Cite as 11 WTD 247 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For Refund of . . .	FINAL DETERMINATION ON EXECUTIVE RECONSIDERATION No. 91-214E Registration No. . . .

PUBLIC UTILITY TAX -- QUASI-MUNICIPAL CORPORATION -- MEANING. A quasi-municipal corporation is one authorized by the state to fulfill a public purpose. A private non-profit corporation not under any Washington law or grant of authority, is not a quasi-municipal corporation or providing public services and not eligible for the exemption provided in RCW 82.04.417.

TAXPAYER REPRESENTED BY: . . .
Washington Rural Electrical Cooperative Association
. . .
. . .

DATE OF CONFERENCE: September 25, 1991

NATURE OF ACTION:

Taxpayer has sought executive reconsideration of its petition for a refund of public utility taxes paid on principal and interest payments for retirement of debt obligations issued for capital improvements under RCW 82.04.417 and WAC 458-20-179(15)(f). In Det. 91-214, taxpayer's petition was denied.

FACTS AND ISSUES:

Faker, A.D. -- The taxpayer is a not-for-profit corporation organized under the laws of Washington and a tax-exempt entity for federal income tax purposes under § 501(c)(12).

The taxpayer argues that it is either a political subdivision, municipal corporation, or quasi-municipal corporation or is entitled to be treated as such for purposes of RCW 82.04.417.

TAXPAYER EXCEPTIONS:

Taxpayer argues as follows:

> In 1969 the Governor signed into law HB 659. The intent of this law was to exempt public service, non-profit utilities from payment of the public utility tax on revenue collected to pay for capital facilities. Water and sewer utilities were the first to benefit from this exemption (RCW 82.04.417).
>
> In 1989, [taxpayer] Electric Cooperative claimed the same credit the other public service, non-profit electric utilities had previously been granted. In 1991 [taxpayer]'s request was denied on the basis that it is not a "quasi-municipal" corporation and, therefore, does not qualify for the deduction.
>
> The Department's decisions to allow this excise tax deduction for some public, nonprofit electric utilities and to deny it to similar public service, nonprofit electric utilities is contrary to the intent of the legislation.
>
> While the wording in the original legislation, i.e. "quasi-municipal, political subdivision, etc.," may not be perfectly descriptive of rural electric cooperatives, the intent not to collect the utility tax from revenue collected to build utility plants to serve the public on a non-profit basis is clear. On this basis the rural electric cooperatives qualify as sufficiently as the PUDs and municipal electric systems.
>
> The wording "public service business" is defined in RCW 82.16.010(5) as follows: "Light and power business," means the business of operating a plant or system for the generation, production or distribution of electrical energy...." As

preference (public, non-profit) customers of the Federal Bonneville Power Administration, rural electric co-ops distribute power to rural citizens at cost.

DOR is in error in ruling that rural electric cooperatives are not public utilities essentially the same as PUDs and municipals. While the "REAs" were empowered by the Federal government and PUDs and municipals by the state, their purposes, functions and accomplishments are essentially 100% comparable. Like PUDs and municipal systems, rural electric co-ops serve all the citizens within their service area. While the term "member" is unique to ratepayers served by cooperatives, the terminology in no way changes the "public service" or "nonprofit" nature of the organization. The fact that cooperatives are "owned by their members" does not make them distinguishable from PUDs or municipals. Like the PUDs and municipals, rural electric co-ops are controlled by and for the citizens within their service area. Any financial savings flow directly back to the citizens ("members") within the utility service area, on a pro-rata basis, which is exactly what happens at PUDs and municipals through their rates and policies. The end result is that local citizens pay only what it costs the local public utility to provide the service. There is no difference between PUDs, municipals or co-ops in the area of rates or non-profit operation.

In each of the three cases (PUD, municipal and co-op) each local citizen ("customer," "ratepayer," "member," etc.) gets one vote for commissioners, council members and/or directors, as the case may be. Hence, all three are democratically controlled by the citizens they serve within their service area. Local citizens benefit (or suffer) as a consequence of the actions decided by their elected officials. While the jargon changes from entity to entity, the purpose, function and goals have always been consistent.

Inside the utility industry, jargon is not a problem. All three are commonly known as "public utilities." They are treated the same by Federal, state and local governments. For example, all three

are "preference customers" of the Bonneville Power Administration. On the state level they are considered "public utilities" under local regulation, not regulated by the state as are investor-owned, for-profit utilities.

History proves that PUDs and cooperatives, in particular, are similar in purpose, function and achievement. In the 1930s, when . . . PUD was formed, it purchased the powerlines in and around . . . previously owned by a for-profit utility. The new PUD did not have the financial capacity to build lines to the vast rural segments of . . . County so it made formal request of the neighboring "public utility," . . . County Electric Cooperative (later renamed [taxpayer]), to build rural lines in . . . County. Using loan funds provided by the Rural Electrification Administration, the cooperative did build powerlines in the more rural sections of Franklin County and continues to serve alongside the PUD. The powerlines owned by the two utilities meet in numerous locations across . . . County. On one side of some roads you can find PUD service and the other side of the road "REA" service.

Rates charged by the two neighboring utilities are essentially the same, although PUD rates tend to be lower than co-op rates in most areas of the state. Consumers have no apparent preference for one utility over the other. The service areas were determined based on the most economical way to serve the load, not on the basis of whether or not the resident of the property wanted to be a PUD "customer" or a co-op "member." In either case they receive the same quality of service, at roughly the same cost, and have basically the same rights when it comes to electing a board of directors or commissioners. When either of the utilities has an operating margin ("profit") at the end of the year, a credit reverts back to all ratepayers on an equitable basis. The methodology and terminology may be different, but the main objective ("service at cost") and end result are exactly the same.

If the Department of Revenue makes a final determination to treat these three similar public utility groups differently by denying an excise tax deduction for capital facilities to cooperatives,

> the Department will not be treating all similar taxpayers equally.
>
> Rural electric cooperatives, given their lower density than both PUDs and municipal systems, are already at a disadvantage when it comes to maintaining competitive rates. Discriminatory treatment by the Department of Revenue would increase the rate disparity that presently exists between most co-ops and the PUDs and municipals. Creating a bigger rate disparity between rural electric co-ops and other public utilities **was not** the intent of this legislation, nor should it be the reality after Department of Revenue rulings.

(Emphasis provided by taxpayer.)

The taxpayer has also presented a letter signed by fourteen members of the 41st Legislature on the subject of RCW 82.04.417 as it relates to rural electric cooperatives. The letter states as follows:

> It is not our intention to add to or subtract any meaning from this legislation. As this is a group letter and involves a matter dating back over 20 years we will not attempt to explain why RCW 82.04.417 was written and passed exactly as it was. The intent of this letter is to clear up one particular issue, which is that it was not our intent to include anything in the legislation which would preclude rural electric cooperatives from qualifying for the capital facilities exemption.

DISCUSSION:

The taxpayer and its Association have provided us with ample and impressive background information in support of their arguments that, as a matter of public policy, rural electric co-ops should be treated the same as public service quasi municipal corporations for all tax purposes. We have thoroughly and carefully reviewed all of this information. In our view, it weighs heavily in support of a public policy conclusion that rural electric cooperatives serve the same public utility purposes which seemingly generated legislative approval of the tax deduction for capital construction contributions (RCW 82.04.417). If the Department of Revenue were empowered with the authority or discretion to accomplish public policy legislation through its appeals determinations

(RCW 82.32.160) we would be so inclined in this case. To do so, however would clearly derogate legislative authority. Administrative agencies are not empowered to alter or amend legislative acts, merely to administer them. Duncan Crane v Dept. of Rev., 44 Wn.App 684 (1986). Thus, as strong and convincing as the taxpayer's arguments may be, the Department of Revenue is not the appropriate forum for their debate or responsive action.

The present law is clear. Corporations are divided into public corporations and private corporations, the distinction being based for the most part on their powers and the purposes of their creation. Although both public and private corporations derive their existence from the State, private corporations are not created for the administration of political power. 1 E. McQuillin, Municipal Corporations § 2.02-2.03 (3d ed. rev. 1987 & supp. 1990); 1 W. Fletcher, Private Corporations § 58 (1990 rev.). So-called "public service corporations," such as railroad, telephone, gas, electric, water, and turnpike corporations operating under private corporation laws, are neither municipal nor quasi-municipal corporations. McQuillin, § 2.03; Fletcher, § 59.[1]

Thus, there seems to be no serious dispute that [taxpayer] Electric Cooperative is a private corporate entity. The issue, then, is whether, in enacting RCW 82.04.417 and RCW 82.16.043, the Legislature intended to grant an exemption from the business and occupation and public utility taxes to any class of private entities. The ordinary meaning of the language used by the Legislature suggests that this was not the Legislature's intent. The statutes provide:

> The tax imposed by chapters 82.04 and 82.16 RCW shall not apply or be deemed to apply to amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for

[1]Public corporations are either (1) municipal corporations proper or (2) quasi-municipal corporations. McQuillin, §§ 2.03, 2.03-2.07a, 2.13.

> the retirement of obligations and payment of interest thereon issued for capital purposes.
>
> Service charges shall not be included in this exemption even though used wholly or in part for capital purposes.

(Emphasis added.)

The ordinary meaning of the underscored language suggests that the Legislature intended to limit this exemption to public entities, which is how the Department of Revenue has consistently interpreted the exemption.

The term "quasi municipal corporation" ordinarily refers to corporations that are public in nature but are not, strictly speaking, municipal corporations. They are public bodies possessing a limited number of corporate powers and consist of various local governments established to aid in the administration of public functions. 1E. McQuillin, Municipal Corporations § 2.13 (3d ed. rev. 1987).

Counties, cities, towns, municipal corporations, and quasi-municipal corporations all are "political subdivisions," according to the ordinary meaning of those terms. See King Cy. Water Dist. 54 v. King Cy. Boundary Review Bd., 87 Wn.2d 536, 540, 554 P.2d 1060 (1976).

Accordingly, unless the Legislature used the phrase "quasi municipal corporation of the state of Washington" in a sense other than the ordinary meaning of the phrase would suggest, [taxpayer] Electric Cooperative does not qualify for the exemption on its face. The legislative history of RCW 82.04.417 and RCW 82.16.043 confirms that the Legislature intended to limit these exemptions to public entities, that is, to political subdivisions of the State.

RCW 82.04.417 and RCW 82.16.043 were enacted in 1969 as House Bill 659. Laws of 1969, 1st Ex. Sess., ch. 156, § 1. As originally introduced, House Bill 659 created only an exemption from the business and occupation tax. The bill, introduced on February 20, 1969, read as follows:

> AN ACT Relating to revenue and taxation; and exempting amounts or value received by taxing districts, municipal corporations or political subdivisions for payments or contributions to capital from the provisions of chapter 82.04

> RCW; and adding a new section to chapter 15, Laws of 1961 and to chapter 82.04 RCW.
>
> BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
>
> NEW SECTION. Section 1. There is added to chapter 15, Laws of 1961, and to chapter 82.04 RCW a new section to read as follows:
>
> This chapter shall not be deemed to apply to amounts or value contributed or paid to any taxing district, municipal corporation or political subdivision of the state of Washington, including any interest or penalties therefore, to aid in the construction cost of any public improvement and properly included in capital pursuant to the uniform system of accounting required to be kept by each such district, municipal corporation, or subdivision.

(Emphasis added.)

The bill was passed by the House, without amendment, on March 24, 1969. House Journal, 41st Legislature (1969), at 1010. The bill was passed by the Senate on April 9, 1969. Id. at 1175-76.

Before the Senate's passage of House Bill 659, a member of the Ways & Means Committee responded on the floor to points of inquiry about the bill. One question concerned the amended bill's exclusion of "service charges" from the exemption. No such exclusionary language appeared in the original version of the bill. The question was asked what was meant by "service charges." One of the bill's sponsors responded:

> "I think I have an answer here. I have a letter from Don Burrows, the assistant director of the department of revenue and he says the impact of both bills would be similar and would affect essentially providers of water and sewer services. These measures would exempt from the coverage of the B&O tax that is received by taxing districts municipal corporations or political subdivisions from payment or contribution for capital improvement. All such payments made prior to initiation of service are presently subject to the B&O tax."

Senate Journal, 41st Legislature (1969), at 1176 (emphasis added).
When House Bill 659 returned to the House, the House concurred in the Senate amendments, passing the amended bill on April 16, 1969. House Journal, 41st Legislature (1969), at 1507-08.

The legislative history of the bill reveals no inquiry concerning the breadth of the exemption or that there were questions or concerns about limiting the exemption for the benefit of the precise entities named in the bill. The Department of Revenue participated in the analysis of the proposal and responded to the only concerns evidenced by legislators. There were no expressed concerns or inquiries which indicated a desire to broaden the scope of the exemption or to protect against the Department's refusal to expand the scope to include unnamed utility service providers, such as REAs or private utilities. Thus, while it is not questioned that language was not purposely introduced which might preclude others from claiming entitlement to the exemption and although this may not have been some legislators' intent, the language actually adopted and enacted in the bill clearly had that effect as a matter of law. In fact, there are other tax deductions and exemptions available for municipal and quasi-municipal utility entities under the Revenue Act for which precisely the same arguments for expanding the deductions could be made by the taxpayer; for example RCW 82.04.4293, 82.04.4297, 82.04.4322, 82.04.418. Whether to expand any or all of these deductions may now be appropriate for legislative consideration. It is not appropriate for the Department to presume to do so by administrative ruling.

Furthermore, the Legislature clearly and directly grants tax exemptions to private, nonprofit corporations when it elects to do so. In 1965, four years before enacting House Bill 659, the Legislature enacted RCW 84.36.250, which granted a property tax exemption for "all property . . . belonging to any nonprofit corporation or cooperative association and used exclusively for the distribution of water to its shareholders or members."

In 1977, eight years after enacting House Bill 659, the Legislature granted a deduction from the public utility tax to nonprofit member associations for "[a]mounts derived from the distribution of water . . . and used for capital improvements." Laws of 1977, 1st Ex. Sess., ch. 364, § 1 (codified as RCW 82.16.050(10)). If the term "quasi municipal corporation" in RCW 82.16.043 included nonprofit corporations like [taxpayer] Electric Cooperative, then this later

amendment would have been superfluous. Statutes should be interpreted so as not to leave one statute mere surplusage. Schrempp v. Munro, 116 Wn.2d 929, 934, ___ P.2d ___ (1991).

As to the letter provided by the taxpayer from the members of the 41st Legislature, the settled rule in this and most other jurisdictions is that legislative intent in passing a statute cannot be shown by depositions or affidavits of individual state legislators. The leading Washington case is Spokane v. State, 198 Wash. 682, 89 P.2d 826 (1939). At issue in that case was the Legislative intent in enacting and amending the use tax statute during the 1935 and 1937 legislative sessions. The dispute concerned whether the use tax was intended to be levied on articles not available for purchase within Washington. In support of its contention that the use tax should be levied on such articles, the State attempted to admit depositions of the Governor, the chairmen of the House and Senate Revenue and Taxation committees, and the Speaker of the House during the 1935 session, in which they testified what they thought the act meant when they exercised their appropriate legislative functions in regard to it. The State also attempted to admit affidavits by 33 senators and 70 representatives who served during the 1937 session.

The trial court held the depositions and affidavits inadmissible, but made them a part of the record. On appeal, the Supreme Court stated that the depositions and affidavits

> remain unread in the unbroken original package in which they were brought here; for it is perfectly clear, both upon reason and authority, that the legislative intent in passing the statute cannot be shown or proven in any such manner.

Spokane v. State, 198 Wash. at 687. Accord Woodson v. State, 95 Wn.2d 257, 264, 623 P.2d 683 (1980); Pennell v. Thompson, 91 Wn.2d 541, 598, 589 P.2d 1235 (1979).

Again, the Department is not unsympathetic to the taxpayer's concerns or the equity and public policy arguments raised in support of the Association's petition for tax deduction relief. At the same time, we are well apprised of the significant tax revenue impact which would appear to result from an expansion of the tax deduction in question. For its part, the Department possesses the legal and technical expertise to assist the taxpayer and its Association in crafting the tax legislative proposals which would accomplish their objectives in greater or lesser degrees. The decision

to make such proposals into law, however, is exclusively the province of the Legislature.

DECISION AND DISPOSITION

The taxpayer's petition for refund is denied. The results of Determination No. 91-214 are hereby confirmed.

DATED this 2nd day of December, 1991.