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DIVISION II

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

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1, d/b/a
SKAGIT VALLEY MEDICAL CENTER

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

This Court should affirm the Board of Tax Appeals (“Board”) because it correctly held that Skagit County Public Hospital District No. 1 dba Skagit Valley Medical Center (“Skagit Valley”)¹ was not entitled to a deduction from revenue subject to business and occupation (B&O) tax for money received as payment for Medicare co-payments and deductibles. Skagit Valley claims that such revenue qualifies for a B&O tax deduction in RCW 82.04.4297, which allows certain hospitals to deduct from taxable gross income money “received from the United States or any instrumentality thereof.” The Board correctly held that money received from patients or patients’ private insurance companies was not money received “from the United States or any instrumentality thereof.”

Moreover, Skagit Valley is not entitled to a waiver of interest on the tax assessment. The Board correctly concluded that Skagit Valley did not enjoy sovereign immunity with respect to interest on a tax assessment. Further, substantial evidence supports the Board’s finding that Skagit Valley had failed to meet the requirements of a waiver of interest that the delay in paying the assessment was “not at the request of the taxpayer and was for the sole convenience of the Department.”

¹ Skagit Valley was formerly doing business as “Affiliated Health Services.” Accordingly, some of the references in the administrative record and briefing below may be to “Affiliated Health Services” or “AHS.”

II. COUNTERSTATEMENT OF THE ISSUES

A. Washington's B&O tax applies to all gross income of a business unless an exemption or deduction applies. The Legislature has provided a deduction in RCW 82.04.4297 to 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, to satisfy patients' personal obligations to pay a Medicare co-payment or deductible, qualify for this deduction?

B. Is a public hospital that is a municipal corporation immune from paying interest on a tax assessment, where taxing statutes specifically include municipal corporations as a "person" subject to tax and prior case law establishes that the state— and therefore its political subdivisions — has waived sovereign immunity for interest in a tax assessment?

C. RCW 82.32.105(3)(b) states that interest on unpaid tax should be waived if "[t]he extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department." Is the Board's finding that Skagit Valley did not meet its burden to show that it was entitled to this waiver of interest supported by substantial evidence where Skagit Valley requested the extensions of due dates and it sought to delay payment of an

assessment while it negotiated with the Department about the amount of the assessment?

III. COUNTERSTATEMENT OF THE CASE

A. Factual Statement

During July 1993 through December 31, 2000 (“the tax period”), Skagit Valley provided medical services to patients, some of whom were beneficiaries of the federal Medicare program. CP 166. During that period, Skagit Valley billed Medicare for services provided and, after receiving a statement of allowable charges from Medicare’s fiscal intermediary, determined who was the responsible party for the co-payment or deductible.² It then sent a statement to the patient or the patient’s supplemental insurance for the remaining balance. CP 167-68.

The patients were responsible for paying the co-payments or deductibles. BTA Doc. 64³ (Finding of Fact No. 3); BTA Doc. 820 (admission form advising Medicare patients that they will be responsible for any co-insurance or deductibles); CP 168-74 (testimony that patient generally responsible for ensuring that payment of Medicare co-payment or deductible is made); CP 178-79 (discussing BTA Doc. 824, which is a

² The Medicare program sets allowable charges for the services rendered by the Skagit Valley. Thus, the Skagit Valley can only seek a coinsurance or deductible payment for the remainder of the allowable charge set by Medicare. RP 25-26.

³ The administrative record transmitted by the Board is numbered independently from the Clerk’s Papers (“CP”) and the Department cites to “BTA Doc.” to distinguish the administrative record from the Clerk’s Papers.

sample statement sent to patients including the line “Please Pay This Amount”). Many patients voluntarily purchased supplemental insurance policies making private, non-governmental insurance companies (referred to by Skagit Valley in its brief as “MediGap insurers”) responsible for paying the patient’s obligation regarding Medicare co-payments and deductibles. BTA Doc. 64 (Finding of Fact No. 3); CP 171. Patients, rather than the United States or the Medicare program, contracted with these insurance companies to pay the co-payments or deductibles, and patients paid the premiums on these policies. CP 171-72. There is no evidence in the record that the Medicare program or the United States required insurance companies to offer these policies.

There is similarly 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 co-payment or deductible or that the patient was satisfying any obligation of the Medicare program. *See generally* BTA Doc. 824; CP 171-77. Rather, the documents indicate that the amounts due are the patient’s obligation. *Id.*

Skagit Valley’s discussion of the Medicare program is not fully accurate. For example, when Skagit Valley refers to “MediGap” insurers as “Medicare-contracted insurance companies,” App. Br. at 6, it means only that the insurers have agreed to abide by Medicare regulations in

offering insurance for sale to patients and that they have received Medicare certification. CP 170-73, 176-77. The patient, not the Medicare program, contracts with the insurance company to pay the co-payments and deductibles. *Id.* Skagit Valley also alleges that Medicare “directs its beneficiaries to pay a copayment or deductible.” App. Br. at 6 (citing CP 101-03). The record cited does not support this statement, and it is more accurate to say that Medicare allows hospitals to bill the beneficiary rather than the beneficiary receiving any sort of instructions or directions from Medicare. *E.g.*, 42 C.F.R. § 489.30.

Furthermore, Medicare did not reimburse Skagit Valley for all uncollected Medicare co-payments and deductibles, as Skagit Valley suggests. App. Br. at 6. Rather, Medicare paid hospitals only a portion of the “bad debt” from Medicare co-payments and deductibles, and only if hospitals complied with Medicare regulations and made reasonable efforts to collect payment from the patients. 42 C.F.R. § 413.89(h) (limiting payment by Medicare of bad debt by varying percentages based on year). Therefore, Medicare was not responsible for all uncollected co-payments and deductibles, let alone all co-payments and deductibles, as Skagit Valley argues. The Department of Revenue (“Department”) did not assess B&O tax on bad debt payments from Medicare because, unlike payments

from patients or private insurance companies, these payments are received from the United States.

B. The Department's Audits And Appeals

This case involves six separate assessments issued by the Department for tax years 1993, 1994-1996, 1997, 1998, 1999, and 2000. BTA Doc. 881-83; 892-94; 920-21; 936; 956-57; 966-67. The audits involved numerous issues and complicated factual and legal questions. *See, e.g.,* BTA Doc. 896-914 (Auditor's Detail of Differences and Instructions to Taxpayers for Amended 1994-96 Assessment identifying at least 20 separate issues Skagit Valley disagreed with and including 19 single-spaced pages of explanation).⁴ Skagit Valley appealed to the Department's Appeals Division all of the assessments as they were issued, which again involved complex legal and factual issues. *See, e.g.,* BTA Doc. 860-79 (Determination of Appeals Division on appeals of all six assessments, identifying at least 11 issues and remanding several issues for additional factual development). The record shows that Skagit Valley requested numerous extensions of the due dates of assessments and also requested time to provide additional information to the Department. *E.g.,* CP 144-45 (Skagit Valley asked for holds to be placed on audits); CP 148 (discussing Exhibit A14 (BTA Doc.

⁴ The Auditor's Detail of Differences and Instructions to Taxpayer is issued to a taxpayer with an assessment when there are outstanding disagreements between the Department and the taxpayer.

73) and admitting that Skagit Valley requested extension of due date); CP 160 (Skagit Valley requested time to gather information); CP 204-06 (Skagit Valley appealed each assessment when issued and asked for some extensions; Skagit Valley also asked that holds be placed on each of the audits); CP 209-10 (discussing extension of 1994-96 assessment and Skagit Valley's awareness that interest would accrue); CP 916-19 (letter from auditor noting times when audit holds were requested).

Because audits and assessments are necessarily backward-looking, the assessments when issued included interest on unpaid tax. *E.g.*, BTA Doc. 881 (1993 Assessment including interest for underpaid tax); RCW 82.32.050(1) (Department shall assess tax and interest). In addition, interest accrues on assessments after they are issued. The time between when the Department issued the assessments and when Skagit Valley paid the assessments varied among the assessments, from less than one month to five years. BTA Doc. 64 (Finding of Fact No. 5).⁵

C. The Board's Decision

The Board heard testimony and argument on July 17, 2008, and issued a final order on October 1, 2008, affirming the Department's assessment of B&O tax on revenues from Medicare co-payments and deductibles and rejecting Skagit Valley's request for a waiver of interest.

⁵ As discussed below, this finding is a verity on appeal. In any event, it is supported by substantial evidence. CP 166, BTA Doc. 73.

BTA Doc. 66. The Board concluded that Skagit Valley was not entitled to the deduction from taxable gross income in RCW 82.04.4297 because patients and patients' insurance companies were not acting as instrumentalities of the United States when paying the patients' obligations to Skagit Valley. BTA Doc. 58, 65. The Board also concluded that Skagit Valley had failed to show that it was entitled to a waiver of interest because Skagit Valley did not enjoy sovereign immunity with respect to interest on a tax assessment, the delay in paying the assessments was for Skagit Valley's convenience, and Skagit Valley had failed to produce evidence to determine how much of the extensions of due dates were not at the request of the taxpayer and for the sole convenience of the Department. BTA Doc. 64-66.

In reaching its conclusions regarding the waiver of interest, the Board first noted that Skagit Valley had claimed a waiver for all interest associated with the assessment. BTA Doc. 60. The Board noted that such a claim was inconsistent with the statutory waiver, which applied only to extensions of due dates of an assessment, and not to interest included when the assessment was first issued. BTA Doc. 60. The Board went on to say that even if Skagit Valley had argued only for a waiver of the interest arising after the assessments were issued, its argument would fail. The Board found that "the evidence demonstrates that the Hospital requested the extension and delayed the payment due dates in order to

both reconcile the assessments to its general ledger or summary trial balances, and to dispute liability and negotiate with the auditors over liable [sic] for several of the taxes assessed. In contrast, there is no evidence in the record that the delay in the Hospital's payment was for the convenience of the Department." BTA Doc. 60.

Skagit Valley appealed the Board's decision to the Thurston County Superior Court, which affirmed the Board's decision. CP 384-386.

IV. SUMMARY OF ARGUMENT

Skagit Valley may not deduct from taxable income money received from patients and private insurance companies paying Medicare co-payments 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 co-payments 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.

Moreover, Skagit Valley has sovereign immunity only when representing the state and not with respect to administrative acts carried out for its own benefit, such as delaying payment of a tax assessment. Even if the Court determines that Skagit Valley was acting as a representative of the state, the Legislature has waived sovereign immunity for interest on tax assessments for the state's agencies and political subdivisions. Finally, pursuant to statute, interest can be waived only if the extension of the due date of an assessment was solely for the convenience of the Department. The delay in paying the assessment was not solely for the convenience of the Department and interest was therefore properly assessed.

V. ARGUMENT

A. Standard Of Review

The Administrative Procedure Act (APA) governs judicial review of a Board of Tax Appeals' 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).

In reviewing the Board's decision, this Court sits in the same position as the Superior Court, applying the APA standards directly to the record before the Board. *Mader v. Health Care Authority*, 149 Wn.2d 458, 470, 70 P.3d 391 (2003). This Court reviews the final decision of the

administrative agency on the administrative record, and not the superior court's decision. *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 632, 869 P.2d 1034 (1994).

In order to obtain relief from the Board's order, Skagit Valley must carry its burden to demonstrate one of the grounds listed in RCW 34.05.570(3), two of which are raised in Skagit Valley's appeal:

- (d) The agency has erroneously interpreted or applied the law;
- (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; . . .

RCW 34.05.570(3).

The Court reviews the Board's legal conclusions under an error of law standard. RCW 34.05.570(3)(d). Findings of fact are reviewed under the "substantial evidence" standard of RCW 34.05.570(3)(e), under which findings are upheld if supported by evidence sufficient to persuade a fair-minded person of the truth of the declared premise. *See, e.g., Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 903 P.2d 433 (1995); *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 869 P.2d 1045 (1994).

A reviewing court does not engage in de novo review of the facts but will uphold the administrative findings of fact if there are sufficient facts in the record from which a fair-minded person could make those

findings, even if the court would come to a different conclusion. *Callegod v. Washington State Patrol*, 84 Wn. App. 663, 676 n. 9, 929 P.2d 510, review denied, 132 Wn.2d 1004 (1997). The substantial evidence standard is “highly deferential” to the agency fact finder. *ARCO Prods. Co. v. Washington Utils. & Transp. Comm’n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995). A reviewing court views the evidence in the light most favorable to the party who prevailed in the administrative forum. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001). Accordingly, the court accepts the fact-finder’s determinations of the weight to be given to reasonable but competing inferences. *Id.*

As discussed below, Skagit Valley can show neither that the Board erred in its legal conclusions nor that the findings of fact are not supported by substantial evidence in the record. Indeed, Skagit Valley ignores the standards of review in RCW 34.05.570(3) and does not even address the “substantial evidence” test.

B. Unchallenged Findings Of Fact Are Verities On Appeal

Findings of fact not challenged by Skagit Valley are verities on appeal. *E.g., Hilltop Terrace Homeowner’s Ass’n v. Island Cy.*, 126 Wn.2d 22, 39, 891 P.2d 29 (1995); *Stuewe v. Dep’t of Revenue*, 98 Wn. App. 947, 950, 991 P.2d 634, review denied, 141 Wn.2d 1015, 10 P.3d 1072 (2000). Thus, the following Findings of Fact are verities on appeal:

Finding of Fact 4: “The Hospital’s argument that interest should be waived under RCW 82.32.105(1) (‘circumstances beyond the taxpayer’s control’) is untimely because it was made for the first time in the Hospital’s Reply Brief.” BTA Doc. 64.

Finding of Fact 7: “The Hospital’s equitable estoppel argument is untimely because it was made for the first time in the Hospital’s Reply Brief.” BTA Doc. 64.

These findings of fact may be mixed questions of law and fact.

The factual component is a verity on appeal since Skagit Valley did not assign error to the findings of fact. Nor may Skagit Valley challenge the legal component of the ruling because it failed to assign error to the legal conclusion. *Cf. Emmerson v. Weilep*, 126 Wn. App. 930, 939-40, 110 P.3d 214, *review denied*, 155 Wn.2d 1026, 126 P.3d 820 (2005).

Moreover, Skagit Valley fails to present any argument with respect to several findings of fact to which it assigns error. Those findings are also verities on appeal. *Van’s P-X, Inc. v. Dep’t of Revenue*, 36 Wn. App. 868, 869, 678 P.2d 351 (1984). “It is incumbent on counsel to present the court with argument as to why specific findings of the trial court are not supported by evidence and to cite to the record to support that argument. *See* RAP 10.3.” *In re Estate of Lint*, 135 Wn.2d 518, 532-33, 957 P.2d 755 (1998). The court in *Lint* explained the reason for this rule:

[T]he rule recognizes that in most cases, like the instant, there is more than one version of the facts. If we were to ignore the rule requiring counsel to direct argument to specific findings of fact which are assailed and to cite to

relevant parts of the record as support for that argument, we would be assuming an obligation to comb the record with a view toward constructing the arguments for counsel as to what findings are assailed and why the evidence does not support these findings. This we will not and should not do.

Id.

In its brief, Skagit Valley does not set forth argument and citations to the record with respect to the following findings of fact to which it assigns error:

Finding of Fact 2: “Medicare patients are personally obligated to pay deductibles and coinsurance (co-payments) themselves.” BTA Doc. 64.

Finding of Fact 3: “Medicare patients voluntarily pay for supplemental insurance policies that cover the patients’ obligation to pay deductibles and coinsurance (co-payments).” BTA Doc. 64.

Finding of Fact 5: “The periods between the initial assessment and the Hospital’s payments for the various audits vary: less than one month for the 2000 audit, one year for the 1999 audit, two years for the 1988 audit, three years for the 1997, and five years for the 1994-96 audit (which included both a short extension requested by the Hospital, followed by a request to put that audit on hold in February of 1999).” BTA Doc. 64.

Finding of Fact 10: “The record is insufficient to permit the Board to determine how much of the extension was either at the request of the taxpayer or for the sole convenience of the Department.” BTA Doc. 65.

Some of these findings of fact may be mixed questions of law and fact.

However, an appellate court will not consider challenges to findings of

fact or conclusions of law unless the challenge is supported by argument

and citation to authority. *Emmerson*, 126 Wn. App. at 929-30.

Accordingly, these findings of fact should be considered verities on appeal or, alternatively, as unchallenged legal conclusions.

C. 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 is measured by the “gross income of the business.” RCW 82.04.220. *See also* RCW 82.04.290(2). 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).

Consequently, 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 Co-op. of Puget Sound, Inc. 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.

D. Medicare Co-Payments And Deductibles Are Taxable

Skagit Valley argues that the B&O tax deduction in RCW 82.04.4297 should apply in this case. Skagit Valley 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 insurers.

- 1. Skagit Valley 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, Skagit Valley 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).⁶ It is undisputed that the revenue at issue in this appeal was received from patients and private insurance companies – not from the United States or the Medicare program. Thus, applying the common understanding of the words of the statute, Skagit Valley’s revenue does not qualify for the deduction.

⁶ As discussed below, the statute was amended after the tax period at issue here.

Skagit Valley argues that patients and private insurance companies become “instrumentalities” of the United States when paying Medicare co-payments 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 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 distinguished the Red Cross from mere contractors that are hired to act as agents of the government and thus are not “instrumentalities.” *Id.* The Red Cross was subsequently explicitly named an instrumentality of the United States by federal statute. 36 U.S.C. § 300101 (Pub. L. 105-225, Aug. 12, 1998, 112 Stat. 1490). *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 prescribed, 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 dictionary definitions of “instrumentality,” which include “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).⁷ In every dictionary entry for “instrumentality” cited in its brief, Skagit Valley omits language that specifically addresses an “instrumentality” of a government or governing body:

⁷ The full definitions are:

1: the quality or state of being instrumental : a condition of serving as an intermediary <the agreement was reached through the ~ of the governor > **2 a :** something by which an end is achieved : MEANS <precious metals purified through the ~ of heat> *instrumentalities* of production > <mechanical *instrumentalities*> **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> <a Chilean government ~ devoted to developing the country’s natural resources—Ethyl News>.

Webster’s Third New International Dictionary 1172 (2002). This is the dictionary generally 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).

- From the *Webster's Third New International Dictionary* entry for "instrumentality," Skagit Valley 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 at App. Br. at 13-14). The 1981 edition of this dictionary, cited by Skagit Valley, and the 2002 edition, cited by the Department above, has identical entries for "instrumentality."
- From the *American Heritage Dictionary* entry for "instrumentality," Skagit Valley omits, "3. A subsidiary branch, as of a government, by means of which functions or policies are carried out." *American Heritage Dictionary* 908 (4th Ed. 2000) (attached as Appendix 4) (quoted at App. Br. at 14).
- From the second *Black's Law Dictionary* definition, of "instrumentality," Skagit Valley omits, ". . . , such as a branch of a governing body." *Black's Law Dictionary* 814 (8th Ed. 2004) (attached as Appendix 5) (quoted at App. Br. at 14).

As these dictionary definitions and the cases cited above show, an instrumentality of a government is not merely anything that somehow assists in achieving 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 and its political subdivisions shows that the deduction was designed to apply to monies received from governments and governmental agencies. Otherwise, the deduction would improbably allow deductibles and co-payments for a federal insurance program to qualify, but not deductibles and co-payments for a state insurance program.

In the present case, patients and patients’ private insurers are not carrying out government functions when making payments to Skagit Valley. As the Board recognized, they are simply paying bills to satisfy the individual patients’ financial obligations to Skagit Valley. BTA Doc. 65. As discussed above, the fact that Medicare patients are personally obligated to pay deductibles and co-payments and that patients voluntarily pay for supplemental insurance to cover these obligations are verities on appeal.⁸ There is no indication that patients or patients’ insurers were

⁸ There is also more than substantial evidence in the record to support these findings of fact. *E.g.*, CP 170-73, 176-77, 178-79; BTA Doc. 820; BTA Doc. 824.

carrying out government functions or acting under the direction of the government when paying Medicare co-payments or deductibles.

Skagit Valley makes much of the fact that insurers must comply with Medicare regulations when offering for sale supplemental insurance to cover Medicare co-payments and deductibles. App. Br. at 16-18. Skagit Valley 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 co-payments and deductibles; the patients do. BTA Doc. 64. Skagit Valley's argument would absurdly make any business operating in a regulated industry an agent of the government. As the Board properly concluded, and Skagit Valley's witness admitted, 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. BTA Doc. 58, 64; CP 171-72.

Nor does the process by which Skagit Valley can recover "bad debt" transform patients and their insurers into "instrumentalities" of the United States. Medicare does not simply agree to pay patient co-payments and deductibles. Rather, hospitals are required to engage in reasonable 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).

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. This feature does not make patients into “instrumentalities” of the federal government. Accordingly, payments from patients and their insurers are not included within the deduction in RCW 82.04.4297.

2. The 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 that it applies only to governmental payments.⁹ The deduction for amounts received “from the United States or any instrumentality thereof”

⁹ Although Skagit Valley refers to “legislative history” of the deduction in its argument heading, it does not cite or discuss any legislative history of the actual deduction statute in effect during the tax period, but discusses only later amendments of the statute. App. Br. at 18-19. As shown below, and contrary to Skagit Valley’s argument, those amendments only reinforce that patient co-payments and deductibles paid by patients or their private insurance companies may not be deducted from a hospital’s gross income for B&O tax purposes.

was originally enacted in 1979. Laws of 1979, 1st Ex. Sess., ch. 196, § 5 (former RCW 82.04.430(16), now codified at RCW 82.04.4297) (attached as Appendix 6). The final bill report for this enactment describes the language added in former subsection (16) as “[a]mounts received from the United States or any governmental unit.” Final Bill Report, Substitute House Bill 302 (attached as Appendix 7). The legislative history therefore supports the Board’s conclusion that payments from patients and private insurance companies do not qualify for the deduction.

Furthermore, courts construe ambiguous tax deductions strictly, but fairly, against a taxpayer. *Group Health Co-op. of Puget Sound, Inc. v. State Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967). Thus, even if the Court ultimately were to conclude that the language of the statute is ambiguous, and that the legislative history did not clarify the ambiguity, the court should deny the deduction to Skagit Valley.

The plain meaning of the deduction, the parallel language in the deduction limited to state and local government 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 in 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-payments.

Skagit Valley argues that subsequent legislation demonstrates that Medicare deductibles and co-payments received from patients or their insurance companies are entitled to the tax deduction in RCW 82.04.4297. App. Br. at 18-21. To the contrary, amendments to the deduction after the tax period at issue show that later Legislatures viewed the deduction exactly as the Department does here.

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 House Bill 1624) (attached as Appendix 8). The stated purpose of this amendment was to preserve and enhance the government's purchasing power for 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 House Bill 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 Skagit Valley 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 Skagit Valley's argument, the Legislature felt it necessary to specifically include managed-care organizations within the deduction, even though these managed-care organizations were obviously operating on behalf of the Medicare program.

The deduction for governmental health care payments was amended again in the following legislative session. Once more, the amendment is inconsistent with Skagit Valley's theory. The new amendment deleted the language that had been added to RCW 82.04.4297 in 2001 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 (House Bill 2732) (codified at RCW 82.04.4311) (2002)¹⁰ (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 health care services "covered under the federal Medicare program" RCW 82.04.4311 (2002). This broader language, unlike that in RCW 82.04.4297, arguably might have included Medicare deductibles and co-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), however, the Legislature specifically excluded from the new deduction patient deductibles and co-payments.¹¹ RCW 82.04.4311 (2002) ("The

¹⁰ 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).

¹¹ Accordingly, Skagit Valley may not take advantage of this deduction even though it was retroactive to 1998. Laws of 2002, ch. 314, § 4. The revenue at issue in this case is limited to payments for patient co-payments and deductibles. Some of those

deduction authorized by this section does not apply to amounts received from patient co-payments or patient deductibles.”) By including the language specifically excluding patient co-payments and deductibles, there is no indication in the 2002 act or its legislative history that the Legislature was removing a previously available deduction. Rather, patient co-payments and deductibles have always been subject to B&O tax, and the change in statutory language necessitated the Legislature making it explicit in RCW 82.04.4311. The 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).

4. Skagit Valley’s interpretation leads to absurd results.

In construing statutes, a court seeks to harmonize the statutory scheme and give effect to all statutory language.¹² *Dep’t of Ecology v.*

payments were made by patients and some were made by patients’ private insurers. In either event, the payments were for the patients’ co-payments or deductibles. BTA Doc. 1010 (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 [Skagit Valley] by Medicare patients and their private insurance companies did not qualify for deduction under RCW 82.04.4297?”); CP 168-70 (testimony that Medicare co-payments and deductibles are the subject of the appeal).

¹² Skagit Valley 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 13. While the Court in *Homestreet* apparently concluded that the overall statutory scheme did not preclude its interpretation

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). A court avoids unlikely, absurd, or strained consequences when interpreting statutory language. *Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007). Skagit Valley's interpretation would make the statutory scheme incongruous and lead to absurd results.

Under Skagit Valley's interpretation, RCW 82.04.4297 allows a deduction for Medicare co-payments 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 co-payments or deductibles. Skagit Valley'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 patient co-payments 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

of the statute at issue there, it did not reject the rule of statutory construction. Decisions subsequent to *Homestreet* continue to apply this bedrock principle of statutory construction. *E.g.*, *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 219 P.3d 686, 688 (2009); *Post v. City of Tacoma*, 167 Wn.2d 300, 217 P.3d 1179, 1184 (2009).

from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program.”)

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

E. Interest Was Appropriately Assessed Against Skagit Valley

1. Skagit Valley is not immune from interest imposed on a tax assessment.

Initially, the Department questions whether the doctrine of sovereign immunity is even applicable in this case. The doctrine is typically applied to prevent lawsuits in *court* against the government. *See Black’s Law Dictionary* 766 (8th Ed. 2004) (defining sovereign immunity as a government’s immunity from being sued in its own courts without its consent); *Lane v. City of Seattle*, 164 Wn.2d 875, 887, 194 P.3d 977 (2008) (“Governments cannot be sued for money [or interest] without their consent.”). In this case, the Department did not ask a court to impose interest on a judgment against Skagit Valley; it simply complied with statutory directives in adding interest to a tax assessment. Even if the

doctrine were applicable in this case, Skagit Valley is not immune from interest on a tax assessment.

a. Skagit Valley does not have sovereign immunity in this case.

Municipal corporations have no sovereign immunity of their own but “partake of the state’s immunity, and only in the exercise of those governmental powers and duties imposed upon them as representing the state.” *Carrillo v. City of Ocean Shores*, 122 Wn. App. 592, 615-16, 94 P.3d 961 (2004) (quoting *Kelso v. City of Tacoma*, 63 Wn.2d 913, 916-17, 390 P.2d 2 (1964)). Thus, Skagit Valley has sovereign immunity only when it is acting as representative of the State, and not in exercising “those administrative powers conferred upon, or permitted to, [it] solely for [its] own benefit in [its] corporate capacity, whether performed for gain or not, and whether of the nature of a business enterprise or not, [it is] neither sovereign nor immune.” *Id.* Applying these principles, the *Carrillo* court held that the City of Ocean Shores had failed to show that it was acting as a representative of the State rather than acting for its own benefit when it imposed what the court determined to be an illegal tax for sewage hookup availability. *Id.* at 616. The court distinguished *Our Lady of Lourdes Hosp. v. Franklin Cy.*, 120 Wn.2d 439, 842 P.2d 956 (1993), because that case involved whether the State Department of Social and Health Services

was required to reimburse Franklin County for the costs of medical care for county jail inmates. *Id.* at 617 n. 15. Accordingly, the court held in *Carrillo* that interest could be imposed against the city. *Id.* at 617.

In the present case, just as in *Carrillo*, the Skagit Valley has not shown that it was acting as a representative of the State. Rather, the interest imposed is a result of Skagit Valley acting for its own benefit in underpaying taxes to the State and then in delaying payment on the assessments. Therefore, Skagit Valley has failed to show it has sovereign immunity in this case.

b. The Legislature has waived any possible sovereign immunity a hospital may enjoy with respect to interest on tax assessments.

Washington statutes and dispositive case law establish that political subdivisions, including municipal corporations, are subject to interest on a tax assessment. Skagit Valley seems to argue that a statute must specifically state that interest may be imposed against a state agency or political subdivision. App. Br. at 23. While it is true that state sovereign immunity may be waived only by statute, Washington courts have never required the level of specificity suggested by Skagit Valley. *See Lane v. City of Seattle*, 164 Wn.2d 875, 888, 194 P.3d 977 (2008) (holding that interest should be awarded where statute allows suit against municipal corporation for “loss, damage, or injury” and rejecting claim

that statute must specifically refer to “interest”); *Fosbre v. State*, 76 Wn.2d 255, 256, 456 P.2d 335 (1969) (holding that state is liable for interest if by “reasonable construction” of a statute, it has waived sovereign immunity).

Under a reasonable construction of Washington tax statutes, it is clear that the Legislature has waived sovereign immunity of municipal corporations such as hospitals with respect to interest on a tax assessment. Washington’s B&O tax is imposed on “persons,” which are defined statutorily to include municipal corporations. RCW 82.04.030; 82.04.220. RCW 82.04, the chapter imposing the B&O tax, specifically incorporates the administrative provisions of chapter 82.32 RCW. RCW 82.04.510 (“All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter.”) Chapter 82.32 RCW in turn specifically applies to taxes imposed under chapter 82.04 RCW. RCW 82.32.010. Chapter 82.32 RCW requires the Department to add interest to an assessment of tax. RCW 82.32.050(1). Accordingly, the provision in chapter 82.32 RCW requiring the Department to add interest to the tax imposed in an assessment applies to the assessments against Skagit Valley.

This Court in *Morrison-Knudsen Co. v. Dep’t of Revenue*, 6 Wn. App. 306, 493 P.2d 802 (1972), applied a nearly identical rationale in holding that interest on an unpaid sales tax could be assessed against a

state agency.¹³ In that case, the court considered whether sovereign immunity prevented the Department from assessing interest against a state agency. *Id.*¹⁴ The court reasoned, “Here, the state, by statute, can be a ‘buyer’ (RCW 82.08.010(3)), and consequently a taxpayer (RCW 82.02.010(2)) and is, therefore, subject to an audit interest (RCW 82.32.050).” *Id.* at 313.

The same logic is applicable here. Skagit Valley, as a municipal corporation, is both a “taxpayer” as defined in RCW 82.02.010(3) and a “person” liable for B&O tax under RCW 82.04.030 and .220. As a taxpayer liable for B&O tax, Skagit Valley is subject to interest on the tax assessment under RCW 82.32.050(1). Not only is this compelled by a plain reading of the statutes using defined terms, it is also compelled by the Court of Appeals analysis in *Morrison-Knudsen*.

Although Skagit Valley did not discuss *Morrison-Knudsen* in its opening brief, it may argue, as it did at the Board, that the *Morrison-Knudsen* case is merely a contract case and thus not applicable. The

¹³ As discussed above, municipal corporations do not have sovereign immunity themselves but derive it in their capacity as agent for the state and only when acting as representative of the state. *Kelso v. City of Tacoma*, 63 Wn.2d 913, 916-17, 390 P.2d 2 (1964). Accordingly, as counsel for Skagit Valley agreed during argument to the Board, any sovereign immunity enjoyed by Skagit Valley is no greater than that enjoyed by the State. CP 86.

¹⁴ The court did not refer specifically to “sovereign immunity” but considered whether the assessment of interest would be constitutional under the opinion issued three years earlier in *Fosbre v. State*, 76 Wn.2d 255, 456 P.2d 335 (1969). The sole issue addressed by the *Fosbre* court was whether the State had waived sovereign immunity with respect to interest on tort claims. *Id.* at 256.

Morrison-Knudsen Court was clear, however, that it was not awarding interest based on any contract principles but rather addressed, and decided, the issue whether sovereign immunity prevented the Department from assessing interest against a state agency. *Morrison-Knudsen*, 6 Wn. App. at 313 (“Charging audit interest against the state cannot be considered unconstitutional under *Fosbre v. State* [a case rejecting the imposition of interest against the state based on sovereign immunity; see footnote 14].”) Accordingly, the case is on point and controlling: The State has waived sovereign immunity with respect to interest on tax assessments against state agencies, and that waiver extends to municipal corporations.

2. Skagit Valley did not meet its burden to show it is entitled to a waiver of interest.

The Department is authorized to waive interest only as set forth in statute. In this case, the statute relied on by Skagit Valley provides that the Department shall waive interest if:

- (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department;
- or
- (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

RCW 82.32.105(3) (attached as Appendix 12); WAC 458-20-228(10).

There is no evidence that the Department ever provided written

instructions to Skagit Valley not to pay the tax. CP 161. Moreover, Skagit Valley has failed to demonstrate the absence of substantial evidence to support the Board's factual findings that any extension of due dates for the payment of an assessment was either at the request of the taxpayer or not for the sole convenience of the Department. Because application of this waiver is primarily a factual determination and substantial evidence supports the Board's findings, the Department respectfully requests that this Court affirm the Board decision.

a. The Department may properly issue an assessment at any time within the statutory time limitation.

The bulk of Skagit Valley's argument with respect to delay relates to the alleged tardiness of the Department's auditors in evaluating information and issuing assessments. The statutory provision Skagit Valley relies upon, however, requires Skagit Valley to identify an extension of the due date for payment of an assessment. RCW 82.32.105(3)(b). Extension of a due date for payment of an assessment presupposes an issued assessment. As the Board recognized, the Department is authorized to assess taxpayers up to the time limits authorized by statute: the current year plus the prior four years. BTA Doc. 60 (citing RCW 82.32.050(3)). The Department issued all the assessments within the statutory time limits and the assessments were thus

timely. BTA Doc. 48-51, 73;(1993 audit) 511-513, 881, 885-90;(1994-96 audit) 892, 896-914;(1997 audit) 920, 929, 932-34;(1998 audit) 936, 938-45, 947;(1999 audit) 956, 959-64;(2000 audit) 966, 969-75.

b. The Board's findings are supported by substantial evidence.

The Board acknowledged that the pre-assessment delays were not subject to the statutory waiver provision and, even though not presented as a separate argument by Skagit Valley, addressed the post-assessment delays in payment. BTA Doc. 60-61. Among the Board's findings regarding this issue are two distinct, key findings: (1) Skagit Valley "chose to delay payment [of the assessments] for its own reasons, i.e., to reconcile the assessments to its general ledger or summary trial balances, and to convince the auditors that it was not liable for several of the taxes assessed," and (2) "[t]he record is insufficient to permit the Board to determine how much of the extension was either at the request of the taxpayer or for the sole discretion [sic] of the Department." BTA Doc. 64-65 (Findings of Fact Nos. 6, 10). Either finding standing alone would be sufficient to sustain the Board's order. Both of the findings are supported by substantial evidence in the record.

(1) Substantial evidence supports the Board's finding that extensions of the due date for paying the assessments was not for the sole convenience of the Department.

Substantial evidence supports the Board's finding that extensions of the due dates for paying the assessments were not for the sole convenience of the Department. Each of the assessments was appealed by Skagit Valley because it disagreed with the legal and factual bases of the assessments. CP 149, 204-06; BTA Doc. 860-79 (Appeals Determination 07-0046 addressing taxpayer appeal of all assessments). These appeals were at the request of the taxpayer and were not for the sole convenience of the Department. Most of the legal issues were ultimately resolved against the taxpayer. CP 218-19; BTA Doc. 860-79. In the meantime, while the audits were on appeal, interest continued to accrue. Skagit Valley was aware that interest was accruing and that it could pay the assessments, or even the uncontested portions of the assessments, to stop interest from accruing. BTA Doc. 79-81, 529, 953-54. ;

Moreover, substantial evidence in the record supports the Board's finding that the delay in payment was because Skagit Valley chose not to pay the assessments in order to reconcile the assessments and to convince the auditors that it was not liable for several of the taxes assessed. Skagit Valley's witnesses testified to these facts. CP 165-66 (Skagit Valley

delayed payment on all assessments until factual issues resolved); CP 144-45 (admitting that there were times that Skagit Valley asked for holds to be placed on audits); CP 148 (discussing BTA Doc. 73 and admitting that Skagit Valley requested extension of due date); CP 160 (Skagit Valley requested time to gather information); CP 204-06 (Skagit Valley appealed each assessment when issued and asked for some extensions; Skagit Valley also asked that holds be placed on each of the audits). Department documents also confirm these facts. *E.g.*, BTA Doc. 81, 522-27, 860-79; 916-18. Accordingly, the Board's findings should be upheld.

(2) Substantial evidence supports the Board's finding that Skagit Valley had produced insufficient evidence to determine how much of the extension was not at the request of the taxpayer and for the sole convenience of the Department.

Skagit Valley continues to assert that all interest must be waived without identifying even one time period for a specific extension of a payment date for an assessment. As the Board properly recognized, assessments are by their nature backward-looking and necessarily include interest. BTA Doc. 60. Even if the Department had issued the assessments on the day that it received information from Skagit Valley, and Skagit Valley immediately paid, the assessments would include interest. Skagit Valley steadfastly refused to even attempt to provide the

Board, or this Court, with any way of determining how much of the interest was due to an alleged delay by the Department for its sole convenience. This refusal amply supports the Board's finding that Skagit Valley had not produced sufficient evidence to allow the Board to determine how much of the extension of due dates might be for the sole convenience of the Department and not at the request of the taxpayer.¹⁵ See CP 143, ll.15-28; 144-45.

The continued "all or nothing" approach by Skagit Valley is particularly troublesome not only because every assessment necessarily includes some interest but because, as discussed above, it is undisputed that at least some of the extensions and delays were at the specific request of the taxpayer. CP 148, 160, 204-06, 209-10, BTA Doc. 79. Moreover, there were substantial differences in the time between when the assessments were issued to when they were paid, ranging from less than one month to five years. BTA Doc. 64 (Finding of Fact No. 5). Even Skagit Valley's own accountants acknowledged that only some of the interest should be waived. CP 1213-14; BTA Doc. 74 (worksheet

¹⁵ In addition to Skagit Valley's refusal to provide the specific information regarding extension of due dates before the Board and this Court, Skagit Valley refused to provide this information to the Department in discovery. *E.g.*, BTA Doc. 830 (letter from Skagit Valley counsel regarding discovery responses); BTA Doc. 845 (answer to interrogatory No. 11).

prepared by Skagit Valley accountant stating “some” interest accrued for convenience of audit).

In light of these undisputed facts, the failure of Skagit Valley to present evidence regarding what delays, if any, were not at the request of the taxpayer and for the sole convenience of the Department, amply supports the Board’s Finding of Fact No. 10.

3. RCW 82.32.105(1) relating to “circumstances beyond the control of the taxpayer” does not apply to interest on a tax assessment.

Skagit Valley incorrectly argues that the Department must waive interest on a tax assessment if the failure to make timely payment was due to circumstances beyond the control of the taxpayer, citing RCW 82.32.105(1). App. Br. at 26, 32. The Board properly rejected this argument out of hand because Skagit Valley had raised it for the first time in its reply brief. BTA Doc. 64 (Finding of Fact No. 4). Moreover, the statutory provision cited applies only to waivers of penalties and does not apply to waivers of interest. Finally, even if the statute authorized the Department to waive interest, the claim that Skagit Valley was powerless to pay a tax assessment was properly rejected by the Board as a legal matter and belied by the record as a factual matter. BTA Doc. 61-62; CP 146-47, 217-18 (testimony that Skagit Valley paid assessments even though they contested both legal and factual bases of assessments).

F. Skagit Valley Is Not Entitled To Attorney Fees

If the Court affirms the Board, it need not reach the issue of Skagit Valley's request for costs and reasonable attorney fees. Nevertheless, the Department offers this additional response to Skagit Valley's request.

Skagit Valley fails to comply with RAP 18.1 by citing no applicable authority supporting its request for attorney fees. Instead, Skagit Valley cites only RAP 18.1 itself as the basis for its fee request. App. Br. at 33. A party seeking reasonable attorney fees must support its request by citing 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, even if Skagit Valley were to prevail in its appeal, its request for attorney fees should be denied for this reason alone. *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). Even though Skagit Valley’s opening brief fails to comply with RAP 18.1, it might belatedly attempt to rely on the Equal Access to Justice Act (“EAJA”) in its reply brief.¹⁶ 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(1).

The requirement of “judicial review of an agency action” would be met in this case. However, even if Skagit Valley were to prevail in this matter, it still must establish that it is a “qualified party” as defined under RCW 4.84.340(5). Even then, Skagit Valley would still not be eligible for an award of attorney fees and costs because this Court should find that “the agency action was substantially justified.” RCW 4.84.350(1). Here, the Department would be required to demonstrate that the Board’s action

¹⁶ Skagit Valley 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 49-71.

was 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 Board's interpretation of the statute denying Skagit Valley the deduction for Medicare co-payments and deductibles was reasonable in light of the fact that three different superior court judges have affirmed the Board on this issue. CP 284-86 (Order on Petition for Judicial Review (July 10, 2009) (Murphy, J.); *St. Joseph General Hosp. v. Dep't of Revenue*, Thurston Cy. Super. Ct. No. 08-2-02054-9, Order on Petition for Judicial Review (June 8, 2009) (Hicks, J.); *Skagit County Public Hosp. Dist. No. 2 dba Island Hospital v. Dep't of Revenue*, Thurston Cy. Super. Ct. No. 08-2-02062-9, Order on Petition for Judicial Review (May 29, 2009) (McPhee, J.). Moreover, for the reasons explained above and the fact that the superior court affirmed the Board on the waiver of interest issue, the Board also was at least substantially justified in rejecting Skagit Valley's interest waiver argument. CP 284-86. The Board's action overall was at least substantially justified and attorney fees and costs should under no circumstances be awarded to Skagit Valley under the EAJA.

VI. CONCLUSION

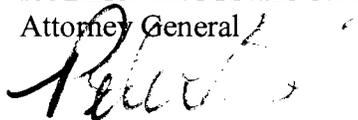
Hospital patients who pay their own bills are not instrumentalities of the federal government. Nor are patients' insurance companies that

make payments on behalf of the patients instrumentalities of the federal government. Accordingly, Skagit Valley is not entitled to a statutory deduction from gross income for B&O tax purposes that applies only to monies received “from the United States or any instrumentality thereof.” Moreover, Skagit Valley is subject to interest on unpaid tax, just like state agencies, other municipal corporations, and all other taxpayers. The Board correctly found that extensions of due dates for assessments were not for the sole convenience of the Department, and its conclusion that Skagit Valley is not entitled to a statutory waiver of interest should therefore be upheld.

The Department respectfully requests that this Court affirm the decision of the Board of Tax Appeals.

RESPECTFULLY SUBMITTED this 8th day of January, 2010.

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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

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(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

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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^{FN1} 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-

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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).^{FN2} 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 *M'Culloch 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

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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

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(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. ^{FN3} 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

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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 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.^{FN4}

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 omitted).

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 forego its claim to recover.^{FN5} 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-

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(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

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APPENDIX 3

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WITH SEVEN LANGUAGE
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VOLUME II

H to R



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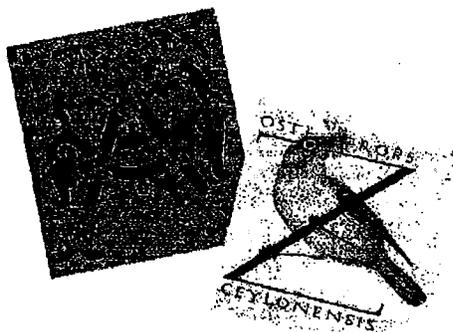
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instans, *instans*, present. See INSTANT. — *in·stan'ta'ne·ous·ly* adv. — *in·stan'ta'ne·ous·ness* n.

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

in·stan'tiate (in·stán'sh·é·t·é) tr.v. -stated, -ating, -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* (-stán'sh·é·t·ív) adj.

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

instant replay n. *fa*. 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' (in·stár') tr.v. -starred, -starring, -stars To stud with or as if with stars.

in·star' (in·stár') n. A stage of an insect or other arthropod between molts. [New Latin *instar*, from Latin, image, form.]

in·state (in·stá't·é) tr.v. -stated, -stating, -states To establish in office; install.

in·stau·ra'tion (in·stó·r·é'sh·án) n. 1. Renovation; restoration. 2. The institution or establishment of something. [Latin *instauratio*, *instauratio*, from *instaurare*, past participle of *instaurare*, to renew. See stá- in Appendix I.]

in·stead (in·stéd') 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*, in; see IN + *sted*, place; see STEAD + *of*, *of*; see OF.]

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

in·step (in·stép') 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·stí·gát') tr.v. -gated, -gating, -gates 1. To urge on; goad. 2. To stir up; foment. [Latin *instigare*, *instigare*. See stieg- in Appendix I.] — *in·sti·ga'tion* n. — *in·sti·ga'tive* adj. — *in·sti·ga'tor* n.

in·still also **in·stil** (in·stíl') tr.v. -stilled, -stilling, -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- + *stillare*, to drip, drop (from *stilla*, drop).] — *in·stil·la'tion* (in·stí·lá'sh·án) n. — *in·stil·ler* n. — *in·still·ment* n.

in·stinct (in·stíngkt') 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·stíngkt') 1. Deeply filled or imbued: *words instinct with love.* 2. *Obsolete* Impelled from within. [Middle English, from Latin *instinctus*, impulse, from past participle of *instingere*, to incite: *in-*, intensive pref.; see IN- + *stingere*, to prick; see stieg- in Appendix I.]

instinctive (in·stíngkt·ív) adj. 1. Of, relating to, or prompted by instinct. 2. Arising from impulse; spontaneous and unthinking: *an instinctive mistrust of burglars.* — *in·stíngt·ive·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·stíngt·u·al (in·stíngkt·chó·ál) adj. Of, relating to, or derived from instinct. See *synonyms at instinctive.* — *in·stíngt·u·al·ly* adv.

in·sti·tute (in·stí·tút·é, -tyóót·é) tr.v. -tuted, -tuting, -tutes 1a. To establish, organize, and set in operation. *b*. To initiate; begin. See *synonyms at found*. 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 *instiuten*, from Latin *instituere*, *instiitit*, to establish: *in-*, in; see IN- + *statuere*, to set up; see stá- in Appendix I.] — *in·sti·tut'er*, *in·sti·tut'or* n.

in·sti·tu'tion (in·stí·tút·sh·án, -tyóót·é) 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'tion·al (in·stí·tút·sh·é·sh·ál, -tyóót·é) 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·stí·tút·sh·é·n·á·l·iz·m, -tyóót·é) n. Adherence to or belief in established forms, especially held in organized religion. 2. Use of public institutions for the care of people who are physically or mentally disabled, criminally delinquent, or incapable of independent living. — *in·sti·tu'tion·al·ist* n.

in·sti·tu'tion·al·ize (in·stí·tút·sh·é·n·á·l·íz·é, -tyóót·é) tr.v. -ized, -izes 1a. To make into, treat as, or give the character of an institution. *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* (in·stí·tút·sh·é·n·á·l·íz·ér) n.

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

in·stroke (in·strók') n. An inward stroke, especially a piston arm moving away from the crankshaft.

in·struct (in·strúkt') v. -structed, -structing, -structs — *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 *instrucen*, from Latin *instruere*, *instruere*, to prepare, to instruct: *in-*, on; see IN- + *struere*, to build; see stér- in Appendix I.]

in·struc'tion (in·strúk'sh·án) n. 1. The act, practice, or process of instructing. 2a. Imparted knowledge. *b*. An imparted or acquired item of knowledge; a lesson. 3. *Computer Science* A sequence of bits that tells a central processing unit to perform a particular operation and to contain data to be used in the operation. 4a. An authoritative direction to be obeyed; an order. Often used in the plural: *had instructions to leave home by midnight.* *b*. *Instructions* Detailed directions on procedure: *read the instructions for assembly.* — *in·struc'tion·al* adj.

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

in·struc'tor (in·strúk'tór) 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·stró·mánt) n. 1. A means by which something is done; an agency. 2. One used by another to accomplish a purpose; a dupe. 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. (-stré·m·nt·éd, -ment·ing, -ments 1) To provide or equip with instruments. 2. *Music* To compose or arrange for performance. 3. To discuss a legal document to, [Middle English, from Old French, from Latin *instrumentum*, tool, implement, from *instruere*, to prepare. See INSTRUC.]

in·stru·men'tal (in·stró·mén'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·stró·mén'tl·iz·m) 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·stró·mén'tl·íst) n. 1. *Music* One who plays an instrument. 2. An advocate or a student of instrumentalism. *☞* adj. Of, relating to, or advocating instrumentalism.

in·stru·men'tal·ity (in·stró·mén'tl·ít·é) 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·stró·mén'tl·é'sh·án) 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*.

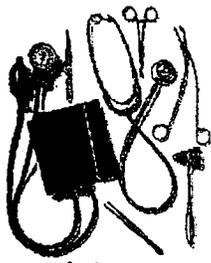
Instrument flying n. Aircraft navigation by reference to instruments only.

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 automotive vehicle, aircraft, or motorboat. Also called *instrument board*.

In·sub·or·di·nate (in'sá·bó·rd·ín·t·é) adj. Not submissive to authority: *has a history of insubordinate behavior.* — *in·sub·or·di·nate·ly* adv. — *in·sub·or·di·na'tion* n.

Synonyms *insubordinate, rebellious, mutinous, 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.* *Mutinous* pertains to: *mutinous sailors defying the captain.* *Factious* implies divisive: *disension, or disunity within a group or an organization.* "The army..."



Instrument variety of medical instruments

APPENDIX 5

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§ 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-te noh-va-ter ri-per-te). [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-tum). [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 seb-sid-ee-um). [Latin] *Hist.* In aid of.

insufficient evidence. See **EVIDENCE**.

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

insula (in-s[y]ə-lə). *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 type 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-er-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 full discharge 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 principal creditor has proved insufficient to meet those debts." John Trayner, *Trayner's Latin Maxims* 277 (4th ed. 1898).

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

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]

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 sale 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 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 may 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 lessee

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
Schaté: (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 CHOPEL
Speaker of the House of
Representatives

CLYDE BALLARD
Speaker of the House of
Representatives

Passed by the Senate June 14, 2001
Yeas 48 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 82.04.4297 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 Loven, Veloria, 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

APPENDIX 12

RCW 82.32.105

Waiver or cancellation of penalties or interest — Rules.

(1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department of revenue shall adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

[1998 c 304 § 13; 1996 c 149 § 17; 1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

Notes:

Findings -- Effective dates -- 1998 c 304: See notes following RCW 82.14B.020.

Findings -- Intent -- Effective date -- 1996 c 149: See notes following RCW 82.32.050.

Construction -- Severability -- 1975 1st ex.s. c 278: See notes following RCW 11.08.160.

FILED
COURT OF APPEALS
DIVISION II

10 JAN 11 AM 10:16

NO. 39658-1-II

STATE OF WASHINGTON

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

BY _____
DEPUTY

SKAGIT COUNTY PUBLIC
HOSPITAL DISTRICT NO. 1, d/b/a
SKAGIT VALLEY MEDICAL
CENTER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Respondent.

DECLARATION OF
SERVICE

I, Candy Zilinskas, state and declare as follows:

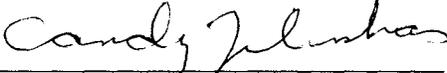
I am a citizen of the United States of America and over 18 years of age and not a party to this action. On January 8, 2010, I caused a true and correct copy of RESPONDENT'S BRIEF and this DECLARATION OF SERVICE to be served electronically by email and via U.S. mail (through Consolidated Mail Services), 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
cdewberry@gsblaw.com
rhillman@gsblaw.com
jwhitehead@gsblaw.com

ORIGINAL

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

Executed this 8th day of January, 2010, in Tumwater, Washington.



Candy Zilinskas, Legal Assistant