not proceed from some obscure and half-formed idea only now wrested into the light of day. Rather, it proceeds from a long, if sometimes wavy, line of Supreme Court authority. This alone indicates that retroactivity is required. See *Ashland Oil, Inc. v. Caryl*, 497 U.S. 916, 110 S.Ct. 3202, 3205, 111 L.Ed.2d 734 (1990) (per curiam). However, we will also look to the other elements. We are dealing with a fundamental principle that precludes the taxation of United States governmental functions. Retroactive operation of our decision will surely foster a proper respect for that principle by encouraging local entities to tread carefully when they impose taxes on entities like the Red Cross. Finally, no inequity results from retroactive application. It is true that the City may already have used the tax money, but at the very least it should have entertained the gravest doubts about its right to collect the tax in the first place. Against that is the inequity to the INC which would be wrought were it forced to forgo its claim to recover.<sup>FN5</sup> Therefore, this decision will apply retroactively.

FN5. There is no assertion that this action is barred by the statute of limitations. Nor is there a claim that payment under protest was required by Washington law. Cf. *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 2243-44 n. 4, 110 L.Ed.2d 17 (1990).

[7] We turn then to the question of relief. That the INC is entitled to relief can hardly be questioned. It is true that the exact form of relief is often left to the local governmental entity when a tax is struck down as unconstitutional. However, that is typically done in cases where there is a commerce clause violation which can be remedied in any one of a num-

918 F.2d 84  
(Cite as: 918 F.2d 84)

ber of ways. See, e.g., *Ashland Oil*, 110 S.Ct. at 3205; *American Trucking*, 110 S.Ct. at 2330; *McKesson Corp.*, 110 S.Ct. at 2252. That approach has no application here, for here, purely and simply, a tax has been exacted from a federal instrumentality. The only logical relief, aside from precluding further taxation, is to order the improperly taken monies refunded. That was the course adopted in *Department of Employment*, 385 U.S. at 357, 87 S.Ct. at 466. It is the course the district court adopted; it is the course we adopt today.

**\*90 CONCLUSION**

The Red Cross is a United States Government instrumentality which is immune from state and local taxation when it is lawfully pursuing its mandated purposes. Here, the INC was engaged in fundraising by lawfully conducting certain gambling activities. The City erred when it levied a tax on those activities.

Thus, the City must cease making that levy and must refund back taxes paid by the INC since November 21, 1982, together with interest from February 28, 1986, the date that the INC made its demand.

AFFIRMED.

C.A.9 (Wash.), 1990.  
U.S. v. City of Spokane  
918 F.2d 84

END OF DOCUMENT

# APPENDIX 3

# New International Dictionary

OF THE ENGLISH LANGUAGE  
UNABRIDGED

*A Merriam-Webster*  
REG. U.S. PAT. OFF.

WITH SEVEN LANGUAGE  
DICTIONARY

---

VOLUME II

H to R



ENCYCLOPÆDIA BRITANNICA, INC.

*Chicago*  
*Auckland, Geneva, London, Manila, Paris, Rome*  
*Seoul, Sydney, Tokyo, Toronto*

COPYRIGHT © 1981 BY MERRIAM-WEBSTER INC.

PHILIPPINES COPYRIGHT 1981 BY MERRIAM-WEBSTER INC.

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY  
PRINCIPAL COPYRIGHT 1961

Library of Congress Cataloging in Publication Data  
Main entry under title:

Webster's third new international dictionary of  
the English language; unabridged.

Includes index.

1. English language—Dictionaries. I. Gove,  
Philip Babcock, 1902-1972. II. G. & C. Merriam Company.  
PE1623.W36 1981 423 81-16678  
ISBN 0-87779-201-1 (blue Sturdite)  
ISBN 0-87779-206-2 (imperial buckram) AACR2

*All rights reserved. No part of this work covered by the copyright bureau may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, recording, taping, or information storage and retrieval systems—without written permission of the publisher.*

MADE IN THE UNITED STATES OF AMERICA

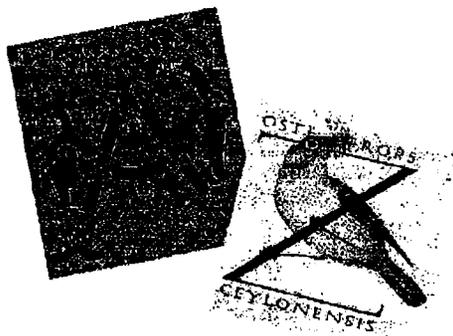
5732KP8584



# APPENDIX 4

*The*  
**American  
Heritage<sup>®</sup> Dictionary**  
*of the English Language*

FOURTH EDITION



Timberland Regional Library  
Service Center  
#15 Airdustrial Way S.W.  
Olympia, WA 98501  
FEB 26 71



**HOUGHTON MIFFLIN COMPANY**  
Boston New York

Words are included in this Dictionary on the basis of their usage. Words that are known to have current trademark registrations are shown with an initial capital and are also identified as trademarks. No investigation has been made of common-law trademark rights in any word, because such investigation is impracticable. The inclusion of any word in this Dictionary is not, however, an expression of the Publisher's opinion as to whether or not it is subject to proprietary rights. Indeed, no definition in this Dictionary is to be regarded as affecting the validity of any trademark.

American Heritage® and the eagle logo are registered trademarks of Forbes Inc. Their use is pursuant to a license agreement with Forbes Inc.

Copyright © 2000 Houghton Mifflin Company. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of Houghton Mifflin Company unless such copying is expressly permitted by federal copyright law. Address inquiries to Reference Permissions, Houghton Mifflin Company, 222 Berkeley Street, Boston, MA 02116.

Visit our Web site: [www.hmco.com/trade](http://www.hmco.com/trade).

*Library of Congress Cataloging-in-Publication Data*

The American Heritage dictionary of the English language.—4th ed.  
p. cm.  
ISBN 0-395-82517-2 (hardcover) — ISBN 0-618-08230-1  
(hardcover with CD ROM)  
1. English language—Dictionaries  
PE1628 .A623 2000  
423—dc21

00-025369

Manufactured in the United States of America

*instans*, *instans*, present. See **INSTANT**.]—**in·stan'ta'ne·ous·ly** (in-stān'-tā-nē'ōs-ē) *adv.* —**in·stan'ta'ne·ous·ness** *n.*

**in·stan'ter** (in-stān'tēr) *adv.* Without delay; instantly. [Medieval Latin, from Latin, *urgently*, from *instans*, *instans*, present. See **INSTANT**.]

**in·stan'tiate** (in-stān'ti-āsh'ē) *tr.v.* -at·ed, -at·ing, -ates To represent (an abstract concept) by a concrete or tangible example: "Two apples . . . both instantiate the single universal redness" (J. Halloway). [Latin *instans*, example; see **INSTANCE** + -ATE.] —**in·stan'tia'tion** *n.* —**in·stan'tia'tive** (-stān'ti-āsh'ēv) *adj.*

**in·stan'tly** (in-stānt-lē) *adv.* 1. At once. 2. With insistence; urgently. *☞ conj.* Chiefly British. As soon as.

**instant replay** *n.* 1a. The recording and immediate playback of part of a live television broadcast, as of a sports play. b. The part so recorded and replayed. 2. Informal Something repeated directly or soon after its original occurrence.

**in·star**<sup>1</sup> (in-stāz') *tr.v.* -starred, -star·ring, -stars To stud with or as if with stars.

**in·star**<sup>2</sup> (in-stāz') *n.* A stage of an insect or other arthropod between molts. [New Latin *instar*, from Latin *instare*, *instare*, to press.]

**in·state** (in-stāt') *tr.v.* -stat·ed, -stat·ing, -states To establish in office; install.

**in·stau·ra'tion** (in-stō-'rā-shən) *n.* 1. Renovation; restoration. 2. The institution or establishment of something. [Latin *instauratio*, *instauratio*-, from *instaurans*, past participle of *instaurare*, to renew. See **stā** in Appendix I.]

**in·stead** (in-stēd') *adv.* 1. In the place of something previously mentioned; as a substitute or an equivalent: *Having planned to drive, we walked instead.* 2. In preference; as an alternative: *yearned instead for a home and family.* [Middle English *in sted of*, in place of; *in*, see **IN** + *stede*, place; see **STEAD** + *of*; see **OF**.]

**instead of prep.** In place of; rather than: *ordered chicken instead of fish.*

**in·step** (in-stēp') *n.* 1. The arched middle part of the human foot between the toes and the ankle. 2. The part of a shoe or stocking covering the instep. [Middle English.]

**in·sti·gate** (in-stī-gā't') *tr.v.* -gat·ed, -gat·ing, -gates 1. To urge on; goad. 2. To stir up; foment. [Latin *instigare*, *instigat*-. See **steig**- in Appendix I.] —**in·sti·ga'tion** *n.* —**in·sti·ga'tive** *adj.* —**in·sti·ga'tor** *n.*

**in·still** also **in·stil** (in-stīl') *tr.v.* -stilled, -still·ing, -stills also -stils 1. To introduce by gradual, persistent efforts; implant: "Morality . . . may be instilled into their minds" (Thomas Jefferson). 2. To pour in (medicine, for example) drop by drop. [Middle English *instillen*, from Latin *instillare*: *in*-, into; see **IN**-<sup>2</sup> + *stillare*, to drip, drop (from *stilla*, drop).] —**in·stil·la'tion** (in-stō-'lā-shən) *n.* —**in·still'er** *n.* —**in·still'ment** *n.*

**in·stinct** (in-stīngkt') *n.* 1. An inborn pattern of behavior that is characteristic of a species and is often a response to specific environmental stimuli: *the spawning instinct in salmon*; *altruistic instincts in social animals.* 2. A powerful motivation or impulse. 3. An innate capability or aptitude: *an instinct for tact and diplomacy.* *☞ adj.* (in-stīngkt') 1. Deeply filled or imbued: *words instinct with love.* 2. Obsolete Impelled from within. [Middle English, from Latin *instinctus*, impulse, from past participle of *instigare*, to incite; *in*-, intensive pref.; see **IN**-<sup>2</sup> + *stingere*, to prick; see **steig**- in Appendix I.]

**in·stinctive** (in-stīngkt'iv) *adj.* 1. Of, relating to, or prompted by instinct. 2. Arising from impulse; spontaneous and unthinking: *an instinctive mistrust of bureaucrats.* —**in·stinctive·ly** *adv.*

**Synonyms** *instinctive, instinctual, intuitive, visceral* These adjectives mean derived from or prompted by a natural tendency or impulse: *an instinctive fear of snakes; instinctual behavior; an intuitive perception; visceral revulsion.* See also **synonyms at spontaneous.**

**in·stinctual** (in-stīngkt'chō-əl) *adj.* Of, relating to, or derived from instinct. See **synonyms at instinctive.** —**in·stinctu·al·ly** *adv.*

**in·sti·tute** (in-stī-tōōt', -tōōt') *tr.v.* -tute·d, -tute·ing, -tutes 1a. To establish, organize, and set in operation. b. To initiate; begin. See **synonyms at found**<sup>1</sup>. 2. To establish or invest in an office or a position. *☞ n.* 1a. Something instituted, especially an authoritative rule or precedent. b. *Institutes* A digest of the principles or rudiments of a particular subject, especially a legal abstract. 2. An organization founded to promote a cause: *a cancer research institute.* 3a. An educational institution, especially one for the instruction of technical subjects. b. The building or buildings housing such an institution. 4. A usually short, intensive workshop or seminar on a specific subject. [Middle English *instituten*, from Latin *instituere*, *institūt*-, to establish; *in*-, see **IN**-<sup>2</sup> + *statuere*, to set up; see **stā**- in Appendix I.] —**in·sti'tu'tor**, **in·sti'tu'tor** *n.*

**in·sti·tu'tion** (in-stī-'tū-shən, -tōōz') *n.* 1. The act of instituting. 2a. A custom, practice, relationship, or behavioral pattern of importance in the life of a community or society: *the institutions of marriage and the family.* b. Informal One long associated with a specified place, position, or function. 3a. An established organization or foundation, especially one dedicated to education, public service, or culture. b. The building or buildings housing such an organization. c. A place for the care of persons who are destitute, disabled, or mentally ill.

**in·sti·tu'tional** (in-stī-'tū-shō-nəl, -tōōz') *adj.* 1. Of or relating to an institution or institutions. 2. Organized as or forming an institution: *institutional religion.* 3. Characteristic or suggestive of an institution, especially in being uniform, dull, or unimaginative: *institutional*

*furniture; a pale institutional green.* 4. Of or relating to the principal institutes of a subject such as law. —**in·sti'tu'tion·al·ly** *adv.*

**in·sti·tu'tion·al·ism** (in-stī-'tū-shō-nəl-'iz-əm, -tōōz') *n.* Adherence to or belief in established forms, especially held in organically or mentally disabled, criminally delinquent, or incapable of independent living. —**in·sti'tu'tion·al·ist** *n.*

**in·sti·tu'tion·al·ize** (in-stī-'tū-shō-nəl-'īz, -tōōz') *tr.v.* -iz·ing, -iz·es 1a. To make into, treat as, or give the character of an institution to. b. To make part of a structured and usually well-established system: *a society that has institutionalized injustice.* 2. To place (a person) in the care of an institution. —**in·sti'tu'tion·al·ize'r** (-lī-zē'shən) *n.*

**instr.** *abbr.* 1. instructor 2. instrument 3. instrumental

**in·stroke** (in-strōk') *n.* An inward stroke, especially a piston in moving away from the crankshaft.

**in·struct** (in-strōkt') *v.* -struc·ted, -struc·ting, -struc·ts *tr.v.* To provide with knowledge, especially in a methodical way. See **synonyms at teach**. 2. To give orders to; direct. —*instr.* To serve as an instructor [Middle English *instruere*, from Latin *instruere*, *instruere*, to prepare.] *struct*: *in*-, on; see **IN**-<sup>2</sup> + *struere*, to build; see **ster**-<sup>2</sup> in Appendix I.]

**in·struc'tion** (in-strōk'tshən) *n.* 1. The act, practice, or profession of instructing. 2a. Impaired knowledge. b. An imparted or acquired item of knowledge; a lesson. 3. Computer Science A sequence of bits in a listed system: *a society that has institutionalized injustice.* 2. To place (a person) in the care of an institution. —**in·sti'tu'tion·al·ize'r** (-lī-zē'shən) *n.*

**in·struc'tion·al** (in-strōk'tshən) *adj.*

**in·struc'tive** (in-strōkt'iv) *adj.* Conveying knowledge or information; enlightening. —**in·struc'tive·ly** *adv.* —**in·struc'tive·ness** *n.*

**in·struc'tor** (in-strōkt'ōr) *n.* 1. One who instructs; a teacher. 2. A college or university teacher who ranks below an assistant professor. —**in·struc'tor·ship**' *n.*

**in·stru·ment** (in-strō-'ment) *n.* 1. A means by which something is done; an agency. 2. One used by another to accomplish a purpose; a dupc. 3. An implement used to facilitate work. See **synonyms at tool**. 4. A device for recording, measuring, or controlling, especially such a device functioning as part of a control system. 5. Music A device for playing or producing music: *a keyboard instrument.* 6. A legal document such as a deed, will, mortgage, or insurance policy. *☞ tr.v.* (-ment') -ment·ed, -ment·ing, -ments 1. To provide or equip with instruments. 2. Music To compose or arrange for performance. 3. To add a legal document to. [Middle English, from Old French, from Latin *instrumentum*, tool, implement, from *instruere*, to prepare. See **INSTRUCT**.]

**in·stru·men'tal** (in-strō-'mēn'tl) *adj.* 1. Serving as a means or agency; implemental: *was instrumental in solving the crime.* 2. Of, relating to, or accomplished with an instrument or tool. 3. Music Performed on or written for an instrument. 4. Grammar Of, relating to, or being the case used typically to express means, agency, or accompaniment. 5. Of or relating to instrumentalism. *☞ n.* 1a. Grammar The instrumental case. b. A word or form in the instrumental case. 2. Music A composition for one or more instruments, usually without vocal accompaniment. —**in·stru·men'tal·ly** *adv.*

**in·stru·men'tal·ism** (in-strō-'mēn'tl-'iz-əm) *n.* A pragmatic theory that ideas are instruments that function as guides of action, their validity being determined by the success of the action.

**in·stru·men'tal·ist** (in-strō-'mēn'tl-'ist) *n.* 1. Music One who plays an instrument. 2. An advocate or student of instrumentalism. *☞ adj.* Of, relating to, or advocating instrumentalism.

**in·stru·men'tal·ity** (in-strō-'mēn'tl-'itē) *n.*, pl. -ities 1. The state or quality of being instrumental. 2. A means; an agency. 3. A subsidiary branch, as of a government, by means of which functions or policies are carried out.

**in·stru·men'ta'tion** (in-strō-'mēn'tl-'āshən) *n.* 1. The application or use of instruments. 2. Music a. The study and practice of arranging music for instruments. b. The arrangement or orchestration resulting from such practice. c. A list of instruments used in an orchestration. 3a. The study, development, and manufacture of instruments, as for scientific or industrial use. b. Instruments for a specific purpose. 4. Instrumentality.

**Instrument board** *n.* See **instrument panel**.

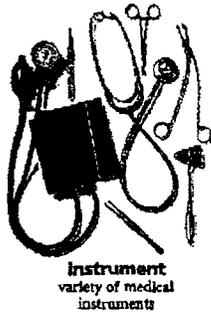
**Instrument flying** *n.* Aircraft navigation by reference to instruments only.

**Instrument landing** *n.* An aircraft landing made by means of instruments and ground-based radio equipment only.

**Instrument panel** *n.* A mounted array of instruments used to operate a machine, especially the dashboard of an automobile vehicle, aircraft, or motorboat. Also called **instrument board**.

**In·sub·or·di·nate** (in-sū-'bōr'dī-n-ē) *adj.* Not submissive to authority: *has a history of insubordinate behavior.* —**in·sub·or'di·nate·ly** *adv.* —**in·sub·or'di·nate'ly** *adv.* —**in·sub·or'di·nate'ly** *adv.*

**Synonyms** *insubordinate, rebellious, mischievous, factious, rebellious* These adjectives mean in opposition to and usually in defiance of established authority. *Insubordinate* implies failure or refusal to recognize or submit to the authority of a superior: *was fired for being insubordinate.* *Rebellious* implies open defiance of authority or resistance to control: *rebellious students demonstrating on campus.* *Mischievous* pertains to mischief against constituted authority, especially that of a naval or military command: *mischievous sailors defying the captain.* *Factious* implies divisive dissension, or disunity within a group or an organization: "The army . . ."



instrument variety of medical instruments

# APPENDIX 5

# Black's Law Dictionary®

**Eighth Edition**

**Bryan A. Garner**  
Editor in Chief

RECEIVED  
MAIN LAW LIBRARY  
DEC 13 2004  
PROPERTY OF WA STATE  
ATTORNEY GENERAL'S OFFICE

**THOMSON**  
—★—  
**WEST**

Mat #40231642  
Mat #40235008—deluxe

"BLACK'S LAW DICTIONARY" is a registered trademark of West, a Thomson business. Registered in U.S. Patent and Trademark Office.

COPYRIGHT © 1891, 1910, 1933, 1951, 1957, 1968, 1979, 1990 WEST PUBLISHING CO.

COPYRIGHT © 1999 WEST GROUP

© 2004 West, a Thomson business

810 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-328-9352

Printed in the United States of America

ISBN 0-314-15199-0

ISBN 0-314-15234-2—deluxe



TEXT IS PRINTED ON 10% POST  
CONSUMER RECYCLED PAPER



## Instrumental crime

§ 3-104(a). See **NEGOTIABLE INSTRUMENT**. 3. A means by which something is achieved, performed, or furthered <an instrument of social equality>.

**inchoate instrument.** An unrecorded instrument that must, by law, be recorded to serve as effective notice to third parties. • Until the instrument is recorded, it is effective only between the parties to the instrument.

**incomplete instrument.** A paper that, although intended to be a negotiable instrument, lacks an essential element. • An incomplete instrument may be enforced if it is subsequently completed. UCC § 3-115. [Cases: Bills and Notes §144. C.J.S. *Bills and Notes, Letters of Credit* §§ 127, 129-130, 143.]

**indispensable instrument.** The formal written evidence of an interest in intangibles, so necessary to represent the intangible that the enjoyment, transfer, or enforcement of the intangible depends on possession of the instrument.

**perfect instrument.** An instrument (such as a deed or mortgage) that is executed and filed with a public registry.

**sealed instrument.** See **SEALED INSTRUMENT**.

**instrumental crime.** See **CRIME**.

**instrumentality, n.** 1. A thing used to achieve an end or purpose. 2. A means or agency through which a function of another entity is accomplished, such as a branch of a governing body.

**instrumentality rule.** The principle that a corporation is treated as a subsidiary if it is controlled to a great extent by another corporation. — Also termed *instrumentality theory*.

**instrumenta noviter reperta** (in-stre-men-tə nob-və-ter ri-pər-tə). [Law Latin] *Hist.* Instruments newly discovered. See **EX INSTRUMENTIS DE NOVO REPERTIS**.

**instrument of accession.** *Int'l law.* A document formally acknowledging the issuing state's consent to an existing treaty, and exchanged with the treaty parties or deposited with a designated state or international organization. See **ACCESSION** (3).

**instrument of appeal.** *Hist. English law.* A document used to appeal a judgment of divorce rendered by a trial judge of the Probate, Divorce and Admiralty Division to the full panel of the court. • The use of the instrument of appeal ended in 1881, when appeals were taken to the Court of Appeal rather than the full panel of the Probate, Divorce and Admiralty Division.

**instrument of crime.** See **CRIMINAL INSTRUMENT**.

**instrument of ratification.** *Int'l law.* A document formally acknowledging the issuing state's confirmation and acceptance of a treaty, and exchanged by the treaty parties or deposited with a designated state or international organization. See **RATIFICATION** (4).

**instrumentum** (in-stroo-men-təm). [Latin] *Hist.* A document, deed, or instrument; esp., a document that is not under seal, such as a court roll.

**insubordination.** 1. A willful disregard of an employer's instructions, esp. behavior that gives the employ-

er cause to terminate a worker's employment [Cases: Master and Servant §30(5). C.J.S. *Employer-Employee Relationship* §§ 65, 71.] 2. An act of disobedience to proper authority; esp., a refusal to obey an order that a superior officer is authorized to give.

**in subsidium** (in sɒb-sid-ee-əm). [Latin] *Hist.* In aid of.

**insufficient evidence.** See **EVIDENCE**.

**insufficient funds.** See **NOT SUFFICIENT FUNDS**.

**insula** (in-s[y]ə-la). *n.* [Latin] *Roman law.* 1. An island. 2. A detached house or block of apartments leased to tenants.

**insular, adj.** 1. Of, relating to, from, or constituting an island <insular origin> 2. Isolated from, uninterested in, or ignorant of things outside a limited scope <insular viewpoint>

**insular area.** A territory or commonwealth. • The phrase is used by some writers to denote the group of which the terms *territory* and *commonwealth* are species. See **COMMONWEALTH** (2); **TERRITORY** (1).

**insular court.** See **COURT**.

**insular possession.** See **POSSESSION**.

**in suo** (in s[y]oo-oh) [Latin] *Hist.* In reference to one's own affairs.

**in suo genere** (in s[y]oo-oh jen-ər-ee). [Latin] *Hist.* In their own kind. • The phrase usu. referred to certain writings that were binding even though they lacked the formal requirements.

**in suo ordine** (in s[y]oo-oh or-da-nee). [Latin] *Hist.* In his order.

"In suo ordine . . . A cautioner who is entitled to the benefit of discussion can only be called upon, for fulfillment of the obligation which he guaranteed, in his order . . . is, after the principal creditor has been discussed. So, an heir can only be made liable for the moveable debt of his ancestor, after the executor who succeeded to the moveable estate has been discussed, and where the moveable estate has proved insufficient to meet those debts." John Trayner, *Trayner's Latin Maxims* 277 (4th ed. 1908).

**insurable, adj.** Able to be insured <an insurable risk>. — **insurability, n.**

**insurable interest.** See **INTEREST** (2).

**insurable value.** The worth of the subject of an insurance contract, usu. expressed as a monetary amount. [Cases: Insurance §2171. C.J.S. *Insurance* §§ 1108-1109, 1204.]

**insurance.** 1. A contract by which one party (*insurer*) undertakes to indemnify another party (*insured*) against risk of loss, damage, or liability arising from the occurrence of some specified contingency, and usu. to defend the insured or to pay for defense regardless of whether the insured is ultimately found liable. • An insured party usu. pays premium to the insurer in exchange for the insurer's assumption of the insured's risk. Although indemnification provisions are most common in insurance policies, parties to any type of contract may agree on indemnification arrangements. [Cases: Insurance §1001. C.J.S. *Insurance* § 2.] 2. The amount for which someone or something is covered by such an agreement. — **insure, vb.**

"Insurance, or as it is sometimes called, assurance, is a contract by which one party, for a consideration, which

# APPENDIX 6

## Ch. 193 WASHINGTON LAWS, 1979 1st Ex. Sess

property at the time of the granting of the option, as determined by the department of revenue or when the option is held by the United States, or by an appropriate agency thereof.

Passed the House May 9, 1979.  
Passed the Senate May 7, 1979.  
Approved by the Governor May 17, 1979.  
Filed in Office of Secretary of State May 17, 1979.

## CHAPTER 194

[Substitute House Bill No. 767]

## CITIES AND COUNTIES—HOME RULE—LEGISLATIVE STUDY

AN ACT Relating to local government; and adding a new chapter to Title 35 RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Section 1. The Legislature finds that confusion and ambiguity exists in relation to "home rule" powers of cities and counties. The legislature further recognizes that expansion of home rule powers creates questions of conflict and duplication of laws and ordinances, the effects of which are of concern to all the citizens of the state of Washington.

Therefore, the legislature hereby empowers and directs that a joint committee composed of six members of the Senate and six members of the House of Representatives be appointed to study the issue of "home rule." The committee shall be composed of three members of the majority and three members of the minority from each house of the legislature appointed by the President of the Senate and the Speaker(s) of the House of Representatives. The joint committee shall hold hearings and report to the legislature their findings and recommendations on or before February 1, 1981.

Passed the House May 11, 1979.  
Passed the Senate April 12, 1979.  
Approved by the Governor May 24, 1979.  
Filed in Office of Secretary of State May 24, 1979.

## CHAPTER 195

[House Bill No. 100]

## STATE ROUTE NUMBER 27

AN ACT Relating to state highway routes; and amending section 24, chapter 51, Laws of 1970 ex. sess. as amended by section 2, chapter 63, Laws of 1975 and RCW 47.17.115.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 24, chapter 51, Laws of 1970 ex. sess. as amended by section 2, chapter 63, Laws of 1975 and RCW 47.17.115 are each amended to read as follows:

[ 1754 ]

## WASHINGTON LAWS, 1979 1st Ex. Sess Ch. 196

A state highway to be known as state route number 27 is established as follows:

Beginning at a junction with state route number ((270-at)) 195 in the vicinity of Pullman, thence northerly to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence in a northerly direction by way of Tekoa, Latah, Fairfield, and Rockford to a junction with state route number 90 in the vicinity of Opportunity.

Passed the House March 21, 1979.  
Passed the Senate May 11, 1979.  
Approved by the Governor May 24, 1979.  
Filed in Office of Secretary of State May 24, 1979

## CHAPTER 196

[Substitute House Bill No. 302]

## TAXATION—RATES—EXEMPTIONS—DEDUCTIONS

AN ACT Relating to business and occupation taxation; amending section 82.02.020, chapter 15, Laws of 1961, section 16, chapter 236, Laws of 1967, and section 8, chapter 94, Laws of 1970, 1st ex. sess., and RCW 82.02.020; amending section 82.04.240, chapter 15, Laws of 1961 as last amended by section 3, chapter 281, Laws of 1971 ex. sess. and RCW 82.04.240; amending section 82.04.260, chapter 15, Laws of 1961 as last amended by section 7, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.260; amending section 82.04.300, chapter 15, Laws of 1961 as last amended by section 41, chapter 278, Laws of 1973 1st ex. sess. and RCW 82.04.300; amending section 82.04.430, chapter 15, Laws of 1961 as last amended by section 1, chapter 105, Laws of 1977 ex. sess. and RCW 82.04.430; amending section 2, chapter 169, Laws of 1974 ex. sess. and RCW 82.04.442; amending section 7, chapter 37, Laws of 1974 ex. sess. as amended by section 1, chapter 35, Laws of 1977 ex. sess. and RCW 35.21.755; amending section 14, chapter 61, Laws of 1975-'76 2nd ex. sess. and RCW 84.36.451; amending section 2, chapter 61, Laws of 1975-'76 2nd ex. sess. and RCW 82.29A.020; adding new sections to chapter 82.04 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1 Section 82.04.240, chapter 15, Laws of 1961 as last amended by section 3, chapter 281, Laws of 1971 ex. sess. and RCW 82.04.240 are each amended to read as follows:

Upon every person except persons taxable under subsections (2), (3), (4), (5), (6), ((or)) (8), (9), or (10) of RCW 82.04.260 engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of forty-four one-hundredths of one percent

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

[ 1755 ]

Sec. 2. Section 82.04.260, chapter 15, Laws of 1961 as last amended by section 7, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.260 are each amended to read as follows:

- (1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one percent.
- (2) Upon every person engaging within this state in the business of manufacturing wheat into flour, soybeans into soybean oil, or sunflower seeds into sunflower oil, as to such persons the amount of tax with respect to such business shall be equal to the value of the flour or oil manufactured, multiplied by the rate of one-eighth of one percent.
- (3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of one-quarter of one percent.
- (4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-eighth of one percent.
- (5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of three-tenths of one percent.
- (6) Upon every person engaging within this state in the business of manufacturing aluminum pig, ingot, billet, plate, sheet (flat or coiled), rod, bar, wire, cable or extrusions; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of four-tenths of one percent.
- (7) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of forty-four one-hundredths of one percent.
- (8) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of thirty-three one-hundredths of one percent.

- (9) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of twenty-five one-hundredths of one percent.
- (10) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of twenty-five one-hundredths of one percent.
- (11) Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of twenty-five one-hundredths of one percent.
- (12) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of thirty-three one-hundredths of one percent.
- (13) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of thirty-three one hundredths of one percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure, cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in

the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

Sec. 3. Section 82.02.020, chapter 15, Laws of 1961, section 16, chapter 236, Laws of 1967, and section 8, chapter 94, Laws of 1970, 1st ex. sess., and RCW 82.02.020 are each amended to read as follows:

Except only as expressly provided in RCW 67.28.180 and 67.28.190 and the provisions of chapter 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature.

Sec. 4. Section 82.04.300, chapter 15, Laws of 1961 as last amended by section 41, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.04.300 are each amended to read as follows:

This chapter shall apply to any person engaging in any business activity taxable under RCW 82.04.230, 82.04.240, 82.04.250, 82.04.260, 82.04.270, 82.04.275, 82.04.280 and 82.04.290 other than those whose value of products, gross proceeds of sales, or gross income of the business is less than ~~((three hundred))~~ one thousand dollars per month: PROVIDED, That where one person engages in more than one business activity and the combined measures of the tax applicable to such businesses equal or exceed ~~((three hundred))~~ one thousand dollars per month, no exemption or deduction from the amount of tax is allowed by this section.

Any person claiming exemption under the provisions of this section may be required to file returns even though no tax may be due: PROVIDED, FURTHER, That the department of revenue may allow exemptions, by general rule or regulation, in those instances in which quarterly, semiannual, or annual returns are permitted. Exemptions for such periods shall be equivalent in amount to the total of exemptions for each month of a reporting period.

Sec. 5. Section 82.04.430, chapter 15, Laws of 1961 as last amended by section 1, chapter 105, Laws of 1977 ex. sess. and RCW 82.04.430 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax the following items:

(1) Amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations;

(2) Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees, charges made for operation of privately operated kindergartens, and endowment funds. This paragraph shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. ~~((Dues which are for, or graduated upon, the amount of service rendered by the recipient thereof are not permitted as a deduction hereunder.))~~ If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction hereunder;

(3) The amount of cash discount actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extractive or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the provisions of RCW 82.04.450;

(4) The amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis;

(5) So much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state or the United States government upon the sale thereof;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in RCW 82.04.330, either as agent or as independent contractor;

(8) Amounts derived as compensation for services rendered or to be rendered to patients or from sales of prescription drugs as defined in RCW 82.08.030 furnished as an integral part of services rendered to patients by a hospital, as defined in chapter 70.41 RCW, devoted to the care of human beings with respect to the prevention or treatment of disease, sickness, or suffering, when such hospital is operated by the United States or any of its instrumentalities, or by the state, or any of its political subdivisions;

(9) Amounts derived as compensation for services rendered to patients or from sales of prescription drugs as defined in RCW 82.08.030 furnished as an integral part of services rendered to patients by a hospital, as defined in chapter 70.41 RCW, which is operated as a nonprofit corporation, nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. In no event shall any such deduction

be allowed, unless the hospital building is entitled to exemption from taxation under the property tax laws of this state;

(10) Amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290;

(11) By those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties;

(12) By those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof;

(13) Amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans ((for agricultural production)) and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities;

(14) By persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if

(a) any additional processing of such articles in this state consists of minor final assembly only, and

(b) in the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture, and

(c) the total cost of the minor final assembly does not exceed two percent of the value of the articles, and

(d) the articles are sold and shipped outside the state;

(15) That portion of amounts received by any funeral home licensed to do business in this state which is received as reimbursements for expenditures (for goods supplied or services rendered by a person not employed by or affiliated or associated with the funeral home) and advanced by such funeral home as an accommodation to the persons paying for a funeral, so long as such expenditures and advances are billed to the persons paying for the funeral at only the exact cost thereof and are separately itemized in the billing statement delivered to such persons.

(16) Amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision.

(17) Amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

(a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

(b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

(c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

To qualify for the deductions under this section:

(a) The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

(b) Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;

(c) Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

NEW SECTION. Sec. 6. There is added to chapter 82.04 RCW a new section to read as follows:

(1) For the purposes of RCW 82.04.430(16), the term "health or social welfare organization" means an organization which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. In addition a corporation in order to be exempt under RCW 82.04.430(16) shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.430(16) and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement; and

(i) Legal services to the indigent.

**NEW SECTION. Sec. 7** There is added to chapter 82.04 RCW a new section to read as follows:

(1) This chapter does not apply to amounts derived by a nonprofit organization as a result of conducting or participating in a bazaar or rummage sale if:

(a) The organization does not conduct or participate in more than two bazaars or rummage sales per year; and

(b) Each bazaar or rummage sale does not extend over a period of more than two days; and

(c) The gross income received by each organization from each bazaar or rummage sale does not exceed one thousand dollars.

(2) For purposes of this section, "nonprofit organization" means an organization that meets all of the following criteria:

(a) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(b) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(c) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

Sec. 8. Section 2, chapter 169, Laws of 1974 ex. sess. and RCW 82.04.442 are each amended to read as follows:

For each of the calendar years 1974 through 1983, a percentage as set forth below, of any personal property taxes paid before delinquency after May 10, 1974 by any taxpayer upon business inventories during the same calendar year or paid after delinquency under extenuating circumstances if approved by the department of revenue shall be allowed as a credit against the total of any taxes imposed on such taxpayer or its successor by chapter 82.04 RCW (business and occupation tax), as follows:

Inventory taxes paid in 1974	ten percent
Inventory taxes paid in 1975	twenty percent
Inventory taxes paid in 1976	thirty percent
Inventory taxes paid in 1977	forty percent
Inventory taxes paid in 1978	fifty percent
Inventory taxes paid in 1979	sixty percent
Inventory taxes paid in 1980	seventy percent
Inventory taxes paid in 1981	eighty percent
Inventory taxes paid in 1982	ninety percent
Inventory taxes paid in 1983	one hundred percent

Sec. 9. Section 7, chapter 37, Laws of 1974 ex. sess. as amended by section 1, chapter 35, Laws of 1977 ex. sess. and RCW 35.21.755 are each amended to read as follows:

A public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 shall receive the same immunity or exemption from taxation as that of the city, town, or county creating the same: PROVIDED, That, except for any property listed on, or which is within a district listed on any federal or state register of historical sites, any such public

corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.725 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW(~~and RCW 84.36.451 and 84.40.175~~) shall not apply to property within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976(~~and the exemption set forth in this proviso shall be allowed in accordance with the following schedule:~~

Year	Percentage Exemption of Tax Otherwise Due
1977 to 1981	100 percent
1982 to 1985	66 2/3 percent
1986 to 1989	33 1/3 percent

and shall expire on December 31, 1989).

Sec. 10. Section 14, chapter 61, Laws of 1975-'76 2nd ex. sess. and RCW 84.36.451 are each amended to read as follows:

The following property shall be exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

(1) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington(~~); or~~

(2) A public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites; and

(3) Including any leasehold interest arising from ~~((such))~~ the property identified in subsections (1) and (2) of this section as defined in RCW 82.29A.020: PROVIDED, That ~~((this))~~ the exemption under this section shall not apply to any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW nor be construed to modify the provisions of RCW 84.40.230.

Sec. 11. Section 2, chapter 61, Laws of 1975-'76 2nd ex. sess. and RCW 82.29A.020 are each amended to read as follows:

As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by

the lessor to the lessee; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the lessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of delivery under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department shall establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deduction for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery

of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

**NEW SECTION. Sec. 12.** There is added to chapter 82.04 RCW a new section to read as follows:

This chapter shall not apply to school districts and educational service districts as defined in Title 28A RCW, in respect to materials printed in the school district and educational service districts printing facilities when said materials are used solely for school district and educational service district purposes.

**NEW SECTION. Sec. 13.** There is added to chapter 82.04 RCW a new section to read as follows:

The tax imposed by RCW 82.04.270(1) does not apply to any person who manufactures alcohol with respect to sales of said alcohol to be used in the production of gasohol for use as motor vehicle fuel. As used in this section, "motor vehicle fuel" has the meaning given in RCW 82.36.010(2), and "gasohol" means motor vehicle fuel which contains more than nine and one-half percent alcohol by volume.

**NEW SECTION. Sec. 14.** There is added to chapter 82.04 RCW a new section to read as follows:

This chapter does not apply to any county, city or town as defined in Title 35 RCW and Title 36 RCW, in respect to materials printed in the county, city or town printing facilities when said materials are used solely for said county, city or town purposes.

**NEW SECTION. Sec. 15.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979.

Passed the House May 14, 1979.

Passed the Senate May 11, 1979.

Approved by the Governor May 24, 1979.

Filed in Office of Secretary of State May 24, 1979.

# APPENDIX 7

environment to residents of substantially polluted areas.

**SUMMARY:**

The Department of Ecology is required to conduct a voluntary vehicle emission inspection program. The implementation of public education and notification programs is required. These programs are to provide information regarding vehicle emissions, noncompliance and emission contributing areas, and restrictions imposed on those areas. The Department of Ecology is to develop, with the Superintendent of Public Instruction and the State Board for Community College Education, a program for granting certificates of instruction to persons who successfully complete training courses regarding engine maintenance and emission control systems.

If the Director of the Department of Ecology determines that the air quality standards for vehicle-emission contaminants are likely to be exceeded in an area after December 31, 1982, the Director is required to designate the area as a noncompliance area for motor vehicle emissions. The geographic area, including the noncompliance area within whose boundaries are registered vehicles that contribute significantly to the violation of the standards within the noncompliance area, is to be designated as an emission contributing area.

The Department is required to administer a vehicle emission inspection system for all motor vehicles registered within each emission contributing area. The inspection stations must be established and operated by one or more private contractors who secure contracts by competitive bid. Such contractors may not be in the business of repairing vehicles for compensation. Owners or operators of fleets of motor vehicles and used motor vehicle dealers may be authorized by the Director of the Department of Ecology to inspect their vehicles.

The Department of Ecology must review consumer complaints regarding the inspection system and repair service utilized to meet the emission standards.

After January 1, 1982, motor vehicle licenses for vehicles registered in emission contributing areas may not be issued or renewed unless the applications are accompanied by:

1. A certificate of compliance issued for vehicles passing the emission test by meeting the emission standards; or
2. A certificate of acceptance issued to a vehicle owner whose vehicle failed the inspection test, who then spent more than \$50 on repairs and/or parts to pass the inspection, but whose vehicle nonetheless failed to pass the inspection test upon retesting.

The following motor vehicles are exempted from this requirement: new vehicles (first licensing);

vehicles fifteen years old or older; those powered by electricity or by diesel engines; motorcycles and motor driven cycles; certain farm vehicles; and classes of vehicles designated by the Director of the Department of Ecology. An area may no longer be designated as a noncompliance area if the air quality standards are no longer being violated in the area and termination of the area inspection system does not result in violations of the standards.

Any rules proposed by the Department of Ecology to implement this act, including those designating noncompliance and emission contributing areas and their boundaries, must be submitted to the House and Senate Ecology Committees for review and approval before adoption.

The provisions of the bill expire on January 1, 1990, unless extended by law for an additional period of time.

The state operating budget authorizes the expenditure of not more than \$500,000 by the Department of Ecology to implement this program during the 1979-81 biennium.

House: (a)	62	36	Effective: Sept. 1, 1979
Senate: (a)	25	22	C 163 L 79 1st ex. sess.
H. Concur:	55	36	

**SHB 302**

**SPONSORS:** Committee on Revenue.  
 (Originally Sponsored by  
 Representatives Whiteside, Thompson,  
 Adams, Barr, Burns, Brekke, Fancher,  
 Maxie, Taylor, Williams, North and  
 Ehlers)  
 (By Department of Social and Health  
 Services Request)

**COMMITTEE:** Revenue  
 Modifying the B&O tax.

**ISSUE:**  
 Exemptions and reductions in the business and occupation tax statute are necessary in order to make the statute more equitable, reflect inflation, and encourage the development of certain products in Washington State.

**SUMMARY:**  
 A business and occupation (B&O) tax rate of one-eighth of one percent is imposed upon manufacturers of soybean oil and sunflower oil.  
 A B&O tax rate of thirty-three hundredths of one percent is imposed upon steamship agents, customs house brokers, freight forwarders, cargo charter brokers and air cargo agents engaged in international trade activities.  
 B&O tax rate of thirty-three hundredths of one percent is imposed upon persons engaged in the

business of stevedoring and associated activities. The portion of income of public ports and other public service businesses derived from these activities is exempt from the 1.8% public utility tax rate and subject to the .33% rate.

Counties, towns, and other municipal corporations may not impose any excise taxes on parimutuel wagering.

Hospitals selling prescription drugs as an integral part of services rendered are exempted from B&O tax on amounts received from the sale of such drugs.

An exemption from B&O tax on interest on loans to producers of aquatic products is extended to cooperative lending institutions.

Funeral homes are exempted from B&O tax for indirect costs incurred, such as providing flowers, soloists, ministers and transportation services, paid in advance by the funeral home for the convenience and accommodation of its customers. Customers must be billed at the exact cost to the funeral home and such costs must be separately itemized in the billing statement.

Amounts received from the United States or any governmental unit for support of health and social welfare services are exempted from business and occupation tax assessed upon private, nonprofit health and social welfare organizations, but only if the organizations comply with several specified conditions.

A deduction is allowed from the B&O tax for amounts received by condominium owners' associations, cooperative housing associations, and other associations of owners of residential property for the repair, maintenance, and management of residential structures and common areas.

Credit for property taxes paid on business inventories is allowed to delinquent taxpayers under extenuating circumstances if approved by the Department of Revenue.

The income level at which a business activity becomes subject to the appropriate business and occupation tax is raised from \$300 to \$1,000.

Amounts derived by a nonprofit organization as a result of conducting or participating in a bazaar or rummage sale are exempted from B&O tax if certain specified conditions are followed.

The tax-exempt status of the Pike Place Market in Seattle is clarified.

The B&O tax does not apply to the printing facilities of schools, counties, cities, or towns when the printed materials are used solely for school, county, city, or town purposes.

The B&O tax on wholesalers does not apply to persons who manufacture alcohol to be used in the production of gasohol.

The B&O tax status of amounts received by clubs and other organizations which are designated as dues to their members is clarified.

The bill contains an emergency clause and takes effect July 1, 1979.

House: 98 0 Effective: July 1, 1979  
 Senat: (a) 46 1 C 196 L 79 1st ex. sess.  
 H. Concur: 85 7

**HB 307**

SPONSORS: Representatives Newhouse and Knowles

COMMITTEE: Judiciary

Revising the criminal code.

**ISSUE:**

In 1975 a comprehensive revision of the criminal code was enacted, codified as the Washington Criminal Code (Title 9A RCW). The 1975 revision, which was the product of an extended criminal code revision process in this state, was principally based upon a proposal developed by the Criminal Code Revision Committee of the State Bar Association. The Committee has continued in existence in order to develop whatever follow-up housekeeping amendments appear to be necessary. The Committee's first proposal was introduced in 1976 and enacted as Chapter 38, Laws of 1975-76, 2nd ex. sess.

**SUMMARY:**

This is the second housekeeping bill developed by the Criminal Code Revision Committee as a follow-up to the 1975 criminal code revision. It makes the following changes in the criminal law:

1. The rape and statutory rape statutes, which are now in Title 9, and the communicating with a minor for immoral purposes and indecent liberties statutes, are recodified into a new chapter in Title 9A. The purpose of this recodification is to gather all of the sex crimes statutes into a single chapter within Title 9A.
2. Some language in the excusable homicide statute is revised to eliminate some uncertainty caused by the revision in the manslaughter statutes in 1975. The problem is that the mental state requirement in the lowest degree of felony homicide (manslaughter second) is "criminal negligence" which is defined as "gross negligence." The excusable homicide statute, however, requires that the actor acted "with ordinary caution" which leaves open the question of whether someone acting with simple negligence can take advantage of the excusable homicide statute. To eliminate this uncertainty, the phrase "without criminal negligence" is

# APPENDIX 8

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1624

Chapter 23, Laws of 2001

(partial veto)

57th Legislature  
2001 Second Special Legislative Session

HEALTH OR SOCIAL WELFARE SERVICES--TAX DEDUCTION

EFFECTIVE DATE: 7/13/01

Passed by the House June 4, 2001  
Yeas 87 Nays 0

FRANK CHOPP  
Speaker of the House of  
Representatives

CLYDE BALLARD  
Speaker of the House of  
Representatives

Passed by the Senate June 14, 2001  
Yeas 40 Nays 0

BRAD OWEN  
President of the Senate

Approved July 13, 2001, with the  
exception of section 3, which is  
vetoed

GARY LOCKE  
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia  
Zehnder, Co-Chief Clerks of the House  
of Representatives of the State of  
Washington, do hereby certify that the  
attached is SUBSTITUTE HOUSE BILL 1624  
as passed by the House of  
Representatives and the Senate on the  
dates hereon set forth

TIMOTHY A. MARTIN  
Chief Clerk

CYNTHIA ZEHNDER  
Chief Clerk

FILED

July 13, 2001 3:14 p.m.

Secretary of State  
State of Washington

SUBSTITUTE HOUSE BILL 1624

Passed Legislature - 2001 2 Special Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Finance (originally sponsored by Representatives Morris, Cairnes, Reardon, Conway, Dunshee, Ogden, Pennington, Van Luvan, Doumit, Voloria, Dickerson, Fromhold, Anderson and Edwards)

Read first time . Referred to Committee on .

1 AN ACT Relating to the business and occupation tax deduction for  
2 health or social welfare services as applied to government-funded  
3 health benefits paid through managed care organizations; amending RCW  
4 82.04.4297; creating new sections; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. Sec. 1. The legislature finds that the deduction  
7 under the business and occupation tax statutes for compensation from  
8 public entities for health or social welfare services was intended to  
9 provide government with greater purchasing power when government  
10 provides financial support for the provision of health or social  
11 welfare services to benefited classes of persons. The legislature also  
12 finds that both the legislature and the United States congress have in  
13 recent years modified government-funded health care programs to  
14 encourage participation by beneficiaries in highly regulated managed  
15 care programs operated by persons who act as intermediaries between  
16 government entities and health or social welfare organizations. The  
17 legislature further finds that the objective of these changes is again  
18 to extend the purchasing power of scarce government health care  
19 resources, but that this objective would be thwarted to a significant

1 degree if the business and occupation tax deduction were lost by health  
2 or social welfare organizations solely on account of their  
3 participation in managed care for government-funded health programs.  
4 In keeping with the original purpose of the health or social welfare  
5 deduction, it is desirable to ensure that compensation received from  
6 government sources through contractual managed care programs also be  
7 deductible.

8       Sec. 2. RCW 32.04.4297 and 1988 c 67 s 1 are each amended to read  
9 as follows:

10       In computing tax there may be deducted from the measure of tax  
11 amounts received from the United States or any instrumentality thereof  
12 or from the state of Washington or any municipal corporation or  
13 political subdivision thereof as compensation for, or to support,  
14 health or social welfare services rendered by a health or social  
15 welfare organization or by a municipal corporation or political  
16 subdivision, except deductions are not allowed under this section for  
17 amounts that are received under an employee benefit plan. For purposes  
18 of this section, "amounts received from" includes amounts received by  
19 a health or social welfare organization that is a nonprofit hospital or  
20 public hospital from a managed care organization or other entity that  
21 is under contract to manage health care benefits for the federal  
22 medicare program authorized under Title XVIII of the federal social  
23 security act; for a medical assistance, children's health, or other  
24 program authorized under chapter 74.09 RCW; or for the state of  
25 Washington basic health plan authorized under chapter 70.47 RCW, to the  
26 extent that these amounts are received as compensation for health care  
27 services within the scope of benefits covered by the pertinent  
28 government health care program.

29       \*NEW SECTION. Sec. 3. *This act applies to taxes collected after*  
30 *the effective date of this act, including taxes collected on reporting*  
31 *periods prior to the effective date of this act.*

32       \*Sec 3 was vetoed. See message at end of chapter.

33       NEW SECTION. Sec. 4. This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the  
35 state government and its existing public institutions, and takes effect  
36 immediately.

Passed the House June 4, 2001  
Passed the Senate June 14, 2001.  
Approved by the Governor July 13, 2001, with the exception of  
certain items that were vetoed.  
Filed in Office of Secretary of State July 13, 2001

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 3.  
3 Substitute House Bill No. 1624 entitled:

4 "AN ACT Relating to the business and occupation tax deduction for  
5 health or social welfare services as applied to government-funded  
6 health benefits paid through managed care organizations;"

7 Substitute House Bill No. 1624 authorizes a business and occupation  
8 (B&O) tax deduction for amounts received by a health or social welfare  
9 organization that is a non-profit hospital or a public hospital, from  
10 a managed care organization or other entity that is under contract with  
11 the federal or state government to manage certain health care benefits.  
12 The deduction is equal to the amount of payments the entity receives  
13 for health benefits for Medicare; medical assistance; children's  
14 health; or other programs authorized pursuant to RCW 74.09; or the  
15 Washington Basic Health Plan. The credit amount is limited to the  
16 extent these payments are received as compensation for health care  
17 services within the scope of benefits covered by the pertinent  
18 government health care program.

19 Section 3 of this bill would have applied the deduction to taxes  
20 collected in the future, on reporting periods prior to the effective  
21 date of this act. The retroactive nature of the provision is not fair  
22 to taxpayers who have timely reported and remitted their taxes.  
23 Taxpayers who failed to pay their taxes due before the effective date  
24 of this bill would have been rewarded for being delinquent, while those  
25 who paid on time would not receive a refund (such refunds are  
26 prohibited by Article VIII, Section 7 of the Washington Constitution as  
27 interpreted by the Washington Supreme Court).

28 For this reason, I have vetoed section 3 of Substitute House Bill  
29 No. 1624.

30 With the exception of section 3, Substitute House Bill No. 1624 is  
31 approved."

# APPENDIX 9

**FINAL BILL REPORT**  
**SHB 1624**

---

**PARTIAL VETO**

C 23 L 01 E 2

Synopsis as Enacted

**Brief Description:** Clarifying the taxation of amounts received by public entities for health or welfare services.

**Sponsors:** By House Committee on Finance (originally sponsored by Representatives Morris, Cairnes, Reardon, Conway, Dunshee, Ogden, Pennington, Van Luven, Doumit, Veloria, Dickerson, Fromhold, Anderson and Edwards).

**House Committee on Finance**  
**Senate Committee on Ways & Means**

**Background:**

Washington's major business tax is the business and occupation (B&O) tax. This tax is imposed on the gross receipts of business activities conducted within the state. Nonprofit organizations pay B&O tax unless specifically exempted by statute. Exemption from federal income tax does not automatically provide exemption from state taxes.

Specific B&O exemptions and deductions, covering all or most income, exist for several types of nonprofit organizations. The eligibility conditions vary for each exemption. The B&O tax deduction for nonprofit organizations or local government jurisdictions for the support of health or social welfare programs is provided only for payments made directly by federal, state, or local governments.

**Summary:**

Nonprofit hospitals and public hospitals are exempt from B&O tax on payments they receive from organizations under contract with the federal or state government to manage health benefits for medicare, medical assistance, children's health, or the basic health plan.

The exemption applies to taxes collected after the act's effective date, including amounts from reporting periods before the act's effective date.

**Votes on Final Passage:**

First Special Session  
House 93 2

Second Special Session  
House 87 0  
Senate 48 0

**Effective:** July 13, 2001

**Partial Veto Summary:** The Governor vetoed the section which provided an exemption for tax amounts from reporting periods before the act's effective date.

# APPENDIX 10

able and potentially major impact on causes of poverty in communities of the state. [1986 c 261 § 6; 1985 c 431 § 3; 1983 1st ex.s. c 66 § 1; 1980 c 37 § 80; 1979 ex.s. c 196 § 6.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**82.04.4311 Deductions—Compensation received under the federal medicare program by certain nonprofit and municipal hospitals.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles. [2002 c 314 § 2.]

**Findings—2002 c 314:** "The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government. Further, the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act." [2002 c 314 § 1.]

**Refund of taxes—2002 c 314:** "A public hospital owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization under RCW 82.04.431, is entitled to:

(1) A refund of business and occupation tax paid between January 1, 1998, and April 2, 2002, on amounts that would be deductible under section 2 of this act; and

(2) A waiver of tax liability for accrued, but unpaid taxes that would be deductible under section 2 of this act." [2002 c 314 § 4.]

**Effective date—2002 c 314:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 2, 2002]." [2002 c 314 § 5.]

**82.04.432 Deductions—Municipal sewer service fees or charges.** In computing the tax imposed by this chapter, municipal sewerage utilities and other public corporations imposing and collecting fees or charges for sewer service may deduct from the measure of the tax, amounts paid to another municipal corporation or governmental agency for sewerage interception, treatment or disposal. [1967 ex.s. c 149 § 17.]

**82.04.4322 Deductions—Artistic or cultural organization—Compensation from United States, state, etc., for artistic or cultural exhibitions, performances, or programs.** In computing tax there may be deducted from the measure of tax amounts received from the United States or

any instrumentality thereof or from the state of Washington or any municipal corporation or subdivision thereof as compensation for, or to support, artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public. [1981 c 140 § 1.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4324 Deductions—Artistic or cultural organization—Deduction for tax under RCW 82.04.240—Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs.** In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturing under RCW 82.04.240, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public. [1981 c 140 § 2.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4326 Deductions—Artistic or cultural organizations—Tuition charges for attending artistic or cultural education programs.** In computing tax there may be deducted from the measure of tax amounts received by artistic or cultural organizations as tuition charges collected for the privilege of attending artistic or cultural education programs. [1981 c 140 § 3.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.** In computing tax there may be deducted from the measure of tax those amounts received by artistic or cultural organizations which represent income derived from business activities conducted by the organization. [1985 c 471 § 6.]

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4328 "Artistic or cultural organization" defined.** (1) For the purposes of RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the corporation shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or

# APPENDIX 11

# FINAL BILL REPORT

## HB 2732

C 314 L 02

Synopsis as Enacted

**Brief Description:** Excluding government subsidized social welfare compensation from taxation.

**Sponsors:** By Representatives Gombosky, Cairnes, Berkey, Nixon, Morris, Armstrong, Esser, Fromhold, Ogden, Conway, Hunt, Van Luven, Voloria, Romero, Reardon, Edwards, Chase, Morell, Santos, Kenney and Wood.

**House Committee on Finance**  
**Senate Committee on Ways & Means**

### **Background:**

Washington's major business tax is the business and occupation (B&O) tax. This tax is imposed on the gross receipts of business activities conducted within the state. Nonprofit organizations pay B&O tax unless specifically exempted by statute. Exemption from federal income tax does not automatically provide exemption from state taxes.

Specific B&O exemptions and deductions, covering all or most income, exist for several types of nonprofit organizations. The eligibility conditions vary for each exemption or deduction.

SHB 1624, adopted in 2001, provided a deduction for nonprofit hospitals and public hospitals from B&O tax on payments they receive from organizations under contract with the federal or state government to manage health benefits for medicare, medical assistance, children's health, or the basic health plan. A deduction already existed for these payments when made directly by federal, state, or local governments.

SHB 1624 contained a section that applied the deduction to taxes collected after the act's effective date, including amounts from reporting periods before the act's effective date.

The Governor vetoed this section of SHB 1624 stating that: "The retroactive nature of the provision is not fair to taxpayers who have timely reported and remitted their taxes. Taxpayers who failed to pay their taxes due before the effective date of this bill would have been rewarded for being delinquent, while those who paid on time would not receive a refund..."

### **Summary:**

The tax deduction available to nonprofit hospitals and public hospitals for payments for health benefits under medicare, medical assistance, children's health, or the basic health plan is restated in a new section. The deduction does not apply to patient copayments or deductibles.

Nonprofit hospitals and public hospitals are entitled to retroactive relief for B&O taxes on payments for health benefits under medicare, medical assistance, children's health, or the basic health plan. Taxpayers who remitted tax are entitled to a refund dating back to January 1, 1998. Tax liability for unpaid taxes is waived.

**Votes on Final Passage:**

House 97 1  
Senate 48 0

**Effective:** April 2, 2002

FILED  
COURT OF APPEALS  
DIVISION II

09 DEC 15 AM 11:09

STATE OF WASHINGTON

RYH  
DEPUTY

NO. 39457-0-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

SKAGIT COUNTY PUBLIC  
HOSPITAL DISTRICT NO. 2, d/b/a  
ISLAND HOSPITAL,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF REVENUE,

Respondent.

DECLARATION OF  
SERVICE

I, Carrie A. Parker, state and declare as follows:

I am a citizen of the United States of America and over 18 years of age and not a party to this action. On December 14, 2009, I caused a true and correct copy of RESPONDENT'S BRIEF and this DECLARATION OF SERVICE to be served via U.S. mail (through Consolidated Mail Services), with proper postage affixed to:

Carla DewBerry  
Roger L. Hillman  
Jamal N. Whitehead  
Garvey Schubert Barer  
1191 Second Avenue, Suite 1800  
Seattle, WA 98101-2939

///

///

///

**ORIGINAL**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of December, 2009, in Tumwater, Washington.

  
Carrie A. Parker, Legal Assistant