Cite as Det. No. 99-351, 19 WTD 670 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
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	)	No. 99-351
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. . .	)	Registration No. . . .
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[1] RCW 82.32.160, RCW 82.32.170: PETITIONS FOR CORRECTION OF ASSESSMENT – PETITIONS FOR REFUND – EXHUASTION OF ADMINISTRATIVE REMEDIES. The opportunities to file a petition for correction of assessment or a petition for refund are not remedies that must be exhausted before seeking a remedy in a court of competent jurisdiction.

[2] PRESUMPTION OF CONSTITUTIONALITY OF LEGISLATION. An administrative body does not have the authority to determine the constitutionality of the law it administers; only the courts have that power.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

Fruit packers seek refunds of sales tax, use tax, and Business and Occupation Tax (B&O) paid in connection with the construction of buildings, purchases of equipment, and the hiring of

"qualified employment positions" involving the storage and packing of fresh apples in an economically distressed area.[1]

ISSUES:

1. Whether the taxpayers' failure to apply for deferral of sales or use tax under ch. 82.60 RCW before initiation of the construction of the investment project and acquisition of equipment or machinery is excused because the Department of Revenue (Department) would not have approved the applications and the law does not require futile acts; and

2. Whether the taxpayers' failure to apply for B&O tax credits under ch. 82.62 RCW before the actual hiring of "qualified employment positions" is excused because the Department of Revenue (Department) would not have approved the applications and the law does not require futile acts; and

3. Whether the retroactive provision in HB 2295 is barred by case law from applying to the taxpayers; and

4. If the answers to 1, 2, and 3 are yes, whether the taxpayers otherwise qualify for the deferral of sales tax, use tax, and B&O tax under the provisions of ch. 82.60 RCW and ch. 82.62 RCW.

BACKGROUND:

Five taxpayers filed petitions seeking refunds of sales tax, use tax, and B&O tax paid in connection with the construction of buildings, purchases of equipment and the hiring of "qualified employment positions" involving the storage and packing of fresh apples in an economically distressed area. Their appeals have been consolidated for hearing and determination. Each taxpayer, or its representative, has filed a written waiver of the confidentiality provisions of RCW 82.32.330 for the purposes of hearing and determination.

Each taxpayer is engaged in the same business with substantially the same processes. The facts are as follows:

After harvest, the apples are delivered to the taxpayers' facilities, where the fruit is separated into fruit which will be stored for extended periods of time, and fruit which shortly shall be sent to market. The fruit earmarked for long term controlled atmosphere storage is treated with fungicides to prevent decay. The fruit is also treated with a chemical to prevent scald, which is a disorder of apple immaturity that progresses through time while the fruit is in storage.

The apples are then placed in cold storage localities, and the apples' core temperature is reduced to approximately 31.5° Fahrenheit. The apples are later removed from cold storage and placed on the packing lines, where they are dumped into treated water to kill any bacteria to prevent

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

individual apples from contaminating the entire lot and to remove deposits. Then the apples are rinsed with a soap that removes any field grime and residual pesticide. The apples are treated with Mertect, which kills harmful bacteria and keeps the apples from decaying before they reach the consumer. The apples are also dried and often waxed. Waxing the apples serves to delay respiration of the apples, which in turn prolongs the apple's life.

After being waxed, the apples are sorted, using a computer and cameras, by color, size, and grade. After sorting, the apples are packed in trays and placed in cardboard boxes.

Once the apples are packed in cardboard boxes, they are placed in a very cold storage area before shipment. Placement in the storage area brings the core temperature of the apples back down to near freezing or below. The apples themselves are not frozen.

In the controlled atmosphere storage facility, the processor displaces the oxygen in the room with nitrogen, so that rather than the normal 22% oxygen level of the atmosphere, the oxygen level inside the facility is reduced to approximately 1%. The reduction of oxygen in the atmosphere essentially puts the enzymatic development of the apple to sleep until the apples are removed from the controlled atmosphere facility and shipped to the consumer. In essence, then, instead of freezing the apples, as is done to corn and peas and other vegetables, but which would destroy apples, the processor preserves the apples by decelerating their growth and keeping them alive in a semicomatose state.

For the sake of convenience in this determination, the taxpayers' business activities will be referred to as "apple packing," although it is plain that considerably more than mere "packing" is involved.

The taxpayers filed their refund requests following a recent appellate decision. Valley Fruit v. Department of Rev., 92 Wn. App. 413, 963 P.2d 886 (1998), is a decision from Division III of the Washington State Court of Appeals that held the business activities engaged in by the plaintiffs to be manufacturing and granted the plaintiffs' requests for sales and use tax exemptions. Douglas Fruit and Valley Fruit applied for a distressed area sales and use tax deferral under ch. 82.60 RCW in 1994. The Department of Revenue's Appeals Division and, subsequently, the Board of Tax Appeals (BTA), denied their petitions, holding the fruit companies' business activities, apple packing, were not manufacturing. The two fruit companies appealed to Superior Court, one in Franklin County, the other in Yakima County, both of which reversed the BTA. The Department appealed to the Court of Appeals, which consolidated the two appeals. The Court of Appeals described the fruit companies' business activities and held:

> The fruit companies start with whole, edible apples which are treated with fungicide and brushed clean of mineral deposits. They are then rinsed, waxed, and dried. After they are sorted, the apples are stored in a controlled atmosphere to aid preservation. Although not included in the BTA's findings of fact, the uncontroverted evidence before it indicated the apples have a longer life as a result of this process. Using this process, the fruit companies are able to keep the apples 11 months. Without the processing, the apples

> would decay within a month. This undisputed testimony indicates the processing significantly changes the apples into a more useful product. Application of the facts presented to the BTA to the law defining manufacturing indicates these activities should be construed as manufacturing.

Valley Fruit, 92 Wn. App. at 419. The Court of Appeals issued its decision on July 28, 1998. The State Supreme Court denied the Department's petition for review. Valley Fruit v. Department of Rev., 137 Wn.2d 1017, 978 P.2d 1098 (1999). Thus, apple packing constituted manufacturing.

The Department and the legislature had two specific concerns with the Valley Fruit decision. First, in determining that apple packing constituted manufacturing, the implication was that apple packers would be required to pay B&O tax at the manufacturing rate[2], conflicting with an express exemption from the B&O tax for apple packers.[3] The Director of the Department of Revenue summarized the unintended consequences of the Valley Fruit decision in a May 5, 1999 letter to seven agricultural business associations:

> However, there are some adverse tax consequences in this situation and these consequences fall upon people who may not be aware that they are affected. In most cases the grower retains ownership of the agricultural product being packed. Since the packers in the above referenced case were successful in their legal argument that their apple handling activities qualify as a manufacturing process, a domino effect occurs. By law, the person who owns a product being manufactured is a manufacturer and the processor is considered a processor for hire. The ultimate result is that the grower is no longer eligible for the B&O exemption for farmers, because the agricultural product is being used as an ingredient in a manufacturing process. The packers are no longer eligible for their B&O exemption because they are packing for growers who are no longer exempt farmers under RCW 82.04.330. Both the grower and the packer will owe B&O tax, the grower on every apple sold, either inside or outside the state. The packer will be taxable on the payment it receives for the packing activity. To make matters worse, it is also now unclear whether the grower is entitled to purchase seedlings, fertilizer, or spray materials without paying sales or possibly use tax. You should at least be aware that farmers statewide will soon be liable for millions of dollars in unanticipated taxes.

The second concern was the substance of the Valley Fruit decision itself. The Department's position has long been that apple packing is not manufacturing and that Douglas Fruit and Valley

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[2] This opinion was not unanimously held within the Department. See, Taxpayer Information & Education Section letter of October 3, 1994 to [a fruit packer], submitted by one of the taxpayers here.

[3] RCW 82.04.4287 provides: "In computing tax there may be deducted from the measure of tax amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in RCW 82.04.330, either as agent or as independent contractor."

Fruit, as well as the five taxpayers in this appeal, do not qualify for the tax deferral program in ch. 82.60 RCW.[4]

The Department decided to address these concerns in the 1999 regular legislative session. SB 6085 was an attempt to legislatively reverse the Valley Fruit decision, but the bill did not survive and the regular session ended. In 1999, there was a Special Session of the legislature, and during the First Special Session the legislature approved HB 2295, which was substantially similar to the original SB 6085 of the regular legislative session. The Governor signed HB 2295 on June 7, 1999 and the bill was filed with the Secretary of State the same day.

HB 2295 affects the issues presented in this appeal for two reasons. First, HB 2295 amended the definition of manufacturing[5] to exclude apple packing:

> "To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; or packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage. (Emphasis supplied).

In addition to amending the definition of manufacturing, HB 2295 also amended the definition of "manufacturing" in RCW 82.60.020 and RCW 82.62.010, to make clear that both chapters excluded "apple packing" from their scope.

Second, HB 2295 expressly was retroactive: "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." HB 2295 contained an emergency clause and took effect immediately upon filing on June 7, 1999. Const. art. 2, § 1 (amend. 72).

The taxpayers filed applications for deferral of taxes under ch. 82.60 RCW with the Department before the effective date of HB 2295 (June 7, 1999). The Department denied each petition. Subsequently, each taxpayer appealed the denials of their applications to this division.

Each taxpayer acknowledges that it did not file an application with the Department before purchasing equipment and beginning construction, as required in RCW 82.60.030. Each taxpayer makes similar arguments. First, their failure to file applications under RCW 82.60.030 and 82.62.020 is excused because the law does not require the performance of futile tasks. Second, HB 2295 does not apply retroactively to them because each taxpayer was entitled to apply for and receive tax refunds as of the date of their respective filings.

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[4] The Department acknowledged that "Yakima County has continuously qualified as an employment distressed county for the distressed area sales tax deferral program since 1985. Yakima County has also qualified for the new employee credit program since it was created in 1986." Letter of November 17, 1999, from Kim Davis, Department of Revenue, Special Programs Division, Miscellaneous Tax Specialist.

[5] RCW 82.04.120.

ANALYSIS:

1. Whether the taxpayers' failure to apply for deferral of sales tax or use tax under ch. 82.60 RCW before initiation of the construction of the investment project and acquisition of equipment or machinery is excused because the Department of Revenue (Department) would not have approved the applications and the law does not require futile acts: and

2. Whether the taxpayers' failure to apply for B&O tax credits under ch. 82.62 RCW before the actual hiring of "qualified employment positions" is excused because the Department of Revenue (Department) would not have approved the applications and the law does not require futile acts.

[1] These issues arise because of the following language in RCW 82.60.030 and 82.62.020. RCW 82.60.030 states, "[a]pplication for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery." RCW 82.62.020 states, "[a]pplication for tax credits under this chapter must be made before the actual hiring of qualified employment positions."

None of the taxpayers filed an application with the Department before purchasing equipment, beginning construction, or hiring "qualified employment positions," unlike Valley Fruit and Douglas Fruit in Valley Fruit, supra.[6]

Some of the taxpayers argue that the futility exception to the doctrine of exhaustion of administrative remedies should be applied to the failure of the taxpayers to file the required applications for tax deferrals, exemptions and credits because fairness or practicality demand it. The other taxpayers argue simply that the courts will not require vain and useless acts.

The duty to exhaust administrative remedies is described in a leading treatise on administrative law: "[It is] the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Kenneth Culp Davis and Richard J. Pierce, Jr., 2 Administrative Law Treatise 307 (1994), citing Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51, 58 S. Ct. 459, 82 L. Ed. 638 (1938). The doctrine is the same in Washington State. "It is a general rule that when an adequate administrative remedy is provided, it must be pursued before the courts will intervene." Orion Corp. v. State, 103 Wn.2d 441, 456, 693 P.2d 1369 (1985).

The taxpayers cite many of the same cases to support their arguments, relying principally on Orion, 103 Wn.2d 441. Orion Corporation had purchased extensive amounts of land for development, but found its plans thwarted by several state and county legislative enactments. The opinion said "Orion's efforts at finding alternative uses for its land proved fruitless." Orion, 103 Wn.2d at 449. "Despite the state development and advertising of the sanctuary, Orion

[6] Valley Fruit involved applications under RCW 82.60.030 only; the case did not involve applications under RCW 82.62.020.

continued to negotiate with the State over selling its land but the parties were unable to agree on a price. Finally, Orion instituted the present suit." Orion, 103 Wn.2d at 454. Among other defenses, the defendants argued that Orion failed to exhaust its administrative remedies before filing suit. The Court observed, at the outset:

> As the cases make clear there is a strong bias toward requiring exhaustion before resort to the courts. This court recently noted that the policies underlying the exhaustion doctrine are to (1) insure against premature interruption of the administrative process, (2) allow the agency to develop the necessary factual background on which to base a decision, (3) allow the exercise of agency expertise, (4) provide a more efficient process and allow the agency to correct its own mistake, and (5) insure that individuals are not encouraged to ignore administrative procedures by resort to the courts. South Hollywood Hills Citizens Ass'n v. King Cy., 101 Wn.2d 68, 73, 74, 677 P.2d 114 (1984).

Orion, 103 Wn.2d at 456. In making its decision, the Court noted that "resort to the administrative procedures would be futile and vain" (Orion, 103 Wn.2d at 457), that the "record reveals that the State has made a conscious policy choice to preserve Padilla Bay in its natural state" (Orion, 103 Wn.2d at 457), and that a "willingness to consider an application is irrelevant if there is no hope of success if one is submitted." Orion, 103 Wn.2d at 457. From Orion, the taxpayers argue that they were not required to file applications before beginning construction, as required in RCW 82.60.030, because the Department would never have approved their applications; thus, it was futile.

Most of the cases cited by the taxpayers discuss the duty to exhaust administrative remedies in the context that doctrine arises: when may a person file an action in court where the issue involves an administrative agency?

For example, in Lund v. State Dep't. of Ecology, 93 Wn. App. 329, 969 P.2d 1072 (1998), the Court of Appeals mentioned futility in connection with extraordinary circumstances:

> The test for a facial challenge is a high one, in part because the landowner has not presented any evidence about the particular impact of the regulation on his or her parcel of land. To succeed in proving that a statute on its face effects a taking by regulating the permissible uses of property, the landowner must show that the mere enactment of the statute denies the owner of all economically viable use of the property. Orion, 109 Wn. 2d at 658. In facial challenges, landowners need not exhaust administrative remedies. Presbytery of Seattle v. King County, 114 Wn.2d 320, 333, 787 P.2d 907, cert. denied, 498 U.S. 911, 112 L. Ed.2d 238, 111 S. Ct. 284 (1990). Such exhaustion would be futile if indeed the regulation prevented any economically viable use of the land. Orion, 109 Wn.2d at 625 (citing Orion Corp. v. State, 103 Wn.2d 441, 457-60, 693 P.2d 1369 (1985)). Thus, a facial challenge in which the court determines a regulation denies all economically viable use of property "should prove to be a relatively rare occurrence."

In Nolte v. Olympia, 94 Wn. App. 944, 958, 982 P.2d 659 (1999), the Court of Appeals said:

> The City claims that Nolte is prevented from claiming that impact fees were improperly imposed, because he failed to exhaust his administrative remedies. A party must exhaust his or her administrative remedies [footnote omitted] unless doing so would be futile. [footnote omitted]. Nolte had no remedy before the hearing examiner, because the latter did not consider the impact fees required by the City's sewer and water ordinances; he considered only whether Nolte should be required to hook up to City sewer and water. Nolte had no remedy before the City, or his remedy was futile, because the City was bound by, and surely would have adhered to, its ordinances. We conclude that Nolte did not fail to exhaust any meaningful administrative remedy.

Baldwin v. Sisters of Providence, 112 Wn.2d 127, 131, 769 P.2d 298 (1989), involved a labor dispute. The duty to exhaust administrative remedies was not at issue in Baldwin; instead, a different doctrine came into play:

> Generally, contractual grievance procedures must be exhausted before parties resort to the courts. [citations omitted]. There are exceptions to the exhaustion doctrine based upon considerations of fairness or practicality. [citations omitted]. One such exception is recognized where pursuing the available remedies would be futile. [citations omitted]. Generally, futility addresses a showing of bias or prejudice on the part of discretionary decisionmakers. [citations omitted].

Baldwin qualifies the use of the futility argument by requiring a showing of a bias or prejudice on the part of discretionary decision makers. To the extent that decisions are discretionary to grant or deny applications submitted to the Department under RCW 82.60.030, none of the taxpayers has shown that Department agents are biased or prejudiced. There has been no showing that the Department agents considered anything other than the applicable statutes and other law in making their decisions. Absent evidence to the contrary, public officers are presumed to execute their duties correctly. Somer v. Woodhouse, 28 Wash. App. 262; 623 P.2d 1164 (1981).

Robinson v. Employment Security Dept., 84 Wn. App. 774, 930 P.2d 926 (1996), also involved an issue other than the exhaustion of administrative remedies. The essence of that case is stated in the first paragraph of the case:

> Noreen Robinson quit her job as an escrow agent because she feared that continued employment would jeopardize her professional license. The court below ruled that Robinson was disqualified from unemployment compensation benefits under RCW 50.20.050. We reverse because Robinson has established that she quit for good cause after exhausting all reasonable alternatives.

Robinson, 84 Wn. App. at 776. In an unemployment compensation case, "[a]n individual who leaves work voluntarily is disqualified from receiving unemployment benefits, unless she has good cause to quit." RCW 50.20.050(1). Robinson, 84 Wn. App. at 778. The Employment

Security Department has an administrative rule that recognizes the futility of exhausting all reasonable alternatives prior to termination. WAC 192-16-009(1)(c). The Court of Appeals explained "futility" in the employment security context:

> We reverse the ALJ's ruling that Robinson failed to exhaust all reasonable efforts to preserve her employment. While Robinson quit her job without attending the meeting scheduled for July 13, 1994, her attendance would have been a futile act. Zehm testified before the ALJ that the purpose of the second meeting was to discuss personal issues that were unrelated to Home Lending's situation. During the July 12 meeting, Bell and Zehm told Robinson to ignore Home Lending's situation and do her job. There is no evidence that Bell or Zehm were willing to further consider Robinson's concerns about her license and personal liability. Robinson was given no reason to believe that she could avoid processing Home Lending's mortgages while her concerns were investigated further. After being unequivocally told that her supervisor was not going to address Robinson's concerns, it would have been futile to pursue any alternative to quitting.

Robinson, 84 Wn. App. at 780. The Robinson case, and Sweitzer v. State, 43 Wn. App. 511, 718 P.2d 3 (1986) (also cited by the taxpayers), were specifically decided on the basis of RCW 50.20.050 and an administrative rule that are to be applied by the agency "liberally" to provide unemployment benefits. Contrasted with the taxpayers' situation, there is no authority that the taxpayers may disregard the legislatively imposed requirements to benefit from a tax deferral because they disagree with the Department's administration of ch. 82.60 RCW, and where the application of tax is the general rule and tax exemptions are to be narrowly construed, as noted below.

We are unconvinced that the duty to exhaust administrative remedies applies in this situation, and consequently, we are unconvinced that the futility exception to the duty to exhaust administrative remedies applies in this situation. The filing requirements in RCW 82.60.030 and RCW 82.62.020 are elements that must be satisfied before certain tax benefits may be realized by any taxpayer. In that regard, they are like any other element for a tax credit, exemption, or deduction:

> In determining whether the exemption is available to the taxpayers in this case we must consider that exemptions to taxing statutes are strictly construed in favor of the application of the tax. Yakima Fruit Growers Association v. Henneford, 187 Wn. 252, 60 P. (2d) 62 (1936); Miethke v. Pierce County, 173 Wn. 381, 23 P. (2d) 405 (1933); Boeing Aircraft Company v. Reconstruction Finance Corporation, 25 Wn.2d 652, 171 P. (2d) 838 (1946). It is required that any claim of exemption be studied with care before depriving the state of revenue. Alaska Steamship Company v. State, 31 Wn.2d 328, 196 P. (2d) 1001 (1948). Only where an exemption is clearly required by law should an individual be exempt from tax. North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P. (2d) 467 (1942).

Det. No. 99-043, 18 WTD 452 (1999).

The reason the doctrine does not apply here is because there are no administrative remedies that must be exhausted before any taxpayer seeks relief in court. Any taxpayer, having paid the disputed tax, may sue for a refund in Thurston County Superior Court. RCW 82.32.180. Any taxpayer may petition the Department for a refund. RCW 82.32.170. However, no taxpayer is required to petition the Department for a refund under RCW 82.32.170 before seeking relief in court. Any of the taxpayers here could, at any time, have filed a refund action under RCW 82.32.180. However, the judge in the refund action would be asking the same question: "why are you entitled to a refund when you admit you did not satisfy the application-filing requirement in RCW 82.60.030?"

The petition is denied on the "futility" issue.

3. Whether the retroactive provision in HB 2295 is barred by case law from applying to the taxpayers.

[2] Despite the express retroactivity of HB 2295, the taxpayers argue that it does not apply to them because it interferes with fundamental rights. The heart of the taxpayers' argument is that they applied for the tax deferral before the effective date of HB 2295; therefore, as of the date of their filings, the taxpayers were entitled to the tax deferral. The taxpayers challenge HB 2295 both facially and as applied as violative of the Equal Protection and Due Process Clauses of the United States and the Washington State Constitutions.

We cannot rule on facial challenges to statutes. "An administrative body does not have authority to determine the constitutionality of the law it administers; only the courts have that power." Bare v. Gorton, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).

The Department frequently determines whether a tax statute may be enforced constitutionally as to particular persons; e.g., whether nexus exists to support B&O or sales tax on business conducted outside of Washington or transactions occurring outside of Washington. However, on the issue of constitutionality of HB 2295 as applied to the taxpayers, we conclude that this issue must be left for an Article IV court to decide. As was noted in National Can Corp. v. Department of Rev., 109 Wash. 2d 878, 887; 749 P.2d 1286:

> Even if the director's opinion was that placed in question the constitutionality of the B & O tax, it was not within his power to stop collecting taxes under a statute which had been properly enacted by the Legislature. The Department of Revenue was collecting taxes under a statute that had been repeatedly upheld and also enjoyed the presumption of constitutionality. The party challenging the statute would have to prove its invalidity beyond a reasonable doubt. High Tide Seafoods v. State, 106 Wn.2d 695, 725 P.2d 411 (1986).

High Tide Seafoods v. State, 106 Wn.2d 695, 698, 725 P.2d 411 (1986), said:

> Statutes are presumed constitutional and a party challenging a statute has the burden of establishing its invalidity beyond a reasonable doubt, as well as rebutting the presumption that all legally necessary facts exist. Higher Educ. Facilities Auth. V. Gardner, 103 Wn.2d 838, 843, 699 P.2d 1240 (1985).

This issue is not simply one of the administration of a tax statute, a subject committed to the Department. Chapter 82.01 RCW. We may decide the constitutionality of the application of a statute to a taxpayer. However, the question here is the retroactivity of a statute passed by the legislature and signed by the governor and whether that statute applies to the taxpayers. That is an issue that must be decided by a court of competent jurisdiction. We must assume HB 2295 is constitutional.

The petition is denied on the retroactivity issue.

4. If the answers to 1, 2, and 3 are yes, whether the taxpayers otherwise qualify for the deferral of sales tax, use tax, and B&O tax under the provisions of ch. 82.60 RCW and ch. 82.62 RCW.

Having answered the first, second, and third issues as "no," it is unnecessary to address the fourth identified issue, whether the taxpayers otherwise qualify for the deferral of B&O tax under the provisions of ch. 82.60 RCW.

The taxpayers and their counsel are commended for the thoroughness of their briefs and their documentation to support their claims for refunds. We will retain the documentation for submission to the Audit Division for verification if this decision is modified or reversed by the Board of Tax Appeals or by a court.

DECISION AND DISPOSITION:

The taxpayers' petitions are denied.

Dated this 30th day of December, 1999.