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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT UTTER and FAITH IRELAND in the name of the STATE OF
WASHINGTON,

Petitioners,

v.

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Respondent.

RESPONSE TO PETITION FOR REVIEW/CROSS-PETITION FOR
REVIEW

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I. INTRODUCTION

The Court of Appeals determined that a citizen cannot pursue a lawsuit alleging campaign finance law violations on behalf of the State if the State already investigated and determined the claims are without merit. *Utter ex rel. State v. Building Industry Association of Washington*, __ Wn. App. __, 310 P.3d 829 (2013). By seeking review of this unremarkable decision, Petitioners advance a theory contrary to the language of the governing statute that would open the door to harassing litigation chilling First Amendment activities. This Court should deny review.

Division One withdrew an unpublished, 2:1 split decision, and published a unanimous opinion affirming entry of summary judgment against Petitioners. The Court concluded that Petitioners' suit against the Building Industry Association of Washington ("BIAW") alleging violations of the Fair Campaign Practices Act ("FCPA") was precluded because the Public Disclosure Commission ("PDC") (i) investigated Petitioners' allegations against BIAW and Member Services Corporation ("MSC"); (ii) determined the allegations against MSC merited a civil action, which the AG brought and later settled; but (iii) also determined that the allegations against BIAW, a different entity, lacked merit and did not warrant a civil action. 310 P.3 at 843-44. Because the central holding in *Utter* is correct, and no conflict exists between the courts of appeal

regarding the definition of “action” under RCW 42.17A.765(4),
Petitioners do not satisfy RAP 13.4, and their request should be denied.

If this Court grants review, BIAW cross-petitions for review of the Court of Appeals’ denial of BIAW’s attorneys’ fees and costs. BIAW is entitled to fees under RCW 42.17A.765 as the prevailing defendant in this saga of politically motivated litigation, designed to chill First Amendment activities. BIAW respectfully requests the Court accept review of the attorney fee issue and award it fees and costs.

II. IDENTITY OF RESPONDENTS/CROSS-PETITIONERS

Respondent and Cross-Petitioner is BIAW.

III. ISSUES PRESENTED

The primary question is whether the State “acts” for purposes of precluding a citizen suit under RCW 42.17A.765(4) where, as here, the State conducts an investigation of alleged FCPA violations, concludes that no violations occurred, and declines to file a civil action. If the Court answers this question in the affirmative, it need not address the remaining issues. If, however, the Court answers in the negative, it must then address four related questions:

- Whether the Court of Appeals erred in finding, in dicta, that a clerical error in a tax form, later corrected, created a triable issue of fact as to whether BIAW qualified as a “political committee.” (Yes, it did.)

- Whether the Court of Appeals erred in ruling, in dicta, that a triable issue of fact existed as to whether BIAW qualified as a “political committee” based on statements made by representatives of MSC. (Yes, it did.)
- Whether the Court of Appeals correctly held that the “attribution” rules under RCW 42.17A.455 did not apply to the definition of a “political committee.” (Yes, it did.)
- Whether the lower courts erred in refusing to award BIAW its attorneys’ fees and costs when Petitioners’ abandoned their central claim only after BIAW moved for summary judgment and conducted the litigation in a vexatious manner. (Yes, they did.)

IV. STATEMENT OF THE CASE

BIAW largely agrees with the facts as set out in *Utter*, 310 P.3d at 832-34, and does not repeat them. A more detailed summary of the procedural history, however, is useful for consideration of the issues here.

During the 2008 gubernatorial campaign, Petitioners wrote to the AG accusing BIAW and MSC of FCPA violations. The PDC investigated and determined MSC violated the law but BIAW had not. CP 56-78. Based on the PDC’s recommendation, the AG filed a lawsuit against MSC and not against BIAW. CP 109-114. The AG ultimately settled the lawsuit against MSC. CP 116-120.

Although the State determined the claims against BIAW lacked merit, Petitioners filed their own lawsuit, in the name of the State, seeking nearly \$21 million in damages from BIAW. CP 1-16. Specifically, Petitioners alleged that BIAW coordinated with gubernatorial candidate

Dino Rossi on a fundraising effort and that this alleged coordination converted roughly \$7 million in independent expenditures by BIAW into campaign contributions thereby exceeding allowable contribution limits. Petitioners also alleged BIAW qualified as a “political committee” under the FCPA and failed to register and report as such.

Arguing that a deposition of candidate Rossi was necessary to prove their central “coordination” claim, Petitioners obtained an *ex parte* order for expedited discovery without notice to BIAW despite a request from BIAW’s counsel for notice of proceedings. CP 873, 801. That order was rescinded on BIAW’s motion. CP 210. Petitioners then moved for expedited discovery, again arguing that it was imperative they depose Mr. Rossi *before* the election to prove their coordination claim and to support a motion for threatened pre-election injunctive relief. After hundreds of pages of motions, Petitioners’ counsel deposed Mr. Rossi and conducted a press conference outside the deposition, just days before the 2008 election. CP 204-205. (Petitioners’ counsel was ultimately admonished by the trial court for misconduct in that deposition. CP 906.)

Tellingly, after Petitioners got what they were after—a deposition of Mr. Rossi on the eve of the election—Petitioners (or their lawyers) lost interest in this case. Petitioners never filed the promised motion for pre-election relief, which was the whole premise for the *ex parte* order and the

emergency motions and depositions. CP 204-205.

Two years later, *after* BIAW filed a motion for summary judgment on all claims, including the “coordination/excess contribution” claim, CP 17-43, Petitioners filed an opposition addressing only the “political committee” claim. CP 211-237. They did not brief the coordination claim, effectively conceding they had no evidence to support it after two years of litigation. The trial court granted BIAW’s motion and dismissed all claims, but it denied BIAW’s request for attorneys’ fees and costs. CP 833-835; 1052-53. Petitioners appealed summary judgment on the “political committee” claim (but not the coordination/excess contribution claim), and BIAW cross-appealed its attorneys’ fees claim. CP 1054-59.

In an unpublished split decision, the Court of Appeals reversed and remanded. *Utter ex rel. State v. Bldg. Indus. Ass’n of Wash.*, No. 66439-5-I, Unpublished Decision (Wash. Ct. App. Oct. 29, 2012) (Pet’r’s Appendix 1-20). BIAW moved for reconsideration, repeating many of the arguments it made at trial and on appeal.¹ The Court of Appeals granted BIAW’s motion and published a unanimous opinion affirming the trial court’s summary judgment against Petitioners. *Utter*, 310 P.3d at 844. Despite BIAW’s successful defense against all claims at trial and on

¹ The motion was supported by amici briefs from SEIU Healthcare 775NW, UFCW 21, the Washington Education Association, SEIU Healthcare 1199NW, SEIU Local 925, and the Washington State Labor Council, AFL-CIO, all of whom criticized the decision.

appeal (including the \$21 million in excess contribution/coordination claim at the center of the suit) and being forced to endure a meritless legal battle, the court refused to award BIAW attorneys' fees and costs. *Id.* at 844-45. This was an error contrary to the statute.

V. ARGUMENT & AUTHORITY

A. The State Acted, Precluding the Citizen Suit.

Division One affirmed summary judgment for BIAW, holding that a citizen action under Chapter 42.17A RCW is precluded where, as here, the State conducts an investigation into alleged wrongdoing, determines the allegations lack merit, and declines to file a lawsuit.² *Utter*, 310 P.3d at 843. The holding is consistent with the plain language of the statute and common sense. The petition should be denied.

Under the Fair Campaign Practices Act (FCPA), a citizen may proceed with a suit only after twice providing written notice of specific violations to the AG and only if the AG fails to commence "an action"

² Petitioners contend that the Division One reached the preclusion issue *sua sponte* and without the benefit of any briefing. Pet'r's Br. at 8. Petitioners are incorrect; BIAW briefed the preclusion issue before the trial court and before Division One. CP 27-30; BIAW's Answering Br. and Opening Cross-Appeal Br. at 34-36; BIAW's Mot. for Reconsideration at 19-20. Petitioners, however, failed to respond to the argument, *Utter*, Unpublished Decision at 6 n.4 (inexplicably declining to reach an issue merely because "Utter and Ireland [did] not respond"). By failing to respond, Petitioners waived the argument. *New Meadows Holding Co. v. Wash. Water Power Co.*, 34 Wn. App. 25, 29 (1983). In any event, the court may affirm summary judgment on any ground supported by the record. *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 347 (1976). Because the record supports summary judgment in favor of BIAW, the Court should deny Petitioners' request for review.

within the prescribed statutory deadlines. If those requirements are met, RCW 42.17A.765(4) provides that a citizen can “bring in the name of the state any of the *actions ... authorized under this chapter.*” “[A]ctions ... authorized under this chapter” include:

- (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750.
- (2) The attorney general and the prosecuting authorities of political subdivisions of this state *may investigate or cause to be investigated* the activities of any person who there is reason to believe is or has been acting in violation of this chapter

RCW 42.17A.765 (emphasis added). *See Utter*, 310 P.3d at 842.

Thus, the statute permits the State to take action either by filing a civil action (as it did against MSC) or by investigating or causing to be investigated allegations of wrongful conduct (as it did against MSC and BIAW). As the Court of Appeals explained, “[w]here a ‘citizen’s action’ refers to any of the actions authorized under chapter 42.17A RCW, we think it logical that an ‘action’ by the AG or the PDC also refers to any of the actions authorized under RCW 42.17A.765.” *Utter*, 310 P.3d at 843. Thus, the Court of Appeals held that “[t]he State took an action against BIAW under RCW 42.17A.765 when it caused PDC to investigate the allegations that BIAW was a political committee and then declined to file

a lawsuit based on the PDC's conclusion that BIAW did not receive contributions or make expenditures to further electoral political goals and was not a political committee." *Id.* at 844.

That holding is correct. First, where the State investigates and, as here, determines a claim lacks merit, allowing plaintiffs to pursue the meritless claim does not advance the public interest or deter wrongdoing. Indeed, allowing the citizen suit to proceed would *cause* significant damage, as it did here, by forcing innocent defendants to endure lengthy, expensive, and meritless litigation.

Second, Petitioners urge a rule that would allow frivolous and harassing lawsuits in the name of the State on issues the State itself has concluded are without merit. Ordinarily the State would be equitably estopped from taking inconsistent positions. Such a rule is also "inconsistent with the notion that the citizen's action is brought 'in the name of the state.'" *Utter*, 313 P.3d at 844. The citizen suit provision does not allow "every watchdog group ... to demand that the PDC find the watchdog's allegations meritorious or ... sue in superior court." *Id.* at 843 (quoting *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n (EFF I)*, 111 Wn. App. 586, 609 (2002)). If it did, the citizen suit provision would chill First Amendment activity because political opponents will, as they did here, use the threat of citizen enforcement to

punish those with whom they disagree, even when the PDC has determined there is no merit to the claims.

B. No Conflict Exists Between the Courts of Appeal as to the Meaning of the term “Action” in RCW 42.17A.765.

Division One’s opinion is consistent with Division Two’s cases. Petitioners’ argument to the contrary stands or falls on whether Division One held in this case that a mere referral to the PDC is sufficient to preclude a citizen suit. That is not what happened and not what *Utter* held. *See* Section V.A., *supra*.

In addition, the holdings in the Division Two cases line up with *Utter* in logical progression. *EFF I* held a citizen suit is precluded when the PDC investigates allegations of FCPA violations and files an administrative proceeding based on those allegations. *EFF I*, 111 Wn. App. at 605; *see also Utter*, 310 P.3d at 843. The same court confirmed in *State ex rel. Evergreen Freedom Foundation v. National Education Ass’n (EFF II)*, 119 Wn. App. 445 (2003), that the central holding of *EFF I* was still good law while clarifying that it never “intend[ed] to imply that the AG’s customary referral to the PDC for initial review and investigation precludes a citizen’s action.” *Id.* at 453. Thus, neither *Utter*, *EFF I*, nor *EFF II* stands for the proposition that the mere referral of a citizen complaint to the PDC is sufficient to preclude a later suit under RCW

42.17A.765(4). Rather, *EFF I* and *EFF II* support the rule that a plaintiff is “free to file a citizen’s lawsuit on the issues that either the [PDC] or the AG did not act on,” and that “where the PDC acted ... by filing an administrative action based on those allegations, those specific allegations could not be included in ... [the] citizen’s action.” *Utter*, 310 P.3d at 843 (quoting *EFF I*, 111 Wn. App. at 594).

Division Two, however, never addressed whether the AG or the PDC “fail[s] to commence an action’ under RCW 42.17A.765(4) when it takes action under RCW 42.17A.765(2) or (3) but decline[s] to bring a civil action under subsection (1).” *Id.* Division One addressed that question in this case, and it answered in the affirmative. Because no conflict exists between the Divisions, Petitioners fail to satisfy the standards of RAP 13.4 and review should be denied.

C. The Trial Court Properly Granted Summary Judgment On the Contribution, Expenditure, and Attribution Claims.

If the Court agrees with Division One that the State’s action in this case precludes the citizen suit, it need not address the remaining issues. If, however, the Court decides to reach Petitioners’ other claims, it should reject them for the reasons set out below and affirm the trial court’s determination that BIAW did not qualify as a “political committee” or otherwise violate campaign disclosure laws.

1. ***In re WBBT* is Inapposite.**

The test for “political committee” status contains two alternative prongs: (1) the contribution prong and (2) the expenditure prong. *Utter*, 310 P.3d at 834. The Court of Appeals confirmed that BIAW was entitled to summary judgment on the “contribution prong” but that a factual dispute existed as to the “expenditure prong.” *Id.* at 835, 836, 840. Petitioners claim that disputes of material fact existed under both prongs and therefore the trial court should be reversed. For support, Petitioners cite *In re Wash. Builders Benefit Trust (In re WBBT)*, 173 Wn. App. 34 (2013), claiming that the facts found in the trial of that case precluded summary judgment in this case. Petitioners are wrong.

In re WBBT is a *different* case with *different* parties involving an entirely *different* legal matter. That case turned on whether retro program enrollment agreements created a “trust” for the benefit of certain employer participants and whether the trustees breached their fiduciary duties in the handling of those accounts. *Id.* at 51-52. The court held that, for purposes of the Trust and Estate Dispute Resolution Act (TEDRA), all defendants were trustees and owed fiduciary obligations to the beneficiaries. *Id.* at 71. But the court did not suggest that the definition of a trustee for TEDRA purposes has any bearing on the definition of a “political

committee” for FCPA purposes. Petitioners grossly mischaracterize *In re WBBT* and its significance here. Their argument should be rejected.³

2. The “Attribution Rule” Does Not Apply to Contributions Under the FCPA.

Petitioners’ final claim is that BIAW “controlled” MSC’s expenditures, thereby making MSC’s expenditures attributable to BIAW under RCW 42.17A.455. Petitioners are wrong. RCW 42.17A.455 sets forth the aggregation and attribution rules for determining *campaign contribution caps*; it does not provide a basis for expanding the statutory definition of a political committee.

In brief, RCW 42.17A.455 allows contributions to be attributed to a parent entity when the parent entity “controls” contributions made by the subsidiary. The central tenet of Petitioners’ claim is that this attribution rule should also apply to political committee test because RCW 42.17A.455 states that it applies “to this chapter.”

This Court has already rejected the argument that “this chapter” always refers to the entire Act in which it appears. *Am. Legion Post # 149 v. Dep’t of Health*, 164 Wn.2d 570, 587-91 (2008). Division One’s interpretation (that the attribution rule applies only to contribution caps,

³ Petitioners cite no authority to support their claim that collateral estoppel operates to bar BIAW’s defenses in this case. Absent citations to authority, the Court need not address this claim. *Eyman v. McGehee*, 173 Wn. App. 684, 699-700 (2013) (citing *State v. Johnson*, 119 Wn.2d 167, 171 (1992)).

not expenditures) is consistent with this Court's guidance.⁴ *Utter*, 310 P.3d at 838-39. Furthermore, the attribution section was adopted as part of a voter initiative on campaign contributions, separate from the adoption of the political committee test, and the voter guide for the initiative did not reflect any intent to apply the attribution rule beyond contributions. *Id.* at 839.⁵ And as the union and trade association Amici argued below, if Petitioners succeed in applying RCW 42.17A.455's attribution rule to the definition of "political committee," many trade associations, labor unions, and community groups would be turned into political committees in Washington, even if the entity did not make any political expenditures. See Brief of Amici at 4-10. See also *Utter*, 310 P.3d at 839-40. For these reasons, the Court should reject Petitioners' argument.

3. The Court of Appeal's Expenditure Prong Analysis is Dicta and Incorrect.

Division One made two errors in determining BIAW may be a political committee under the "expenditure" prong of the "political committee" test. Though those errors are dicta, this Court should correct them if it grants Petitioners' request for review. First, the court wrongly

⁴ Even if the statute is ambiguous, the Court should defer to the executive agencies charged with enforcing it. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77 (2000). Here, the PDC and the AG have consistently applied the statute to campaign contribution caps only. See *EFF I*, 111 Wn. App. at 594 n.3; *Political Committees; Campaign Disclosure Instructions* (PDC June 2012) at 6.

⁵ In addition, contributions caps apply to direct contributions to candidate committees only, not to independent expenditures like those made to ChangePAC. See RCW 42.17A.405. RCW 42.17A.455 thus has no applicability to this case.

found that a clerical error on an IRS form, that was later corrected, created an issue of fact as to whether BIAW made an expenditure for purposes of qualifying as a “political committee.” *Utter*, 310 P.3d at 836. The court also incorrectly concluded that issues of fact existed as to whether electoral activities were “a” primary purpose of BIAW. *Id.* at 841.⁶

a. No Dispute of a Material Fact Existed

According to the Court of Appeals, an organization satisfies the definition of “political committee” under RCW 42.17A.005(37) by expecting to make or by actually making expenditures to further electoral goals, *and* if the organization has “as its primary purpose, or one of its primary purposes, to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” *Utter*, 310 P.3d at 835 (citing *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 509 (1976)). Here, the only evidence BIAW (as opposed to MSC) made political expenditures in any amount was a 2008 IRS Form 990. That tax form contained a clerical error, listing \$165,214 as “Political expenditures.” That form was amended and corrected in 2011 to show BIAW had not, in fact, spent any money on political

⁶ Division One stated that one of BIAW’s main efforts was supporting Rossi’s 2008 gubernatorial campaign. *Utter*, 310 P.3d at 832. This is misleading. BIAW had many purposes, CP 151-154, 158, 163-164, none of which include electoral activities, let alone make electoral activities “a” or “the” primary purpose. Further, all acts alleged to have constituted a FCPA violation were taken by MSC. *See, generally*, CP 55-78.

expenditures.⁷ *See* Appx. A (originally submitted with Motion for Reconsideration). An error on a tax form, later corrected, does not create a dispute as to what actually occurred, especially where, as here, it is undisputed that the PDC reviewed BIAW's actual expenditures and concluded that BIAW "does not contribute to candidates or political committees." *Utter*, 310 P.3d at 843.

In addition, the expenditure test is stated in the conjunctive: there must be expenditures *and* a primary purpose of the organization must be electoral activities. It follows that, where, as here, no evidence exists that any expenditures were made, the claim fails as a matter of law. But even if the \$165,214 was a political expenditure (it was not), that amount is not sufficient for any reasonable trier of fact to conclude that BIAW's primary purpose was electoral activity. BIAW is a statewide trade association affiliated with the National Association of Homebuilders. BIAW provides services to its 13,000 Washington members. BIAW serves as a clearinghouse of information of interest to small homebuilders; engages in a variety of communications with its members; publishes an award-winning industry magazine; offers award-winning education programs on

⁷ The Court should consider and rely on the Corrected Form 990 under RAP 9.11. The form was not initially presented at the trial court because the error did not become known until late in the litigation. Additionally, there is no reason to doubt the veracity of the corrected form, and none is presented here. Considering that the corrected form resolves the issues on review, remand would be wasteful and unnecessary.

a wide range of topics; and offers members other benefits, including health insurance. *See, e.g.*, CP 152-154.

And as to the statements attributed to BIAW presidents and board members, the uncontested evidence showed that such statements were made on behalf of MSC and not BIAW. It is not disputed that BIAW and MSC referred to themselves as “BIAW.” CP 701 n.2; CP 156. Petitioners admit that the use of “BIAW” referred to both BIAW and MSC. CP 1041. And as Division One acknowledged elsewhere in the opinion, “BIAW” was used generically to refer to MSC, BIAW, or both, but this shorthand is not sufficient to cast doubt on the fact that MSC, not BIAW, managed the funds or engaged in electoral activity. *Utter*, 310 P.3d at 835. Because all the evidence showed that BIAW made no expenditures, Division One erred in determining this was a disputed factual issue.

b. The Court of Appeals Applied an Unconstitutional Standard.

Division One also applied an unconstitutional standard when it found that a question of fact existed as to whether “one” of BIAW’s primary purposes included electoral activities, for purposes of the expenditure prong analysis. *Utter*, 310 P.3d at 840-841.

To avoid constitutional problems of vagueness and over breadth, the U.S. Supreme Court limited the definition of “political committees” in

federal campaign finance laws to “organizations that are under the control of a candidate or *the* major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (emphasis added). The same rule must also be used when determining political committee status under state laws as well. As the Fourth Circuit recognized, *Buckley* expressed “the Supreme Court’s insistence that political committees can only be regulated if they have the support or opposition of candidates as their primary purpose.” *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 289 (4th Cir. 2008). The court in *Leake* held that it was not enough to show that *one of* the organization’s major purposes was the support of candidates. *But see Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010). Though BIAW is not a political committee under either formulation, this court should follow the *Buckley* and *Leake* formulation (applying the narrower “*the* primary purpose” test),⁸ as it is more protective of core First Amendment activity.

⁸ Independent expenditures in support of or in opposition to a candidate or issue constitute “core” political speech, protected from regulation and restriction by the First Amendment to the U.S. Constitution. *Colo. Republican Fed. Campaign Comm. v. F.E.C.*, 518 U.S. 604, 616 (1996). Statutes that require registration and disclosure burden political speech and impose burdens on core First Amendment activity. Such burdens must, therefore, survive “exacting” judicial scrutiny. *Brumsickle*, 624 F.3d at 1005. Requiring BIAW to register and report as a political committee cannot satisfy the “exacting scrutiny” required for burdening core First Amendment activity. Requiring a statewide trade association like BIAW, which provides a wide range of programs to thousands of its members, to disclose “all bank accounts, all deposits and donations, and all expenditures, including the names of each person contributing funds” even when unrelated to electoral campaign activity, would impose a substantial burden. Moreover, it

When the correct test is applied, BIAW does not qualify as a political committee, and it was error for the Court of Appeals to conclude otherwise, even in dicta.

VI. CROSS-PETITION

Petitioners accused BIAW of improper coordination with Mr. Rossi, sought treble damages of \$21 million, and argued BIAW was a “political committee” despite the contrary conclusion by the PDC. They pursued these claim aggressively, and then, after two years of litigation, lost on summary judgment (abandoning their central claim after BIAW filed its motion). Because the claims were frivolous and prosecuted unreasonably, BIAW is entitled to attorneys’ fees and costs.

The campaign finance statute provides two separate standards authorizing an award to BIAW of its attorneys’ fees and costs. First, RCW 42.17A.765(4)(b) states, “[i]n the case of a citizen’s action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys’ fees incurred by the defendant.”

Second, RCW 42.17A.765(5) provides, “If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded

is beyond dispute that contributions and expenditures at issue in this case have already been reported to the PDC by MSC, the entity that actually made them. Thus, the State gains nothing by requiring duplicative disclosures of the information already available.

reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington." Unlike the former provision, this second provision does not require that the action was brought without reasonable cause, and a claim need not be facially invalid to subject a plaintiff to fees under RCW 42.17A.765. *EFF I*, 111 Wn. App. at 616 (granting fees to defendant on claim that survived summary judgment and was disposed of only at trial). A claim that fails for lack of proof merits an award of fees. *Id.* Furthermore, the citizen enforcement provision is constitutional in part because it provides fees to a defendant who, like BIAW, has been subject to a harassing suit. *Fritz v. Gorton*, 83 Wn.2d 275, 314 (1974).

An award for BIAW under either statutory provision is appropriate. BIAW successfully defended against all claims, including the central "coordination" claim that supposedly justified the demand for \$21 million in damages and emergency deposition. Petitioners lacked reasonable cause under the FCPA: they (or their counsel) knew from the start the PDC and AG had carefully investigated their political committee allegations and rejected them for lack of merit.⁹ And Petitioners never

⁹ Division One found that even though the PDC and AG determined that Petitioners' claims lacked merit, that fact did not warrant awarding BIAW fees in part because "Utter and Ireland disagree with the conclusion of the PDC and the AG." This remarkable reasoning should be rejected. If there is litigation, there is a disagreement, but that does mean the litigation is justified or reasonable. Further, under the court's logic, the deterrent of paying an opponent's fees evaporates in every case (or perhaps in every case in which the plaintiffs are respected public figures), leaving precious few safeguards in place to protect organizations like Planned Parenthood, WEA, WSTLA, BIAW or myriad

offered any evidence of improper coordination. Yet Petitioners waited to abandon their claim until the very end of the case and only *after* BIAW moved for summary judgment.


Petitioners' motives (or the motives of Petitioners' attorneys) also justify an award to BIAW because a fee award is designed to protect against harassing lawsuits. *EFF I*, 111 Wn. App. at 615; *see also Fritz v. Gorton*, 83 Wn.2d 274, 314 (1974). Here, it is clear the Petitioners' motives had little to do with enforcing the FCPA. CP 896 (Justice Utter's "sole reason for involvement in this matter was [his] great concern about the nature of the BIAW involvement in the 2006 election campaign involving a number of judges."); CP 901 (Justice Ireland's motivation "stems from the unfair judicial campaign against Chief Justice Alexander orchestrated by BIAW [in 2006]."); CP 851 (Mr. Lowney said his intent was to harass and embarrass Mr. Rossi on the eve of the election and to "taint the BIAW to the point that candidates will be 'returning their money.'"). Of course, publicizing spurious allegations rejected by the PDC and AG that were later dismissed by the trial court does not further any of the policies identified in the FCPA. *See* RCW 42.17A.001.

Because BIAW prevailed in this litigation, and was compelled to endure years of vexatious and oppressive litigation, BIAW is entitled to other trade associations, garden clubs, and community groups from abusive opponents (or their layers) all too willing to manipulate and abuse the judicial process.

attorneys' fees and costs at trial and on appeal. *See* RAP 18.1.

RESPECTFULLY SUBMITTED this 14th day of
November, 2013.

Davis Wright Tremaine LLP
Attorneys for Respondent/Cross-
Appellant

By 
Harry J. F. Korrell, WSBA #23173
Robert J. Maguire, WSBA #29909
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
(206) 622-3150 Phone
(206) 757-7700 Fax


CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on November 14, 2013, I caused Respondent/Cross-Appellant's Response to Petition for Review/Cross-Petition for Review to be served in the above-captioned matter upon the parties herein via messenger:

Knoll D. Lowney
Smith & Lowney, PLLC
2317 East John Street
Seattle, WA 98112-5412

Michael W. Withey
Law Offices of Michael W. Withey
601 Union Street, Suite 4200
Seattle, WA 98101-4036

Stated under oath this 14th day of November, 2013.


Donna Alexander

APPX. A.

NO. 66439-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

ROBERT F. UTTER and FAITH IRELAND,
in the name of the STATE OF WASHINGTON,

Appellants,

v.

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Respondent and Cross-Appellant.

DECLARATION OF ART CASTLE

I, Art Castle, declare as follows:

1. I am the Executive Vice President of Respondent and Cross-Appellant Building Industry Association of Washington (“BIAW”). If called upon to testify as a witness, I could and would competently testify to the following.
2. I make the following statements based on my personal knowledge and my review of BIAW’s contemporaneous records kept in the ordinary course of business.
3. The IRS significantly redesigned Form 990 (the Return of Organization Exempt from Income Tax), effective with the 2008 tax year. See <http://www.irs.gov/pub/irs-prior/i990--2008.pdf>. As a result, for the 2008 tax year, BIAW filled out the redesigned Form 990 for the first time.
4. After filing its 2008 Form 990, BIAW discovered that it had misunderstood the new form and mistakenly answered “yes” to Part IV, Line 3 of the form confusing lobbying activities with political activities. BIAW did not “engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” and should have answered “no.”
5. BIAW subsequently filed an amended Form 990 correcting the mistake in Part IV, Line 3. The amended form explains the reason

for the amendment on page 22 as follows: "The organization is amending the 2008 Form 990 to correctly answer Form 990, Part IV, Line 3. The organization only incurs lobbying expenditures, no political expenditures or activities, and, therefore, should have answered this question "no". As a Result, Schedule C, Part I-A is no longer completed. Schedule C, Part III-B remains the same to properly disclose lobbying expenditures and nondeductible dues information."

6. Attached as Exhibit A to this declaration is a true and correct copy of the amended Form 990 that I signed on June 22, 2011 and had filed with the IRS. Exhibit A bears a stamp showing it was received by the IRS's Ogden, Utah office. The copy of the amended Form 990 attached as Exhibit A was obtained from the website of the Foundation Center using their 990 Finder tool, available at <http://foundationcenter.org/findfunders/990finder/>.

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

EXECUTED this 16 day of November, at OLYMPIA, WA.



Art Castle

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On November 19, 2012, I caused to be served in the manner noted below a copy of the document entitled **DECLARATION OF ART CASTLE** on the following:

BY LEGAL MESSENGER:

Knoll Lowney
c/o Lonnie Lopez
Smith & Lowney, PLLC
2317 East John Street
Seattle, WA 98112

Michael E. Withey
Law Offices of Michael Withey
601 Union Street, Suite 4200
Seattle, WA 98101-4036

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

Executed this 19th day of November, 2012, in Seattle,
Washington.


Suzette Barber

EXTENSION GRANTED TO 11/15/09

Form **990**

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

OMB No 1545-0047

2008

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2008 calendar year, or tax year beginning and ending

B Check if applicable:
 Address change
 Name change
 Initial return
 Termination
 Amended return
 Application pending

Please use IRS label or print or type
 See Specific Instructions

C Name of organization
BUILDING INDUSTRY ASSOCIATION OF WASHINGTON
 Doing Business As
 Number and street (or P O box if mail is not delivered to street address) Room/suite
P.O. BOX 1909
 City or town, state or country, and ZIP + 4
OLYMPIA, WA 98507-1909

D Employer identification number
91-6087698

E Telephone number
(360) 352-7800

G Gross receipts \$ **3,046,466.**

H(a) Is this a group return for affiliates? Yes No
H(b) Are all affiliates included? Yes No
 If 'No,' attach a list. (see instructions)

F Name and address of principal officer: **ART CASTLE**
111 21ST AVE SE, OLYMPIA, WA 98501

I Tax-exempt status: 501(c) (6) (insert no.) 4947(a)(1) or 527

J Website: **WWW.BIAW.COM**

H(c) Group exemption number ▶

K Type of organization Corporation Trust Association Other ▶

L Year of formation **1966** **M** State of legal domicile **WA**

Part I Summary

| | | | | |
|-----------------------------|---|--|-------------------|--------------|
| Activities & Governance | 1 | Briefly describe the organization's mission or most significant activities: SEE FORM 990, PART III, QUESTION 1. | | |
| | 2 | Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its assets | | |
| | 3 | Number of voting members of the governing body (Part VI, line 1a) | 3 | 272 |
| | 4 | Number of independent voting members of the governing body (Part VI, line 1b) | 4 | 272 |
| | 5 | Total number of employees (Part V, line 2a) | 5 | 0 |
| | 6 | Total number of volunteers (estimate if necessary) | 6 | 333 |
| | 7a | Total gross unrelated business revenue from Part VIII, line 12, column (C) | 7a | 8,020. |
| | b Net unrelated business taxable income from Form 990-T, line 34 | 7b | <1,435.> | |
| Revenue | 8 | Contributions and grants (Part VIII, line 1h) | Prior Year | Current Year |
| | 9 | Program service revenue (Part VIII, line 2g) | | 1,120,725. |
| | 10 | Investment income (Part VIII, column (A), lines 3, 4, and 7d) | 1,526,730. | 915,834. |
| | 11 | Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e) | 359,806. | 360,603. |
| | 12 | Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12) | 750,800. | 8,020. |
| Expenses | 13 | Grants and similar amounts paid (Part IX, column (A), lines 1-3) | 2,637,336. | 2,405,182. |
| | 14 | Benefits paid to or for members (Part IX, column (A), line 4) | | |
| | 15 | Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10) | 604,708. | 711,468. |
| | 16a | Professional fundraising fees (Part IX, column (A), line 11e) | | |
| | 16b | Total fundraising expenses (Part IX, column (D), line 25) | | |
| 17 | Other expenses (Part IX, column (A), lines 1a-11b, 12a-12c, 12e, 12f, 12g, 12h, 12i, 12j, 12k, 12l, 12m, 12n, 12o, 12p, 12q, 12r, 12s, 12t, 12u, 12v, 12w, 12x, 12y, 12z) | 659,063. | 492,522. | |
| 18 | Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25) | 1,263,771. | 1,203,990. | |
| 19 | Revenue less expenses. Subtract line 18 from line 12 | 1,373,565. | 1,201,192. | |
| Net Assets or Fund Balances | 20 | Total assets (Part X, line 16) | Beginning of Year | End of Year |
| | 21 | Total liabilities (Part X, line 26) | 8,731,108. | 8,236,708. |
| | 22 | Net assets or fund balances. Subtract line 21 from line 20 | 43,052. | 40,656. |
| | | 8,688,056. | 8,196,052. | |

Part II Signature Block

Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here
 Signature of officer: *Art Castle*
ART CASTLE, EXECUTIVE VP
 Type or print name and title

Paid Preparer's Use Only
 Preparer's signature: *[Signature]*
 Firm's name (or yours if self-employed), address, and ZIP + 4:
MOSS ADAMS LLP
1301 A STREET, SUITE 600
TACOMA, WA 98402-4205

SCANNED JUL 08 2011

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON

Form 990 (2008)

91-6087698 Page 2

Part III Statement of Program Service Accomplishments (see instructions)

1 Briefly describe the organization's mission: SEE SCHEDULE O FOR CONTINUATION THE BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, IS THE VOICE OF THE HOUSING INDUSTRY IN THE STATE OF WASHINGTON. THE ASSOCIATION IS DEDICATED TO ENSURING AND ENHANCING THE VITALITY OF THE BUILDING INDUSTRY FOR THE BENEFIT OF ITS MEMBERS AND THE HOUSING NEEDS OF THE

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? [] Yes [X] No

If "Yes", describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? [] Yes [X] No

If "Yes", describe these changes on Schedule O

4 Describe the exempt purpose achievements for each of the organization's three largest program services by expenses. Section 501(c)(3) and 501(c)(4) organizations and section 4947(a)(1) trusts are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ 1,142,009, including grants of \$) (Revenue \$ 2,405,182.) PROVIDE INFORMATION ON NEW DEVELOPMENTS AND ISSUES REGARDING THE INDUSTRY VIA NEWSLETTER, MEETINGS & CONFERENCES MONITORING OF NEW LEGISLATIVE & DEPT.OF LABOR & INDUSTRIES ISSUES THAT AFFECT THE INDUSTRY.

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe in Schedule O) (Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses \$ 1,142,009. (Must equal Part IX, Line 25, column (B))

Form 990 (2008)

832002 12-18-08

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 990 (2008)

91-6087698 Page 3

Part IV Checklist of Required Schedules

| | Yes | No |
|--|-----|----|
| 1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i> | | X |
| 2 Is the organization required to complete Schedule B, Schedule of Contributors? | | X |
| 3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i> | | X |
| 4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities? <i>If "Yes," complete Schedule C, Part II</i> | | |
| 5 Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations. Is the organization subject to the section 6033(e) notice and reporting requirement and proxy tax? <i>If "Yes," complete Schedule C, Part III</i> | X | |
| 6 Did the organization maintain any donor advised funds or any accounts where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? <i>If "Yes," complete Schedule D, Part I</i> | | X |
| 7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? <i>If "Yes," complete Schedule D, Part II</i> | | X |
| 8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? <i>If "Yes," complete Schedule D, Part III</i> | | X |
| 9 Did the organization report an amount in Part X, line 21; serve as a custodian for amounts not listed in Part X, or provide credit counseling, debt management, credit repair, or debt negotiation services? <i>If "Yes," complete Schedule D, Part IV</i> | | X |
| 10 Did the organization hold assets in term, permanent, or quasi-endowments? <i>If "Yes," complete Schedule D, Part V</i> | | X |
| 11 Did the organization report an amount in Part X, lines 10, 12, 13, 15, or 25? <i>If "Yes," complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable</i> | X | |
| 12 Did the organization receive an audited financial statement for the year for which it is completing this return that was prepared in accordance with GAAP? <i>If "Yes," complete Schedule D, Parts XI, XII, and XIII</i> | | X |
| 13 Is the organization a school as described in section 170(b)(1)(A)(ii)? <i>If "Yes," complete Schedule E</i> | | X |
| 14a Did the organization maintain an office, employees, or agents outside of the U.S.? | | X |
| b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, and program service activities outside the U.S.? <i>If "Yes," complete Schedule F, Part I</i> | | X |
| 15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or assistance to any organization or entity located outside the United States? <i>If "Yes," complete Schedule F, Part II</i> | | X |
| 16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or assistance to individuals located outside the United States? <i>If "Yes," complete Schedule F, Part III</i> | | X |
| 17 Did the organization report more than \$15,000 on Part IX, column (A), line 11e? <i>If "Yes," complete Schedule G, Part I</i> | | X |
| 18 Did the organization report more than \$15,000 total on Part VIII, lines 1c and 8a? <i>If "Yes," complete Schedule G, Part II</i> | | X |
| 19 Did the organization report more than \$15,000 on Part VIII, line 9a? <i>If "Yes," complete Schedule G, Part III</i> | | X |
| 20 Did the organization operate one or more hospitals? <i>If "Yes," complete Schedule H</i> | | X |
| 21 Did the organization report more than \$5,000 on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i> | | X |
| 22 Did the organization report more than \$5,000 on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i> | | X |
| 23 Did the organization answer "Yes" to Part VII, Section A, questions 3, 4, or 5? <i>If "Yes," complete Schedule J</i> | X | |
| 24a Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer questions 24b-24d and complete Schedule K. If "No," go to question 25</i> | | X |
| b Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception? | | |
| c Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds? | | |
| d Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year? | | |
| 25a Section 501(c)(3) and 501(c)(4) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i> | | |
| b Did the organization become aware that it had engaged in an excess benefit transaction with a disqualified person from a prior year? <i>If "Yes," complete Schedule L, Part I</i> | | |
| 26 Was a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person outstanding as of the end of the organization's tax year? <i>If "Yes," complete Schedule L, Part II</i> | | X |
| 27 Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, or substantial contributor, or to a person related to such an individual? <i>If "Yes," complete Schedule L, Part III</i> | | X |

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432003
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**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 990 (2008)

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Part IV Checklist of Required Schedules *(continued)*

| | Yes | No |
|--|-----|----|
| 28 During the tax year, did any person who is a current or former officer, director, trustee, or key employee: | | |
| a Have a direct business relationship with the organization (other than as an officer, director, trustee, or employee), or an indirect business relationship through ownership of more than 35% in another entity (individually or collectively with other person(s) listed in Part VII, Section A)? <i>If "Yes," complete Schedule L, Part IV</i> | 28a | X |
| b Have a family member who had a direct or indirect business relationship with the organization? <i>If "Yes," complete Schedule L, Part IV</i> | 28b | X |
| c Serve as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the organization? <i>If "Yes," complete Schedule L, Part IV</i> | 28c | X |
| 29 Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i> | 29 | X |
| 30 Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i> | 30 | X |
| 31 Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i> | 31 | X |
| 32 Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i> | 32 | X |
| 33 Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i> | 33 | X |
| 34 Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Parts II, III, IV, and V, line 1</i> | 34 | X |
| 35 Is any related organization a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2</i> | 35 | X |
| 36 Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i> | 36 | |
| 37 Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI</i> | 37 | X |

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532004
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**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 990 (2008)

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Part VI Governance, Management, and Disclosure (Sections A, B, and C request information about policies not required by the Internal Revenue Code)

Section A. Governing Body and Management

For each "Yes" response to lines 2-7b below, and for a "No" response to lines 8 or 9b below, describe the circumstances, processes, or changes in Schedule O. See instructions

| | | Yes | No |
|----|--|-----|----|
| 1a | Enter the number of voting members of the governing body | | |
| 1b | Enter the number of voting members that are independent | | |
| 2 | Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? | | X |
| 3 | Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? | | X |
| 4 | Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed? | | X |
| 5 | Did the organization become aware during the year of a material diversion of the organization's assets? | | X |
| 6 | Does the organization have members or stockholders? | X | |
| 7a | Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body? | X | |
| 7b | Are any decisions of the governing body subject to approval by members, stockholders, or other persons? | X | |
| 8 | Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following: | | |
| 8a | a The governing body? | X | |
| 8b | b Each committee with authority to act on behalf of the governing body? | X | |
| 9a | Does the organization have local chapters, branches, or affiliates? | | X |
| 9b | b If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization? | | |
| 10 | Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990 | | X |
| 11 | Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O | | X |

Section B. Policies

| | | Yes | No |
|-----|--|-----|----|
| 12a | Does the organization have a written conflict of interest policy? If "No," go to line 13 | X | |
| 12b | b Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts? | | X |
| 12c | c Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done | X | |
| 13 | Does the organization have a written whistleblower policy? | | X |
| 14 | Does the organization have a written document retention and destruction policy? | | X |
| 15 | Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision: | | |
| 15a | a The organization's CEO, Executive Director, or top management official? | | X |
| 15b | b Other officers or key employees of the organization? Describe the process in Schedule O. (see instructions) | | X |
| 16a | Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? | X | |
| 16b | b If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements? | X | |

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed **WA**
- 18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply
 Own website Another's website Upon request
- 19 Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.
- 20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization. **▶**
ART CASTLE - (360) 352-7800
111 21ST AVE SE, OLYMPIA, WA 98501

832006 12-18-08

Form 990 (2008)

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

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Part VIII Statement of Revenue

| | | | (A) Total revenue | (B) Related or exempt function revenue | (C) Unrelated business revenue | (D) Revenue excluded from tax under sections 512, 513, or 514 |
|---|---|---------------------------|----------------------|---|---|--|
| Contributions, gifts, grants and other similar amounts | 1 a Federated campaigns | 1a | | | | |
| | b Membership dues | 1b | 1120725. | | | |
| | c Fundraising events | 1c | | | | |
| | d Related organizations | 1d | | | | |
| | e Government grants (contributions) | 1e | | | | |
| | f All other contributions, gifts, grants, and similar amounts not included above | 1f | | | | |
| | g Noncash contributions included in lines 1a-1f \$ | | | | | |
| | h Total. Add lines 1a-1f | | | 1,120,725. | | |
| Program Service Revenue | 2 a PROGRAM ASSESSMENT FEE | Business Code 900099 | 692,758. | | | 692,758. |
| | b EDUCATION PROGRAM | 611710 | 213,318. | 213,318. | | |
| | c OTHER INCOME-ROYALTIES | 900099 | 9,758. | | | 9,758. |
| | d | | | | | |
| | e | | | | | |
| | f All other program service revenue | | | | | |
| | g Total. Add lines 2a-2f | | | 915,834. | | |
| Other Revenue | 3 Investment income (including dividends, interest, and other similar amounts) | | 234,564. | | | 234,564. |
| | 4 Income from investment of tax-exempt bond proceeds | | | | | |
| | 5 Royalties | | | | | |
| | 6 a Gross Rents | (i) Real (ii) Personal | | | | |
| | b Less rental expenses | | | | | |
| | c Rental income or (loss) | | | | | |
| | d Net rental income or (loss) | | | | | |
| | 7 a Gross amount from sales of assets other than inventory | (i) Securities (ii) Other | 767,323. | | | |
| | b Less: cost or other basis and sales expenses | | 641,284. | | | |
| | c Gain or (loss) | | 126,039. | | | |
| | d Net gain or (loss) | | | 126,039. | 126,039. | |
| | 8 a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18 | a | | | | |
| | b Less: direct expenses | b | | | | |
| | c Net income or (loss) from fundraising events | | | | | |
| | 9 a Gross income from gaming activities See Part IV, line 19 | a | | | | |
| b Less: direct expenses | b | | | | | |
| c Net income or (loss) from gaming activities | | | | | | |
| 10 a Gross sales of inventory, less returns and allowances | a | | | | | |
| b Less: cost of goods sold | b | | | | | |
| c Net income or (loss) from sales of inventory | | | | | | |
| Miscellaneous Revenue | | Business Code | | | | |
| 11 a ADVERTISING | 541800 | 8,020. | | | 8,020. | |
| b | | | | | | |
| c | | | | | | |
| d All other revenue | | | | | | |
| e Total. Add lines 11a-11d | | | 8,020. | | | |
| 12 Total Revenue. Add lines 1h, 2g, 3, 4, 5, 6d, 7d, 8c, 9c, 10c, and 11e | | | 2,405,182. | 339,357. | 8,020. | 937,080. |

832008
02-02-09

Form 990 (2008)

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 990 (2008)

91-6087698 Page 10

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns.

All other organizations must complete column (A) but are not required to complete columns (B), (C), and (D).

| Do not include amounts reported on lines 8b, 7b, 8b, 9b, and 10b of Part VIII. | (A) Total expenses | (B) Program service expenses | (C) Management and general expenses | (D) Fundraising expenses |
|--|-----------------------|---------------------------------|--|-----------------------------|
| 1 Grants and other assistance to governments and organizations in the U.S. See Part IV, line 21 | | | | |
| 2 Grants and other assistance to individuals in the U.S. See Part IV, line 22 | | | | |
| 3 Grants and other assistance to governments, organizations, and individuals outside the U.S. See Part IV, lines 15 and 16 | | | | |
| 4 Benefits paid to or for members | | | | |
| 5 Compensation of current officers, directors, trustees, and key employees | | | | |
| 6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) | | | | |
| 7 Other salaries and wages | 592,148. | | | |
| 8 Pension plan contributions (include section 401(k) and section 403(b) employer contributions) | 28,480. | | | |
| 9 Other employee benefits | 46,812. | | | |
| 10 Payroll taxes | 44,028. | | | |
| 11 Fees for services (non-employees): | | | | |
| a Management | 29,348. | | | |
| b Legal | | | | |
| c Accounting | 4,799. | | | |
| d Lobbying | | | | |
| e Professional fundraising services See Part IV, line 17 | | | | |
| f Investment management fees | | | | |
| g Other | | | | |
| 12 Advertising and promotion | 52,528. | | | |
| 13 Office expenses | 61,589. | | | |
| 14 Information technology | 8,438. | | | |
| 15 Royalties | | | | |
| 16 Occupancy | | | | |
| 17 Travel | | | | |
| 18 Payments of travel or entertainment expenses for any federal, state, or local public officials | | | | |
| 19 Conferences, conventions, and meetings | | | | |
| 20 Interest | | | | |
| 21 Payments to affiliates | | | | |
| 22 Depreciation, depletion, and amortization | 581. | | | |
| 23 Insurance | | | | |
| 24 Other expenses. Itemize expenses not covered above (Expenses grouped together and labeled miscellaneous may not exceed 5% of total expenses shown on line 25 below) | | | | |
| a EDUCATION PROGRAM | 189,078. | | | |
| b COMMITTEE & PROGRAM SER | 114,331. | | | |
| c LEGIS POLICY STRATEGY | 18,793. | | | |
| d AREA 15 VP & 1/MEMBER | 13,037. | | | |
| e | | | | |
| f All other expenses | | | | |
| 25 Total functional expenses. Add lines 1 through 24f | 1,203,990. | | | |
| 26 Joint Costs. Check here <input type="checkbox"/> if following SOP 98-2. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. | | | | |

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Form 990 (2008)

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 990 (2008)

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Part X Balance Sheet

| | | (A) Beginning of year | | (B) End of year | |
|---|---|--------------------------|-----------|--------------------|----------------|
| Assets | 1 Cash - non-interest-bearing | 1,309,001. | 1 | 267,604. | |
| | 2 Savings and temporary cash investments | 7,294,557. | 2 | 6,759,800. | |
| | 3 Pledges and grants receivable, net | | 3 | | |
| | 4 Accounts receivable, net | 125,516. | 4 | 1,207,851. | |
| | 5 Receivables from current and former officers, directors, trustees, key employees, or other related parties. Complete Part II of Schedule L | | 5 | | |
| | 6 Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B). Complete Part II of Schedule L | | 6 | | |
| | 7 Notes and loans receivable, net | | 7 | | |
| | 8 Inventories for sale or use | | 8 | | |
| | 9 Prepaid expenses and deferred charges | | 9 | | |
| | 10a Land, buildings, and equipment: cost basis | 24,325. | | | |
| | b Less: accumulated depreciation. Complete Part VI of Schedule D | 22,872. | 2,034. | 10c | 1,453. |
| | 11 Investments - publicly traded securities | | 11 | | |
| | 12 Investments - other securities. See Part IV, line 11 | | 12 | | |
| | 13 Investments - program-related. See Part IV, line 11 | | 13 | | |
| | 14 Intangible assets | | 14 | | |
| | 15 Other assets See Part IV, line 11 | | 15 | | |
| 16 Total assets. Add lines 1 through 15 (must equal line 34) | 8,731,108. | 16 | | 8,236,708. | |
| Liabilities | 17 Accounts payable and accrued expenses | 43,052. | 17 | 40,656. | |
| | 18 Grants payable | | 18 | | |
| | 19 Deferred revenue | | 19 | | |
| | 20 Tax-exempt bond liabilities | | 20 | | |
| | 21 Escrow account liability. Complete Part IV of Schedule D | | 21 | | |
| | 22 Payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L | | 22 | | |
| | 23 Secured mortgages and notes payable to unrelated third parties | | 23 | | |
| | 24 Unsecured notes and loans payable | | 24 | | |
| | 25 Other liabilities. Complete Part X of Schedule D | | 25 | | |
| | 26 Total liabilities. Add lines 17 through 25 | 43,052. | 26 | | 40,656. |
| Net Assets or Fund Balances | Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34. | | | | |
| | 27 Unrestricted net assets | 8,688,056. | 27 | 8,196,052. | |
| | 28 Temporarily restricted net assets | | 28 | | |
| | 29 Permanently restricted net assets | | 29 | | |
| | Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 30 through 34. | | | | |
| | 30 Capital stock or trust principal, or current funds | | 30 | | |
| | 31 Paid-in or capital surplus, or land, building, or equipment fund | | 31 | | |
| | 32 Retained earnings; endowment, accumulated income, or other funds | | 32 | | |
| 33 Total net assets or fund balances | 8,688,056. | 33 | | 8,196,052. | |
| 34 Total liabilities and net assets/fund balances | 8,731,108. | 34 | | 8,236,708. | |

Part XI Financial Statements and Reporting

| | Yes | No |
|---|-----|----|
| 1 Accounting method used to prepare the Form 990. <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other | | |
| 2a Were the organization's financial statements compiled or reviewed by an independent accountant? | 2a | X |
| b Were the organization's financial statements audited by an independent accountant? | 2b | X |
| c If "Yes" to lines 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? | 2c | |
| 3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133? | 3a | X |
| b If "Yes," did the organization undergo the required audit or audits? | 3b | |

632011 12-18-08

Form 990 (2008)

SCHEDULE C
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Political Campaign and Lobbying Activities
For Organizations Exempt From Income Tax Under section 501(c) and section 527

▶ To be completed by organizations described below.
▶ Attach to Form 990 or Form 990-EZ.

OMB No 1545-0047

2008
Open to Public
Inspection

If the organization answered "Yes," to Form 990, Part IV, line 3, or Form 990-EZ, Part VI, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered "Yes," to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered "Yes," to Form 990, Part IV, line 5 (Proxy Tax), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization **BUILDING INDUSTRY ASSOCIATION OF WASHINGTON** Employer identification number **91-6087698**

Part I-A To be completed by all organizations exempt under section 501(c) and section 527 organizations.

See the instructions for Schedule C for details.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV.
- 2 Political expenditures ▶ \$ _____
- 3 Volunteer hours _____

Part I-B To be completed by all organizations exempt under section 501(c)(3).

See the instructions for Schedule C for details.

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C To be completed by all organizations exempt under section 501(c), except section 501(c)(3).

See the instructions for Schedule C for details.

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$ _____
- 3 Total of direct and indirect exempt function expenditures. Add lines 1 and 2 and enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file Form 1120-POL for this year? Yes No
- 5 State the names, addresses and employer identification number (EIN) of all section 527 political organizations to which payments were made. Enter the amount paid and indicate if the amount was paid from the filing organization's funds or were political contributions received and promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV

| (a) Name | (b) Address | (c) EIN | (d) Amount paid from filing organization's funds. If none, enter -0- | (e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0- |
|----------|-------------|---------|--|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
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| | | | | |
| | | | | |

BUILDING INDUSTRY ASSOCIATION OF

Schedule C (Form 990 or 990-EZ) 2008

WASHINGTON

91-6087698 Page 2

Part II-A To be completed by organizations exempt under section 501(c)(3) that filed Form 5768 (election under section 501(h)). See the instructions for Schedule C for details.

- A Check if the filing organization belongs to an affiliated group.
 B Check if the filing organization checked box A and 'limited control' provisions apply.

| Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.) | | (a) Filing organization's totals | (b) Affiliated group totals | | | | | | | | | | | | |
|---|--|---|--|--------------------|-------------------------------|---|--|---|--|--|---|-------------------|--------------|--|--|
| 1 a Total lobbying expenditures to influence public opinion (grassroots lobbying) | | | | | | | | | | | | | | | |
| b Total lobbying expenditures to influence a legislative body (direct lobbying) | | | | | | | | | | | | | | | |
| c Total lobbying expenditures (add lines 1a and 1b) | | | | | | | | | | | | | | | |
| d Other exempt purpose expenditures | | | | | | | | | | | | | | | |
| e Total exempt purpose expenditures (add lines 1c and 1d) | | | | | | | | | | | | | | | |
| f Lobbying nontaxable amount. Enter the amount from the following table in both columns. | | | | | | | | | | | | | | | |
| <table border="1"> <thead> <tr> <th>If the amount on line 1a, column (a) or (b) is:</th> <th>The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1a.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table> | | If the amount on line 1a, column (a) or (b) is: | The lobbying nontaxable amount is: | Not over \$500,000 | 20% of the amount on line 1a. | Over \$500,000 but not over \$1,000,000 | \$100,000 plus 15% of the excess over \$500,000. | Over \$1,000,000 but not over \$1,500,000 | \$175,000 plus 10% of the excess over \$1,000,000. | Over \$1,500,000 but not over \$17,000,000 | \$225,000 plus 5% of the excess over \$1,500,000. | Over \$17,000,000 | \$1,000,000. | | |
| If the amount on line 1a, column (a) or (b) is: | The lobbying nontaxable amount is: | | | | | | | | | | | | | | |
| Not over \$500,000 | 20% of the amount on line 1a. | | | | | | | | | | | | | | |
| Over \$500,000 but not over \$1,000,000 | \$100,000 plus 15% of the excess over \$500,000. | | | | | | | | | | | | | | |
| Over \$1,000,000 but not over \$1,500,000 | \$175,000 plus 10% of the excess over \$1,000,000. | | | | | | | | | | | | | | |
| Over \$1,500,000 but not over \$17,000,000 | \$225,000 plus 5% of the excess over \$1,500,000. | | | | | | | | | | | | | | |
| Over \$17,000,000 | \$1,000,000. | | | | | | | | | | | | | | |
| g Grassroots nontaxable amount (enter 25% of line 1f) | | | | | | | | | | | | | | | |
| h Subtract line 1g from line 1a. Enter -0- if line g is more than line a | | | | | | | | | | | | | | | |
| i Subtract line 1f from line 1c. Enter -0- if line f is more than line c | | | | | | | | | | | | | | | |
| j If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | | | | | | |

4-Year Averaging Period Under Section 501(h)
 (Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 2a through 2f of the instructions.)

| Lobbying Expenditures During 4-Year Averaging Period | | | | | |
|---|----------|----------|----------|----------|-----------|
| Calendar year (or fiscal year beginning in) | (a) 2005 | (b) 2006 | (c) 2007 | (d) 2008 | (e) Total |
| 2a Lobbying non-taxable amount | | | | | |
| b Lobbying ceiling amount (150% of line 2a, column(e)) | | | | | |
| c Total lobbying expenditures | | | | | |
| d Grassroots non-taxable amount | | | | | |
| e Grassroots ceiling amount (150% of line 2d, column (e)) | | | | | |
| f Grassroots lobbying expenditures | | | | | |

Schedule C (Form 990 or 990-EZ) 2008

BUILDING INDUSTRY ASSOCIATION OF

Schedule C (Form 990 or 990-EZ) 2008

WASHINGTON

91-6087698 Page 3

Part II-B To be completed by organizations exempt under section 501(c)(3) that have NOT filed Form 5768 (election under section 501(h)). See the instructions for Schedule C for details.

| | (a) | | (b) |
|---|-----|----|--------|
| | Yes | No | Amount |
| 1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of | | | |
| a Volunteers? | | | |
| b Paid staff or management (include compensation in expenses reported on lines 1c through 1j)? | | | |
| c Media advertisements? | | | |
| d Mailings to members, legislators, or the public? | | | |
| e Publications, or published or broadcast statements? | | | |
| f Grants to other organizations for lobbying purposes? | | | |
| g Direct contact with legislators, their staffs, government officials, or a legislative body? | | | |
| h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means? | | | |
| i Other activities? If "Yes," describe in Part IV | | | |
| j Total lines 1c through 1i | | | |
| 2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)? | | | |
| b If "Yes," enter the amount of any tax incurred under section 4912 | | | |
| c If "Yes," enter the amount of any tax incurred by organization managers under section 4912 | | | |
| d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year? | | | |

Part III-A To be completed by all organizations exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6). See the instructions for Schedule C for details.

| | Yes | No |
|---|-----|----|
| 1 Were substantially all (90% or more) dues received nondeductible by members? | | X |
| 2 Did the organization make only in-house lobbying expenditures of \$2,000 or less? | | X |
| 3 Did the organization agree to carryover lobbying and political expenditures from the prior year? | X | |

Part III-B To be completed by all organizations exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) if BOTH Part III-A, questions 1 and 2 are answered "No" OR if Part III-A, question 3 is answered "Yes." See Schedule C instructions for details.

| | |
|---|------------|
| 1 Dues, assessments and similar amounts from members | 1,120,725. |
| 2 Section 162(e) non-deductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid). | |
| a Current year | 165,214. |
| b Carryover from last year | <12,538.> |
| c Total | 152,676. |
| 3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues | 168,109. |
| 4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year? | |
| 5 Taxable amount of lobbying and political expenditures (line 2c total minus 3 and 4) | <15,433.> |

Part IV Supplemental Information

Complete this part to provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; and Part II-B, line 1i. Also, complete this part for any additional information.

Schedule D
(Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Attach to Form 990. To be completed by organizations that answered "Yes," to Form 990, Part IV, line 6, 7, 8, 9, 10, 11, or 12.

OMB No 1545-0047

2008
Open to Public Inspection

Name of the organization **BUILDING INDUSTRY ASSOCIATION OF WASHINGTON**

Employer identification number
91-6087698

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

| | (a) Donor advised funds | (b) Funds and other accounts |
|---|-------------------------|--|
| 1 Total number at end of year | | |
| 2 Aggregate contributions to (during year) | | |
| 3 Aggregate grants from (during year) | | |
| 4 Aggregate value at end of year | | |
| 5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds may be used only for charitable purposes and not for the benefit of the donor or donor advisor or other impermissible private benefit? | | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Part II Conservation Easements. Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

1 Purpose(a) of conservation easements held by the organization (check all that apply).

| | |
|---|--|
| <input type="checkbox"/> Preservation of land for public use (e.g., recreation or pleasure) | <input type="checkbox"/> Preservation of an historically important land area |
| <input type="checkbox"/> Protection of natural habitat | <input type="checkbox"/> Preservation of certified historic structure |
| <input type="checkbox"/> Preservation of open space | |

2 Complete lines 2a-2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

| | Held at the End of the Year |
|--|-----------------------------|
| a Total number of conservation easements | 2a |
| b Total acreage restricted by conservation easements | 2b |
| c Number of conservation easements on a certified historic structure included in (a) | 2c |
| d Number of conservation easements included in (c) acquired after 8/17/06 | 2d |

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the taxable year ▶ _____

4 Number of states where property subject to conservation easement is located ▶ _____

5 Does the organization have a written policy regarding the periodic monitoring, inspection, violations, and enforcement of the conservation easements it holds? Yes No

6 Staff or volunteer hours devoted to monitoring, inspecting, and enforcing easements during the year ▶ _____

7 Amount of expenses incurred in monitoring, inspecting, and enforcing easements during the year ▶ \$ _____

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? Yes No

9 In Part XIV, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116, not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIV, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116, to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenues included in Form 990, Part VIII, line 1 ▶ \$ _____

(ii) Assets included in Form 990, Part X ▶ \$ _____

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 relating to these items:

a Revenues included in Form 990, Part VIII, line 1 ▶ \$ _____

b Assets included in Form 990, Part X ▶ \$ _____

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

3 Using the organization's accession and other records, check any of the following that are a significant use of its collection items (check all that apply):

- a Public exhibition
- b Scholarly research
- c Preservation for future generations
- d Loan or exchange programs
- e Other _____

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIV.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? Yes No

Part IV Trust, Escrow and Custodial Arrangements. Complete if organization answered "Yes" to Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? Yes No

b If "Yes," explain the arrangement in Part XIV and complete the following table:

- c Beginning balance
- d Additions during the year
- e Distributions during the year
- f Ending balance

| | Amount |
|----|--------|
| 1c | |
| 1d | |
| 1e | |
| 1f | |

2a Did the organization include an amount on Form 990, Part X, line 21? Yes No

b If "Yes," explain the arrangement in Part XIV.

Part V Endowment Funds. Complete if organization answered "Yes" to Form 990, Part IV, line 10.

| | (a) Current year | (b) Prior year | (c) Two years back | (d) Three years back | (e) Four years back |
|--|------------------|----------------|--------------------|----------------------|---------------------|
| 1a Beginning of year balance | | | | | |
| b Contributions | | | | | |
| c Investment earnings or losses | | | | | |
| d Grants or scholarships | | | | | |
| e Other expenditures for facilities and programs | | | | | |
| f Administrative expenses | | | | | |
| g End of year balance | | | | | |

2 Provide the estimated percentage of the year end balance held as:

- a Board designated or quasi-endowment _____ %
- b Permanent endowment _____ %
- c Term endowment _____ %

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

- (i) unrelated organizations
- (ii) related organizations

| | Yes | No |
|--------|-----|----|
| 3a(i) | | |
| 3a(ii) | | |
| 3b | | |

b If "Yes" to 3a(i), are the related organizations listed as required on Schedule R?

4 Describe in Part XIV the intended uses of the organization's endowment funds.

Part VI Investments - Land, Buildings, and Equipment. See Form 990, Part X, line 10.

| Description of investment | (a) Cost or other basis (investment) | (b) Cost or other basis (other) | (c) Depreciation | (d) Book value |
|--|--------------------------------------|---------------------------------|------------------|----------------|
| 1a Land | | | | |
| b Buildings | | | | |
| c Leasehold improvements | | | | |
| d Equipment | | | | |
| e Other | | 24,325. | 22,872. | 1,453. |
| Total. Add lines 1a-1e. (Column (d) should equal Form 990, Part X, column (B), line 10(c)) | | | | 1,453. |

**SCHEDULE J
(Form 990)**

Compensation Information

OMB No 1545-0047

2008

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 990. To be completed by organizations that answered "Yes" to Form 990, Part IV, line 23.

Name of the organization **BUILDING INDUSTRY ASSOCIATION OF WASHINGTON**

Employer identification number **91-6087698**

Part I Questions Regarding Compensation

1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.

- | | |
|--|--|
| <input type="checkbox"/> First-class or charter travel | <input type="checkbox"/> Housing allowance or residence for personal use |
| <input type="checkbox"/> Travel for companions | <input type="checkbox"/> Payments for business use of personal residence |
| <input type="checkbox"/> Tax indemnification and gross-up payments | <input type="checkbox"/> Health or social club dues or initiation fees |
| <input type="checkbox"/> Discretionary spending account | <input type="checkbox"/> Personal services (e.g., maid, chauffeur, chef) |

b If line 1a is checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain

2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a?

3 Indicate which, if any, of the following the organization uses to establish the compensation of the organization's CEO/Executive Director. Check all that apply.

- | | |
|--|--|
| <input type="checkbox"/> Compensation committee | <input type="checkbox"/> Written employment contract |
| <input type="checkbox"/> Independent compensation consultant | <input type="checkbox"/> Compensation survey or study |
| <input type="checkbox"/> Form 990 of other organizations | <input type="checkbox"/> Approval by the board or compensation committee |

4 During the year, did any person listed in Form 990, Part VII, Section A, line 1a:

- a** Receive a severance payment or change of control payment?
- b** Participate in, or receive payment from, a supplemental nonqualified retirement plan?
- c** Participate in, or receive payment from, an equity-based compensation arrangement?

If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.

Only 501(c)(3) and 501(c)(4) organizations must complete lines 5-8.

5 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:

- a** The organization?
 - b** Any related organization?
- If "Yes," to line 5a or 5b, describe in Part III.

6 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:

- a** The organization?
 - b** Any related organization?
- If "Yes" to line 6a or 6b, describe in Part III.

7 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III

8 Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regs. section 53.4958-4(a)(3)? If "Yes," describe in Part III

| | Yes | No |
|----|-----|----|
| 1a | | |
| 1b | | |
| 2 | | |
| 3 | | |
| 4a | | X |
| 4b | | X |
| 4c | | X |
| 5a | | |
| 5b | | |
| 6a | | |
| 6b | | |
| 7 | | |
| 8 | | |

LHA For Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule J (Form 990) 2008

832111
12-23-08

EXHIBIT A - Page 22

19

08440621 099308 58465

2008.0600 BUILDING INDUSTRY ASSOCIATI 58465__3

SCHEDULE O
(Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990

▶ Attach to Form 990. To be completed by organizations to provide additional information for responses to specific questions for the Form 990 or to provide any additional information.

OMB No 1545-0047

2008

Open to Public
Inspection

Name of the organization

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Employer identification number
91-6087698

FORM 990, PART III, LINE 1, DESCRIPTION OF ORGANIZATION MISSION:

CITIZENS. TO ACCOMPLISH THIS PURPOSE, THE ASSOCIATION'S PRIMARY FOCUS IS TO INTERACT WITH THE LEGISLATIVE, REGULATORY, JUDICIAL AND EXECUTIVE AGENCIES OF WASHINGTON'S GOVERNMENT. BIAW WILL OFFER ITS MEMBERSHIP THOSE SERVICES WHICH CAN BE BEST PROVIDED ON A STATEWIDE BASIS AND WILL DISSEMINATE INFORMATION CONCERNING THE BUILDING INDUSTRY TO ALL ASSOCIATION MEMBERS AND THE PUBLIC.

FORM 990, PART VI, SECTION A, LINE 6: BIAW HAS MEMBERS OR STOCKHOLDERS

WHO, PURSUANT TO A PROVISION OF THE ORGANIZATION'S GOVERNING DOCUMENTS OR APPLICABLE STATE LAWS, HAS THE RIGHT TO PARTICIPATE IN THE ORGANIZATION'S GOVERNANCE, OR TO RECEIVE DISTRIBUTIONS OF INCOME OR ASSETS FROM THE ORGANIZATION.

FORM 990, PART VI, SECTION A, LINE 7A: AT ANY TIME DURING THE TAX YEAR,

THERE WERE ONE OR MORE PERSONS THAT HAD THE RIGHT TO ELECT OR APPOINT ONE OR MORE MEMBERS OF THE ORGANIZATION'S GOVERNING BODY, WHETHER PERIODICALLY, AS VANCANCIES ARISE, OR OTHERWISE.

FORM 990, PART VI, SECTION A, LINE 7B: AT ANY TIME DURING THE TAX YEAR,

THERE WAS ONE OR MORE PERSONS WHO HAD THE RIGHT TO APPROVE OR RATIFY DECISIONS OF BIAW'S GOVERNING BODY, SUCH AS APPROVAL OF THE GOVERNING BODY'S ELECTION OR REMOVAL OF MEMBERS OF THE GOVERNING BODY, OR APPROVAL OF THE GOVERNING BODY'S DECISION TO DISSOLVE THE ORGANIZATION.

FORM 990, PART VI, SECTION A, LINE 10: THE PROCESS THE ORGANIZATION USES

LHA For Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule O (Form 990) 2008

832211
12-18-08

EXHIBIT A - Page 24

21

08440621 099308 58465

2008.06000 BUILDING INDUSTRY ASSOCIATI 58465__3

SCHEDULE O
(Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990

▶ Attach to Form 990. To be completed by organizations to provide additional information for responses to specific questions for the Form 990 or to provide any additional information.

OMB No 1545-0047

2008

Open to Public
Inspection

Name of the organization

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Employer identification number
91-6087698

TO REVIEW THE FORM 990 IS AN ACCOUNTING REVIEW.

**FORM 990, PART VI, SECTION B, LINE 12C: BIAW REGULARLY AND CONSISTENTLY
MONITORS AND ENFORCE COMPLIANCE WITH THE POLICY THROUGH BOARD MEETINGS.**

**FORM 990, PART VI, SECTION C, LINE 18: THE FORM 990 IS AVAILABLE UPON
REQUEST BY MEMBERS.**

**FORM 990, PART VI, SECTION C, LINE 19: THE ORGANIZATION'S
GOVERNING/ORGANIZING DOCUMENTS AND CONFLICT OF INTEREST POLICY ARE
AVAILABLE TO THE PUBLIC UPON REQUEST BY MEMBERS.**

EXPLANATION FOR AMENDING FORM 990 AND SCHEDULE C:

**THE ORGANIZATION IS AMENDING THE 2008 FORM 990 TO CORRECTLY ANSWER FORM
990, PART IV, LINE 3. THE ORGANIZATION ONLY INCURS LOBBYING
EXPENDITURES, NO POLITICAL EXPENDITURES OR ACTIVITIES, AND, THEREFORE,
SHOULD HAVE ANSWERED THIS QUESTION "NO". AS A RESULT, SCHEDULE C, PART
I-A IS NO LONGER COMPLETED. SCHEDULE C, PART III-B REMAINS THE SAME TO
PROPERLY DISCLOSE LOBBYING EXPENDITURES AND NONDEDUCTIBLE DUES
INFORMATION.**

Related Organizations and Unrelated Partnerships

▶ Attach to Form 990. To be completed by organizations that answered "Yes" to Form 990, Part IV, lines 33, 34, 35, 36, or 37.
 ▶ See separate instructions.

OMB No 1545-0047

2008
 Open to Public
 Inspection

Name of the organization **BUILDING INDUSTRY ASSOCIATION OF WASHINGTON** Employer identification number **91-6087698**

Part I Identification of Disregarded Entities

| (A) Name, address, and EIN of disregarded entity | (B) Primary activity | (C) Legal domicile (state or foreign country) | (D) Total income | (E) End-of-year assets | (F) Direct controlling entity |
|--|-------------------------|---|---------------------|---------------------------|-------------------------------------|
| | | | | | |
| | | | | | |
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| | | | | | |

Part II Identification of Related Tax-Exempt Organizations

| (A) Name, address, and EIN of related organization | (B) Primary activity | (C) Legal domicile (state or foreign country) | (D) Exempt Code section | (E) Public charity status (if section 501(c)(3)) | (F) Direct controlling entity |
|--|-------------------------|---|-------------------------------|---|-------------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
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| | | | | | |

BUILDING INDUSTRY ASSOCIATION OF

Part V Transactions With Related Organizations

Note. Complete line 1 if any entity is listed in Parts II, III, or IV

1 During the tax year, did the organization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?

- a Receipt of (i) interest (ii) annuities (iii) royalties (iv) rent from a controlled entity
- b Gift, grant, or capital contribution to other organization(s)
- c Gift, grant, or capital contribution from other organization(s)
- d Loans or loan guarantees to or for other organization(s)
- e Loans or loan guarantees by other organization(s)

- f Sale of assets to other organization(s)
- g Purchase of assets from other organization(s)
- h Exchange of assets
- i Lease of facilities, equipment, or other assets to other organization(s)

- j Lease of facilities, equipment, or other assets from other organization(s)
- k Performance of services or membership or fundraising solicitations for other organization(s)
- l Performance of services or membership or fundraising solicitations by other organization(s)
- m Sharing of facilities, equipment, mailing lists, or other assets
- n Sharing of paid employees

- o Reimbursement paid to other organization for expenses
- p Reimbursement paid by other organization for expenses

- q Other transfer of cash or property to other organization(s)
- r Other transfer of cash or property from other organization(s)

| | Yes | No |
|----|-----|----|
| 1a | | X |
| 1b | | X |
| 1c | | X |
| 1d | X | |
| 1e | | X |
| 1f | | X |
| 1g | | X |
| 1h | | X |
| 1i | | X |
| 1j | | X |
| 1k | | X |
| 1l | | X |
| 1m | | X |
| 1n | | X |
| 1o | | X |
| 1p | | X |
| 1q | | X |
| 1r | | X |

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

| (A) Name of other organization(s) | (B) Transaction type (a-r) | (C) Amount involved |
|--------------------------------------|-------------------------------|------------------------|
| (1) BIAW MEMBER SERVICES CORPORATION | D | 1,207,851. |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) | | |
| (6) | | |

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization 990
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No 1545-0172

2008

Attachment
Sequence No 67

Name(s) shown on return

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Business or activity to which this form relates

FORM 990 PAGE 10

Identifying number

91-6087698

Part I Election To Expense Certain Property Under Section 179 Note: If you have any listed property, complete Part V before you complete Part I.

| | | | |
|---|--|---|----------|
| 1 | Maximum amount. See the instructions for a higher limit for certain businesses | 1 | 250,000. |
| 2 | Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | 800,000. |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions. | 5 | |

| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
|---|-----------------------------|------------------------------|------------------|
| | | | |
| | | | |
| | | | |

| | | | |
|----|---|----|--|
| 7 | Listed property. Enter the amount from line 29 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from line 13 of your 2007 Form 4562 | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property. Instead, use Part V

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)

| | | | |
|----|--|----|--|
| 14 | Special depreciation for qualified property (other than listed property) placed in service during the tax year | 14 | |
| 15 | Property subject to section 168(f)(1) election | 15 | |
| 16 | Other depreciation (including ACRS) | 16 | |

Part III MACRS Depreciation (Do not include listed property) (See instructions)

Section A

| | | | |
|----|---|--------------------------|------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2008 | 17 | 581. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here | <input type="checkbox"/> | |

Section B - Assets Placed in Service During 2008 Tax Year Using the General Depreciation System

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only - see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|--------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 19a | 3-year property | | | | | |
| b | 5-year property | | | | | |
| c | 7-year property | | | | | |
| d | 10-year property | | | | | |
| e | 15-year property | | | | | |
| f | 20-year property | | | | | |
| g | 25-year property | | 25 yrs. | | S/L | |
| h | Residential rental property | / | 27.5 yrs. | MM | S/L | |
| i | Nonresidential real property | / | 27.5 yrs. | MM | S/L | |
| | | / | 39 yrs. | MM | S/L | |
| | | / | | MM | S/L | |

Section C - Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System

| 20a | Class life | | | | | |
|-----|------------|---|---------|----|-----|--|
| b | 12-year | | 12 yrs | | S/L | |
| c | 40-year | / | 40 yrs. | MM | S/L | |

Part IV Summary (See instructions)

| | | | |
|----|---|----|------|
| 21 | Listed property. Enter amount from line 28 | 21 | |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr | 22 | 581. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 23 | |

816251 11-08-08 LHA For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2008)

**BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

Form 4562 (2008)

91-6087698 Page 2

Part V **Listed Property** (include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)
 Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable

Section A - Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles)

24a Do you have evidence to support the business/investment use claimed? Yes No 24b If 'Yes,' is the evidence written? Yes No

| (a) Type of property (list vehicles first) | (b) Date placed in service | (c) Business/ investment use percentage | (d) Cost or other basis | (e) Basis for depreciation (business/investment use only) | (f) Recovery period | (g) Method/ Convention | (h) Depreciation deduction | (i) Elected section 179 cost |
|--|-------------------------------------|--|-------------------------------|--|---------------------------|------------------------------|----------------------------------|---------------------------------------|
| 25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use | | | | | | | 25 | |
| 26 Property used more than 50% in a qualified business use: | | | | | | | | |
| | | % | | | | | | |
| | | % | | | | | | |
| | | % | | | | | | |
| 27 Property used 50% or less in a qualified business use: | | | | | | | | |
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |
| 28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1 | | | | | | | 28 | |
| 29 Add amounts in column (i), line 28. Enter here and on line 7, page 1 | | | | | | | | 29 |

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

| | (a) | | (b) | | (c) | | (d) | | (e) | | (f) | |
|--|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle | Vehicle |
| 30 Total business/investment miles driven during the year (do not include commuting miles) | | | | | | | | | | | | |
| 31 Total commuting miles driven during the year | | | | | | | | | | | | |
| 32 Total other personal (noncommuting) miles driven | | | | | | | | | | | | |
| 33 Total miles driven during the year. Add lines 30 through 32 | | | | | | | | | | | | |
| 34 Was the vehicle available for personal use during off-duty hours? | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No |
| 35 Was the vehicle used primarily by a more than 5% owner or related person? | | | | | | | | | | | | |
| 36 Is another vehicle available for personal use? | | | | | | | | | | | | |

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

| | | |
|---|-----|----|
| 37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? | Yes | No |
| 38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners | | |
| 39 Do you treat all use of vehicles by employees as personal use? | | |
| 40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? | | |
| 41 Do you meet the requirements concerning qualified automobile demonstration use? Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles. | | |

Part VI **Amortization**

| (a) Description of costs | (b) Date amortization begins | (c) Amortizable amount | (d) Code section | (e) Amortization period or percentage | (f) Amortization for this year |
|---|------------------------------------|------------------------------|------------------------|---|--------------------------------------|
| 42 Amortization of costs that begins during your 2008 tax year: | | | | | |
| | | | | | |
| 43 Amortization of costs that began before your 2008 tax year | | | | | 43 |
| 44 Total. Add amounts in column (f). See the instructions for where to report | | | | | 44 |

816252 11-08-08

Form 4562 (2008)

Application for Extension of Time To File an Exempt Organization Return

OMB No. 1545-1709

▶ **File a separate application for each return.**

- If you are filing for an Automatic 3-Month Extension, complete only Part I and check this box
 - If you are filing for an Additional (Not Automatic) 3-Month Extension, complete only Part II (on page 2 of this form).
- Do not complete Part II unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.

Part I Automatic 3-Month Extension of Time. Only submit original (no copies needed)

A corporation required to file Form 990-T and requesting an automatic 6 month extension check this box and complete Part I only

All other corporations (including 1120-C filers), partnerships, REMICs, and trusts must use Form 7004 to request an extension of time to file income tax returns

Electronic Filing (e-file). Generally, you can electronically file Form 8868 if you want a 3-month automatic extension of time to file one of the returns noted below (3 months for a corporation required to file Form 990-T). However, you cannot file Form 8868 electronically if (1) you want the additional (not automatic) 3-month extension or (2) you file Forms 990-BL, 6069, or 8870, group returns, or a composite or consolidated Form 990-T. Instead, you must submit the fully completed and signed page 2 (Part II) of Form 8868. For more details on the electronic filing of this form, visit www.irs.gov/efile and click on e-file for Charities & Nonprofits.

| | | |
|---|---|---|
| Type or print | Name of Exempt Organization BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | Employer identification number 91-6087698 |
| File by the due date for filing your return. See instructions | Number, street, and room or suite no. If a P.O. box, see instructions P.O. BOX 1909 | |
| | City, town or post office, state, and ZIP code. For a foreign address, see instructions. OLYMPIA, WA 98507-1909 | |

Check type of return to be filed (file a separate application for each return).

- | | | |
|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Form 990 | <input type="checkbox"/> Form 990-T (corporation) | <input type="checkbox"/> Form 4720 |
| <input type="checkbox"/> Form 990-BL | <input type="checkbox"/> Form 990-T (sec 401(a) or 408(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ | <input type="checkbox"/> Form 990-T (trust other than above) | <input type="checkbox"/> Form 6069 |
| <input type="checkbox"/> Form 990-PF | <input type="checkbox"/> Form 1041-A | <input type="checkbox"/> Form 8870 |

TOM MCCABE

- The books are in the care of ▶ **P.O. BOX 1909 - OLYMPIA, WA 98507-1909**
- Telephone No. ▶ **(360) 352-7800** FAX No ▶ _____
- If the organization does not have an office or place of business in the United States, check this box
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) _____ . If this is for the whole group, check this box ▶ . If it is for part of the group, check this box ▶ and attach a list with the names and EINs of all members the extension will cover

1 I request an automatic 3-month (6 months for a corporation required to file Form 990-T) extension of time until **AUGUST 15, 2009** to file the exempt organization return for the organization named above. The extension is for the organization's return for:
 ▶ calendar year **2008** or
 ▶ tax year beginning _____, and ending _____

2 If this tax year is for less than 12 months, check reason Initial return Final return Change in accounting period

| | | | |
|---|----|----|-----|
| 3a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions | 3a | \$ | |
| b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit | 3b | \$ | |
| c Balance Due. Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions | 3c | \$ | N/A |

Caution. If you are going to make an electronic fund withdrawal with this Form 8868, see Form 8453-EO and Form 8879-EO for payment instructions

LHA For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

Form 8868 (Rev. 4-2009)

If you are filing for an Additional (Not Automatic) 3-Month Extension, complete only Part II and check this box

Note. Only complete Part II if you have already been granted an automatic 3-month extension on a previously filed Form 8868.

If you are filing for an Automatic 3-Month Extension, complete only Part I (on page 1).

Additional (Not Automatic) 3-Month Extension of Time. Only file the original (no copies needed).

| | | |
|---|---|---|
| Type or print File by the extended due date for filing the return. See instructions. | Name of Exempt Organization BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | Employer identification number 91-6087698 |
| | Number, street, and room or suite no. If a P.O. box, see instructions. P.O. BOX 1909 | For IRS use only |
| | City, town or post office, state, and ZIP code. For a foreign address, see instructions. OLYMPIA, WA 98507-1909 | |

Check type of return to be filed (File a separate application for each return).

- Form 990
- Form 990-EZ
- Form 990-T (sec. 401(a) or 408(a) trust)
- Form 1041-A
- Form 5227
- Form 8870
- Form 990-BL
- Form 990-PF
- Form 990-T (trust other than above)
- Form 4720
- Form 6069

STOP! Do not complete Part II if you were not already granted an automatic 3-month extension on a previously filed Form 8868.

TOM MCCABE

The books are in the care of **P.O. BOX 1909 - OLYMPIA, WA 98507-1909**

Telephone No. **(360) 352-7800**

FAX No.

If the organization does not have an office or place of business in the United States, check this box

If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) . If this is for the whole group, check this box . If it is for part of the group, check this box and attach a list with the names and EINs of all members the extension is for.

I request an additional 3-month extension of time until **NOVEMBER 15, 2009.**

For calendar year **2008**, or other tax year beginning _____, and ending _____.

If this tax year is for less than 12 months, check reason: Initial return Final return Change in accounting period

State in detail why you need the extension

ADDITIONAL TIME IS REQUESTED AS WE ARE AWAITING INFORMATION FROM THIRD PARTIES REQUIRED TO PREPARE A COMPLETE AND ACCURATE RETURN.

| | | |
|--|-----------|---------------|
| 8a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions. | 8a | \$ |
| b If this application is for Form 990-PF, 990-T, 4720, or 6069, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit and any amount paid previously with Form 8868. | 8b | \$ |
| c Balance Due. Subtract line 8b from line 8a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFPS (Electronic Federal Tax Payment System). See instructions. | 8c | \$ N/A |

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form.

Signature **T. McCabe**

T. McCabe

Date **8/11/09**

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Subject: Utter et al. v. Building Industry Association of Washington - Case No. 89462-1
Attachments: Response to Petition for Review-Cross-Petition for Review.PDF

Please find attached the Respondent/Cross Appellant's Response to Petition for Review/Cross-Petition for Review.

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A little encouragement can spark a great accomplishment

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