

# **Washington Taxes for Nonprofits**

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# Washington Taxes for Nonprofits

## The B&O tax for nonprofits

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### Washington taxes in general

While considered by some a simple gross receipts tax system, Washington's complex Business & Occupation (B&O) tax system has more than 50 B&O tax classifications, many with their own definitions, exemptions, deductions, and credits. In addition, there are 43 cities with their own definitions, B&O tax rates, exemptions, deductions and thresholds.

### Nonprofit does not mean the same as tax-exempt

“Nonprofit” is a state legal term that describes how an entity is organized under state law, how it is controlled, and what happens to assets upon dissolution. “Tax-exempt” usually describes an organization, not necessarily organized as a nonprofit, that has been granted a limited exemption under federal law from federal net income taxes.

While many states follow the federal income tax exemption for state net income tax purposes, Washington does not have a net income tax, as that type of tax is specifically prohibited by the Washington State Constitution. *Culliton v. Chase*, 174 Wash. 363, 289 P.2d 81 (1933).

### Nonprofits are presumed taxable

Washington nonprofits are presumed taxable like any other business organization. For B&O tax purposes, a taxpayer is any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. RCW 82.04.030.

Therefore, like any other taxpayer, nonprofit or governmental organizations should assume all their activities are taxable, then determine the classification of the revenues, then review specific exemptions or deductions that may apply to the classified revenue, and finally prepare or collect any necessary documentation to prove the exemption or deduction.

## The burden of proof

The Washington State Constitution prohibits the gift of public money to private persons. Article VIII, Section 5 and 7.

In general, taxation is the rule and exemption is the exception. *Budget Rent-A-Car v. Department of Revenue*, 81 Wn.2d at 174. Tax exemptions, deductions, and credits are construed narrowly and against the taxpayer. *Group Health Co-op. of Puget Sound, Inc. v. Wash. State Tax Commission*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967).

If not an exemption, deduction, or credit and if any doubt exists as to the meaning of a taxation statute, the Washington State Supreme Court has held that the statute must be construed most strongly against the taxing power and in favor of the taxpayer. *Agrilink Foods, Inc. v. State of Washington*, No. 74478-574974-4 (2005); *Estate of Wylie Hemphill Et. Al v. Department of Revenue*, No. 74974-4 (2005).

## Typical nonprofit B&O classifications

Every person engaged in activities which are within the provisions of two or more of classifications are taxable under each classification. RCW 82.04.440.

This makes it necessary for every taxpayer to segregate its revenues to determine the proper classification of each, and then determine any applicable deductions for that classification.

Most nonprofits providing program services are typically engaged in retailing activities subject to the Retailing B&O tax or providing activities subject to the Service & Other B&O tax.

## Retailing and retailing services

Retailing is every sale of tangible personal property to consumers. RCW 82.04.050(1).

A consumer is the end user of the goods who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business other than for the purpose of selling the item or service at wholesale. RCW 82.04.190.

In addition to sales of tangible personal property to end users, many services provided to end users are also included within retailing:

- The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. RCW 82.04.050(2)(a).

- The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers. RCW 82.04.050(2)(b).
- The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner. RCW 82.04.050(2)(c).
- The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures. RCW 82.04.050(2)(d).
- The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services. RCW 82.04.050(2)(e).
- The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp. RCW 82.04.050(2)(f).
- The installing, repairing, altering, or improving of digital goods for consumers. RCW 82.04.050(2)(g).
- Abstract, title insurance, and escrow services. RCW 82.04.050(3)(a).
- Credit bureau services. RCW 82.04.050(3)(b).
- Automobile parking and storage garage services. RCW 82.04.050(3)(c).
- Landscape maintenance and horticultural services. RCW 82.04.050(3)(d).
- Service charges associated with tickets to professional sporting events. RCW 82.04.050(3)(e).
- The following personal services: tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services. RCW 82.04.050(3)(f).
- Operation of an athletic or fitness facility, including all charges for the use of a facility or for any associated services and amenities. RCW 82.04.050(3)(g).
- The renting or leasing of tangible personal property to consumers. RCW 82.04.050(4)(a).
- The providing of telephone services to consumers. RCW 82.04.050(5).

- The sale of prewritten computer software or the right to access and use prewritten software regardless of the method of delivery to the end user. RCW 82.04.050(6).
- The sale of or charge made for an extended warranty to a consumer. RCW 82.04.050(7).
- The sale to consumers of digital goods, digital codes, or digital automated services. RCW 82.04.050(8).
- Providing tangible personal property along with an operator for a fixed or indeterminate period of time. RCW 82.04.050(9).
- Specified services of an amusement or recreational nature. RCW 82.04.050(15).

These services are frequently called “retailing services” and only services on this list are both retailing B&O and sales tax taxable. Other services are not sales taxable, for example testing services are not subject to either the sales or use tax. WAC 458-20-172 and Det. No. 92-183ER, 13 WTD 96 (1993).

### **Service & Other Activities**

Any activity not otherwise specifically classified or named in the B&O tax chapter is subject to the Service & Other activity B&O classification. RCW 82.04.290(2).

Unlike the retailing services specifically named in RCW 82.04.050, these services are not subject to the sales tax.

### **Other classifications and B&O tax rates**

Many other B&O classifications exist. These include wholesaling, manufacturing, and extracting, as well as preferential rates for a variety of special retailers, wholesaler, manufacturers, extractors, and service providers.

- Retailing is taxed at .471%.
- Service & Other Activities are taxed at 1.5%.

## **B&O exceptions for low gross income**

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### **Registration thresholds**

Businesses with taxable gross income of less than \$12,000 per year are not required to register with the Department, as long as the person is not required to collect or pay to the Department any other tax or fee which the Department is authorized to collect; and the person is not otherwise required to obtain a business license. RCW 82.32.030(2).

## **Active non-reporting**

Other taxpayers may be required to initially file for a tax registration but can be relieved by the Department of filing returns if the person's taxable gross income is less than \$28,000 per year and the person is not required to collect or pay to the Department any other tax or fee which the Department is authorized to collect. RCW 82.32.045(4).

- The Department calls this "active non-reporting" status.
- Persons placed on an active non-reporting status are required to timely notify the Department if their business activities no longer meet the conditions to be in active non-reporting status. WAC 458-20-228(5).

For taxpayers that will report at least 50% of their taxable amounts subject to the Service & Other B&O tax rate of 1.5%, the active non-reporting threshold is \$56,000.

## **Completely Washington B&O tax exempt organizations**

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### **The Red Cross**

The B&O tax does not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. RCW 82.04.380.

This organization is also broadly exempt on its purchases for sales tax purposes. RCW 82.08.0258.

### **Artistic and cultural organizations**

Artistic or cultural organizations are allowed a deduction from all business activities whatsoever conducted by the organization. RCW 82.04.4327.

"Artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs for viewing or attendance by the general public. RCW 82.04.4328(1).

The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to an exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums; musical or dramatic performance or series of performances; or an educational seminar or

program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. RCW 82.04.4328(2).

The organization must meet certain organization and operational requirements. It must be a not-for-profit corporation under Chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under Chapter 24.12 RCW. In addition:

- No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;
- Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;
- Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;
- The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;
- The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;
- Services must be available regardless of race, color, national origin, or ancestry; and
- The Department shall have access to its books in order to determine whether the corporation is exempt from taxes. RCW 82.04.4328(1).

The Department has noted that even if the organization's governing documents call for less than eight board members, as long as the actual number of board members is at least eight, the organization will qualify. Det. No. 88-23, 5 WTD 61 (1988).

The Department has also noted that natural history museums do not qualify for exemption, as they are not history museums. Det. No. 01-104ER, 22 WTD 163 (2003).

These organizations also are allowed a sales tax exemption for certain items used in their program activities. RCW 82.08.031.

## **Sheltered workshops**

The B&O tax does not apply to the business activities of nonprofit organizations from the operation of sheltered workshops. RCW 82.04.385.

"The operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or providing evaluation and work adjustment services for handicapped individuals.

As sheltered workshop activities are considered manufacturing activities, these organizations are allowed a sales tax exemption for certain assets used in their manufacturing activities. RCW 82.08.02565.

## **Blood, bone, and tissue banks**

The B&O tax does not apply to amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent the amounts are exempt from federal income tax. RCW 82.04.324(1).

"Qualifying blood bank" means a blood bank that qualifies as an exempt organization under federal Internal Revenue Code Section 501(c)(3), is registered pursuant to 21 C.F.R., part 607, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. RCW 82.04.324(2)(a).

"Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under federal Internal Revenue Code Section 501(c)(3), is registered pursuant to 21 C.F.R., part 1271, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. RCW 82.04.324(2)(b).

"Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under federal Internal Revenue Code Section 501(c)(3), is registered pursuant to 21 C.F.R., part 607 and part 1271, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. RCW 82.04.324(2)(c).

These organizations are allowed a sales tax exemption for certain assets used in their activities. RCW 82.08.02805.

### **Comprehensive cancer centers**

The B&O tax does not apply to amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. RCW 82.04.4265.

"Comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the national cancer institute as a comprehensive cancer center and that qualifies as an exempt organization under federal Internal Revenue Code Section 501(c)(3).

This organization is allowed a sales tax exemption for certain assets used in its activities. RCW 82.08.808.

### **Organ procurement organizations**

The B&O tax does not apply to amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) to the extent that the amounts are exempt from federal income tax. RCW 82.04.326.

These organizations are allowed a sales tax exemption for certain assets used in their activities. RCW 82.08.02807.

### **The state, the federal government, and housing authorities**

The State of Washington and its departments are expressly excluded from the definition of a taxpayer. RCW 82.04.030.

The federal government is exempt by virtue of federal law. Those selling to the federal government are still taxable. RCW 82.04.4286.

Housing authorities are exempt. RCW 35.82.210

While the federal government and housing authorities are exempt from paying the sales tax, the State of Washington is subject to the tax. RCW 82.08.010(3).

### **Legal services to low-income individuals**

The B&O tax does not apply to nonprofit organizations primarily engaged in the providing of legal services to low-income individuals from whom no charge for services is solicited. For purposes of this exemption "nonprofit organization" is an organization exempt from federal income tax under federal internal revenue code section 501(c). RCW 82.04.635.

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## **B&O exemptions and deductions for specific activities**

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### **General exclusions, deductions, exemptions, and credits**

Because the state does not consider nonprofits exempt from tax, nonprofits need to consider the same general exclusions, deductions, exemptions, and credits that would be used by a for-profit or commercial taxpayer.

These would include but not be limited those for low volume of gross income, rents of real property, investment income, reimbursements, interstate or foreign sales, and the B&O credit for small businesses.

### **Fundraising**

The B&O tax does not apply to amounts received by nonprofit organizations for fundraising activities. RCW 82.04.3651(1).

"Fundraising activity" means soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. RCW 82.04.3651(3).

"Fundraising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business or the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. RCW 82.04.3651(3).

The sale of used books, used videos, used sound recordings, or similar used information products in a library is not the operation of a regular place of business for the purposes of this section, if the proceeds of the sales are used to support the library. RCW 82.04.3651(3).

For the purposes of this exemption, a "nonprofit organization" means an organization exempt from tax under federal Internal Revenue Code Sections 501(c) (3), (4), or (10); a nonprofit organization that would qualify under the first definition except that it is not organized as a nonprofit corporation; or a nonprofit organization that meets all of the following criteria:

- The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;
- The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

- The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office. RCW 82.04.3651(2).

Qualifying nonprofits are also exempt from collecting the sales tax on their fundraising activities. RCW 82.08.02573.

### **Trade shows, conventions, and seminars**

The B&O tax does not apply to charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, if the trade show, convention, or educational seminar is not open to the general public. RCW 82.04.4282.

A "trade organization" is an entity whose members are engaged "in trade," i.e., in one or more lawful commercial trades, businesses, crafts, industries, or distinct productive enterprises. A "professional organization" is an entity whose members are engaged in a particular lawful vocation, occupation, or field of activity of a specialized nature. WAC 458-20-256(3).

"Not open to the general public" means that attendance is limited to members of the sponsoring organization and to specific invited guests of the sponsoring organization. WAC 458-20-256(3).

If the attendance is not limited to members of the organization and specifically invited guests, all proceeds from the event are taxable, regardless of how many members or specifically invited guests attend.

### **Dues and initiation fees**

The B&O tax does not apply to amounts derived from bona fide dues and initiation fees. RCW 82.04.4282.

This deduction does not exempt any organization from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. RCW 82.04.4282.

If dues are in exchange for any significant amount of goods or services rendered by the recipient to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services is not considered to be deductible. RCW 82.04.4282.

For nonprofit trade associations, significant goods and services do not include the provision of newsletters of a general and informational nature; the conduct of regulatory or legislative liaison or lobbying; the conduct of trade shows and

conventions; or the conduct of meetings and seminar of general and varied interest to members. Det. No. 86-310, 2 WTD 91 (1986).

Member discounts on separately charged goods or services do not subject a portion of dues to the B&O tax as long as the charges are for the full cost of the item. Det. No. 94-062, 14 WTD 225 (1995).

The B&O tax does not apply to all amounts received by a nonprofit youth organization as membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members to receive services from the organization or to use the organization's facilities or from members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities. "Nonprofit youth organization" is one that qualifies for property tax exemption under RCW 84.36.030. RCW 82.04.4271.

### **Contributions and donations**

The B&O tax does not apply to amounts received as donations. RCW 82.04.4282.

Some revenue may be part sale and part gift. To the extent revenue represents an exchange for goods and services it may be considered a taxable gross receipt, barring another specific exemption. The revenue above the value of the goods and services exchanged is exempt as a donation to further the goals of the nonprofit organization. WAC 458-20-169(5)(f).

### **Tuition fees**

The B&O tax does not apply to amounts received as tuition fees. RCW 82.04.4282.

"Tuition fee" includes library, laboratory, health service, and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. RCW 82.04.170.

"Educational institution," as used for this deduction, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501(c)(3).

### **Grants and sponsorship**

Grants are deductible from the B&O tax as a donation. RCW 82.04.4282. In order to qualify, the grant maker must have a gratuitous intent. *Analytical Methods v. Department of Revenue*, 84 Wn. App. 236, 928 P.2d 1123 (1996).

For a gratuitous intent, the donor cannot receive significant goods, services, or benefits in return for making the grant. Written accountability reporting does not result in a benefit in exchange for the grant nor does conditions or restrictions on the use of the gift for specific charitable purposes. WAC 458-20-169(5)(f)(3).

Examples of direct benefits that would cause a grant to be taxable are money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research benefiting the donor directly. WAC 458-20-169(5)(f)(3).

Public acknowledgment of a donor for the gift does not result in a significant service or benefit simply because the gift is publicly acknowledged. WAC 458-20-169(5)(f)(3).

Specific deductions exist for certain grants:

- Federal Small Business Innovation Research (SBIR) grants are exempt effective July 1, 2004. RCW 82.04.4261.
- Federal Small Business Technology Transfer Program grants are exempt effective July 1, 2004. RCW 82.04.4262.
- Grants from the federal government to political subdivisions of the state are exempt. RCW 82.04.418.
- Grants received by a nonprofit organization from the United States, the State of Washington or any municipal corporation or political subdivision as grants to support salmon restoration purposes are deductible. RCW 82.04.4339.

### **Federal subrecipient grants**

Federal subrecipient grants are deductible from the B&O tax as a donation. RCW 82.04.4282. However, amounts received as a contractor are taxable.

For federal grant making purposes, a “subrecipient” is distinguished from a “contractor” when federal funds are distributed directly from the federal government to a pass-through entity that then remits the funds to either a subrecipient or a contractor. A subrecipient is measured against the objectives and the restrictions of the federal program, while a contractor is not.

Section 200.330 of the Code of Federal Regulations defines subrecipients and contractors for federal grantmaking purposes.

A subrecipient:

- Determines who is eligible to receive what federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the federal award; and
- In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

A contractor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the federal program; and
- Is not subject to compliance requirements of the federal program because of the agreement, though similar requirements may apply for other reasons.

These definitions were in former Federal OMB Circular A-133, but used the term “vendor” rather than “contractor”.

## **Health and social welfare services**

A deduction exists for amounts received from the United States, the State of Washington or any municipal corporation or political subdivision as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision. RCW 82.04.4297.

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

- Mental health, drug, or alcoholism counseling or treatment;
- Family counseling;
- Health care services;

- Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;
- Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;
- Care of orphans or foster children;
- Day care of children;
- Employment development, training, and placement;
- Legal services to the indigent;
- Weatherization assistance or minor home repair for low-income homeowners or renters;
- Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;
- Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state; and
- Temporary medical housing. RCW 82.04.431.

"Health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. In addition, a corporation needs to satisfy the following conditions:

- No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;
- Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;
- Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly

to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

- The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;
- The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;
- Services must be available regardless of race, color, national origin, or ancestry; and
- The Department shall have access to its books in order to determine whether the corporation is exempt from taxes. RCW 82.04.431.

No deduction is allowed for amounts that are received under an employee benefit plan. RCW 82.04.4297.

Because the deduction only applies to amounts received from specified governmental entities, any fee received by a nongovernmental organization or state other than Washington is considered a taxable fee for service.

Because the deduction is limited to certain specifically defined services, any fee received for services not expressly included on the list of health or social welfare services is taxable, regardless of the payer.

No director can be a paid employee, regardless of the number of directors. Det. 95-124, 15 WTD 145 (1996).

Salary or compensation paid to officers and executives must be at levels comparable to the salary or compensation of like positions within the public service of the state. *Group Health v. Department of Revenue*, 106 Wn. 2d 391 (1986).

### **Public and nonprofit hospitals, and community health centers**

A public hospital district, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization is allowed to deduct amounts received as compensation for health care services covered under Medicare, Medicaid, Children's Health, and the State of Washington Basic Health Plan. RCW 82.04.4311.

The deduction does not apply to amounts received from patient copayments or patient deductibles. RCW 82.04.4311.

These organizations also have a wide variety of sales tax exemptions for supplies used to provide medical care to patients.

## **Municipal revenues**

Political subdivisions of the state such as counties and towns are taxable, but allowed an exemption for exclusively governmental activities. RCW 82.04.319.

Activities which are considered nongovernmental enterprise activities are taxable. "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over 50% funded by user fees. WAC 458-20-189(2)(d).

## **Camps and conference centers**

The B&O tax does apply to amounts received by a nonprofit organization from the sale or furnishing certain items at a camp or conference center conducted on property exempt from property tax. RCW 82.04.363.

Exempt revenues are those for lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property; food and meals; books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large.

These items are also exempt from the retail sales tax as well. RCW 82.08.830.

## **Childcare resource and referral services**

The B&O tax does not apply to nonprofit organizations in respect to amounts derived from the provision of childcare resource and referral services. RCW 82.04.3395.

## **Credit and debt services**

The B&O tax does not apply to nonprofit organizations in respect to amounts derived from provision of certain credit and debt services. RCW 82.04.368.

Exempt services are presenting individual and community credit education programs including credit and debt counseling; obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner; establishing and administering negotiated repayment programs for debtors; or providing advice or assistance to a debtor with regard to the above-noted services. RCW 82.04.368.

## **Group training homes**

The B&O tax does not apply to income received from the Department of Social and Health services for the cost of care, maintenance, support, and training of persons with developmental disabilities at nonprofit group training homes. RCW 82.04.385.

"Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities. RCW 71A.22.20(2).

### **Student loan programs**

B&O tax does not apply to gross income received by nonprofit organizations that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or provide guarantees for student loans made through programs other than the federal guaranteed student loan program. RCW 82.04.367.

Qualifying organizations are nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. RCW 82.04.367.

### **Patient services or drug sales by certain nonprofits**

The B&O tax does not apply to amounts derived as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by certain qualifying organizations. RCW 82.04.4289.

Qualifying organizations are kidney dialysis facilities operated as nonprofit corporations, nonprofit hospice agencies, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289.

It is the position of the Department that nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for this tax exemption. WAC 458-20-168(3)(d).

### **Nonprofit boarding homes**

The B&O tax does not apply to amounts received by a nonprofit boarding home for providing room and domiciliary care to residents of the boarding home. RCW 82.04.4262.

"Domiciliary care" means assistance with activities of daily living provided by the boarding home either directly or indirectly; or health support services, if provided directly or indirectly by the boarding home; or intermittent nursing services, if provided directly or indirectly by the boarding home. RCW 18.20.020.

"Nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under federal Internal Revenue Code Section 501(c)(3), is incorporated under Chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district. RCW 82.04.4262(2)(b).

### **Child welfare services**

A B&O tax deduction exists for certain nonprofits that receive funding directly or indirectly from a governmental entity to provide child welfare services. The nonprofit must qualify as a health or social welfare organization. deduction must be for funds received directly, and any indirect funds received from a third party, even if government subsidized, are taxable. RCW 82.04.4275.

### **Property management**

A B&O tax deduction exists for amounts received by a nonprofit property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts. RCW 82.04.394.

### **Mental health services**

A B&O tax deduction exists for certain nonprofits that receive funding directly or indirectly from a governmental entity to provide mental health services or chemical dependency services. The nonprofit must qualify as a health or social welfare organization. The deduction includes amounts received from a regional support network as compensation for mental health services provided under a government funded program. RCW 82.04.4277.

### **Pet adoption fees**

The B&O tax does not apply to the transfer of the ownership of, title to, or possession of an animal by an animal rescue organization in exchange for the payment of an adoption fee. "Animal rescue organization" means an animal care and control agency or an animal rescue group that is exempt under section 501(c)(3) of the Internal Revenue Code. RCW 82.04.040(1).

## **Local B&O taxes and nonprofits**

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### **In general**

Approximately 170 cities in Washington impose some type of business licensing requirement and 43 impose local B&O taxes as part of their licensing fee.

Cities that impose local B&O taxes include Bellingham, Bellevue, Bremerton, Everett, Issaquah, Longview, Olympia, Seattle, and Tacoma.

These taxes are administered independently by each city. While these cities generally have similar classifications as the state such as retailing, wholesaling, manufacturing, and services, these taxes are not identical to the state level tax and cities are free to define their classifications as they see fit and are not bound to any exemption or deduction at the state level.

## **City B&O taxation of nonprofits**

Recently, most cities have modified their ordinances to try to create more uniformity between their tax statutes. As a result, most cities will tax nonprofits on their retailing activity but exempt other activities.

Seattle is an exception and restricts exemptions for nonprofits to specific revenue streams.

Nonprofits will need to analyze their local licensing and B&O tax payment obligations independently of their state level obligations.

## **The sales tax for nonprofits**

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### **The Retailing B&O determines if the retail sales tax applies**

Many key definitions do not independently exist in the sales or use tax statutes, rather those statutes directly adopt and cross-reference B&O tax definitions, including "sale," "sale at retail," "retail sale," "sale at wholesale," and "wholesale." RCW 82.08.010(6).

Therefore, sales of tangible personal property to consumers and sales of certain specified retailing services also to consumers should always by default assumed to be subject to the sales tax. RCW 82.04.050.

However, many activities subject to the Retailing B&O tax have specific sales tax exemptions.

### **General exemptions from the retail sales tax**

Unlike many other states, Washington does not provide broad retail sales tax exemptions for nonprofit organizations. Over time, the Legislature has created special tax preferences for certain organizations or revenue streams.

For other revenue streams, nonprofits need to consider the same general retail sale tax exemptions that would be used by a for-profit or commercial taxpayer. These would include but not be limited to purchases of food, certain medical items, purchases for resale, and interstate or foreign sales.

### **Due from the consumer and not the seller**

The tax is due from the consumer of the transaction. A consumer is means any person who purchases, acquires, owns, holds, or uses any article of tangible personal property other than for the purpose of resale. RCW 82.04.190(1).

A consumer also includes those who provide services subject to the Service & Other Activities B&O tax, or any person who buys any retailing service other than for the purchase of resale in the regular course of business. RCW 82.04.190(2).

## **The seller is a collection agent for the state**

The tax is paid by the buyer to the seller and the tax is deemed to be held in trust by the seller until paid to the Department. Any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the Department is guilty of a gross misdemeanor. RCW 82.08.050(2).

In case any seller fails to collect the tax or having collected the tax, fails to pay it to the Department, the seller is personally liable to the state for the amount of the tax. RCW 82.08.050(3).

The amount of tax, until paid by the buyer to the seller is a debt from the buyer to the seller. RCW 82.08.050(4).

## **The use tax**

Washington imposes a use tax on the consumer of any article of tangible personal property or retailing service to the extent sales tax was not paid on the purchase. RCW 82.12.020(1).

This occurs in instances in which a registered seller does not collect the sales tax, purchases from unregistered businesses such as small contractors, or purchases from out-of-state sellers who have no physical presence within Washington and are therefore not required to be registered to collect the retail sales tax.

The tax rate is the same as the state and local portions of the retail sales tax. RCW 82.12.020(5).

Examples for individual consumers.

- Tangible personal property purchased at garage sales and through the classifieds.
- Services purchased from unregistered retailing service providers, such as contractors and landscapers.
- Tangible personal property purchased from unregistered out-of-state catalog sellers or over the Internet.
- Automobiles purchased from private parties.
- Artwork and jewelry.

Examples for business activities.

- Prewritten software and software installation charges.

- Computers, office equipment, and repair parts purchased from unregistered out-of-state sellers.
- Office supplies purchased from unregistered out-of-state sellers.
- Reference and research materials purchased from unregistered out-of-state sellers.
- Magazine and periodical subscriptions with the exception of newspapers.
- Software maintenance agreements.
- Uniforms purchased from unregistered out-of-state sellers.
- Computer maintenance services purchased from small registered vendors.
- Employee bank card purchases.
- Digital goods and remote access software.

## **The sales tax and fundraising**

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### **An exemption for the nonprofit seller**

Fundraising activities which qualify for the B&O tax fundraising exemption also qualify for a sales tax exemption as well. This means the seller, the nonprofit, is not required to collect the retail sales tax and remit it to the state. RCW 82.08.02573.

### **Examples of qualifying fundraising activities**

Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fundraising contributions of money to further the goals of the nonprofit organization. WAC 458-20-169(5)(f)(ii)(A).

A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners, or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both retail sales tax and B&O tax to the extent these amounts represent an exchange for goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fundraising contribution of money to further the goals of the nonprofit organization. WAC 458-20-169(5)(f)(ii)(B).

A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both retail sales tax and B&O tax as a fundraising exchange of goods for money to further the goals of the nonprofit group. WAC 458-20-169(5)(f)(ii)(C).

### **Examples of non-qualifying fundraising activities**

A nonprofit educational broadcaster received funds from a group that conditions receipt upon the nonprofit broadcaster airing its seminars. The broadcaster was in the business of broadcasting programs. It has a regular site for broadcasting programs and runs broadcasts for 24 hours every day. Broadcasting is a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast does not qualify as money received from a fundraising activity. WAC 458-20-169(5)(f)(iv)(A).

A nonprofit organization that makes catalog sales throughout the year with a 24-hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of 24 hours a day. Catalog sales are not exempt as fundraising amounts even though the funds are raised for a nonprofit purpose. WAC 458-20-169(5)(f)(iv)(B).

A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fundraising activities even though amounts raised from the concessions may be used to further the nonprofit purpose of that group. WAC 458-20-169(5)(f)(iv)(C).

A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though the amounts are raised to further the student group's nonprofit purpose. WAC 458-20-169(5)(f)(iv)(D).

### **Qualifying and non-qualifying educational organizations**

Public school districts are governmental entities which are governed by locally elected legislative boards. As such, public school districts are not eligible for the exemptions. Excise Tax Advisory 2004.04/08.167.

ASBs are established by school districts. However, an ASB is not a public governing body lobbied to make public decisions and is not necessarily involved in a substantial amount of political activity. Thus, ASB groups that are not

involved in a substantial amount of political activity will qualify for the fundraising exemptions. Excise Tax Advisory 2004.04/08.167.

To the extent a PTA group qualifies as a nonprofit organization, it will qualify for the exemptions providing it conducts fundraising activities as defined by statute. Excise Tax Advisory 2004.04/08.167.

When considering sales of tangible personal property by an ASB or PTA, it is important to distinguish between sales made by the organization in its own name and those sales whereby the organization acts as an agent. The fundraising exemption does not extend to sales made on behalf of non-qualifying organizations. A common example of a PTA acting as an agent includes book fairs during which the seller consigns books to the PTA. Typically, a PTA will sponsor a book sale during a specific time period. Although the PTA is the sponsor, the seller's name is prominently displayed at the event. The PTA has the option of keeping a book or cash profit based on specified percentages of their total sales. In most instances, the PTA retains a percentage of the sales proceeds and remits the remaining proceeds to seller. The PTA returns unsold books to the seller. In this and similar situations, sales tax must be collected and remitted on the book sales. Excise Tax Advisory 2004.04/08.167.

### **Resale exemption consequences**

Organization buying items to sell as part of a fundraising activity may be purchased free of sales tax if the organization qualifies for a Reseller's Permit. Examples would be prepared meals served at an auction, programs, and give-away items given to every person who pays for admission to the event.

Qualifying organizations must still pay the sales tax on items they are the user of in the activity, such as table rentals, room rentals by hotels, decorations, and invitations.

Unless the organization qualifies for a Reseller's Permit issued by the Department of Revenue, it is not allowed to exempt resale purchases at the point of sale. While most nonprofits will generally not be allowed a reseller's permit, the changes do not affect the resale exemption, but only effect who is allowed the exemption at the point of sale.

Any service business buying items for resale will:

- Pay the retail sales tax on the purchase to the vendor;
- Collect the proper amount of retail sales tax from the buyer when the item is sold to the end user; and
- Calculate the deduction for retail sales tax paid at source when filing its own excise tax return

## **Buyer use tax consequences**

In 2013, the Legislature created a use tax exemption for any article of personal property, valued at \$12,000 or less, purchased or received as a prize from a nonprofit organization or library as part of a fundraising activity. RCW 82.12.225. The exemption expires July 1, 2020.

## **Property tax exemption consequences**

For fundraising activities conducted upon or using tax-exempt property, there is a different test to determine if the activity does not disqualify the property for property tax purposes.

The use of exempt property for fundraising activities does not jeopardize a property tax exemption if the fundraising activities are consistent with the purposes for which the exemption was granted. For property tax purposes, the term "fundraising" means any revenue-raising activity limited to less than five days in length that disburses 51% or more of the profits realized from the activity to the exempt nonprofit entity holding the fundraising event. WAC 458-16-165(4)(b).

## **Sales tax exemptions for certain nonprofit activities**

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### **The Red Cross**

The retail sales tax does not apply to sales to the American Red Cross. RCW 82.08.0258.

This organization also has a broad B&O tax exemption as well. RCW 82.04.380.

### **Artistic or cultural organizations**

The retail sales tax does not apply to sales to nonprofit artistic or cultural organizations of objects which are acquired for the purpose of exhibition or presentation to the general public. RCW 82.08.031.

The exemption is limited to objects of art; objects of cultural value; objects to be used in the creation of a work of art, other than tools; or objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances.

Examples of exempt items. WAC 458-20-249.

- Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage, props, scrimms, and materials for their construction.

- Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction.
- Sheet music, recordings, musical instruments, and musical supplies for the staging of displays and performances.
- Movie projectors, films, sound systems, video and sound equipment and supplies and computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

Examples of non-exempt items. WAC 458-20-249.

- Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies.
- Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use.
- Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects.
- Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects as such items are deemed to be "tools," rather than exempt objects.
- Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

Qualified artistic and cultural organizations may obtain the tax exemption by providing their suppliers with a written statement in essentially the following form: "I, (buyer's name), hereby confirm that the items purchased on (date of purchase), without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances." The statement should include the name of the authorized purchaser, the name of the organization, and the registration number of the organization. WAC 458-20-249.

## **Sheltered workshops**

The operation of a sheltered workshop is considered a manufacturing activity for sales tax purposes. Therefore, a sheltered workshop is entitled to utilize the Manufacturer's Machinery and Equipment Sales Tax Exemption. RCW 82.08.02565.

The purchase must have one of several direct uses in the manufacturing operation. RCW 82.08.02565(2)(c). It must:

- Act upon or interact with an item of tangible personal property.
- Convey, transport, handle, or temporarily store an item of tangible personal property at the site.
- Control, guide, measure, verify, align, regulate, or test tangible personal property at the site or away from the site.
- Provide physical support for or access to tangible personal property.
- Produce power for, or lubricate machinery and equipment.
- Produce another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation.
- Place tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.
- Be integral to research and development.

Qualifying purchases do not include hand-powered tools; property with a useful life of less than one year; buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. RCW 82.08.02565(2)(b).

### **Blood, bone, tissue banks**

The retail sales tax does not apply to the sale of medical supplies, chemicals, or materials to a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank. The exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. RCW 82.08.02805(1).

"Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. RCW 82.08.02805(2)(a).

"Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue. RCW 82.08.02805(2)(b).

"Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. RCW 82.08.02805(2)(c).

A qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank is defined the same as it is for B&O tax purposes. RCW 82.08.02805(2)(e).

### **Comprehensive cancer centers**

The retail sales tax does not apply to the sale of medical supplies, chemicals, or materials to a comprehensive cancer center. The exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. RCW 82.08.808(1).

A comprehensive cancer center is defined the same as it is for B&O tax purposes. RCW 82.08.808(2)(a).

### **Organ procurement organizations**

The retail sales tax does not apply to the sales of medical supplies, chemicals, or materials to an organ procurement organization. The exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. RCW 82.08.02807.

The same definitions for qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank apply to this exemption. RCW 82.08.02807.

### **The state, the federal government, and housing authorities**

The retail sales tax generally applies to all retail sales made to the state of Washington, its departments and institutions, and to municipal corporations of the state. WAC 458-20-189(5)(a).

The federal government is exempt by virtue of federal law. RCW 82.04.4286.

Housing authorities are exempt. RCW 35.82.210.

### **Nonprofit youth organizations**

The retail sales tax does not apply to the sale of amusement and recreation services, or other retail sales taxable personal services by a nonprofit youth organization or to physical fitness classes provided by a local government. RCW 82.08.0291.

A nonprofit youth organization is defined the same as it is for B&O tax purposes. RCW 82.04.4271.

## **Camps and conference centers**

The retail sales tax does not apply to sale of lodging, meals, and books made at a nonprofit camp or conference center. RCW 82.08.830.

This exemption applies if the sale is exempt for B&O tax purposes. RCW 82.04.363.

## **Health or social welfare organizations**

The retail sales tax does not apply to sales to health or social welfare organizations of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency upon completion. RCW 82.08.02915.

"Youth in crisis" means any youth under eighteen years of age who is either: homeless; a runaway from the home of a parent, guardian, or legal custodian; abused; neglected; abandoned by a parent, guardian, or legal custodian; or suffering from a substance abuse or mental disorder. RCW 82.08.02917.

## **Hospitals**

The retail sales tax does apply to sales to free hospitals of items reasonably necessary for the operation of free hospitals. RCW 82.08.0258.

The retail sales tax does not apply to sales of drugs for human use dispensed or to be dispensed to patients pursuant to a prescription, sales of drugs or devices used for family planning purposes dispensed pursuant to a prescription, or sales of drugs and devices used for family planning purposes supplied by a family planning clinic that is under contract with the Department of Health to provide family planning services. RCW 82.08.281.

The retail sales tax does not apply to sales of prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual, and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems. The retail sales tax also does not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of any exempt item. RCW 82.08.283.

The retail sales tax does not apply to sales of nebulizers, including repair and replacement parts for nebulizers, for human use pursuant to a prescription. In addition, charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers are exempt. RCW 82.08.803.

The retail sales tax does not apply to sales of ostomic items used by colostomy, ileostomy, or urostomy patients. "Ostomic items" means disposable medical supplies used by colostomy, ileostomy, and urostomy patients, and includes bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and other like supplies. RCW 82.08.804.

The retail sales tax does not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. "Disposable devices used to deliver drugs" means single use items such as syringes, tubing, or catheters. RCW 82.08.935.

The retail sales tax does not apply to sales of over-the-counter drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. RCW 82.08.940.

The retail sales tax does not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the retail sales tax does not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of these items. RCW 82.08.945.

The retail sales tax does not apply to sales of insulin for human use. RCW 82.08.985.

### **Sales of meals**

The retail sales tax does not apply to prepared meals served under a state administered nutrition program for the aged. RCW 82.08.0283(3).

The retail sales tax does not apply to meals provided to senior citizens, disabled persons, or low-income persons by not-for-profit organizations. RCW 82.08.0283(3). However, this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render. WAC 458-20-119(3)(b).

The retail sales tax does not apply to meals sold as part of a qualifying fundraising event. RCW 82.08.02573.

The serving of meals by hospitals, nursing homes, sanitariums, and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses, and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing sales tax, including the value of meals provided at no charge to employees. WAC 458-20-119(2)(a)(vi).

Public schools, high schools, colleges, universities, or private schools operating lunchrooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the guests are retail sales. WAC 458-20-119(2)(a)(vii).

### **Sales and distribution of magazines for fundraising**

The retail sales tax does not apply to the sales and distribution of magazines or periodicals by subscription for the purposes of fundraising by qualifying organizations. RCW 82.08.02535.

Qualifying organizations are educational institutions or nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger. RCW 82.08.02535.

### **Emergency lodging for the homeless**

The retail sales tax does not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization RCW 82.08.0299(1).

For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. RCW 82.08.0299(2).

### **Temporary medical housing**

Temporary medical housing provided by a health or social welfare organization is exempted from state and local sales taxes and similar charges on lodging. To qualify, the housing must be provided to the patient or patient's family while the patient is receiving medical treatment at a hospital licensed in Washington or the patient is recuperating or under observation following medical treatment at a licensed hospital. RCW 82.08.997, effective July 1, 2008.

## **Use tax exemptions for donations**

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### **Donations of property**

Use tax does not apply to use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity. RCW 82.12.02595.

Use tax does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing,

repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge. RCW 82.12.02595(2).

### **Donations of retailing services**

Use tax does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services. RCW 82.12.02595(3).

Use tax does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. RCW 82.12.02595(4).

## **Property taxes in general and the effect of exemptions**

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### **The rules of construction are narrow and favor taxation**

The burden of proving entitlement to a property tax exemption rests upon the taxpayer claiming exemption. WAC 458-16-100(2)(b).

Statutes exempting property from taxation are strictly construed, though fairly and in keeping with the ordinary meaning of the language employed. WAC 458-16-100(2)(c).

If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute will be construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception. WAC 458-16-100(2)(d).

If the Legislature has created an exemption, the exemption must not be enlarged by construction since it is reasonable to presume that the Legislature has granted in express terms all that it intended to grant. An exemption must be limited to the very terms of the statute enacted; if not so limited, the exemption would be enlarged beyond what the Legislature intended to exempt. WAC 458-16-100(2)(e).

Property is exempt from taxation only when the Legislature has created an exemption by clear and explicit language. WAC 458-16-100(2)(f).

### **Exemptions shift the tax burden**

When granted, an exemption reduces the value of taxable property assessed by the governmental authority. It does not reduce the absolute dollar amount of

tax assessed by the governmental authority. Therefore, the same amount of tax is collected, but the tax burden shifts more heavily onto the taxable property.

Assume a taxing district has \$100M of taxable property in its jurisdiction. If the district levies \$2M of tax, the levy rate for the taxable property is \$20 per \$1,000 of taxable property, or 2%. Applied to the \$250,000 value of taxable property that generates tax of \$5,000.

Assume the Department grants an exemption for \$1M of property in that district. The district still levies tax of \$2M, but that tax is now assessed against taxable property of \$99M. The levy rate increase to \$20.20 per \$1,000 of taxable property, or 2.02%. Applied to the \$250,000 value of taxable property that generates tax of \$5,050.

Multiple taxing districts assess the same taxable value of property. There are over 1,750 taxing districts in Washington, including the state, counties, cities, and other special districts such as school districts, public hospital districts, etc.

### **Social accountability for exemptions**

Because of the tax shift onto other property owners, if the use on an exempt property changes, the owner is required to notify the Department of any change of use prior to each assessment year. RCW 84.36.813.

Any other person believing that a change in the use of exempt property has occurred is required to report the change to the county assessor, who is required to examine the property and if the use is not in compliance, he or she is required to report the information to the Department with a recommendation that the exempt status be canceled. The final determination is made by the Department. RCW 84.36.813. *Joseph P. McGivney v. Department of Revenue and YMCA of Tacoma Pierce County, Board of Tax Appeals* (1993).

### **Lack of recourse with the Department and unclear precedents**

If a taxpayer and the Department disagree on whether all or a portion of a property is exempt, there is no further recourse with the Department. The taxpayer has the right to appeal the determination to a separate state agency, the Board of Tax Appeals.

The Board of Tax Appeals is an administrative tax court. It is an independent state agency and is not part of, or associated with, any other governmental agency. The Board hears appeals from decisions of the County Boards of Equalization and the Department of Revenue.

Created by the Legislature in 1967, the Board has three members appointed by the governor and approved by the state senate. No more than two members at

the time of appointment or during their six-year terms can be members of the same political party. RCW 82.03.020.

The Board publishes the result of every hearing, both informal and formal with all facts about the taxpayer and the controversy disclosed. Its decisions are referenced by appellant name and docket number.

Even though the Board reviews the actions of the Department, it is the Department's position that Board rulings only bind the particular taxpayer to whom it was issued and only for the time period under appeal. Officially, the Department does not agree with any adverse Board decision. ETA 2009-3s.

## **Activities qualifying for property tax exemption**

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### **Public property**

All property belonging exclusively to the United States, the state, or any county or municipal corporation; all property belonging exclusively to any federally recognized Indian tribe located in the state, if that property is used exclusively for essential government services; is exempt. RCW 84.36.010.

All property belonging exclusively to a foreign national government is exempt from taxation if that property is used exclusively as an office or residence for a consul or other official representative of the foreign national government, and if the consul or other official representative is a citizen of that foreign nation. RCW 84.36.010.

Nonpublic lessees of public owned property may be subject to the Leasehold Excise Tax. Chapter 82.29A RCW.

### **Churches, parsonages, convents, and grounds**

All churches, personal property, and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or will be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. RCW 84.36.020.

A separate exemption exists for the administrative offices of nonprofit religious organizations. This property is exempt to the extent that the property is used for the administration of the religious programs of the organization and such other programs as would be exempt as either for church purposes or character building, benevolent, protective, or rehabilitative social services. RCW 84.36.032.

### **Character building, benevolent, protective, rehabilitative**

Property owned by nonprofit organizations, organized and conducted for nonsectarian purposes, which is used for character-building, benevolent,

protective, or rehabilitative social services directed at persons of all ages. RCW 84.36.030(1)(a).

"Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost. WAC 458-16-210(2)(a).

"Character building" means social services or programs that are designed for the general public good, that assist people with general living skills, that develop interview and job seeking skills, or that assist people in working towards independent living and self-sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation. WAC 458-16-210(2)(b).

"Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training. WAC 458-16-210(2)(f).

"Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the effects of a physical injury, stroke, or heart attack. WAC 458-16-210(2)(f).

"Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of socialization and development; and therapy, help, rehabilitation, and social protection. WAC 458-16-210(2)(h).

To qualify for this exemption, there must be an element of gift and giving in the organization's activities, in relation to the people it serves. This element of gift and giving requires giving something of value with no expectation of compensation or remuneration. In order to meet this requirement of gift and giving, the nonprofit organization must annually meet one of the following conditions:

- Provide goods and/or services free of charge or at a rate that is at least 20% below the total actual cost of such goods and/or services to a minimum of 15% of the total number of people assisted by that organization; or

- Contribute at least 10% of its total annual income towards the support of character-building, benevolent, protective, or rehabilitative social services or programs. "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements. WAC 458-16-210(3).

### **Church camp facilities**

Property owned by any nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches or their qualified representatives, which is utilized as a camp facility if used for organized and supervised recreational activities and church purposes as related to such camp facilities. RCW 84.36.030(2)

The exemption applies to a maximum of 200 acres of any such camp as selected by the church, including buildings and other improvements.

### **Nonprofit youth organizations**

Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations engaged in character building of boys and girls under 18 years of age. RCW 84.36.030(3).

If existing charters provide that organizations serve boys and girls up to the age of 21 years, then such organizations will still qualify.

"Character building" refers to activities for children under 18 of age that are for the general public good. The activities may build, improve, or enhance a child's moral constitution by developing moral or ethical strength, leadership, integrity, self-discipline, fortitude self-esteem, and reputation. For example, "character building" activities may involve organized and supervised recreational activities including, but not limited to, exploring, hiking, beachcombing, swimming, fishing, studying, and discussion groups. WAC 458-16-230(2)(a).

### **Public assembly halls**

Real or personal property owned by a nonprofit organization in connection with the operation of a public assembly hall or meeting place. The area exempt includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre. RCW 84.36.037(1).

The property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property. Membership is not a prerequisite for the use of the property. RCW 84.36.037(2).

"Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization are allowed to attend. WAC 458-16-300(2)(b).

### **Nonprofit or public hospitals**

The real and personal property used by nonprofit hospitals. RCW 84.36.040(1).

The real and personal property leased to and used by a hospital, owned and operated by a public hospital district for hospital purposes. RCW 84.36.040(2).

The exemption is limited to all property and buildings that are part of an integrated, interrelated, homogeneous unit exclusively used for exempt hospital purposes. The term excludes clinics or physician's offices where patients are not regularly kept as bed patients for 24 hours or more. WAC 458-16-260(2).

### **Homes for the aging**

All real and personal property used by a nonprofit home for the aging if at least 50% of the occupied dwelling units in the home are occupied by eligible residents or the home is subsidized under a federal Department of Housing and Urban Development program. RCW 84.36.041(1).

"Eligible resident" means a person who occupies the dwelling unit as a principal place of residence as of December 31st of the assessment year; is 61 years of age or older on December 31st of the year in which the exemption claim is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability; and has a combined disposable income of no more than the greater of \$22,000 or 80% of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county. RCW 84.36.041(8).

If 50% of the residents are not eligible residents, a partial exemption is allowed based on the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living. RCW 84.36.041(3).

### **Schools and colleges**

Property owned or used by or for any nonprofit school or college in this state for educational purposes or cultural or art educational programs. The exemption cannot exceed 400 acres including, but not limited to, buildings and grounds designed for the educational, athletic, or social programs of the institution, the housing of students, religious faculty, and the chief administrator, athletic buildings, and all other school or college facilities. RCW 84.36.050(1).

The exemption also applies to the real or personal property owned by a not-for-profit foundation that is established for the exclusive support of an institution of higher education. RCW 84.36.050(2).

### **Art, scientific, and historical collections**

All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections. RCW 84.36.060(1)(a).

An organization must be organized and operated exclusively for artistic, scientific, and historical purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public. RCW 84.36.060(2)(a). Substantial contributed support is generally interpreted as 25%. *Fifth Avenue Theatre Association v. Department of Revenue*, Board of Tax Appeals Docket. No. 22705 (1981).

### **Performing arts**

All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance. RCW 84.36.060(1)(b).

An organization must be organized and operated exclusively for musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public. RCW 84.36.060(2)(a). Substantial contributed support is generally interpreted as 25%. *Fifth Avenue Theatre Association v. Department of Revenue*, Board of Tax Appeals Docket. No. 22705 (1981).

### **Low income housing**

The real and personal property owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide space for the placement of a mobile home for a very low-income household within a mobile home park is exempt from taxation if at least 75% of the occupied dwelling units in the rental housing or lots in a mobile home park are occupied by a very low-income household and the rental housing or lots in a mobile home park were insured, financed, or assisted in whole or in part through federal or state housing program administered by the Department of Community, Trade, and Economic Development or an affordable housing levy. RCW 84.36.560(1).

If less than 75% of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by very low-income households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption of the housing's or park's personal property. RCW 84.36.560(2).

For the purposes of this exemption, a qualifying organization is a nonprofit organization exempt from federal income tax under Section 501(c)(3) or a limited partnership or limited liability company where a qualifying nonprofit, a public corporation, or a housing authority is a general partner. RCW 84.36.560(7).

### Other qualifying activities

- Cemeteries. RCW 84.36.020.
- Veteran or relief organization owned property. RCW 84.36.030(4).
- The American Red Cross. RCW 84.36.030(5).
- Nonprofit organizations that issue debt for student loans or that are guarantee agencies. RCW 84.36.030(6).
- Property used by qualifying blood, tissue, or blood and tissue banks. RCW 84.36.035.
- Nonprofit day care centers, libraries, orphanages, outpatient dialysis facilities. RCW 84.36.040.
- Nonprofit organization, corporation, or association property used to provide housing for persons with developmental disabilities. RCW 84.36.042.
- Nonprofit organization property used in providing emergency or transitional housing to low-income homeless persons or victims of domestic violence. RCW 84.36.043.
- Nonprofit organization property available without charge for medical research or training of medical personnel. RCW 84.36.045.
- Nonprofit cancer clinics or centers. RCW 84.36.046.
- Nonprofit organization property used for transmission or reception of radio or television signals originally broadcast by governmental agencies. RCW 84.36.047.
- All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for

meetings of fire companies, as long as the property belongs to any city or town or to a fire company. RCW 84.36.060(1)(c).

- Humane societies. RCW 84.36.060(1)(d).
- Water distribution property owned by nonprofit corporations or cooperative associations. RCW 84.36.250.
- Property owned or used for sheltered workshops for handicapped. RCW 84.36.350.
- Nonprofit fair associations. RCW 84.36.480.
- Nonprofit organization property used for solicitation or collection of gifts, donations, or grants. RCW 84.36.550.
- Nonprofit organization property used for agricultural research and education programs. RCW 84.36.570.
- Property used by certain nonprofits to solicit or collect money for artists. RCW 84.36.650.
- Senior citizen organizations, property used for the operation of a multipurpose senior citizen center. RCW 84.36.670.

## **The structure of ownership on property tax exemptions**

### **Where ownership is required**

- Public property. RCW 84.36.010.
- Cemeteries. RCW 84.36.020.
- Churches, parsonages, convents, and grounds. RCW 84.36.020.
- Character building, benevolent, protective, or rehabilitative social services. RCW 84.36.030(1).
- Church camps. RCW 84.36.030(2).
- Nonprofit youth organizations. RCW 84.36.030(3).
- Veteran or relief organization owned property. RCW 84.36.030(4).
- The American Red Cross. RCW 84.36.030(5).
- Nonprofit organizations that issue debt for student loans or that are guarantee agencies. RCW 84.36.030(6).

- Public assembly halls. RCW 84.36.037.
- Artistic, scientific, or historical collections. RCW 84.36.060(1)(a).
- All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies. RCW 84.36.060(1)(c).
- Humane societies. RCW 84.36.060(1)(d).
- Water distribution property owned by nonprofit corporations or cooperative associations. RCW 84.36.250.
- Nonprofit fair associations. RCW 84.36.480.
- Nonprofit organization property used for solicitation or collection of gifts, donations, or grants. RCW 84.36.550.
- Nonprofit organization property used for agricultural research and education programs. RCW 84.36.570.

### **Leased property and the benefit inuring to the nonprofit**

If the exemption allows the property to be leased and qualify for the exemption, the benefit must inure to the nonprofit. For example, under a real estate lease, if the nonprofit must reimburse owner of the property for the actual amounts of property taxes paid, then the benefit of any exemption would inure to the nonprofit.

Organizations frequently both own and lease property. For example, owned personal property would qualify for an exemption even if leased real property did not.

Nonprofits that lease space in a building with other for profit organizations and qualify for exemption for leased property should verify that their share of the allocation of common area charges is calculated without regard to any property taxes paid. Any share of property taxes paid is solely the responsibility of the for profit tenants and not the nonprofit. *Institute of Systems Biology v. Department of Revenue*, Board of Tax Appeals (2005).

### **Special purpose entities that hold title**

At times in the past, both the Department and the Board of Tax Appeals have disregarded the existence of special purpose title holding entities and attributed the ownership of the property to other entities. *P.H.S. Properties v. Department of Revenue*, Board of Tax Appeals (1991).

Whether or not the Department or the Board of Tax Appeals recognize single purpose limited liability companies as title holding entities is still unclear.

*Nalandabodhi Buddhist Church v. Department of Revenue*, Board of Tax Appeals (2006).

### **“Ownership” may be different than the legal owner**

While legal title is an indication of ownership, it is not necessarily controlling as far as who is the owner of the property. Washington courts have consistently recognized that the rights to possess, to exclude others, and to dispose of property are the fundamental attributes of property ownership. *Manufactured Housing Communities v. State of Washington*, 142 Wn.2d 347 (2000).

### **Public private partnerships and fractional ownership interests**

While governmental entities must own their property to qualify it for exemption, the Washington State Supreme Court has allowed entities with fractional government ownership to exempt the government’s fractional share of the value of the property. *City of Kennewick v. Benton County*, 131 Wn.2d 768, 935 P.2d 606 (1997)

### **Character building, benevolent, protective, rehabilitative**

While normally entities exempt under RCW 84.36.030 must own their property for it to be exempt, if these entities may loan, lease, or rent the property they own to another organization for the same purpose as set out in RCW 84.36.030.

## **The Leasehold Excise Tax**

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### **In general**

Public property is exempt from property taxes. However, if a non-governmental entity acquires a leasehold interest in governmental property, the Leasehold Excise Tax is imposed upon the lease payments at a rate of 12.84%. Chapter 82.29A RCW.

The intent of the Leasehold Excise Tax is to compensate state and local governments for the taxes not collected on governmentally owned property, if the property is not used in a governmental purpose. Nonprofit tax-exempt property is also exempt from the Leasehold Excise Tax. RCW 82.29A.120(1).

### **More than just leases**

Despite its name, the leasehold excise tax applies to far more than leases. It applies to any lease, permit, license, or other agreement granting possession and use of the publicly owned property. RCW 82.29A.020 (1). “Possession” can be nonexclusive. *Rainier Mountaineering, Inc. v. Department of Revenue*, Board of Tax Appeals Docket No. 3706.

## Significant exemptions

Leasehold interests for which annual taxable rent is less than \$250. RCW 82.29A.130(8).

Leasehold interests which give use or possession of the property for less than 30 days. RCW 82.29A.130(9).

## Qualifying use

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### Current use

The property must be currently in use in the exempt activity. *P.H.S. Properties v. Department of Revenue*, Board of Tax Appeals (1991).

For example, many organizations constructing property pay property taxes during the construction period and the property will only qualify for exemption upon completion.

Exceptions are allowed for churches, museums and the performing arts, and low-income housing. RCW 84.36.020, RCW 84.36.060, and RCW 84.36.560.

### Exclusive use

In most cases, the property must be exclusively used in the exempt purpose to qualify for exemption or continuing exemption in any assessment year.

Exclusive use is generally a zero-tolerance standard and a single disqualifying use will cause the property to be taxed for the entire year. *Greenwood Grange 622 v. Department of Revenue*, Board of Tax Appeals (1992).

In the last few years, the Legislature created a uniform exemption from exclusive use for all nonprofits.

Because property tax exemptions apply to the property and not the organization, the square footage of areas that fail the exclusive use test, such as common areas, are segregated and taxed but other portions exclusively used will still qualify.

### Loan or rental of property

As a general rule, the loan or rental of exempt property does not make it taxable if the rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

The property would be exempt from tax if owned by the organization to which it is loaned or rented. WAC 458-16-165(4)(a).

- Public owned property such as that owned by the federal government, the state, cities, counties, and public schools are exempt from property taxes. RCW 84.36.010. These entities do not apply for the exemption with the Department of Revenue
- Not all nonprofits can qualify for a property tax exemption. Private foundations, professional or trade organizations, labor organizations, and political organizations generally do not qualify.

## **Fundraising**

The use of exempt property for fundraising activities sponsored by an exempt organization does not jeopardize an exemption if the fundraising activities are consistent with the purposes for which the exemption was granted.

The term "fundraising" means any revenue-raising activity limited to less than five days in length that disburses 51% or more of the profits realized from the activity to the exempt nonprofit entity holding the fundraising event. WAC 458-16-165(4)(b).

There is no such limitation on fundraising activities that are not held on exempt property. WAC 45-16-165(4)(b)(ii).

- A nonprofit social service agency holds an art auction in the auditorium of its tax-exempt facility to raise funds. The event must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency because the fund-raising event is being held on exempt property.
- A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising event because the subscription drive is not being held on exempt property.

The rental of exempt property is not considered a "fundraising" activity for this exception. *Camano Senior Services Association v. Department of Revenue*, Board of Tax Appeals (2005).

## **Personal service contracts**

Programs provided under a personal service contract will not jeopardize an exemption if the program is compatible and consistent with the purposes of the exempt organization; the organization maintains separate financial records as to all receipts and expenses related to the program; and a summary of all receipts and expenses of the program are provided to the Department upon request. WAC 458-16-165(4)(c).

- A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and

bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

Programs provided under a personal service contract will subject a property to tax if they require the contractor to reimburse the nonprofit organization for program expenses; or in which the instructor is paid a fee based on the number of people who attend the program. WAC 458-16-165(4)(d).

### **Caretaker's residences**

If a nonprofit entity employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

- The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;
- The nonprofit entity demonstrates the need for a caretaker at the facility;
- The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and
- The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence are not rent. WAC 458-16-165(9).

### **Effect of commercial use on other exemptions**

Some organizations have B&O and sales tax exemptions that are contingent upon qualifying for a property tax exemption. Therefore, disqualify uses of property also terminates these other tax exemptions.

Examples include the B&O and sales tax exemptions for nonprofit youth organizations and church camps.

### **Statutory exceptions to exclusive use**

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#### **Uniform exception for all organizations**

In 2014, at the request of the Department, the Legislature created a uniform exception for all nonprofits. The exception allows the rental or use of exempt property for non-exempt purposes for up to 50 days per calendar year if no

more than 15 of those 50 days are used for pecuniary gain or business activities.

The 50 and 15-day limitations do not include days during which setup and takedown activities take place immediately preceding or following a meeting or other event by an individual, group, or entity using the property.

If uses of the exempt property exceed the 50 and 15-day limitations during an assessment year, the exemption is removed for the affected portion of the property for that assessment year. RCW 84.36.805.

### **Churches, parsonages, convents, and grounds**

To be exempt the property must be wholly used for church purposes. RCW 84.36.020. "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. RCW 84.36.800(1). *Nalandabodhi Buddhist Church v. Department of Revenue*, Board of Tax Appeals (2006).

The loan or rental of property otherwise exempt to a nonprofit organization, association, or corporation, or school for use for an eleemosynary activity does not nullify an exemption provided the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property. RCW 84.36.020.

### **Schools and colleges**

An exemption is not nullified if the property is used by students, alumni, faculty, staff, or other persons or entities in a manner consistent with the educational, social, or athletic programs, including property used for related administrative and support functions, of the school or college. Notwithstanding the foregoing, the school or college may contract with and permit the use of school or college property by persons or entities to provide school or college-related programs or services including, but not limited to, the provision of food services to students, faculty, and staff, the operation of a bookstore on campus, and the provision to the school or college of maintenance, operational, or administrative services without nullifying the exemption. RCW 84.36.050(3)(a).

### **Museums and performing arts**

Note that group admissions or private showings are considered programs of the nonprofit and do not count against either the 15 days or 50-day limitations. *Grays Harbor Historical Seaport Society v. the Department of Revenue*, Board of Tax Appeals, (1991).

## Property tax exemption administration

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### Application

To qualify for exempt status for any real or personal property, organizations file an initial application on or before March 31 with Department of Revenue. RCW 84.36.815.

When an organization acquires real property qualified for exemption or converts real property to exempt status, the application is due within 60 days following the acquisition or conversion. RCW 84.36.815.

In either case, the organization is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted. RCW 84.36.815.

There is no application fee and a \$10 per month late filing fee. RCW 84.36.825.

As a result of the application, the Department is required to make a physical inspection of the property. RCW 84.36.830.

The Department will issue a determination within 60 days of the filing of the application. If the application is denied, the organization has 30 days to appeal the denial to the Board of Tax Appeals. RCW 84.36.850.

### Annual renewal

Once granted, the organization must requalify their property every year by filing an annual renewal declaration on or before March 31 each year. RCW 84.36.815.

There is no renewal fee and a \$10 per month late filing fee. RCW 84.36.825.

Failure to file an annual renewal will lead to a revocation of the exemption. RCW 84.36.815.

### Change of use and rollback of prior period taxes

If the exempt use ceases, back taxes may be due. For most organizations, the county treasurer will collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes. RCW 84.36.810(1).

If the property has been granted an exemption for more than ten consecutive years, taxes and interest are not assessed for prior periods. RCW 84.36.810(1).

These provisions apply only when ownership of the property is transferred or when 51% percent or more of the area of the property loses its exempt status. RCW 84.36.810(2).

These provisions do not apply in certain instances, including transfer to an organization for a use which also qualifies and is granted a property tax exemption; a taking through the exercise of the power of eminent domain; official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property; a natural disaster; or a cancellation of a lease on leased property that had been exempt. RCW 84.36.810.

## **Appealing tax valuations for taxable properties**

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### **In general**

Any nonprofit owning taxable property, or having a portion of an otherwise exempt parcel segregated and taxed, should annually monitor the value assigned to the property by the assessor. If the value is greater than comparable properties, the nonprofit, like any other property owner, should appeal the value of the assessment.

### **Paying taxes under protest**

There are many alternative and low cost options to reduce a property valuation. However, at any time a property owner can pay their tax under protest and file a lawsuit in Superior Court. RCW 84.68.020.

The suit must be brought no later than June 30 of the year following the payment under protest. RCW 84.68.020.

Paying taxes under protest means submitting a written statement with the April tax payment stating the grounds upon which the property owner feels the tax, or any portion of the tax, is unlawful or excessive. WAC 458-18-215.

No protest is due for the second half of any taxes payable for the year if the property owner indicates in April that the protest is a continuing protest in regard to taxes payable for the entire year.

No protest submitted for a year is valid for the following year.

### **Informal discussions with the county assessor**

Property owners should protect their appeal rights by both paying taxes under protest and filing a formal appeal with the county board of equalization. However, disagreements are frequently resolved by informal discussions with the assessor's office. This is useful for more mechanical errors such as:

- Errors in description of the property.

- Clerical errors in extending the tax rolls.
- Clerical errors in listing property.
- Improvements which did not exist on the assessment date.

### **County boards of equalization**

Property owners wishing to contest their valuation must file an appeal with the county Board of Equalization by the later of July 1 of the assessment year or within 30 days of the mailing of the Change of Value Notice. RCW 84.40.038.

In some cases, certain counties provide an additional 30 days.

The law presumes the assessor is correct and the burden of proof is upon the property owner to present clear and convincing evidence. An appeal should state specific reasons why the assessor's value is incorrect and provide information to support the property owner's proposed valuation.

The hearing is an informal process and both the property owner and the assessor have opportunity to present their perspective, additional evidence, cross-examine each other, and rebut evidence. Within 30 to 60 days of the hearing, the board will issue a written decision.

The Board has the authority to agree with the assessor's valuation, lower the valuation, or raise the valuation.

### **The Washington State Board of Tax Appeals**

The Board of Tax Appeals is an administrative tax court. It is an independent state agency and is not part of, or associated with, any other governmental agency. The Board hears appeals from decisions of the County Boards of Equalization and the Department of Revenue.

Created by the Legislature in 1967, the Board has three members appointed by the governor and approved by the state senate. No more than two members of at the time of appointment or during their six-year terms can be members of the same political party. RCW 82.03.020.

The Board hears conducts both informal and formal hearings. In informal hearings, neither party has any further appeal rights. In formal hearings, either party may appeal the decision to Superior Court. RCW 82.03.180.

The Board has the authority to agree with the assessor's valuation, lower the valuation, or raise the valuation.

## **Nonprofit laws and rules available on the Internet**

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### **The Revised Code of Washington**

The Revised Code of Washington (“RCW”) is the compilation of all permanent laws now in force. It is a collection of the session laws enacted by the Legislature and signed by the Governor, or laws enacted via the initiative process.

It is divided by title, chapters, and sections. For example, Title 82 RCW is excise tax laws, Chapter 82.04 RCW is the B&O tax, and RCW 82.04.050 defines a retail sale.

Various nonprofit statutes are available to the public on the Washington State Legislature’s website at <http://apps.leg.wa.gov/rcw/>.

### **The Washington Administrative Code**

The Washington Administrative Code (“WAC”) is legislative, procedural, and nonbinding interpretive rules written by administrative agencies.

It is divided by title, chapters, and rule. For example, Title 458 WAC is Department of Revenue rules, Chapter 458-20 WAC is excise tax rules, and WAC 458-20-169 is a rule for nonprofit organizations.

Various nonprofit rules are available to the public on the Washington State Legislature’s website at <http://apps.leg.wa.gov/wac/default.aspx?cite=458>.