SUPREME COURT NO. 101770-7

COURT OF APPEALS NO. 56478-5-II

SUPREME COURT OF THE STATE OF WASHINGTON

ROYAL OAKS COUNTRY CLUB, a Washington Non-Profit Corporation,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Petitioner.

DEPARTMENT OF REVENUE'S PETITION FOR REVIEW

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I. INTRODUCTION

Since its enactment, the Revenue Act of 1935 has included a business and occupation tax deduction for "bona fide . . . initiation fees," as well as dues, contributions, and various other receipts. Consistently since the 1930s, the Department of Revenue and its predecessor, the Washington State Tax Commission, have interpreted this deduction in keeping with its plain meaning: to include only amounts genuinely paid solely for the privilege of joining the membership of an organization.

Supreme Court and Court of Appeals case law applying the deduction statute to dues and contributions have agreed with the Department. Charges are not "bona fide" if they are paid in exchange for services, rather than for the privilege of membership.[1]

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[1] *Red Cedar Shingle Bureau v. State*, 62 Wn.2d 341, 382 P.2d 503 (1963); *Grp. Health Coop. of Puget Sound, Inc. v. Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967); *Auto. Club of Wash. v. Dep't of Revenue*, 27 Wn. App. 781, 621 P.2d 760 (1980).

The Court of Appeals' decision below conflicts with these precedents. The Court erroneously concluded that a country club could deduct the full amount of its initiation fees, even though members unquestionably paid a large part of those fees for access to the club's golf and recreational facilities. This is illustrated by the fact that some members paid $10,000 initiation fees for full access to those facilities, when the privilege of membership, including access to all social events, could be had for a mere $200 initiation fee. The court distinguished prior case law on the rationale that those cases involved dues. But the holdings of those precedents apply with equal force to initiation fees. By concluding otherwise the court created conflicting precedent, meriting this Court's review under RAP 13.4(b)(1) and (2).

The decision below creates the perverse result that the same sale of services is taxable when charged through recurring dues payments, but tax-free when charged up front. In effect, the decision creates a significant new tax deduction for

membership-model businesses when they charge up front for services. The decision will have far-reaching effects on the taxation of gyms and athletic facilities, country clubs, trade organizations, homeowners' associations, membership-model stores, and any other entity that charges initiation fees. Due to its pervasive effects across industries, the issue presented is also one of substantial public interest. *See* RAP 13.4(b)(4).

II. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

The Department of Revenue seeks review of the Court of Appeals' published decision, *Royal Oaks Country Club v. Department of Revenue*, No. 56478-5-II, ___ Wn. App. 2d ___, 523 P.3d 1198 (Jan. 31, 2023). A copy of the decision is attached as Appendix A.

III. ISSUE PRESENTED FOR REVIEW

The tax code in RCW 82.04.4282 provides a business and occupation tax deduction for "bona fide . . . initiation fees" paid solely for the privilege of membership in a club or other organization, rather than in exchange for goods or services.

Was Royal Oaks Country Club entitled to fully deduct its initiation fees as bona fide when members' "initiation fee" amounts varied dramatically in direct correlation to the amount of retail services they received?

IV. STATEMENT OF THE CASE

A. Background on the Deduction Statute

Washington imposes the business and occupation (B&O) tax upon every person "for the act or privilege of engaging in business activities," with "business" broadly defined to include "all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly." RCW 82.04.140, .220. The tax rate depends on the classification of the business activity, one of which is making retail sales. *See* RCW 82.04.250. During the tax period at issue, charges for the provision of golf, swimming, and fitness facilities fell within the statutory definition of "retail

sale." *See* former RCW 82.04.050(3)(a), (g) (2011).[2] Taxpayers' gross receipts for providing such facilities were therefore subject to B&O tax under the retailing classification, and also subject to retail sales tax. RCW 82.04.250 (retailing B&O tax); RCW 82.08.020 (retail sales tax); RCW 82.08.050(3) (retailers' obligation to remit retail sales tax regardless of whether they collected it from consumers).

The deduction statute at issue in this case, RCW 82.04.4282 (attached as Appendix B), provides a deduction from the B&O tax for "bona fide . . . initiation fees." This deduction has existed since 1935, when the B&O tax was enacted. Laws of 1935, ch. 180, § 12(b). Since that time, the State's taxing authorities have consistently interpreted the initiation fee deduction to include only amounts genuinely paid

[2] The tax treatment of these activities remains largely unchanged, but the statute has since been reorganized. *See* RCW 82.04.050(3)(g)(i), (15)(a).

for initiation into an organization—not amounts paid for receiving goods or services. *See infra* § V.B.

Often, taxpayers do not segregate the portion of their initiation fees (or dues, which are exempted by the same statute) attributable to providing the privilege of membership from the portion attributable to providing taxable goods and services. *See, e.g.*, *Auto. Club*, 27 Wn. App. at 786. The Court of Appeals has held that "[a]bsent such a segregation, the Department may presume that the entire amount is taxable." *Id.* at 786-87. Nonetheless, the Department has adopted a "cost of production" calculation method to assist taxpayers that do not segregate their initiation fees (or dues) in claiming the deduction. *See* former WAC 458-20-183(4)(c)(ii) (2011)[3] (hereinafter "former Rule 183") (in effect during the tax period); Excise Tax Advisory 3230.2021 (currently in effect). This method takes a taxpayer's costs of producing taxable

[3] A copy of former Rule 183 is attached as Appendix F.

goods and services as a fraction of their total operating costs, multiplies that fraction by the taxpayer's gross receipts, and permits the taxpayer to deduct the remainder of its gross receipts as bona fide initiation fees and dues. *See* former Rule 183(4)(c)(ii); ETA 3230.2021.

B. Royal Oaks' Facilities, Membership Levels, and Initiation Fees

Royal Oaks Country Club owns and operates a country club in Vancouver, Washington. CP 45. The club offers golf, fitness, swimming, and dining facilities and services. CP 45-46. Its golf facilities include an 18-hole golf course, two driving ranges, a practice putting green, a practice chipping area, a practice bunker (i.e., sand trap), and a pro shop retail center. *Id.* Its fitness center includes cardio equipment, weight machines, free weights, stretching machines, and locker rooms. CP 46. Royal Oaks also operates a swimming pool facility, complete with a lazy river, children's wading pool, hot tub, and locker rooms. *Id.*

Royal Oaks has several membership levels, and facility access varies by level. "Proprietary," "corporate," and "intermediate" members enjoy full access to all facilities. CP 46-47. "Social with golf" members have limited access to the golf facilities and unlimited access to the swimming, fitness, and restaurant facilities. *Id.* "Social" members have no access to the golf facilities, but have unlimited access to the other facilities. CP 47. Lastly, "dining" members have no access to the golf, swimming, or fitness facilities, but have unlimited access to the restaurant facilities. CP 48. Dining members, along with all other membership levels, have access to "all social events." CP 201.

The amount of one-time initiation fees that new members paid during the tax period directly correlated with their level of facility access. New proprietary, corporate, and intermediate members, all of whom enjoyed full access to all facilities, paid

$10,000.[4] CP 48. "Social with golf" members paid between $1,000 and $2,500 in initiation fees, depending on the year. *Id.* Social (without golf) members consistently paid a lower amount—between $200 and $1,500, depending on the year. *Id.* Dining members consistently paid the lowest initiation fee amount of any membership level—$200 in the last half of the tax period, at a time when social (without golf) members paid $1,500. CP 48.

C. The Superior Court Held that Royal Oaks' Initiation Fees Were Not Fully Deductible, but the Court of Appeals Reversed

The Department audited Royal Oaks for the tax period January 1, 2011, through March 31, 2016, and issued assessments. CP 256-58. The auditor determined that initiation fees and dues from membership levels that did not receive retail services were fully deductible. CP 267. Using former Rule 183's cost of production method, the auditor determined that

[4] This amount was reduced to $5,000 during four months of the tax period in an effort to attract new members. *See* CP 48.

65.35% of the other membership levels' initiation fees and dues were bona fide (i.e., paid purely for the privilege of membership) and thus deductible from the B&O tax. CP 257, 261-62, 267. Thus, for example, $6,535 of a proprietary member's $10,000 initiation fee amount was deemed deductible. The remaining amounts were subject to B&O tax under the retailing classification. CP 257, 261-62. Because they qualified as retail sales, they were also subject to retail sales tax. *Id.*

Following an administrative appeal, Royal Oaks filed this excise tax refund action under RCW 82.32.180, asserting that under RCW 82.04.4282, its initiation fees were fully deductible from both the retailing B&O tax and retail sales tax. CP 5-6. The superior court granted summary judgment to the Department. CP 368-71. In a published decision, the Court of Appeals reversed. App. A.

V. ARGUMENT

The Court of Appeals' decision conflicts with two of this Court's decisions and another Court of Appeals decision. *See Red Cedar*, 62 Wn.2d 341; *Grp. Health*, 72 Wn.2d 422; *Auto. Club*, 27 Wn. App. 781. Those decisions interpreted the plain meaning of the deduction statute consistently with nearly a century of Department and Tax Commission rules. Simply put, initiation fees and dues are "bona fide" only if they are genuinely paid solely for the privilege of membership, and not in exchange for goods or services. Rather than construing the deduction narrowly as required by case law, the decision below effectively creates a new tax deduction for retail service charges when structured as up-front rather than as periodic payments. This conflict with existing precedent, along with the decision's effects across a broad range of industries, merit this Court's review. RAP 13.4(b)(1)-(2), (4).

A. Construing the Deduction to Include Amounts Paid for Retail Services Conflicts with Supreme Court and Court of Appeals Precedent

Previous appellate case law has consistently interpreted the deduction statute to include only amounts genuinely paid for the privilege of membership in an organization, not amounts paid in exchange for services. The decision below conflicts with those cases by permitting Royal Oaks to fully deduct its initiation fees, even though a large portion of some members' fees was a premium paid for access to retail facilities.

RCW 82.04.4282 reads in relevant part:

> In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees . . . . This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, . . . or upon providing facilities or other services for which a special charge is made to members or others. 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 under this section.

The statute's first sentence sets forth a limited deduction for specifically enumerated "bona fide" receipts. The second and third sentences provide additional limiting language on how the deduction should be construed. That is, they provide further clarification on what it means for the enumerated receipts to be "bona fide." To be deductible, the claimed amount must be one of the items specifically listed in the first sentence and must be a "bona fide" instance of that item.

1. *Red Cedar*, *Group Health*, and *Automobile Club* interpreted the deduction statute to exclude amounts paid in exchange for services

Both this Court and the Court of Appeals have interpreted the deduction statute to exclude amounts that an organization's members paid in exchange for services. In *Red Cedar*, this Court rejected a trade association's claim that its cedar shingle manufacturer-members' recurring payments were deductible as "dues" or "contributions." 62 Wn.2d at 346. The Court reasoned that the trade association's position "would mean in effect that [it] would pay no [B&O] tax respecting its

public relations and business promotional activities in [sic] behalf of its member-manufacturers." *Id.* Because the payments were made "for services rendered" and individual members' payment amounts were "roughly in proportion" to the amount of services they received, the payments were not deductible as bona fide dues or contributions. *Id.* at 347.

Similarly, in *Group Health*, this Court held that a healthcare cooperative members' monthly payments were not "bona fide" dues because they were paid to finance prepaid medical services. 72 Wn.2d at 433-35. The Court reasoned that Group Health's designation of the payments as "dues" was not determinative. *Id.* at 434. Because members' payments were "related to or graduated upon the cost of operation which, in turn, reflect[ed] upon the services available and furnished to [Group Health's] members," the payments were not bona fide dues. *Id.*

In *Automobile Club*, the Court of Appeals further refined *Group Health*'s holding consistent with the Department's and

Tax Commission's longstanding rules: the purpose of the RCW 82.04.4282 deduction is "to exempt from taxation only revenue exacted for the privilege of membership." *Auto. Club*, 27 Wn. App. at 786; *accord* former Rule 183(2)(i) ("'Bona fide initiation fees' . . . shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership."); former Rule 117 (1936) ("initiation fees include only amounts actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.") (attached as Appendix C).

To interpret the statute otherwise would circumvent the broad scope of the B&O tax and the requirement that deductions be strictly construed against the taxpayer. *Auto. Club*, 27 Wn. App. at 786-87. "In adopting our State's B&O tax system the legislature intended to impose the business and

occupation tax upon virtually all business activities carried on within the state, and to leave practically no business and commerce free of . . . tax." *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000) (internal quotation marks and citations omitted). Accordingly, exemptions and deductions "must be narrowly construed," and the taxpayer's receipts "must come within that tiny niche reserved for" the applicable deduction. *Budget Rent-A-Car of Wash.-Or., Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972).

2. The decision below conflicts with *Red Cedar*, *Group Health*, and *Automobile Club*

Here, the Court of Appeals erroneously distinguished *Red Cedar*, *Group Health*, and *Automobile Club* on the grounds that they involved dues rather than initiation fees. The Court of Appeals incorrectly reasoned that initiation fees are treated differently than dues for three reasons.

First, the Court of Appeals wrongly concluded that Royal Oaks members' initiation fees were paid for initiation rather

than for their use of club facilities or services, because new members must also pay their first month's dues along with the initiation fee before being allowed to use club facilities. Slip Op. at 10. But that is like saying that a down payment on a new car is not a payment for the car, because the purchaser must also pay their first month's loan payment before driving the car off the lot. Here, Royal Oaks members' "initiation fee" payments varied dramatically in correlation with the amount of services they received. Members surely did not pay $10,000 in in initiation fees simply to join the club when they could have done so, and gained access to all social events, for a $200 dining-level initiation fee. CP 48. Instead, they paid thousands of extra dollars in exchange for retail services—specifically, the right to unlimited access to the club's golf, swimming, and fitness facilities. *Id.*

Under the Court of Appeals' reasoning, membership-based businesses may broadly deduct up-front payments made in exchange for retail goods and services, so long as members

must also pay their first month's dues before accessing those goods or services. That conflicts with the well-established principle that deductions are narrowly construed, and it conflicts with the case law interpreting this deduction statute. The purpose of the deduction statute was not to create favorable tax treatment for up-front versus recurring retail payments. But that is the effect of the Court of Appeals' decision, and it will significantly impact the Department's administration of RCW 82.04.4282.

Second, the Court of Appeals erroneously held that *Red Cedar*, *Group Health*, and *Automobile Club* "are inapposite because they analyze the predecessor to the current statute." Slip Op. at 13. While it is true that the deduction statute has since been revised and recodified from former RCW 82.04.430(2) (1980) to RCW 82.04.4282, the Legislature expressly stated that renumbering the statute has no effect on its meaning. Laws of 1980, ch. 37, § 1 (the renumbering "shall not

change the meaning of any of the exemptions or deductions involved").

Nor did the Court of Appeals point to any change in statutory language that would render those cases inapposite. In truth, differences in the two statutes' wording are superficial rather than substantive. *Compare* former RCW 82.04.430(2) (1980) ("Dues which are for, or graduated upon, the amount of service rendered by the recipient thereof are not permitted as a deduction hereunder.") *with* RCW 82.04.4282("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 under this section."). *Red Cedar*, *Group Health*, and *Automobile Club* remain good law and conflict with the decision below.

Third, the Court of Appeals wrongly concluded that initiation fees differ from dues based on the third and final sentence of the deduction statute. Slip Op. at 12-14. That sentence reads:

> 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 under this section.

RCW 82.04.4282. This proviso clarifies that receipts are not "bona fide," and thus not deductible, if they are in exchange for a significant amount of goods or services or graduated upon the amount of goods or services rendered. The Court of Appeals concluded that this sentence is inapplicable to initiation fees because it uses the term "dues" and not "initiation fees." Slip. Op. at 13-14. The apparent—and problematic—consequence of that reasoning is that initiation fees are deductible *even if* they are paid in exchange for a significant amount of goods or

services or graduated upon the amount of services rendered (as Royal Oaks' initiation fees were).

But this Court in *Red Cedar* expressly held that the deduction statute's final proviso sentence applies to the other forms of receipts enumerated in the first sentence, not only to "dues." 62 Wn.2d at 347. The Court held that this proviso applied not only to "dues," but also to other types of charges enumerated in the first sentence of the deduction statute:

> Falling, as we believe they do, clearly within the proviso of RCW 82.04.430(2) negatives consideration of such payments as dues *or contributions, donations, tuition fees*, and thus negatives consideration of such payments as a permissible deduction . . . .

Id. at 347 (discussing former RCW 82.04.430(2), later recodified as RCW 82.04.4282) (emphasis added). Because the trade association in *Red Cedar* had alleged that its members' payments were "dues" *and* "contributions," the Court had to interpret the final sentence's proviso as applying to both to conclude, as it did, that the statute's final sentence rendered the

association's position "untenable." *Id.* at 346-47. The proviso in the statute's final sentence clarifies what it means for receipts to be "bona fide," and hence deductible. Thus, it made sense for this Court to hold that the proviso applies not only to dues, but also to contributions and the other forms of receipts enumerated in the statute's first sentence. In concluding otherwise, the decision below conflicts with *Red Cedar*.

More fundamentally, the decision conflicts with precedent holding that under the statute's first sentence, payments correlating to the amount of services provided to members are not "bona fide" deductible receipts. In *Group Health*, the problem with members' payments was not simply that they fell afoul of the proviso in the statute's final sentence, although that figured into the Court's analysis. *See* 72 Wn.2d at 435. Rather, this Court concluded that because the payment amounts "reflect[ed] upon the services available and furnished to [Group Health's] members," those payments were not "'bona fide' dues within the contemplation of the . . . statute." *Grp.*

Health, 72 Wn.2d at 434. They were not genuinely "dues" paid for membership in the organization; they were payments for healthcare services. In this way, the Court in *Group Health* grounded its holding in the statutory term "bona fide"—a term that modifies "initiation fees" as well as "dues." RCW 82.04.4282.

The decision below conflicts with *Red Cedar*, *Group Health*, and *Automobile Club*, all of which narrowly construe the deduction to exclude amounts paid by members in exchange for services rendered. Under those cases, a charge is "bona fide" only if it is "exacted for the privilege of membership." *Auto. Club*, 27 Wn. App. at 786. The Legislature's purpose in enacting RCW 82.04.4282 was not to broadly exclude retail service charges from taxation when they are structured as up-front rather than periodic payments. Rather, the Legislature's purpose was to exclude fees genuinely paid for initiation into an organization's membership. The decision's

departure from the body of case law interpreting the deduction statute merits this Court's review.

B. Alternatively, This Case Presents an Issue of First Impression Meriting Review

Red Cedar, *Group Health*, *Automobile Club*, and the plain meaning of RCW 82.04.4282 all conflict with the Court of Appeals' decision. But if this Court were to instead agree with the Court of Appeals that prior appellate case law is inapposite, then this case would present a question of first impression about the application of the deduction statute to initiation fee receipts. That question would merit this Court's review, particularly given the Court of Appeals' departure from the longstanding regulatory treatment of initiation fees and its reliance on an informal administrative decision to effectuate that departure.

The Court of Appeals distinguished *Red Cedar*, *Group Health*, and *Automobile Club* on the grounds that they analyzed dues rather than initiation fees. Slip Op. at 13-14. Viewing prior appellate precedents in that way, the Court of Appeals was

forced to turn to an informal decision by the Board of Tax Appeals as "the only adjudicated decision" applying the deduction to initiation fees. *Id.* at 13 (citing *Black Diamond Gun Club v. Dep't of Revenue*, No. 70949, 2010 WL 3944939 (Wash. Bd. Tax App. 2010)). In fact, a more recent informal Board decision holds the opposite, agreeing with the Department's interpretation of the initiation fee deduction. *See Innis Arden Swimming Club v. Dep't of Revenue*, No. 93156, 2021 WL 5871836 (Wash. Bd. Tax App. 2021). But neither informal administrative decision provides a strong basis for departing from the Department's longstanding interpretation of the deduction statute.

Since the 1930s, the Department and the Tax Commission have consistently construed the initiation fee deduction to include only amounts paid *solely* for the privilege of joining an organization. The 1936 version of the relevant rule explained that: "Amounts which may be deducted as initiation fees include only amounts actually required to be paid by a

person to a club or similar organization *for the sole privilege of joining such club or similar organization*." Former Rule 117 (1936) (attached as Appendix C) (emphasis added); *see also* Former Rule 114 (1943) (same language recodified under different rule number) (included in Appendix C).

When the Department replaced the Tax Commission as the administrator of Washington excise taxes, it adopted identical rule language.[5] *See* former WAC 458-20-114 (1970) (attached as Appendix D). Later versions of the rule expanded upon this interpretation but did not change its substance. *See* former WAC 458-20-114 (1984) (expanding the rule) (attached as Appendix E); former WAC 458-20-183 (1995) (recodifying the expanded rule under a new section) (attached as Appendix F).

[5] The Tax Commission was abolished in 1967 and largely replaced by the Department. *See* Laws of 1967, Ex. Sess., ch. 26, § 7.

During the tax period relevant in this case, the Department's interpretive rule continued to define "initiation fees" to mean "those amounts paid *solely* to initially admit a person as a member to a club or organization." Former Rule 183(2)(i) (2011) (attached as Appendix F) (emphasis added). Similarly, it defined "bona fide initiation fees" to "include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership." The Department continues to employ the same interpretation of the statute.[6]

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[6] In 2018, the Department removed the portion of Rule 183 implementing the RCW 82.04.4282 deduction, with the stated purpose of addressing it in a separate rule. *See* Wash. St. Reg. 18-08-051; Wash. St. Reg. 18-11-126. In the meantime, the Department continues to employ the same interpretation of the statutory phrase "bona fide initiation fees," as explained in an interpretive statement. Specifically, the Department has issued Excise Tax Advisory ETA 3230.2021. *Available at*: https://taxpedia.dor.wa.gov/documents/current%20eta/3230.202

To the extent there is any ambiguity in the statute, these longstanding interpretations by the agencies charged with administering the B&O tax are entitled to great weight. *See First Student, Inc. v. Dep't of Revenue*, 194 Wn.2d 707, 716-19, 451 P.3d 1094 (2019) (deferring to longstanding Tax Commission and Department interpretations to interpret a public utility tax definition). This lengthy period of consistent agency interpretation, which began with the Tax Commission's contemporaneous construction of the statute, also gives rise to an inference of legislative acquiescence. *See id.* at 718-19 (quoting *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 780, 903 P.2d 443 (1995)). If this Court agrees with the Court of Appeals that its prior cases are inapplicable to initiation fees, then this case presents the Court's first opportunity to consider whether the Department's longstanding treatment of initiation fees is consistent with the statutory language.

1.pdf (last accessed Feb. 22, 2023). Excise tax advisories are interpretive statements authorized by RCW 34.05.230.

In sum, the Court of Appeals decision merits review because it conflicts with established precedents. But even if the Court agrees with the Court of Appeals' conclusion that there is no on-point precedent, the decision below departs from more than 80 years of consistent regulatory treatment. Either way, this Court's review is warranted.

C. The Court of Appeals Decision Effectively Creates a New Deduction for a Broad Range of Industries, Meriting This Court's Review

The Court of Appeals decision will substantially impact the Department's administration of the RCW 82.04.4282 deduction. Under the decision, businesses may shield thousands of dollars from B&O and retail sales taxation by shifting them from recurring to up-front charges. As the case law suggests, this deduction affects a broad array of unrelated economic sectors. *See, e.g.*, *Red Cedar*, 62 Wn.2d at 341 (trade and lobbying organization); *Grp. Health*, 72 Wn.2d at 422 (prepaid healthcare services cooperative); *Auto. Club*, 27 Wn. App. at 781 (organization providing roadside assistance and other

services); Slip Op. at 2 (country club and championship golf course). This matter raises an issue of substantial public interest, meriting this Court's review. RAP 13.4(b)(4).

VI. CONCLUSION

For the foregoing reasons, the Department respectfully requests that this Court grant review.

This document contains 4,726 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 2nd day of March, 2023.

ROBERT W. FERGUSON
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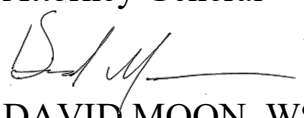

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PROOF OF SERVICE

I certify that I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal and thus served the following:

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

DATED this 2nd day of March, 2023, at Tumwater, WA.

Dani McFadden, Legal Assistant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

January 31, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROYAL OAKS COUNTRY CLUB, a Washington Non-Profit Corporation, Appellant, v. WASHINGTON STATE DEPARTMENT OF REVENUE, Respondent,	No. 56478-5-II PUBLISHED OPINION

LEE, J. — Royal Oaks Country Club (Royal Oaks) appeals the superior court's order granting summary judgment for the Department of Revenue (DOR) and denying summary judgment for Royal Oaks. Royal Oaks argues that the superior court erred by ruling that Royal Oaks' initiation fees for new club members were only partially deductible under RCW 82.04.4282.

We hold that the superior court erred by ruling that Royal Oaks' initiation fees were only partially deductible under RCW 82.04.4282. Accordingly, we reverse and remand for the superior court to enter summary judgment for Royal Oaks.

FACTS

After performing a tax audit on Royal Oaks for tax period from January 2011 through March 2016, DOR determined that a portion of Royal Oaks' initiation fees for new members was tax deductible and other portions were non-deductible based on DOR's interpretation of RCW

82.04.4282. Royal Oaks unsuccessfully appealed DOR's determination, paid the taxes, and filed a complaint for a tax refund in superior court.

The parties agreed to a set of stipulated facts outlined below and filed cross motions for summary judgment. The superior court denied Royal Oaks' motion for summary judgment, granted DOR's motion for summary judgment, and dismissed with prejudice Royal Oaks' request for a tax refund.

A. ROYAL OAKS' SERVICES AND MEMBERSHIP LEVELS

Royal Oaks is a nonprofit corporation that owns and operates a country club. Royal Oaks offers several amenities including a golf course, golf pro shop, fitness center, clubhouse with several dining options, golf practice facility, and swimming facility. Non-member guests must pay "greens fees" to access the golf facilities. Clerk's Papers (CP) at 231.

Royal Oaks offers several levels of membership. Proprietary members receive full access to all of Royal Oaks' facilities and services. Proprietary members can vote in elections for Royal Oaks' directors and officers and are eligible to serve in those roles. Additionally, Royal Oaks must receive proprietary members' approval for "'extraordinary issues'" specified in the bylaws. CP at 46. Proprietary members can seek approval from Royal Oaks' board to transfer their membership to a family member or business owned by a family member. And proprietary members who resign and relinquish membership can receive a "'refund equity'" of 25 percent of the current proprietary member initiation fee at the board's discretion. CP at 47

Corporate members receive full access to all of Royal Oaks' facilities and services. Each corporate membership is "owned by a registered business entity for the benefit of a designated employee." CP at 47.

Intermediate members receive full access to all of Royal Oaks' facilities and services. Intermediate members pay half dues until they reach the age of 35, when their memberships are converted to proprietary memberships. Intermediate members cannot vote for or serve as directors or officers. Intermediate members cannot transfer their memberships.

"'Social with golf'" members have unlimited access to Royal Oaks' fitness center, swimming facilities, dining facilities, and all social events. CP at 47. However, social with golf members have limited access to Royal Oaks' golf course and practice facilities. Social with golf members may play one round of golf per month and access the practice facilities on their day of play. Social with golf members may purchase items from the golf pro shop. And social with golf members may purchase additional rounds of golf from November through March, and their children may compete in the junior golf tournament. Social with golf members cannot participate in tournaments, vote for directors or officers, or serve as directors or officers.

Social members have unlimited access to the fitness center, swimming facilities, dining facilities, and all social events. However, social members cannot use Royal Oaks' golf course or practice facilities. Social members may purchase items from the golf pro shop. Social members cannot vote for or serve as directors or officers.

Dining members have unlimited access to Royal Oaks' dining facilities. However, dining members cannot use Royal Oaks' golf course, practice facilities, fitness center, or swimming facilities. Dining members may purchase items from the golf pro shop. Dining members cannot vote for or serve as directors or officers.

B. ROYAL OAKS' INITIATION FEES

New members must pay a one-time initiation fee with their application to join Royal Oaks. The initiation fee amounts vary by membership level. During the tax period at issue, new members paid the following amounts:

Year	**Proprietary, Corporate, and Intermediate**	**Social with golf**	**Social**	**Dining**
2011	$10,000 (reduced to $5,000 in May and June)	$1,000	$200	
2012	$10,000	$1,000	$200	
2013	$10,000	$1,500	$1,000	
2014	$10,000 (reduced to $5,000 in November and December)	$2,500	$1,500	$200
2015	$10,000	$2,500	$1,500	$200
2016	$10,000	$2,500	$1,500	$200

CP at 48.

Members must also pay monthly dues which vary in amount by membership level. Significantly, members must pay their initiation fee *and* their first month's dues before they may access any facilities, services, or social events. Members receive a monthly bill that includes charges for dues, greens fees, and other charges, which are separately stated and immediately due and payable. If a member does not pay their bill within 60 days, the member loses all membership privileges until they have fully paid their outstanding bills.

C. AUDIT AND PROCEDURAL HISTORY

In December 2014, Royal Oaks sought to deduct its initiation fees from its taxable income. DOR audited Royal Oaks for the tax period from January 2011 through March 2016. DOR's auditor calculated the deductible portion of Royal Oaks' initiation fees using former WAC 458-

20-183 (1995) (former Rule 183), which allowed for a deduction of bona fide initiation fees[1] and dues. The auditor used the same calculation for both initiation fees and dues when determining whether Royal Oaks could take a deduction. Consistent with its calculation for dues, the auditor determined that only a percentage of Royal Oaks' initiation fees were deductible as bona fide initiation fees and that the remainder of the initiation fees were taxable as goods or services provided to members. DOR then assessed $2,640.00 in business and occupation taxes and $45,245.00 in retail sales taxes arising from Royal Oaks' income related to initiation fees.

Royal Oaks appealed to DOR, arguing that its initiation fees were wholly deductible under RCW 82.04.4282. DOR rejected Royal Oaks' arguments and affirmed its audit results relating to the deductibility of initiation fees. Royal Oaks petitioned for reconsideration, which DOR denied. Royal Oaks paid the taxes assessed by DOR.

Royal Oaks then filed a tax refund action in the superior court, again arguing that its initiation fees were wholly deductible under RCW 82.04.4282. The parties jointly filed a partial

[1] Former Rule 183 provided that "initiation fees" were those amounts paid solely to initially admit a person as a member to a club or organization. Former WAC 458-20-183(2)(i). Former Rule 183 defined "bona fide initiation fees" to include only one-time amounts paid that genuinely represent the value of membership in the club or similar organization. Former WAC 458-20-183(2)(i). According to former Rule 183, bona fide initiation fees "shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership." Former WAC 458-20-183(2)(i). Former Rule 183 provided that individuals seeking deductions from initiation fees may use one of two calculation methods to determine how much of their initiation fees are deductible. Former WAC 458-20-183(4)(c). Royal Oaks does not challenge the calculation method itself on appeal but instead argues that the initiation fees were wholly deductible and should not have been subject to the calculation.

Former Rule 183 was amended in 2018, and the provisions relied on by DOR were deleted. Wash. St. Reg. 18-11-126.

stipulation of facts and filed cross motions for summary judgment. The superior court denied Royal Oaks' motion for summary judgment, granted DOR's motion for summary judgment, and ruled that Royal Oaks' initiation fees were only partially deductible as bona fide initiation fees under RCW 82.04.4282.

Royal Oaks appeals the superior court's summary judgment orders.

ANALYSIS

A. LEGAL PRINCIPLES

1. Summary Judgment

We review summary judgment decisions de novo. *Wash. Imaging Servs., LLC v. Dep't of Revenue*, 171 Wn.2d 548, 555, 252 P.3d 885 (2011). "Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*; CR 56(c). Where there are no disputed issues of material fact and the issue is how the tax statutes and regulations apply to the facts of the case, we treat the issue as a question of law and review the decision de novo. *Wash. Imaging*, 171 Wn.2d at 555.

2. Statutory Interpretation

This case presents questions of statutory interpretation, which we review de novo. *Tesoro Refining & Mktg. Co. v. Dep't of Revenue*, 173 Wn.2d 551, 556, 269 P.3d 1013 (2012). When engaging in statutory interpretation, our primary objective is to determine and carry out the legislature's intent. *Id.* To determine the legislature's intent, we first look to the statute's plain language. *Id.*

If the statute's plain language is unambiguous, "we give the words their common and ordinary meaning." *Id.* "'Where statutory language is plain and unambiguous, courts will not

construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency.'" *Id.* (quoting *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005)).

A statute is ambiguous only if "'it is subject to more than one reasonable interpretation.'" *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014) (quoting *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 456, 219 P3d 686 (2009)). Only when a statute is ambiguous do we turn to statutory construction, legislative history, and relevant case law to determine legislative intent. *Id.*

The plain meaning of a statute is "derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Id.* at 762 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). We give effect to all the language in a statute and do not render any portion meaningless or superfluous. *Spokane County v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018). We do not add words to statutes where the legislature chose to not include them. *Ctr. for Envtl. Law & Policy v. Dep't of Ecology*, 196 Wn.2d 17, 32, 468 P.3d 1064 (2020). And we use the dictionary to determine the plain meaning of undefined words in a statute. *Nissen v. Pierce County*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015).

B. DEDUCTIBILITY OF INITIATION FEES

Royal Oaks argues that the superior court erred by granting summary judgment for DOR because its initiation fees are wholly deductible under RCW 82.04.4282. We agree.

RCW 82.04.4282 provides for deductions from taxable income for certain types of payments as follows:

> In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others. 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 under this section.

The parties advance differing interpretations of RCW 82.04.4282.

1. First Sentence

The first sentence of RCW 82.04.4282 states, in relevant part, that "bona fide . . . initiation fees" are deductible. Royal Oaks argues that "bona fide initiation fees" are all fees paid for initiation, so long as there is no speciousness, bad faith, fraud, or deceit in treating the payments as initiation fees. DOR argues that "bona fide initiation fees" include only the portion of the initiation fees that are genuinely paid for membership. Specifically, here, DOR argues that only $200 per initiation fee is "bona fide" because that is the cost of the lowest initiation fee, and all payments beyond $200 are attributable to the use of services and facilities.[2]

Neither "bona fide" nor "initiation fees" are defined in Title 82 RCW, which addresses excise taxes. Therefore, we turn to the dictionary definition of those terms.

[2] We note that at oral argument, DOR was unable to identify any situation where an initiation fee would be fully deductible. Wash. Court of Appeals oral argument, *Royal Oaks Country Club v. Dep't of Revenue*, No. 56478-5-II (Oct. 20, 2022), at 24 min., 13 sec. through 25 min., 6 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org.

"Bona fide" is defined as "made in good faith without fraud or deceit," "SINCERE," or "not specious or counterfeit: GENUINE." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 250 (2002). "Initiation" is defined as "the act or an instance of formally initiating (as into an office, sect, or society)." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1164 . Taken together, the ordinary, everyday meaning of "bona fide initiation fees" is fees paid genuinely for the act or instance of formally initiating someone.

Here, the first sentence of RCW 82.04.4282 is unambiguous. The plain language of RCW 82.04.4282 shows that "bona fide initiation fees" do not include dues because "dues" are listed separately in the first sentence of the statute and addressed separately in the third sentence, as discussed below. *See* RCW 82.04.4282. Thus, the first sentence of RCW 82.04.4282 clearly allows for a deduction to be taken for "bona fide initiation fees." There is no dispute that the plain language of the statute only allows for a deduction of initiation fees that are genuinely related to the allowance of a person into club membership.[3] It also is undisputed that new members pay a one-time initiation fee to become a member at Royal Oaks.

[3] While we do not consider agency interpretations if the statute's plain language is unambiguous, we note that this definition aligns with DOR's own interpretation of "bona fide initiation fees" in former Rule 183, which was in effect during the tax periods at issue. *See Jametsky*, 179 Wn.2d at 762. Former Rule 183 provided that "initiation fees" were those amounts paid solely to initially admit a person as a member to a club or organization. Former WAC 458-20-183(2)(i). Former Rule 183 defined "bona fide initiation fees" to include only one-time amounts paid that genuinely represent the value of membership in the club or similar organization. Former WAC 458-20-183(2)(i). According to former Rule 183, bona fide initiation fees "shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership." Former WAC 458-20-183(2)(i).

DOR amended former Rule 183 in 2018 and removed the part of the rule addressing initiation fees. Wash. St. Reg. 18-11-126. The stated purpose of this amendment was to address

DOR argues that Royal Oaks may not take a full deduction for its initiation fees because part of the initiation fees are for facilities and services, with new members paying higher initiation fees to gain access to more facilities and services. But the record shows that the higher initiation fees only correspond with the new member's membership level. While the membership level determines the members' ability to access more services and facilities, the membership level also determines a member's ability to participate in tournaments, vote for leaders, serve in leadership positions, transfer memberships, and receive refund equities in the event of member resignation. Further, payment of the initiation fee does *not* automatically entitle new members to use Royal Oaks' facilities and services. Rather, Royal Oaks' new members must pay their first month's dues along with the initiation fee before they are allowed to use the club's facilities and services.

Because the dues are billed separately from the initiation fee, the initiation fee does not include any dues, which, again, must be paid before members may use the club's facilities and services. Members who fail to pay their monthly dues are denied membership privileges. Thus, Royal Oaks' initiation fees are for new members to become members of the club, not for their use of club facilities or services. Therefore, Royal Oaks' initiation fees fall within the plain language of the deduction for "bona fide initiation fees" allowed in the first sentence of RCW 82.04.4282.

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initiation fees in a different rule. Wash. St. Reg. 18-08-051. As of January 2023, DOR had not issued another rule addressing initiation fees.

However, in October 2021, DOR issued Excise Tax Advisory (ETA) 3230.2021, which became effective in July 2022. Wash. Dep't of Revenue, Excise Tax Advisory 3230.2021 (Oct. 22, 2021), https://taxpedia.dor.wa.gov/documents/current%20eta/3230.2021.pdf. ETA 3230.2021 uses definitions for "bona fide initiation fees" that are substantially the same as those in former Rule 183.

2. Second Sentence

The second sentence of RCW 82.04.4282 limits the deduction allowed in the first sentence. Royal Oaks argues that the second sentence only disallows deductions for special payments made in exchange for a particular good or service, like receiving a free set of golf clubs or five free golf lessons. DOR argues that the second sentence disallows deductions for any payment made in exchange for access to facilities that the taxpayer would ordinarily charge people to access.

The second sentence in RCW 82.04.4282 is also unambiguous. That sentence states, in relevant part, that the statute may not be construed as to allow any person, association, or society to be exempt from tax liability for "providing facilities or other services for which a special charge is made to members or others." RCW 82.04.4282.

Title 82 RCW does not define "special charge." The dictionary defines "special" to mean "supplemental to the regular," "confined to a definite field of action: designed or selected for a particular purpose, occasion or other end," or "containing particulars: DETAILED, SPECIFIC — opposed to *general*." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 2186. Therefore, a "special charge" is a charge supplemental to the regular charges, or one that is specifically designed or selected for a particular purpose. And in the context of the statute and the arguments advanced by the parties, these charges must be specifically designed or selected for the use of Royal Oaks' facilities or services.

Here, nothing in the record shows that Royal Oaks' one-time initiation fees are specifically designed or selected for anything other than membership into the club. The record shows that a new member's general use of the club's facilities and services is not included in the initiation fee as a "special charge." Contrary to DOR's argument, the undisputed record shows that Royal Oaks'

initiation fees do not include any amounts that can be considered a "special charge" to allow the new member to access club facilities because dues are billed separately at the same time as the initiation fee. It is the payment of the monthly dues that allows members to use the club's facilities and services.

There may be included in the monthly dues bill charges beyond the use of the club's facilities and services (e.g., food and drink purchases or merchandise purchases from the pro shop). These charges on the members' monthly dues bills might constitute "special charges" because they are supplemental to the regular dues for the use of the club's facility and services. But unlike special charges that may show up in a member's monthly dues bill, the stipulated facts show that there are no "special charges" included in initiation fees (e.g., new members are not provided free golf lessons, any free products that are included in the initiation fee, or any other free goods or services).

Therefore, the undisputed record shows that there is nothing included in the initiation fees that is a "special charge" within the limitation stated in the second sentence of RCW 82.04.4282. Because Royal Oaks' initiation fees do not fall within the limitation on tax deductions in the second sentence of RCW 82.04.4282, Royal Oaks' initiation fees remain fully deductible under the first sentence of RCW 82.04.4282.

3. Third Sentence

The third sentence of RCW 82.04.4282 provides another limitation for the first sentence's list of income that is deductible. The third sentence provides that

> [i]f 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 under this section.

RCW 82.04.4282.

The parties contest whether this sentence applies only to dues or to the other types of transactions listed in the first sentence of RCW 82.04.4282. The plain language of the third sentence applies only to "dues" and does not mention any of the other payments listed in the first sentence of the statute. Because we must not add words where the legislature chose to not include them, we decline to extend the application of the third sentence to other payments that are not dues. *See Ctr. for Envtl. Law*, 196 Wn.2d at 32.

This interpretation comports with the only adjudicated decision addressing the application of the statute's third sentence to initiation fees. *See Black Diamond Gun Club v. Dep't of Revenue*, No. 70949, 2010 WL 3944939, at *5 (Wash. Bd. of Tax Appeals Sept. 14, 2010) ("The last sentence of RCW 82.04.4282 indicates that if dues are in exchange for any significant amount of goods and services, then they shall not be deductible. There is no such proviso for the category of initiation fees.").

While DOR argues that other published cases support its position, the cases that DOR cites are inapposite because they analyze the predecessor to the current statute and address only dues. *See Group Health Co-op. of Puget Sound, Inc. v. Wash. State Tax Comm'n*, 72 Wn.2d 422, 434, 433 P.2d 201 (1967) (holding that monthly fees were not deductible because they were dues for or graduated upon the amount of services rendered); *Red Cedar Shingle Bureau v. State*, 62 Wn.2d 341, 346-47, 382 P.2d 503 (1963) (holding that certain payments were not deductible as dues or contributions and that such payments would fall into the dues exception even if they were dues);

Auto. Club of Wash. v. Dep't of Revenue, 27 Wn. App. 781, 786-87, 621 P.2d 760 (1980) (holding that annual dues were not deductible).

The income at issue here is initiation fees, not dues. Dues for the use of the club's facilities and services are billed separately and not included in the initiation fee. Thus, the third sentence's limitation for tax deductions under RCW 82.04.4282 is inapplicable, and Royal Oaks' initiation fees remain fully deductible under the first sentence of RCW 82.04.4282.

CONCLUSION

We hold that the superior court erred by ruling that Royal Oaks' initiation fees were only partially deductible under RCW 82.04.4282. Accordingly, we reverse the superior court's order granting summary judgment for DOR and denying summary judgment for Royal Oaks, and we remand for the superior court to enter summary judgment for Royal Oaks.

Lee, J.

We concur:

Maxa, J.

Cruser, A.C.J.

APPENDIX B

RCW 82.04.4282

Deductions—Fees, dues, charges.

In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others. 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 under this section.

[**2009 c 535 § 410**; **1994 c 124 § 3**; **1989 c 392 § 1**; **1980 c 37 § 3**. Formerly RCW **82.04.430**(2).]

NOTES:

Intent—Construction—2009 c 535: See notes following RCW **82.04.192**.

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

APPENDIX C

Rules and Regulations

RELATING TO

The Revenue Act of 1935

Chapter 180, Laws of 1935

OF THE

State of Washington

Issued by the Excise Tax Division of the Tax Commission
of the State of Washington

Commissioners

H. H. HENNEFORD, Chairman
T. M. JENNER T. S. HEDGES

Counsel — Excise Tax Division
DONALD H. WEBSTER

Revised April 1, 1936

1936
STATE PRINTING PLANT
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Sales by supply houses of articles of equipment, such as kitchen utensils, fountain fixtures, booths and the like to restaurants, soda fountains, beer parlors, etc., are retail sales upon which the Retail Sales Tax must be collected by the supply houses. In the same category are sales of napkins, whether linen or paper, toothpicks, matches and the like.

BONA FIDE INITIATION FEES, DUES, CONTRIBUTIONS, DONATIONS, TUITION FEES AND ENDOWMENT FUNDS—DEDUCTIONS

Rule 117.

In computing tax liability, amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds may be deducted from the measure of tax under the Business and Occupation Tax. This deduction is to be strictly construed and such amounts may only be deducted provided,

(1) they are bona fide, and

(2) they have been included in the "Gross Amount" reported under the classification with respect to which the deduction is sought, and

(3) they have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, and

(4) they do not exceed the limitations hereinafter set forth.

Amounts which may be deducted as initiation fees include only amounts actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.

Amounts which may be deducted as dues include only amounts which a member must pay toward the support of a club or similar organization in order to retain his membership therein and does not include amounts which are for or graduated upon services rendered to a member of such club or organization.

The term "tuition fees" refers only to fees charged by an educational institution and, in addition to instruction fees, includes library, laboratory, health and other special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution.

An "educational institution," which may deduct "tuition fees," includes any institution created or generally accredited as such by the state and offering to students an educational program of a general academic nature. Such institutions include the following:

(a) The common schools, the state normal schools, the University of Washington, the State College of Washington and such other schools which are or may be established by law and maintained at public expense as part of the "uniform school system" provided for in Remington's Revised Statutes, section 4518, et seq.;

(b) Parochial schools and private schools accredited to schools of the "uniform school system" by the State Board of Education or the State Department of Education;

(c) Schools whose students and credentials are accepted without examination by the schools referred to in (a) and (b) above.

A business college, dancing school, music school or any trade or specialty school generally is not an "educational institution" within the meaning of

that term as defined above and, therefore, is not permitted the deduction for "tuition fees," which are taxable under the classification "Service and Other Business Activities" at the rate of ½ of 1%.

The right to deduct bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds does not 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.

SALES OF CONTAINERS, WRAPPING AND PACKING MATERIALS AND RELATED PRODUCTS

Rule 118.

When used in this rule, the term "containers" includes all containers, boxes, wrapping and packing materials, bags, twines, wrapping papers, gummed tapes, cellophane, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained.

Sales of containers to persons for use in connection with rendering services, or for personal or other uses, are sales for consumption and the Retail Sales Tax must be collected thereon. For example, the sale of paper boxes to a laundry is subject to tax because laundries use such boxes in connection with rendering services and do not sell property contained therein.

Sales of containers to persons who resell the containers in the regular course of business are not subject to the Retail Sales Tax. Included in this class are sales of envelopes to a stationer and sales of boxes and packing materials to persons packing fruit for others.

Sales of containers to persons who sell tangible personal property contained in such containers are sales for resale and not subject to the Retail Sale Tax if title to the containers passes to other persons along with the property sold and contained therein. For example, sales of wrapping paper and boxes to a department store, cans to a cannery, or beer bottles to a brewery, are sales for resale because the department store, cannery and brewery resell goods contained therein.

Sales of containers to persons who sell tangible personal property in the containers, but retain title to such containers which are to be returned for reuse, are sales for consumption, and the Retail Sales Tax must be collected thereon. This class may include such containers as wooden or metal bottle cases, barrels, hogsheads, gas tanks, carboys, drums, bags, milk bottles and many others when title remains in the seller and when they are customarily returned to and reused by him in making other deliveries. In such cases, if a charge is made against, or deposit is required from, the customer for the container, with the understanding that such charge will be cancelled or deposit rebated when the container is returned, such amounts will be considered as security for the use and the return of the container, and there is no resale of the container.

LABELS, TAGS AND NAMEPLATES

Rule 119.

Sales of labels, tags or name plates to persons for use in connection with rendering services, for personal or business use, or which do not become an inseparable part of products sold, are sales for consumption and the Retail

RULES

RELATING TO

THE REVENUE ACT

Chapter 180, Laws of 1935, as Amended by Chapters 116, 191, and 227, Laws of 1937, Chapters 9 and 225, Laws of 1939, Chapters 76, 118 and 178, Laws of 1941 and Chapter 156, Laws of 1943

OF THE

State of Washington

Issued by the Excise Tax Division of the Tax Commission of the State of Washington

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Revised May 1, 1943

photographer for use in the production of photographs are not retail sales.

On the other hand, sales of ammonia to an ice cream manufacturer for use in the freezing of ice cream are retail sales and subject to the Retail Sales Tax. The ammonia does not unite in a chemical reaction with any of the ingredients or components of the ice cream, but instead is consumed in the refrigerating plant to produce merely a physical change in such ingredients or components.

Sales of diesel or fuel oil to a steel mill or foundry, for use or consumption primarily in generating heat, are retail sales and subject to the Retail Sales Tax, notwithstanding that some portion of the oil may cause a chemical reaction and to some extent alter the character of the article being manufactured or processed.

In special cases where doubt exists, a special ruling will be made by the Tax Commission upon submission of all the pertinent facts relative to the nature of the chemical substances concerned and the use made thereof by the purchaser.

Effective May 1, 1943.

BONA FIDE INITIATION FEES, DUES, CONTRIBUTIONS, DONATIONS, TUITION FEES AND ENDOWMENT FUNDS—DEDUCTIONS

Rule 114.

In computing tax liability amounts derived from *bona fide* initiation fees, dues, contributions, donations, tuition fees and endowment funds may be deducted from the measure of tax under the Business and Occupation Tax. This deduction is to be strictly construed and such amounts may only be deducted providing:

(1) They are *bona fide*, and

(2) They have been included in the "Gross Amount" reported under the classification with respect to which the deduction is sought, and

(3) They have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, and

(4) They do not exceed the limitations hereinafter set forth.

Amounts which may be deducted as initiation fees include only amounts actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.

Amounts which may be deducted as dues include only amounts which a member must pay toward the support of a club or similar organization in order to retain membership therein and does not include amounts which are for or graduated upon services rendered to a member of such club or organization.

The term "tuition fees" refers only to fees charged by an educational institution and, in addition to instruction fees, includes library, laboratory, health and other special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution.

An "educational institution" which may deduct "tuition fees" includes any institution created or generally accredited as such by the state and offering to students an educational program of a general academic nature and those institutions which are not operated for profit and which are privately en-

dowed under a deed of trust to offer instruction in trade, industry and agriculture, but not including specialty schools, business colleges, other trade schools or similar institutions. Educational institutions include the following:

(a) The common schools, the state normal schools, the University of Washington, the State College of Washington and such other schools which are or may be established by law and maintained at public expense as part of the "uniform school system" provided for in Remington's Revised Statutes, section 4518, *et seq.*;

(b) Parochial schools and private schools accredited to schools of the "uniform school system" by the State Board of Education or the State Department of Education, and which are not specialty schools, business colleges, other trade schools or similar institutions;

(c) Schools whose students and credentials are accepted without examination by the schools referred to in (a) and (b) above, and which are not specialty schools, business colleges, other trade schools or similar institutions.

A business college, dancing school, music school or specialty school is not an "educational institution" within the meaning of that term as defined above, and is not permitted the deduction for "tuition fees," which are taxable under the classification "Service and Other Activities" of the Business and Occupation Tax at the rate of ½ of 1%.

The right to deduct *bona fide* initiation fees, dues, contributions, donations, tuition fees and endowment funds does not 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.

Effective May 1, 1943.

SALES OF PACKING MATERIALS AND CONTAINERS

Rule 115.

The term "packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container, for transportation or delivery to a purchaser.

Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and not subject to the Retail Sales Tax if title thereto passes with the goods contained therein.

Sales of containers to persons who sell tangible personal property therein but who retain title to such containers which are to be returned for reuse are sales for consumption, and the Retail Sales Tax or the Compensating Tax must be paid upon the sale or use thereof. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags, milk bottles, syphon bottles, and other items, when title thereto remains in the seller and when such articles are customarily returned to and reused by him in making other deliveries. If a charge is made against a customer for the container, with the understanding that such charge will be cancelled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container.

Returned Containers—In computing tax under the "Manufacturing," "Wholesaling," and "Retailing" classifications of the Business and Occupation

APPENDIX D

WASHINGTON ADMINISTRATIVE CODE

VOLUME 18

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Thus WAC 16-08-010

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ARTICLES PURCHASED FOR DUAL PURPOSES. Where an article purchased serves a dual purpose, tax liability under the retail sales tax is determined by the primary purpose for which the article is purchased. The fact that a portion of the article purchased actually becomes a physical part of the new article produced for sale is not in itself sufficient to constitute the sale thereof a sale at wholesale, unless such use is the primary purpose for which the article was purchased. Thus, the sale of coal to a cement manufacturer which is used primarily as a fuel for producing heat is a taxable retail sale even though the ash from the burned coal is blown into the cement mixture and actually remains an ingredient thereof. Likewise the sale of coke to a foundry to produce heat for melting iron or steel is a taxable retail sale, although a secondary purpose in using coke is to introduce carbon into the metal.

CHEMICALS USED IN PROCESSING. Sales of chemicals to a person for use in processing articles produced for sale are not retail sales, and therefore are not subject to the retail sales tax.

"Chemicals used in processing" carries its common restricted meaning in commercial usage. It includes only chemical substances which are used by the purchaser to unite with other chemical substances, present as ingredients or components of the articles or substances being processed, to produce a chemical reaction therewith, as contrasted with merely a physical change therein. A chemical reaction is one in which there takes place a permanent change of certain properties, with the formation of new substances which differ in chemical composition and properties from the substances originally present, and usually differ from them in appearance as well. It is not necessary that all of the new substances which are formed be present in the final completed article or substance which is sold; one or more of such new substances resulting from the chemical reaction may be removed or drawn off in the processing.

To illustrate: Sales of chemicals to a pulp mill for use in the digesting and bleaching of pulp are not subject to the retail sales tax because such chemicals react chemically with the cellulose in the pulp fiber which, in turn, becomes a major ingredient of the final product paper. Similarly, sales of carbon to an aluminum reduction plant for the primary purpose of forming a chemical reaction with alumina to remove its oxygen content are not retail sales.

Conversely, sales of water purifiers and wetting agents to a pulp mill are taxable sales. The treated water acts primarily as a conveyor or carrier of the pulp fibers and only an insignificant part of the water becomes an ingredient of the final product. Similarly, sales of caustic soda to potato processors to remove peelings from potatoes are retail sales because the chemical reacts only with the peelings which are removed as waste, and not with the potatoes which are sold as the final product.

Sales of diesel or fuel oil to a steel mill or foundry, for use or consumption primarily in generating heat, are retail sales and subject to the retail sales tax, notwithstanding the fact that some portion of the oil may cause a chemical reaction and to some extent alter the character of the article being manufactured or processed.

In special cases where doubt exists, a special ruling will be made by the Department of Revenue upon submission of all the pertinent facts relative to the nature of the chemical substances concerned and the use made thereof by the purchaser.

Revised June 1, 1970.
[Order ET 70-3, §458-20-113, filed 5/29/70, eff. 7/1/70.]

WAC 458-20-114 (Rule 114) BONA FIDE INITIATION FEES, DUES CONTRIBUTIONS, DONATIONS, TUITION FEES AND ENDOWMENT FUNDS

Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds may be deducted from the measure of tax under the business and occupation tax. (RCW 82.04.430(2)). This deduction is construed strictly and such amounts may be deducted only if:

1. They are bona fide, and
2. They have been included in the Gross Amount reported under the classification with respect to which the deduction is sought, and
3. They have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, and
4. They do not exceed the limitations hereinafter set forth.

Amounts which may be deducted as initiation fees are those amounts only which are actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.

Amounts which may be deducted as dues are those amounts only which a member must pay toward the support of a club or similar organization in order to retain membership therein. Amounts which are for, or graduated upon, the amount of services rendered to a member of such club or organization may not be deducted. The terms "dues" and "initiation fees" must be given their ordinary meaning and do not include, for example, amounts paid to trade or industry associations for services rendered and such payments are proportional to the size and volume of the member's business or manufacturing operations.

The term "tuition fees" refers only to fees charged by educational institutions, and, in addition to instruction fees, includes library, laboratory, health and other special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institutions.

"Educational institutions" which may deduct "tuition fees" are those which have been created or generally accredited as such by the state and which offer to students an educational program of a general academic nature and those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry and agriculture, but not including specialty schools, business colleges, other trade schools or similar institutions. Educational institutions which are entitled to the deduction include the following:

a. The common schools, the state normal schools, the University of Washington, the Washington State University and such other schools which are or may be established by law and maintained at public expense as part of the "uniform school system" provided for in RCW 28.02.010;
b. Parochial schools and private schools accredited to schools of the "uniform school system" by the State Board of Education or the State Department of Education, and which are not specialty schools, business colleges, other trade schools or similar institutions;
c. Schools whose students and credentials are accepted without examination by the schools referred to in "a" and "b" above, and which are not specialty schools, business colleges, other trade schools or similar institutions.

A business college, dancing school, music school or specialty school is not an "educational institution" within the meaning of that term as defined above. Tuition fees collected by such institutions are taxable under the Service and Other Business Activities classification of the business and occupation tax.

The right to deduct bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds does not 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.

Revised June 1, 1970.
[Order ET 70-3, §458-20-114, filed 5/29/70, eff. 7/1/70.]

WAC 458-20-115 (Rule 115) SALES OF PACKING MATERIALS AND CONTAINERS.

The term "packing materials" means and includes all boxes, crates,

APPENDIX E

Washington State Register

APRIL 18, 1984

OLYMPIA, WASHINGTON

ISSUE 84-08

IN THIS ISSUE

(Subject/Agency index at back of issue)
This issue contains documents officially filed not later than April 4, 1984

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Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

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(4) Any expenditures made by the institution for postage for indigent inmates may be recouped by the institution whenever such indigent inmate has a five dollar or more balance in his/her trust fund account.

WSR 84-08-012
ADOPTED RULES
DEPARTMENT OF REVENUE
[Order 84-1—Filed March 27, 1984]

I, Donald R. Burrows, director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Nonbusiness income—Bona fide initiation fees, dues, contributions, tuition fees and endowment funds, WAC 458-20-114.

This action is taken pursuant to Notice No. WSR 84-05-067 filed with the code reviser on February 22, 1984. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Revenue as authorized in RCW 82.32.300.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED March 27, 1984.

By Matthew J. Coyle
Deputy Director

AMENDATORY SECTION (Amending Order ET 70-3, Rule 114, filed 5/29/70, effective 7/1/70)

WAC 458-20-114 NONBUSINESS INCOME—BONA FIDE INITIATION FEES, DUES, CONTRIBUTIONS, ((~~DONATIONS,~~)) TUITION FEES AND ENDOWMENT FUNDS. ((~~Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds may be deducted from the measure of tax under the business and occupation tax. (RCW 82.04.430(2)) [RCW 82.04.4282]. This deduction is construed strictly and such amounts may be deducted only if:~~

~~1. They are bona fide, and~~

~~2. They have been included in the gross amount reported under the classification with respect to which the deduction is sought, and~~

~~3. They have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, and~~

~~4. They do not exceed the limitations hereinafter set forth.~~

~~Amounts which may be deducted as initiation fees are those amounts only which are actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.~~

~~Amounts which may be deducted as dues are those amounts only which a member must pay toward the support of a club or similar organization in order to retain membership therein. Amounts which are for, or graduated upon, the amount of services rendered to a member of such club or organization may not be deducted. The terms "dues" and "initiation fees" must be given their ordinary meaning and do not include, for example, amounts paid to trade or industry associations for services rendered and such payments are proportional to the size and volume of the member's business or manufacturing operations.~~)) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. Thus, outright gifts, donations, contributions, endowments, tuition, and initiation fees and dues which do not entitle the payor to receive any significant goods or services in return for the payment are not subject to business and occupation tax. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction.

Many for-profit or nonprofit entities may receive "amounts derived," as defined in this rule, which consist of mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). For purposes of distinguishing between these kinds of income, the law requires that tax exemption provisions must be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these legal requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

CONTRIBUTIONS, DONATIONS, AND ENDOWMENTS.

Only amounts which are received as outright gifts are entitled to deduction. Any amounts, however designated, which are received in return for any goods, services, or business benefits are subject to business and occupation tax under the appropriate classification depending upon the nature of the goods, services, or benefits provided. Thus, for example, so-called "grants" which are received in return for the preparation of studies, white papers, reports, and the like do not constitute deductible contributions, donations, or endowments. RCW 82.04-.4297 and WAC 458-20-169 provide for a specific deduction for compensation from public entities for health or social welfare services.

BONA FIDE INITIATION FEES AND DUES.

The law does not contemplate that the deduction should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available ". . . if dues are in exchange for any significant amounts 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 . . ." (RCW 82.04.4282). Thus, it is only those initiation fees and dues which are paid for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

Also, the statute does not distinguish between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. However, none of these characteristics determines the entitlement to tax deduction. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as defined in this rule.

The deduction is limited to business and occupation tax. There is no provision under the law for any deduction from retail sales tax or use tax of amounts designated as initiation fees or dues. Consequently, any club or organization that collects dues or initiation fees from members who in turn receive tangible personal property or retail services as defined in RCW 82.04.050, or licenses to use real property as defined in RCW 82.04-.050, must collect and report retail sales tax on the value of such goods or services sold. (See WAC 458-20-183, Places of amusement or recreation, and WAC 458-20-166, Hotels, motels, boarding houses, resorts, summer camps, trailer camps, etc., for additional guidance relative to retail sales and retail services.)

DEFINITIONS:

The words and terms utilized in RCW 82.04.4282 are not given a statutory definition in the Revenue Act. Under the general rules of statutory construction, those words and terms are to be given their ordinary and common meaning. Hence, for purposes of RCW 82.04-.4282 and this rule the following definitions will apply:

"Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04-.080, respectively. It shall also include income attributable to bona fide initiation fees and bona fide dues.

"Bona fide" shall have its common dictionary meaning, i.e., in good faith, authentic, genuine.

"Initiation fees" are those initial amounts which are paid solely to admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

"Dues" are those amounts paid solely for the privilege or right of retaining membership in a club or similar organization. "Bona fide dues" within the context of this rule shall include only those amounts periodically paid by members which genuinely entitle those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

"Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having important meaning or the quality of being important.

"Goods or services rendered" shall include those amusement and recreation activities as defined in RCW 82.04.050, WAC 458-20-166, and 458-20-183. The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

"Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "dues" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria: (1) It must cover all costs reasonably related to furnishing the goods or services, or (2) it must compare with charges made for similar goods or services by other commercial businesses.

"Value of such goods or services" shall mean the market value of similar goods or services or computed value based on costs of production.

METHODS OF REPORTING:

Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (Retailing or Service) by use of alternative methods, based upon:

1. A standard deduction of 20 percent of gross income (This method is available for use only by not-for-profit organizations); or,

2. Actual records of facilities usage; or,

3. Cost of production of facilities and benefits.

All amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The alternative apportionment methods are mutually exclusive. Thus, if a qualifying organization elects to use the standard deduction, neither of the other methods may be used. Organizations which cannot qualify to take the standard deduction, or which elect not to do so, may apportion their income based upon such actual records of facilities usage as are maintained. This method is accomplished by:

a) The allocation of a reasonable charge for the specific goods or services rendered:

PROVIDED, That in no case shall any allocation of any separate charge for any goods or services be deemed "reasonable" if the aggregate of such charges is insufficient to cover the costs of providing such goods or services; or,

b) The average comparable charges for such goods or services made by other commercial businesses.

The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization. The following are some examples of this reporting method for several different kinds of facilities.

Facility	Period	Source	Value Base	Usage		Value	Taxable Income
Golf	3 mos	Reservations	Mkt Comparison	5,000 rounds	x	$7.50* per Round	$37,500
Camping	6 mos	Vacancy Study	Mkt Comparison	4,500 stays	x	$12.50 per Stay	$56,250
Racquetball	9 mos	Reservations	Charge to Nonmember	1,250 hours	x	$4.00 per Hour	$5,000
Swimming	12 mos	Member Survey	Actual Charges	3,650 uses	x	$1.00 per Use	$3,650
Tennis	1 mo	Graduated Fee Structure	Graduated Fee Structure	200 playing members	x	$50.00 per Member	$10,000

*Figures and dollar amounts shown are hypothetical.

Organizations which provide more than one kind of "goods or services" as defined in this rule, may provide such actual records for each separate kind of goods or services rendered. Based upon this method the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282.

COST OF PRODUCTION METHOD.

This alternative apportionment method is available only for persons who do not take the standard deduction and when, it is impossible or unfeasible to maintain actual usage records. Under such circumstances apportionment of income may be done based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

Direct overhead costs include all items of expense immediately associated with the specific goods or services for which the costs of production method is used, e.g., the salary of a swimming pool lifeguard or a golf club's greenskeeper.

Indirect overhead costs include a pro rata share of total operating costs, including executive and employee salaries as well as a pro rata share of administrative expense and the cost of depreciable capital assets.

No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the cost of providing any specific goods or service, and the denominator of which is the organization's total operating costs. The formula looks like this:

Direct and Indirect Costs of Specific Goods or Service

..... x Gross Income

Total Business Costs

The result is the portion of "amounts derived" which is allocable to the taxable facility (goods or services rendered.) The balance of gross amounts derived is deductible as bona fide initiation fees or dues. If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable.

Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as additional factors shown to be unique to certain kinds of organizations.

Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this rule, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

TAX CLASSIFICATIONS.

Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish golf as well as sauna bath facilities to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been apportioned between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return. (See WAC 458-20-183, 458-20-166, and RCW 82.04.050 for further guidance in distinguishing between retailing and service activities for excise tax purposes.)

NONPROFIT YOUTH ORGANIZATIONS.

Nonprofit youth organizations which, as such, are exempt from property tax under RCW 84.36.030 may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271).

TUITION FEES.

The term "tuition fees" refers only to fees charged by educational institutions, and, in addition to instruction fees, includes library, laboratory, health and other special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institutions.

"Educational institutions" which may deduct "tuition fees" are those which have been created or generally accredited as such by the state and which offer to students an educational program of a general academic nature and those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry and agriculture, but not including specialty schools, business colleges, other trade schools or similar institutions. ((~~Educational institutions which are entitled to the deduction include the following:~~

~~a. The common schools, the state normal schools, the University of Washington, the Washington State University and such other schools which are or may be established by law and maintained at public expense as part of the "uniform school system" provided for in RCW 28.02.010;~~

~~b. Parochial schools and private schools accredited to schools of the "uniform school system" by the state board of education or the state department of education, and which are not specialty schools, business colleges, other trade schools or similar institutions;~~

~~c. Schools whose students and credentials are accepted without examination by the schools referred to in "a" and "b" above, and which are not specialty schools, business colleges, other trade schools or similar institutions.~~))

A business college, dancing school, music school or specialty school is not an "educational institution" within the meaning of that term as defined above. Tuition fees collected by such institutions are taxable under the service and other business activities classification of the business and occupation tax.

The right to deduct bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds does not 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. However, agencies or institutions of the state of Washington, such as the University of Washington and community colleges are exempt from payment of the business and occupation tax.

Revised ((~~June 1, 1970~~)) March 27, 1984.

WSR 84-08-013
EMERGENCY RULES
BOARD OF PILOTAGE COMMISSIONERS

[Order 84-2, Resolution No. 84-2—Filed March 27, 1984]

Be it resolved by the Board of Pilotage Commissioners, acting at Colman Dock, Seattle, Washington 98104, that it does adopt the annexed rules relating to marine pilot liability, trip insurance rule, repealing WAC 296-116-330.

We, the Board of Pilotage Commissioners, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general

APPENDIX F

claim a small business B&O tax credit for the entire ninety-dollar B&O tax liability.

Maximum Credit available for quarterly filers (3 x $35)	$105
B&O Tax due	$ 90
Credit Available	$ 90

(b) HM Corporation has been assigned a quarterly reporting period by the department of revenue. HM's B&O tax liability from all business activities for the fourth quarter is one hundred twenty dollars. This tax liability exceeds the one hundred five-dollar maximum small business B&O tax credit available for a quarterly period (three times the monthly credit amount of thirty-five dollars). However, a reduced small business tax credit is available. This credit is computed by subtracting HM's B&O tax liability of one hundred twenty dollars from the figure of two hundred ten dollars (twice the maximum credit available for a quarterly reporting period). HM Corporation may claim a small business tax credit of ninety dollars.

Twice the Maximum Credit available for quarterly filers (2 x $105)	$210
Less: B&O Tax due	$120
Credit Available	$ 90

(c) XY Inc. has been assigned a quarterly reporting period by the department of revenue. XY's B&O tax liability for the first quarter is two hundred fifty dollars. As XY's B&O tax liability exceeds the two hundred ten-dollar figure used to determine any reduced B&O tax credit (twice the maximum credit available for a quarterly reporting period), XY Inc. is not eligible for the small business B&O tax credit.

Twice the Maximum Credit available for quarterly filers (2 x $105)	$210
Less: B&O Tax due	$250
Credit Available	$ 0

(d) BG Manufacturing has been assigned a quarterly reporting period. BG has incurred a ninety-dollar tax liability under the wholesaling B&O tax classification, and a seventy-dollar tax liability under the manufacturing B&O tax classification, for a total B&O tax liability of one hundred sixty dollars during the first quarter. As BG manufactures much of what it sells at wholesale, BG qualifies for an internal multiple activities tax credit (MATC) of sixty dollars. (See WAC 458-20-19301 on multiple activities tax credits.) BG Manufacturing would claim its MATC prior to computing its small business B&O tax credit. BG's B&O tax liability net of the MATC is one hundred dollars, which is less than the one hundred five-dollar maximum credit available for the reporting period. BG may claim a one hundred-dollar small business B&O tax credit.

Wholesaling B&O Tax due	$ 90
Add: Manufacturing B&O Tax due	$ 70
Subtotal of B&O Tax due	$160
Less: MATC	$ 60
Total B&O Tax Liability	$100
Maximum Credit available for quarterly filers (3 x $35)	$105
B&O Tax due	$100
Credit Available	$100

(e) BB Corporation has been assigned a quarterly reporting period by the department of revenue. BB's total taxable public utility income for the third quarter is one thousand three hundred dollars. BB Corporation is exempt for the payment of public utility tax because BB's taxable public income does not exceed the one thousand five hundred-dollar minimum taxable amount for this reporting period.

[Statutory Authority: RCW 82.32.300. 95-07-088, § 458-20-104, filed 3/17/95, effective 4/17/95; 83-07-034 (Order ET 83-17), § 458-20-104, filed 3/15/83; Order ET 70-3, § 458-20-104 (Rule 104), filed 5/29/70, effective 7/1/70.]

WAC 458-20-114 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) **Introduction.** This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) **Business and occupation tax.**

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities

classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) **Receiving income in the form of dues and/or initiation fees.**

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts 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. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) **Actual records of facilities usage.**

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this

section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) **Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) **Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

[Statutory Authority: RCW 82.32.300. 95-22-100, § 458-20-183, filed 11/1/95, effective 12/2/95; 84-12-046 (Order ET 84-2), § 458-20-183, filed 6/1/84. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-183, filed 6/27/78; Order ET 70-3, § 458-20-183 (Rule 183), filed 5/29/70, effective 7/1/70.]

WAC 458-20-18601 Wholesale and retail cigarette vendor licenses. (1) Definitions. For purposes of this section, the following terms mean:

(a) "Wholesaler" is any person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(b) "Retailer" is any person, other than a wholesaler, who purchases, sells, offers for sale or distributes cigarettes at retail and all persons operating under a retailer's registration certificate.

(c) "Place of business" is any location where business is transacted with, or sales are made to, customers. The term also includes any vehicle, truck, vessel, or the like at which sales are made.

(d) "Department" is the department of revenue.

(2) Wholesale license. Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first be issued a wholesale cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of $650.

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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