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No. 65928-6

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

Puget Sound Energy, Inc.,

Appellant,

v.

City of Bellingham, Finance Department,

Respondent.

Brief of Appellant

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TABLE OF CONTENTS

	Page
I. ASSIGNMENTS OF ERROR.....	1
A. Assignments of Error.....	1
B. Issues Pertaining to Assignments of Error.....	1
II. STATEMENT OF THE CASE.....	2
A. PSE's Business Activities.....	2
1. Electricity Sales.....	3
2. Retail Sales.....	3
3. Non-Utility Services and Late Fees.....	4
B. Procedural Facts.....	4
III. ARGUMENT.....	6
A. PSE's Retail Selling and Service Business Activities Other Than Selling and Furnishing Electric Light and Power are Not Subject to City Utility Tax.....	6
1. PSE's business activities other than selling and furnishing electric light and power are not subject to City utility tax under the plain language of the ordinance.....	6
2. RCW 35.21.710 bars the City from imposing City utility tax on PSE's Retail Sales, Non-Utility Services, and Late Fees.....	9

TABLE OF CONTENTS
(continued)

	Page
3. The Equal Protection Clause of the U.S. Constitution and the Privileges and Immunities provision of the Washington State Constitution bar the City from imposing City utility tax on PSE's non-utility retail selling and service activities while imposing B&O tax at much lower rates on retail sales made by other retailers and on services provided by other service providers.	13
B. PSE's Gross Income from Selling or Furnishing Electric Light and Power Does Not Include City Utility Tax Recovered from PSE's Bellingham Customers.	15
IV. CONCLUSION.....	20
APPENDIX.....	22

TABLE OF AUTHORITIES

	Page
 Cases	
Agrilink Foods, Inc. v. Department of Revenue, 153 Wn.2d 392, 103 P.3d 1226 (2005).....	9, 17
Allegheny Pittsburgh Coal Co. v. County Comm’n of Webster County, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989).....	13, 14
Assoc. Grocers, Inc. v. State of Washington, 114 Wn.2d 182, 787 P.2d 22 (1990).....	13, 14
City of Puyallup v. Pacific Northwest Bell Telephone Co., 98 Wn.2d 443, 656 P.2d 1035 (1982).....	9
Community Telecable of Seattle, Inc. v. City of Seattle, 164 Wn.2d 35, 186 P.3d 1032 (2008).....	12
Island County v. Mackie, 36 Wn.App. 385, 675 P.2d 607 (1984)	16
King County Water District No. 68 v. Tax Commission, 58 Wn.2d 282, 362 P.2d 244 (1961).....	12
Lone Star Cement Corp. v. City of Seattle, 71 Wn.2d 564, 429 P.2d 909 (1967).....	14
Qwest Corp. v. City of Bellevue, 161 Wn.2d 353, 166 P.3d 667 (2007).....	12
Ski Acres, Inc. v. Kittitas County, 118 Wn.2d 852, 827 P.2d 1000 (1992).....	9
Sprint Spectrum, L.P./Sprint PCS v. City of Seattle, 131 Wn.App. 339, 127 P.3d 755 (2006).....	passim
Willman v. Wash. Utilities and Transp. Comm’n, 154 Wn.2d 801, 117 P.3d 343 (2005).....	18
 Statutes	
BMC 6.04.050(D)	7, 10
BMC 6.04.050(E).....	7

TABLE OF AUTHORITIES
(continued)

	Page
BMC 6.06.020(A).....	16, 17, 19
BMC 6.06.030(B).....	7, 8
BMC 6.06.050(D).....	6, 7, 8
RCW 35.21.710	passim
RCW 80.28.020	18
RCW 80.28.090	18
RCW 80.28.100	18
RCW 82.04.250	11
RCW 82.04.290	11
RCW 82.16.010(3).....	8, 17
RCW 82.16.010(4).....	8
RCW 82.16.020(1)(b).....	11
RCW 82.16.060	11
 Regulations and Rules	
WAC 458-20-179.....	11
WAC 458-20-179(1).....	8, 11
WAC 458-20-179(3)(e)	11
WAC 458-20-179(4).....	12
 Other Authorities	
U.S. Constitution, Fourteenth Amendment, Equal Protection Clause.....	6, 15
Washington State Constitution, Article 1, Section 12	6, 15

I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in ruling that PSE's retail selling and service business activities other than selling and furnishing electric light and power are subject to City utility tax.

2. The trial court erred in ruling that PSE's gross income from selling and furnishing electric light and power includes City utility tax recovered or collected from PSE's Bellingham customers.

B. Issues Pertaining to Assignments of Error

1. Whether a City utility tax imposed on "selling or furnishing electric light and power" applies to retail selling and service business activities that are not "selling or furnishing electric light and power" and that are taxed under the City's business and occupation ("B&O") tax? (Assignment of Error 1).

2. Whether RCW 35.21.710 bars the City from imposing utility tax on retail selling and service activities that are not subject to state public utility tax? (Assignment of Error 1).

3. Whether the Equal Protection Clause of the U.S. Constitution and the Privileges and Immunities provision of the Washington State Constitution bar the City from imposing 6% utility tax on PSE's non-utility retail selling and service activities while imposing a

0.17% tax on retail sales by other retailers and a 0.44% tax on services provided by other service providers? (Assignment of Error 1).

4. Whether PSE's gross income from selling and furnishing electric light and power includes City utility tax that is required to be collected from Bellingham customers and paid to the City? (Assignment of Error 2).

5. If *Sprint Spectrum, L.P./Sprint PCS v. City of Seattle*, 131 Wn.App. 339, 127 P.3d 755 (2006), overruled this Court's unpublished decision in favor of PSE with respect to Issue 4 in *Puget Sound Energy, Inc. v. City of Redmond*, 97 Wn.App. 1075 (1999) (unpublished), is PSE, a party bound by this Court's unpublished decision, entitled to rely on the decision when it collected and remitted utility tax from its customers for periods before the Court's decision in *Sprint Spectrum*? (Assignment of Error 2).

II. STATEMENT OF THE CASE

A. PSE's Business Activities

During the period January 1, 2004 through September 30, 2008 (the "Period at Issue"), PSE was engaged in various business activities within Bellingham, including: (a) selling or furnishing electric light and power ("Electricity Sales"); (b) making retail sales and leases of tangible personal property ("Retail Sales"); (c) providing services to persons who

are not purchasing or receiving electricity ("Non-Utility Services"); and (d) receiving late fees from persons who previously purchased or received electricity or other non-utility services ("Late Fees"). CP 122, 123.

1. Electricity Sales

During the Period at Issue, PSE reported and paid \$12,719,230 in City utility tax on its Electricity Sales within Bellingham. CP 4. PSE reported and paid City utility tax on PSE's total basic/customer charges and its per kilowatt hour electricity charges to Bellingham customers. CP 4.

2. Retail Sales

During the Period at Issue, PSE made retail sales of tangible personal property to two primary customers in Bellingham. First, PSE leased hardware, software, and equipment to Quanta Services, Inc. ("Quanta") under a lease agreement dated January 23, 2007. CP 123, 229-273. PSE's lease agreement with Quanta's covered equipment located at various service center locations throughout the state, including Bellingham. *Id.* PSE reported and paid retailing B&O tax on the equipment located in Bellingham.¹ CP 123. PSE also sold steam to Georgia-Pacific Corporation under a Steam Sale Agreement. CP 122, 123. Although the correct B&O tax classification of the steam sales was

¹ PSE also collected and paid Washington and City retail sales tax on its retail leasing of equipment in Bellingham. CP 123, 274 – 275.

originally at issue in this appeal, the parties recently settled the issue on the basis that PSE's sales of steam during the Period at Issue were properly taxed under the retailing B&O tax.²

3. Non-Utility Services and Late Fees

During the Period at Issue, PSE received revenue for setting up accounts for prospective electricity customers and connecting, reconnecting, and disconnecting prospective or former electricity customers to or from the electricity grid. CP 123. These charges were independent of sales of electricity and did not arise or accrue from any such sales. CP 123. These charges related entirely to persons who were either not yet electricity customers or who had ceased to be electricity customers. CP 123. PSE also received late fees from customers who failed to timely pay for electricity or Non-Utility Services. CP 123. PSE reported and paid City and Washington B&O tax under the service and other classification on its revenue from such Non-Utility Services and Late Fees. CP 123.

B. Procedural Facts

During 2008, the City's contract auditors, Tax Recovery Services LLC, conducted a B&O tax and utility tax audit of PSE for the period at

² There has never been an issue that PSE's steam sales were subject to City B&O tax rather than City utility tax. The only issue below was the proper B&O tax classification of those sales. CP 101.

issue. CP 124. As a result of the audit, the City (a) reclassified PSE's Retail Sales (other than steam) from the retailing B&O tax to the utility tax; (b) reclassified PSE's Non-Utility Services and Late Fees from the service and other B&O tax to the utility tax; and (c) increased PSE's "gross income" for utility tax purposes to include City utility taxes recovered from Bellingham customers pursuant to PSE's WUTC electric tariff rate schedule 81. CP 124, 310 - 371. The City issued an assessment \$680,316.76 in utility tax and \$239,345.35 in penalties against PSE. CP 332. PSE paid the assessment in full and timely filed its Complaint for Refund of Taxes and Declaratory Judgment. CP 124, 380 - 390.

The parties agreed that there were no material facts in dispute and presented the matter to the superior court on cross-motions for summary judgment. Following briefing and oral argument, the trial court granted summary judgment to the City on all issues. The trial court did not provide any analysis or explanation other than a brief acknowledgement that the issues "will probably go from here to the Court of Appeals." RP 23, CP 18 – 20. As anticipated by the trial court, PSE filed the present appeal. CP 4 - 10.

III. ARGUMENT

A. **PSE's Retail Selling and Service Business Activities Other Than Selling and Furnishing Electric Light and Power are Not Subject to City Utility Tax.**

PSE's gross income from business activities other than selling and furnishing electric light and power (*i.e.*, Retail Sales, Non-Utility Services, and Late Fees) are not subject to City utility tax for three independent reasons: (1) the activities are not taxable under the plain language of the Bellingham Municipal Code; (2) RCW 35.21.710 bars such taxation; and (3) the Equal Protection Clause of the U.S. Constitution and the Privileges and Immunities provision of the Washington State Constitution bar the City's attempt to impose utility tax on PSE's retail selling and service activities while imposing B&O tax at a much lower rate on other taxpayers engaged in the same business activities.

1. **PSE's business activities other than selling and furnishing electric light and power are not subject to City utility tax under the plain language of the ordinance.**

BMC 6.06.050(D) imposes City electric utility tax "[u]pon every person engaged in or carrying on the *business of selling or furnishing electric light and power.*" BMC 6.06.050(D) (emphasis added). The utility tax is measured by "the total gross income from *such business* in the city" multiplied by a rate of six percent. *Id.* (emphasis added). The City further requires that "[a]ny person engaging in or carrying on more

than one such business, occupation, pursuit, or privilege shall pay the license tax so imposed upon each of the same." BMC 6.06.030(B). These provisions, which mirror the state tax system, recognize that taxpayers often engage in a variety of different business activities and are separately taxable for each business. Consistent with this principle, the City imposes its B&O tax on the business activity of making sales at retail (BMC 6.04.050(D)) and the business activity of rendering services or conducting "other" activities not specifically classified elsewhere (BMC 6.04.050(E)).

In this case, PSE is subject to City utility tax (as well as state utility tax) on its activity of "selling or furnishing electric light and power." BMC 6.06.050(D). Contrary to the City's assessment, PSE is not subject to City or state utility tax on its separate activities of making retail sales, receiving late payment fees, establishing new accounts, and connecting or disconnecting customers from the electricity grid. Each of these activities is distinct from the activity of "selling or furnishing electric light and power" and is taxable under its own tax classification.

The Washington Department of Revenue has long recognized this principle in context of the comparable state utility and B&O taxes:

[M]any persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company ... may

also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances.

WAC 458-20-179(1).³

The City's argument below rests solely on its position that the measure of its utility tax for "selling or furnishing electric light and power" reaches "all of PSE's total gross income from any source." CP 95. However, the City's tax ordinance clearly provides that the measure of the tax is "the total gross income from *such business*" (*i.e.*, "the business of selling or furnishing electric light and power").⁴ BMC 6.06.050(D) (emphasis added). The measure is not, as argued by the City, "total gross income from *any source*." Compare BMC 6.06.050(D) and CP 95.

³ The state utility tax on "light and power businesses" is even broader than the City's equivalent utility tax. The state tax defines "light and power business" as "the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others." RCW 82.16.010(4). The state's definition of gross income further includes "operations incidental" to a light and power business. RCW 82.16.010(3). In contrast, the City utility tax applies only to "the business of selling or furnishing electric light and power." BMC 6.06.050(D).

⁴ The City tax code is clear that that "business" does not mean "taxpayer" or "person," but the activity or activities of a taxpayer or person. For example, the City utility tax chapter requires "[a]ny *person* engaging in or carrying on *more than one such business*, occupation, pursuit, or privilege shall pay the license tax so imposed *upon each of the same*." BMC 6.06.030(B) (emphasis added).

The City's argument that utility tax applies to PSE's gross income from "any source" is further rebutted by its own concession that PSE's gross income from its sales of steam are taxable under the B&O tax and *not* subject to utility tax. CP 101. Like sales of steam, PSE's other non-utility activities are subject to City B&O tax and not City utility tax.

Finally, "if any doubt exists as to the meaning of a taxation statute, the statute must be construed most strongly against the taxing power and in favor of the taxpayer." *Agrilink Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392, 396-97, 103 P.3d 1226 (2005) (quoting *Ski Acres, Inc. v. Kittitas County*, 118 Wn.2d 852, 857, 827 P.2d 1000 (1992)); *City of Puyallup v. Pacific Northwest Bell Telephone Co.*, 98 Wn.2d 443, 448, 656 P.2d 1035 (1982). In this case, the City's ordinance imposing utility tax on "selling or furnishing electric light and power" measured by the gross income "from such business" does not unambiguously reach gross income from other business activities, which are taxable under the City's B&O tax.

2. RCW 35.21.710 bars the City from imposing City utility tax on PSE's Retail Sales, Non-Utility Services, and Late Fees.

Even if the City's tax ordinance was rewritten to reach PSE's non-utility retailing and selling activities, such tax would be barred by RCW 35.21.710. RCW 35.21.710 provides that "[a]ny city which imposes a

license fee or tax upon *business activities consisting of the making of retail sales of tangible personal property* which are measured by gross receipts or gross income from such sales, shall impose such tax at a *single uniform rate* upon *all such business activities*." (Emphasis added). The City generally imposes a B&O tax upon the business of making sales at retail measured by the gross proceeds of the sales multiplied by a tax rate of 0.17%. BMC 6.04.050(D). In this case, the City assessed a 6.0% utility tax on PSE's retail sales of tangible personal property to consumers in Bellingham. CP 124, 337. The City's audit report indicates that "[w]e have scheduled all 'retail sales' from the Bellingham General Business and Occupation Tax return as Bellingham Electric Utility Tax Gross Income." CP 337. The 6.0% utility tax rate that the City contends applies to PSE's retail sales, and the 0.17% B&O tax rate, which generally applies to retail sales, are plainly not a "single uniform rate" as required by RCW 35.21.710.

RCW 35.21.710 further provides: "The taxing authority granted to cities for taxes upon business activities measured by gross receipts or gross income from sales shall not exceed a rate of .0020," except in certain specified circumstances. The 6.0% utility tax rate, which was applied by the City to PSE's Retail Sales, Non-Utility Services, and Late Fees, exceeds "a rate of .0020" (*i.e.*, 0.2%) for taxes measured by gross receipts.

RCW 35.21.710 provides an exception to the uniformity requirement and rate limitation for "any business activities subject to the tax imposed by chapter 82.16 RCW"—the state public utility tax. There is no dispute that PSE's retail sales and leases of tangible personal property (other than electricity and natural gas) are subject to state B&O tax under the retailing classification, RCW 82.04.250, and are not subject to state public utility tax under chapter 82.16 RCW. RCW 82.04.250, 82.16.020(1)(b), 82.16.060. *See also* WAC 458-20-179(1) ("[M]any persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the [B&O] tax. For example, a gas distribution company ... would be ... taxable under the [B&O] tax with respect to its sale of gas appliances.")

Similarly, PSE's revenue from Non-Utility Services and Late Fees are subject to state B&O tax under the service and other classification, RCW 82.04.290, and are not subject to state public utility tax under chapter 82.16 RCW. RCW 82.04.250, 82.16.020(1)(b), 82.16.060. WAC 458-20-179 specifically provides that "charges for line extensions, connection fees, line drop charges, start-up fees" and similar "activities which are incidental to a public utility activity" are subject to B&O tax and not utility tax when "performed for a customer prior to sale of a public utility service to the customer." WAC 458-20-179(3)(e). *See also King*

County Water District No. 68 v. Tax Commission, 58 Wn.2d 282, 286, 362 P.2d 244 (1961) (holding that connection charges and amounts received from prospective utility customers were not subject to utility tax). The rule further provides:

Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This ***includes interest charged for failure to timely pay*** for utility services or for ***special services which were performed prior to the customer receiving services, such as connection charges.***

WAC 458-20-179(4) (emphasis added).

The City's power to tax must be delegated by the Legislature and the scope of its power is defined and limited by state law. *Community Telecable of Seattle, Inc. v. City of Seattle*, 164 Wn.2d 35, 41, 186 P.3d 1032 (2008). *See also Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007) (holding that state law prohibited Bellevue from imposing utility tax on interstate telephone service). The City's attempt to impose a 6.0% utility tax on Retail Sales, Non-Utility Services, and Late Fees, which are not "subject to the tax imposed by chapter 82.16 RCW," is barred by RCW 35.21.710.

3. The Equal Protection Clause of the U.S. Constitution and the Privileges and Immunities provision of the Washington State Constitution bar the City from imposing City utility tax on PSE's non-utility retail selling and service activities while imposing B&O tax at much lower rates on retail sales made by other retailers and on services provided by other service providers.

There is no dispute that the City is generally free to classify and tax different business activities at different tax rates. However, once the City establishes those tax classifications, the City is not free to ignore them. *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989); *Assoc. Grocers, Inc. v. State of Washington*, 114 Wn.2d 182, 188, 787 P.2d 22 (1990).

In this case, the City has assessed a 6.0% utility tax on PSE's Retail Sales, while imposing a 0.17% retailing B&O tax on other retailers. CP 331 – 371; RP 12. Not only is the City taxing PSE differently than retailers generally, the City is taxing PSE differently than other utilities that conduct a combination of utility and retailing activities. For example, the City acknowledges that AT&T is subject to utility tax on its business of selling telephone service but is subject to retailing B&O tax on its retail sales of telephone equipment. RP 12. Similarly, the City has assessed a 6.0% utility tax on PSE's Non-Utility Services, while imposing a 0.44% service B&O tax on other non-utility service providers. *See* CP 331 – 371.

As noted by the Washington Supreme Court, "[t]he aim and purpose of the special privileges and immunities provision of article I, section 12, of the State Constitution and of the equal protection clause of the Fourteenth Amendment of the Federal Constitution is to secure equality of treatment of all persons, without undue favor on the one hand or hostile discrimination on the other." *Lone Star Cement Corp. v. City of Seattle*, 71 Wn.2d 564, 570, 429 P.2d 909 (1967). To that end, legislation involving classifications must satisfy two requirements: "(1) The legislation must apply alike to all persons within the designated class; and (2) reasonable ground must exist for making a distinction between those who fall within the class and those who do not." *Id.* When taxpayers are all in the same class (as are PSE are other retailers and service providers), such taxpayers "must, for constitutional reasons, be treated alike." *Id.* at 571. *See also Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989) (holding that the Equal Protection Clause was violated by a county's administrative practice of assessing property taxes differently despite the property being in the same legislative classification); *Assoc. Grocers, Inc. v. State of Washington*, 114 Wn.2d 182, 188, 787 P.2d 22 (1990) ("Where, as here, there is but one class, and the members of it are taxed differently, the statute must be declared unconstitutional.")

City is attempting—contrary to its own legislative classifications—to impose a tax on PSE's business of making retail sales at a rate that is more than **35 times higher** than other taxpayers conducting the identical business of making retail sales. The City's position that PSE must pay a 6.0% tax when it sells or leases computer equipment, but that a another taxpayer selling or leasing identical computer equipment pays a 0.17% tax is not supported by City's tax ordinances and would deprive PSE of equal protection of the laws in violation of the Equal Protection Clause of the U.S. Constitution and the privileges and immunities afforded similarly situated taxpayers in violation of Article 1, Section 12 of the Washington State Constitution.⁵

B. PSE's Gross Income from Selling or Furnishing Electric Light and Power Does Not Include City Utility Tax Recovered from PSE's Bellingham Customers.

Pursuant to Washington Utilities and Transportation Commission ("WUTC") tariffs, PSE recovers City utility taxes from its Bellingham customers, who bear the full burden of the City tax.⁶ CP 123, 282 - 302. PSE has excluded such tax reimbursements from "gross income" in Bellingham based on the holding of this Court in earlier litigation

⁵ This Court does not need to reach the constitutional issues unless it concludes that the Department's assessment was proper under the plain language of the Bellingham tax ordinances and RCW 35.21.710.

⁶ Bellingham customers would similarly receive the benefit of the refund of City utility taxes in this case.

involving the City of Redmond's virtually identical utility tax ordinance. CP 11, 12, 304 - 309 (*Puget Sound Energy, Inc. v. City of Redmond*, 97 Wn.App. 1075 (1999) ("*PSE v. Redmond*").⁷

In *PSE v. Redmond*, this Court held that Redmond's definition of "gross income" did not unambiguously include PSE's recovery of utility taxes and, as a result, was strictly construed against the City. CP 304 - 309. Redmond's definition of gross income, which has since been amended, provided:

'Gross income' shall mean the value proceeding or accruing from the sale of tangible property or service, and receipts ... by reason of investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated ... and without any deduction on account of the cost of the property sold, cost of materials used, labor costs, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses.

CP 304. The City's definition of "gross income" at issue in this case is indistinguishable. BMC 6.06.020(A). As in *PSE v. Redmond*, the City's definition of "gross income" does not specifically include the recovery of

⁷ To be clear, PSE is not citing *PSE v. Redmond* as legal precedent, but as evidence regarding PSE's facts and its status as a party bound to follow the decision based on principles of collateral estoppel and its duties to ratepayers as a regulated utility. See *Island County v. Mackie*, 36 Wn.App. 385, 675 P.2d 607 (1984) (n. 3) (permitting the citation to unpublished authority to establish facts rather than as legal precedent).

City utility taxes, nor are such taxes unambiguously "value proceeding or accruing" from selling or furnishing electricity. Any ambiguity with respect to the scope of the utility tax must be construed against the City and in favor of PSE and its customers. *Agrilink Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392, 396-97, 103 P.3d 1226 (2005).

The City's definition of "gross income" also contrasts significantly with the state utility tax definition. The state's definition of gross income includes not just "value proceeding or accruing" from the sale of electricity but also "operations incidental thereto." RCW 82.16.010(3). The City's definition of gross income is limited to "value proceeding or accruing" from selling or furnishing electricity. BMC 6.06.020(A).

Second, the state's definition of gross income specifically includes "taxes;" the City's does not. *Compare* RCW 82.16.010(3) and BMC 6.06.020(A).

In the trial court proceedings in this case, the City pointed to this Court's 2006 decision in *Sprint Spectrum, L.P./Sprint PCS v. City of Seattle*, 131 Wn.App. 339, 127 P.3d 755 (2006) ("*Sprint Spectrum*"), in support of its position that "gross income" includes City utility taxes recovered from PSE's Bellingham customers. The City criticized PSE's reliance on the reasoning in its own court of appeals case, *PSE v. Redmond*, on the grounds that it was "not published and has since been

overruled by the published opinion in *Sprint Spectrum*." CP 100. *Sprint Spectrum* is not controlling in this case for several reasons.

First, *Sprint Spectrum* addressed gross income in the context of an unregulated cellular telephone utility that chose to pass its city utility tax through to customers. As this Court concluded, "we do not agree that Sprint's decision to charge its customers for the utility tax changes the fact that the customer is paying the sales price fixed by Sprint." *Sprint Spectrum, L.P./Sprint PCS v. City of Seattle*, 131 Wn.App. 339, 347, 127 P.3d 755 (2006). Unlike PSE, Sprint was not a regulated utility and was not required to pass utility taxes through to customers as part of its WUTC tariff. *See* RCW 80.28.020, 80.28.090, 80.28.100; *Willman v. Wash. Utilities and Transp. Comm'n*, 154 Wn.2d 801, 117 P.3d 343 (2005); CP123, 282 - 302. In contrast, PSE's WUTC tariffs make the city utility tax the obligation of the customer. Doing so is critical for a regulated utility because it assures that ratepayers outside Bellingham do not bear the cost of the City's tax as part of PSE's general rates.

Further, unlike Sprint, PSE had an obligation under Washington law as a regulated public utility to act prudently with respect to city taxes and pass any such taxes through to its customers. *See* RCW 80.28.020; *Willman v. Wash. Utilities and Transp. Comm'n*, 154 Wn.2d 801, 117 P.3d 343 (2005). It would have been exceedingly *imprudent* for PSE to charge

a utility tax to ratepayers under a substantially identical statute as was addressed explicitly by this Court in a case to which PSE was bound as a party. If PSE is unsuccessful in this case, it will, pursuant to its tariff, pass the assessed utility tax through to its Bellingham customers. If PSE is successful, its Bellingham customers will realize the entire benefit. In short, there is no "value proceeding or accruing" to PSE as a result of the city utility tax and, accordingly, PSE has no "gross income" when it passes such taxes through its customer, who are responsible for the taxes under the WUTC tariff. BMC 6.06.020(A).

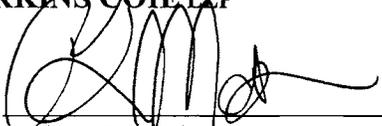
Finally, *Sprint Spectrum* was issued on January 30, 2006, mid-way through the audit period in this case. At least until the *Sprint Spectrum* decision, PSE would have been collaterally estopped in any ratepayer or WUTC challenge from collecting utility tax reimbursements from Bellingham customers. The Bellingham code provisions are indistinguishable from the *PSE v. Redmond*. Further, *PSE v. Redmond* case was a final decision on the merits to which PSE was a party. PSE was not free to simply ignore *PSE v. Redmond* and charge its customers in a manner explicitly inconsistent with the holding of that case. Thus, even if the City is correct that *Sprint Spectrum* overruled *PSE v. Redmond*, any such impact on PSE should be prospective and apply only for periods after January 30, 2006.

IV. CONCLUSION

For the reasons stated above, PSE respectfully requests that the Court of Appeals reverse the order of the trial court and remand the case with instructions to enter judgment for PSE refunding the utility tax and penalties assessed by the City.

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Puget Sound Energy, Inc.

CERTIFICATE OF SERVICE

I, Jessica Flesner, certify and declare:

1. I am a legal secretary employed by Perkins Coie LLP.
2. On November 16, 2010, I caused true and correct copies of

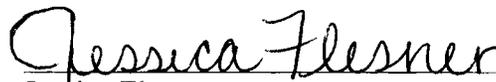
the foregoing Brief of Appellant to be served by U.S. Mail postage prepaid on the following:

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Bellingham, WA 98225

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

DATED: November 16, 2010, at Seattle, Washington.


Jessica Flesner

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APPENDIX



««6.04.040 - Agency - Sales And Services By Agent, Consignee, Bailee, Factor Or Auctioneer

6.04.060 - Doing Business With The City
»»

City of Bellingham Municipal Code

Title 6 BUSINESS TAXES, LICENSES, AND REGULATIONS
Chapter 04 BELLINGHAM BUSINESS AND OCCUPATIONS TAX CODE

6.04.050 - IMPOSITION OF THE TAX - TAX OR FEE LEVIED

Except as provided in BMC 6.05.040(D), there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

A. Upon every person engaging within the City in business as an extractor, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the City for sale or for commercial or industrial use, multiplied by the rate of seventeen one-hundredths of one percent. The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

B. Upon every person engaging within the City in business as a manufacturer, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City or processed, multiplied by the rate of seventeen one-hundredths of one percent. The measure of the tax is the value of the products, including by-products, so manufactured or processed, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

C. Upon every person engaging within the City in the business of making sales at wholesale, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of seventeen one-hundredths of one percent.

D. Upon every person engaging within the City in the business of making sales at retail or retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of seventeen one-hundredths of one percent.

E. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of forty-four one-hundredths of one percent. This subsection includes, among others, and without limiting the

scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail or a sale at wholesale.

[Ord. 2004-12-083; Ord. 2002-12-105]



«6.06.040 - License Tax Year

6.06.060 - Deductions And Exemptions

»»

City of Bellingham Municipal Code

Title 6 BUSINESS TAXES, LICENSES, AND REGULATIONS
Chapter 06 OCCUPATION TAX AND LICENSE

6.06.050 - OCCUPATIONS SUBJECT TO TAX - AMOUNTS

There are levied and shall be collected annual license fees or occupation taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as follows:

A. Telephone Business. Upon every person engaged in or carrying on a telephone business, there shall be levied a tax equal to the following percentages:

7.614% in 1987;
7.345% in 1988;
7.076% in 1989;
6.807% in 1990;
6.538% in 1991;
6.269% in 1992;
6.000% in 1993 and each year thereafter of the total gross operating revenues, derived from the operation of such businesses within the city; provided, however, that the minimum fee shall not be less than \$100 per tax year. Gross operating revenue for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by the regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

B. Telegraph Business. Upon every person engaged in or carrying on the telegraph business, a fee or tax equal to 3-1/2% of the total gross income from such business in the city during this fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than \$100 per tax year.

C. Gas Suppliers.

1. Upon every person engaged in or carrying on the business of selling or furnishing gas for hire, a fee or tax equal to the following percentages:

6.6% in 1985;
6.5% in 1986;
6.4% in 1987;
6.3% in 1988;
6.2% in 1989;
6.1% in 1990;

6.0% in 1991 and each year thereafter of the total gross income

from such business conducted within the city with a minimum fee or tax of \$100 per tax year; provided, however, that a fee or tax of 1% shall apply to that portion of gross income derived from a single use site in excess of \$250,000 per month. Suppliers claiming the reduced rate for volume sales to single users shall supplement monthly returns required by Section 6.06.070Bas required by the Finance Director.

2. a. In accordance with applicable State law, the tax of this subsection C shall apply to every person for the privilege of using natural gas or manufactured gas in the City as a consumer. The rate of tax herein shall be applied to the value of the article used by the taxpayer for domestic, business, or industrial consumption.

b. The "value of the article used" shall have the meaning set forth in RCW 82.12.010(1) (as from time to time amended), and shall not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas which are subject to and do pay the tax imposed by subsection (C)(1), above.

c. There shall be a credit against the tax levied under this subsection C(1) in an amount equal to any tax paid by:

i. The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to this section 6.06.050 by another state with respect to the gas for which a credit is sought; or,

ii. The person consuming the gas upon which a use tax similar to the tax imposed by this subsection was paid to another state with respect to the gas for which a credit is sought.

d. The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be by the Washington State Department of Revenue pursuant to RCW 82.14.050.

D. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, a fee or tax equal to the following percentages:

- 6.6% in 1985;
- 6.5% in 1986;
- 6.4% in 1987;
- 6.3% in 1988;
- 6.2% in 1989;
- 6.1% in 1990;
- 6.0% in 1991 and thereafter of the total gross income from such business in the city; provided, however, that the minimum fee or tax shall not be less than \$100 per tax year, and provided further, that this tax shall not apply to persons or entities selling electric power to a utility otherwise taxed under this subparagraph D which ultimately resells power to consumers.

E. **Water Suppliers.** Upon every person, including any water department, engaged in or carrying on the business of selling or furnishing water for domestic or commercial purposes, a fee or tax equal to 11½% of the total gross income from such activity, such tax to be paid covering each month's business activity and to be paid within 30 days following the conclusion of the next preceding month. Such tax shall be applicable to the extraterritorial revenues of such businesses if their principal

place of business is situated within the corporate limits of Bellingham and if the system which generates the extraterritorial revenue is interconnected with a portion of the system located within the city and at least 75% of the total system (by value) is located within the City of Bellingham.

F. Upon every person engaged in or carrying on the business of community antenna TV, also known as cable TV, there is provided a fee or tax to be levied and collected as provided herein, equal to 6% of the total gross income from such business from any source whatsoever, commencing on the 1st day of January, 1983.

G. Sewer Collection and Treatment. Upon every person, including any sewer utility, engaged in or carrying on the business of collecting and creating sewerage waste within the city, a fee or tax equal to 11½% of the total gross income from such activities, such tax to be paid covering each month's business activities, and to be paid within 30 days following the conclusion of such month.

H. Municipal Golf Course. Upon every person or organization, including any Parks and Recreation Department, engaged in or carrying on the business of a municipal golf course, a fee or tax equal to 4% of the total gross green fee and trail fee income from such activity. The tax herein shall be paid on account of each month's business activity and shall be paid within 30 days of the end of such month.

I. Cellular Telephone Business.

1. With regard to cellular telephone businesses, which are taxes in accordance with subsection A above, a deduction from gross income shall be allowed, only to those companies which keep their regular books of account on an accrual basis, for cash discounts, credit losses actually sustained, or to reverse a billing or charge that had been made as a result of third-party fraud or other crime not properly a debt of a customer to be phased in as follows: 20% for those occurring in 1995, 40% for those occurring in 1996, 60% for those occurring in 1997, 80% for those occurring in 1998, and a complete deduction for those occurring in 1999 and thereafter.

2. With regard to allocation among taxing jurisdictions based on service address:

a. Service address: Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

b. Presumption: There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

c. Roaming phones: When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

d. Dispute resolution: If there is a dispute between or among the City and other city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been

paid to one of the contesting cities, the cellular telephone company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

J. Storm and Surface Water. The City's storm and surface water utility shall pay a tax equal to 11½% of the total gross income from the utility, such tax to be paid covering each month's business and to be paid within 30 days following the conclusion of such month.

[Ord. 2002-12-101; Ord. 2001-02-009; Ord. 2000-11-070; Ord. 2000-05-022; Ord. 1998-05-024; Ord. 10800 §1, 1996; Ord. 10611 §2, 1995; Ord. 10503, 1994; Ord. 10412, 1993; Ord. 10277 §1, 1992; Ord. 10170, 1991; Ord. 10164 §1, 1991; Ord. 9760 §1, 1988; Ord. 9616, 1986; Ord. 9537, 1986; Ord. 9376 §1-3, 1984; Ord 9366 §1, 1984; Ord. 9268 §1, 1983; Ord. 9260 §1-3, 1983; Ord. 9214 §1, 1983; Ord. 9154 §1-3, 1982; Ord. 9122 §1, 1982; Ord. 9040 §3, 1981; Ord. 8988 §1, 1981; Ord. 8954 §1, 1981; Ord. 8921 §1, 1980; Ord. 8886 §2, 1980; Ord. 8630 §1, 1977; Ord. 8629 §1, 1977; prior code §15.04.050, 15.04.060]