



living services under contract with the Department of Social and Health Services authorized by chapter 74.39A RCW to residents who are Medicaid recipients" limited to payments received from DSHS, or does the deduction also apply to copayments patients are required to make?

#### FINDINGS OF FACT

[Taxpayer] is an [out-of-state] company that is a boarding home operator in Washington licensed under Ch. 18.20 RCW. Its business activities in Washington include residential care and support for . . . patients.

Some of the taxpayer's Washington boarding home residents are Medicaid recipients. The taxpayer provides residential care and assisted living services to Medicaid patients under a contract with the Washington Department of Social and Health Services (DSHS) authorized under Ch. 74.39A RCW.

The taxpayer provided a sample DSHS contract. The contract has the following provisions regarding payment for services provided under the contract:

- a. DSHS shall pay to the Contractor a daily sum per Client not to exceed [specified amounts depending on geographical location].

The monthly service payment for all services provided to any DSHS Client in the Contractor's facility under this Contract shall not exceed the amount authorized for each Client. The Contractor hereby waives written notice of subsequent rate changes  
....

- b. The Contractor accepts the DSHS payment amount, with the Client participation amount required by federal and state regulations, as sole and complete payment for the services provided under this Contract. The Contractor shall be responsible for collection of the Client's participation amount (if any) from the Client in the month in which services are provided.
- c. DSHS shall mail the Contractor's payment for services to the mailing address specified on page one of this Contract.
- d. DSHS shall not reimburse the Contractor for authorized services not provided to Clients . . . .
- e. The Contractor shall not charge the Client, or anyone else on behalf of the Client, for medical assistance covered services as defined in RCW 74.09.520. This excludes any Client participation amount.

The sample contract defines "Client Participation" as follows: "‘Client Participation’ means the amount of the Client's nonexempt income, if any, which the Contractor shall collect directly from the Client and apply to the cost of the Client's authorized care."

DSHS provides the taxpayer with a service invoice for each client (patient) each month, which the taxpayer completes and submits to DSHS for payment of the DSHS portion of authorized charges. The invoice specifies the amount the taxpayer is authorized to collect from the client and the amount the taxpayer is authorized to collect from DSHS.

The Audit Division of the Department of Revenue (Department) examined the taxpayer's books and records for the period April 1, 2005 through June 30, 2006. The Audit Division found that the taxpayer had received \$. . . in "client participation" amounts (copayments) in the last nine months of 2005, and \$. . . in copayments in the first half of 2006, which the taxpayer had deducted from the measure of its Business and Occupation (B&O) tax as payments from DSHS. The Audit Division disallowed the deductions of the copayments, and assessed additional B&O tax on them. The Audit Division issued the assessment . . . in the amount of \$. . . tax plus \$. . . interest.

The taxpayer appeals the assessment of B&O tax on the copayment income, contending it was allowed to deduct those amounts under RCW 82.04.4337(1).

### ANALYSIS

Boarding homes that are maintained for the purpose of providing housing, providing basic services, assuming general responsibility for the safety and well-being of the residents, keep providing domiciliary care, and that otherwise meet the definition of "boarding home" in RCW 18.20.020, are required to be licensed by DSHS under Ch. 18.20 RCW.

Washington imposes a Business and Occupation (B&O) tax "for the act or privilege of engaging in business" in the State of Washington. RCW 82.04.220. The B&O tax measure and rate are determined by the type or nature of the business activity in which a person is engaged. RCW 82.04.220. The measure of the B&O tax is generally applied to gross receipts. RCW 82.04.220. Persons engaging in the business of providing room and domiciliary care to residents of a boarding home licensed under Ch. 18.20 RCW are subject to a preferential B&O tax rate specified in RCW 82.04.2908.

RCW 82.04.4337(1) allows licensed boarding homes providing services to Medicaid recipients under contract with DSHS to deduct certain receipts from income before B&O taxes are determined. It states:

A boarding home licensed under chapter 18.20 RCW may deduct from the measure of tax amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the Department of Social and Health Services authorized by chapter 74.39A RCW to residents who are medicaid recipients.

Medicaid is a state-administered medical services program available to people with limited income and resources. Medicaid directly pays health care providers. Under state rules,

Medicaid recipients are required to pay a part of the cost (copayment) for some medical services.<sup>2</sup>

The issue in this case is whether the deduction provided by RCW 82.04.4337(1) applies to Medicaid recipients' copayments, or is limited to payments the provider receives from DSHS.

The Audit Division contends that the deduction statute must be strictly construed, and "[t]he language of the exemption and the legislative history indicate that the exemption only applies to the funds received from DSHS and that patient co-pays are subject to the Service & Other Activities business and occupation tax classification."<sup>3</sup>

The taxpayer contends that the Audit Division misconstrues the deduction. The taxpayer argues, in part: . . .

The deduction is not limited to revenues paid by DSHS, it includes ". . . amounts received as compensation for providing . . . services under contract with [DSHS] . . . to residents who are Medicaid recipients." Any amounts received are deductible, as long as they are received for providing care to qualified Medicaid recipients.

If the Legislature intended to limit the deduction to just amounts paid by Medicaid, it would have expressly stated so as it has in the case of other deductions. For example, the health or social welfare deduction of RCW 82.04.4297 for governmental organizations and certain nonprofits is limited to "amounts received *from*" governmental entities, not "amounts received as compensation for *providing . . . services*" as noted in RCW 82.04.4337. Similarly, the deduction for certain health care services for governmental organizations and certain nonprofits of RCW 82.04.4311 expressly notes "the deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles." RCW 82.04.4337 does not include any such language. Both these statutes were created by the Legislature prior to the 2004 enactment of RCW 82.04.4337.

Under the rules of statutory construction, it must be assumed that the legislature intended exactly what it said in creating RCW 82.04.4337 and effect must be given to all of the language:

In construing a statute, we seek to ascertain and give effect to the legislature's intent. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). When statutory language is clear, we assume that the legislature "meant exactly what it said" and apply the plain language of the statute. *Duke*, 133 Wn.2d at 87 . . . In interpreting and construing a statute, we must give effect to all of the language rendering no portion meaningless or superfluous. *City of Seattle v. State*, 136 Wn.2d 693, 965 P.2d 619 (1998).

---

<sup>2</sup> See <http://www.adsa.dshs.wa.gov/pubinfo/benefits/medicaid.htm>; <http://www.cms.hhs.gov/MedicaidGenInfo/>.

<sup>3</sup> Audit Division Response dated February . . ., 2007.

*Stroh Brewery Company v. Department of Revenue*, No. 24944-8-II, (Slip Op., January 12, 2001).

In RCW 82.04.4337, the Legislature “meant what it said” by noting that it was the services performed on the behalf of a qualifying resident, rather than the payer, that made the revenues qualify for the deduction. In addition, the Legislature specifically did not exclude any copayments. Accordingly, the Audit Division is erroneously interpreting RCW 82.04.4337. Its interpretation either enlarges the statute by adding the phrase “excluding copayments or deductibles” or renders the phrase “as compensation for providing . . . services . . . to residents who are Medicaid recipients” superfluous.

We agree that the Legislature’s intention would have been clearer had it used the same language it used in RCW 82.04.4297 (“amounts received from” governmental entities), or had used the same language it used in RCW 82.04.4311 (which includes a phrase expressly excluding from a different deduction “amounts received from patient copayments or patient deductibles”). However, the fact that RCW 82.04.4337 does not have the same language as either of those deduction statutes does not require a conclusion that the Legislature intended that co-payments be included in the deduction authorized by RCW 82.04.4337. We note that the Legislature did not indicate its intention in the same way in either of those other statutes, even though the intention in both was the same.

When the legislature enacts a statute, it intends to accomplish a particular purpose. It is the role of the courts in a particular case to implement the legislative intent. Determining that intent may be difficult, when legislation is imprecisely drafted or is the product of political compromise. The courts, and the Department, use a variety of principles of statutory interpretation to assess what the legislature meant in enacting a statute.

Washington courts have long indicated that they will not construe a plain and unambiguous statute, that is, they will not resort to canons of construction or legislative history to analyze the meaning of a statute when the meaning is plain. The Washington Supreme Court explained this rule as follows, in *AgriLink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 396-7, 103 P.3d 1226 (2005):

Where statutory language is plain and unambiguous courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency. A statute is ambiguous if “susceptible to two or more reasonable interpretations,” but “a statute is not ambiguous merely because different interpretations are conceivable. Finally, we take note that “[i]f any doubt exists as to the meaning of a taxation statute, the statute must be construed most strongly against the taxing power and in favor of the taxpayer.”

(Citation is omitted). The threshold question, then, is whether the language of RCW 82.04.4337(1) is plain and unambiguous, or is susceptible to two or more reasonable interpretations with respect to whether the deduction it authorizes is limited to payments from DSHS. We conclude that the language is not plain, and is ambiguous. The key language is

“amounts received as compensation for providing [services] . . . under contract with [DSHS].” Does that language mean the contracted payment for the services (i.e., the contractual obligation of DSHS), or all compensation received for services that are provided to Medicaid recipients who are receiving services under a contract with DSHS? The meaning makes a difference, because, while the DSHS contract authorizes the taxpayer to collect copayments from clients, the contract limits the payment DSHS contracts to make to an amount that does not include copayments.

Once it is determined that a statute is ambiguous, we resort to canons of statutory construction or legislative history to analyze the meaning of the statute. Of great . . . value are legislative findings in a preamble section of a bill, which represent an affirmative statement of legislative intent enacted by the legislature. *See Spokane County Health Dist. v. Brockett*, 120 Wn. 2d 140, 839 P.2d 324 (1992). Courts also look to official documents of the legislature, such as bill reports, which are the product of the legislative staff, as authoritative sources of legislative intent. *See Young v. Estate of Snell*, 134 Wn. 2d 267, 948 P.2d 1291 (1997).

RCW 82.04.4337(1) was enacted in the 2004 Legislature, as part of Ch. 174, Laws of 2004. There are no legislative findings in a preamble section of the bills.<sup>4</sup> However, the Substitute House Bill Report contained the following brief summary of the substitute House bill:

- Lowers B&O rate from 1.5 percent to 0.275 percent for licensed boarding homes.
- Deducts from B&O tax calculation **amounts received** by licensed boarding homes **from Department of Social and Health Services** for services provided to medicaid recipients.

(Emphasis added.) The same report contains the following summary of the substitute House bill:

Licensed boarding homes providing room and domiciliary care to residents pay B&O tax at a rate of 0.275 percent. **Amounts received from the Department of Social and Health Services (DSHS)** for adult residential care, enhanced adult residential care, or assisted living services for Medicaid recipients are deducted from income before B&O taxes are determined.

(Emphasis added.) The Senate Bill Report, and the Final Bill Report, contain the same summary of the legislation.

Based on the above legislative history, we find that the Legislature intended the deduction authorized by RCW 82.04.4337(1) to apply only to amounts received from DSHS. We conclude that the taxpayer was not allowed to deduct the copayments from the measure of its B&O tax.

---

<sup>4</sup> Substitute House Bill 1328 and Substitute Senate Bill 5580.

**DECISION AND DISPOSITION**

Taxpayer's petition is denied

Dated this 28th day of June 2007.