State of Washington
Department of Revenue
REVENUE

Property Tax Advisory

Property Tax Advisories (PTA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. PTAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxing officials and taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the PTA.

NUMBER: PTA 13.0.2004 ISSUE DATE: 7/30/2004

Impact of Local Zoning Ordinances on Property Tax Exemptions Granted Under Chapter 84.36 RCW

Question: If a property otherwise qualifies for exemption under chapter 84.36 RCW but the use of the property by the applicant conflicts with a local zoning ordinance, will the Department of Revenue deny the exemption?

Answer: The Department will not deny a claim for property tax exemption solely because an applicant's use of the property conflicts with a local zoning ordinance. The Department is required to make the exemption decision on the basis of the statutes within chapter 84.36 RCW and the Department's administrative rules interpreting these statutes. Under these statutes and rules, the Department must decide whether the actual use of a property qualifies it for property tax exemption. The Department must interpret and apply these statutes and rules strictly, though fairly, and in keeping with the ordinary meaning of the language employed. The Department's rulings should be uniform and consistent throughout the state. The Department's decision will not be controlled by local zoning or land use ordinances and enforcement decisions. Local zoning enforcement must be done by the local authorities. The enforcement of local zoning laws may mean that an activity is disallowed by local government.

Recent Actions: In 2001, the Department granted a property tax exemption to property known as Lyle Point in Klickitat County. There were strong proponents and strong opponents to the exemption determination in the local community. The site was owned by the Trust for Public Land (TPL) and exempted under RCW 84.36.260 as a nature conservancy property. There was considerable local opposition to TPL's acquisition of the property and its intent to preclude development of the property. Many local residents viewed this site as a key piece of real estate to be developed, enhancing the local economy and adding to the local tax base. Local authorities passed a zoning ordinance that attempted to prevent TPL from using the property as open space. In effect, the ordinance required that the property be developed. The ordinance was never enforced against TPL, nor did the Department interpret the local law as preventing exemption under state statutes. The Department granted the exemption under RCW 84.36.260.

The Department's determination was appealed by the Klickitat County Assessor to the Washington Board of Tax Appeals (BTA) in Klickitat County v. Department of Revenue, Docket Nos. 01-070 to 01-099. In that 2002 decision, the BTA found in favor of Klickitat County, ruling against the Department and denying TPL's exemption. The BTA was convinced by two arguments: (1) TPL did not meet specific criteria found in the key statute, RCW 84.36.260; and (2) the property's use as open space or a conservancy was contrary to the local zoning ordinance.

The BTA's decision was appealed to the Thurston County Superior Court. In its 2003 ruling, the court found that the BTA made an appropriate decision with respect to the criteria for exemption found in RCW 84.36.260. In fact, the Department has adopted the BTA's criteria for exemption under RCW 84.36.260 as its own when reviewing nature conservancy properties. However, the court did find that neither the Department nor the BTA have the authority to decide whether a specific use is a "legal" one. The question of "legal" use is to be determined by the local authority that passes and enforces the zoning ordinances governing the use of the property. Although the superior court decision was not appealed, the Department finds the reasoning persuasive and, as a matter of policy, will not deny property tax exemption solely because an applicant's use conflicts with a local zoning ordinance.

Example: A nonprofit organization operating a homeless shelter in the Town of Milton Heights applies for a property tax exemption. The Department rules that the property qualifies for exemption under RCW 84.36.043 and other relevant statutes and rules based on actual use. However, the Town of Milton Heights passes a zoning ordinance that prohibits this type of shelter within its city limits. The shelter conforms to the exemption laws but is not a legal use in the eyes of the Town of Milton Heights. If the property were located across the street in another municipality, it would be considered a legal use in that jurisdiction. The shelter is actually open and running because the Town of Milton Heights has not enforced the ordinance through police or court action.

In this example, the Department must make its decision based on the actual use, even if the continued activity is in jeopardy under the town's police powers. The property is actually operating as a qualifying shelter. Subsequently, if the town enforces the zoning ordinance and causes the shelter to cease its operation, the property would cease to qualify for exemption. The Department would then have no choice but to remove the exemption and return the property to the tax rolls.

The local zoning ordinance controls the actual use of property to the extent that the ordinance is enforced. The exemption process has only an indirect effect on the use of the property. Certainly, property tax relief makes it easier for a nonprofit organization to operate a facility. However, the exemption is a result or reflection of the actual use and whether that use satisfies the governing statutes. The process of granting or denying the property tax exemption is independent of local efforts to control how the property is used. Therefore, the Department will not deny exemption solely for the reason that the applicant's actual use of property conflicts with local zoning provisions.

*****