Cite as Det. No. 16-0209, 36 WTD 052 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 16-0209
. . .	)	Registration No. . . .

[1] RCW 82.08.020(1)(a); RCW 82.04.250(1) – RETAIL SALES OF MEDICAL MARIJUANA – The taxpayer was liable for retailing B&O tax and retail sales tax for the sales of medical marijuana.

[2] RCW 82.04.480; Rule 159 – SALES IN OWN NAME – SALES AS AGENT – The taxpayer was responsible to collect and remit retail sales tax when making sales irrespective of whether the taxpayer was provided management services to the collective garden. As the seller of tangible personal property, whether as agent of the collective garden or as principal, the taxpayer was responsible for collecting and remitting retail sales tax on all sales under RCW 82.08.050(1).

[3] RCW 82.04.4282 – DEDUCTIONS – FEES, DUES, CHARGES – The money the customers gave the taxpayer when the taxpayer gave the customers marijuana did not qualify as a contribution or donation B&O tax exemption because it was not gratuitous.

[4] RCW 82.08.0281(1); Rule 18801 – EXEMPTIONS – SALES OF PRESCRIPTION DRUGS – Because of the use of different language, "prescription" and "to prescribe" in RCW 82.04.0281 and "valid documentation" in RCW 69.51A.010(7), we conclude that medical marijuana was not prescribed to patients, but rather patients received valid documentations from health care professionals that allowed them to purchase medical marijuana. Therefore, the taxpayer's sales of medical marijuana to consumers did not qualify for the prescription drug exemption under RCW 82.08.0281(1).

[5] RCW 82.08.0283(1) – EXEMPTIONS – CERTAIN MEDICAL ITEMS - The botanical medicines referred to in RCW 82.08.0283(1)(b) equate to the botanical medicines referenced in RCW 18.36A.020(10). RCW 82.08.0283(1)(b) specifically refers to items administered, dispensed, or used in the treatment by a naturopath under chapter 18.36A and that chapter specifically limits the term "botanical medicines" to certain medicines, excluding most controlled

> substances. Medical marijuana has always been classified as a controlled substance, which is treated separately from the botanical medicines described in RCW 18.36A.020(10). Therefore, the taxpayer's sales of marijuana were not exempt from retail sales tax under RCW 82.08.0283(1).

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.

Callahan, T.R.O. – A limited liability company that sells medical marijuana and marijuana-related products ("Taxpayer") protests the Department of Revenue's ("Department") assessment of retail sales tax and retailing business and occupation ("B&O") tax arguing that it is a collective garden and it does not sell or provide medical marijuana to consumers in exchange for donations. Taxpayer also argues that even if there were retail sales, those sales are exempt either as sales of drugs pursuant to a prescription or [as] sales of medicines of a botanical origin. We deny the petition.[1]

ISSUES

1. Did Taxpayer make retail sales of medical marijuana, and [are] the sales . . . subject to retail sales tax under RCW 82.08.020(1)(a) and retailing B&O tax under RCW 82.04.250(1)?

2. Whether the money Taxpayer received in exchange for the medical marijuana constitutes exempt donations under RCW 82.04.4282?

3. If Taxpayer made retail sales, are these sales exempt from retail sales tax as sales of drugs pursuant to a prescription under RCW 82.08.0281(1)?

4. If Taxpayer made retail sales, are these sales exempt from retail sales tax as sales of medicines of a botanical origin under RCW 82.08.0283(1)(b)?

5. Under RCW 82.32.070 and WAC 458-20-254 ("Rule 254"), has Taxpayer shown that the Department assessed the tax in error?

FINDINGS OF FACT

Taxpayer registered with the Department on November 1, 2010, and operated a medical marijuana dispensary under the business name of . . . . Taxpayer reported its gross income under the retailing B&O tax classification and remitted retail sales tax to the Department for the period of January 2011 through July 2012.

Taxpayer submitted a business account closure request to the Department on August 10, 2012. On September 23, 2014, Taxpayer submitted a refund request for retail sales tax submitted to the Department for the period of January 2011 through July 2012. Taxpayer argued that the sale of medical marijuana was not subject to retail sales tax and that it had remitted retail sales tax that it

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

did not collect from its customers for the period January 2011 through July 2012 to the Department in error.

The Department's Taxpayer Account Administration ("TAA") Division investigated Taxpayer's business activities and discovered that Taxpayer posted pictures of receipts dated April 2012 through July 2012 showing retail sales tax that it charged customers on its marijuana sales on its social media page. TAA also found Taxpayer advertised its marijuana and marijuana-related products on the internet from the period of January 2011 through March 2015. The Department denied Taxpayer's refund request.

TAA contacted Taxpayer on January 23, 2015, to follow-up on the discovery of Taxpayer's marijuana selling activities. Taxpayer responded that it changed its business from a dispensary to a collective garden in August 2012, and stopped reporting income to the Department since then. On March 4, 2015, TAA mailed a letter to Taxpayer stating that Taxpayer reported its business activity to the Department as "selling or providing certain products in exchange for donations to consumers in Washington," and such activity does not qualify for a tax exemption. The March 4, 2015 letter advised Taxpayer on how to correctly report the sales of medical marijuana and to amend previously filed returns if income was not correctly reported. The letter asked Taxpayer to provide a schedule of its gross income for the business known as . . . . Taxpayer did not respond to the Department's March 4, 2015 letter.

Due to lack of responses from Taxpayer, the Department mailed Taxpayer another letter dated April 29, 2015, advising Taxpayer that an estimated assessment would be issued if Taxpayer did not provide the information requested in the March 4, 2015 letter by May 29, 2015.

On May 15, 2015, Taxpayer's representative responded, stating Taxpayer provided management services. Taxpayer's representative stated that Taxpayer has not existed since it became a collective in August 2012, and thus, Taxpayer did not make retail sales. Taxpayer completed the gross income schedule with zero income from retail sales and wholesale sales. On June 9, 2015, TAA sent a letter to Taxpayer and its representative stating that Taxpayer's business tax reporting account had been reopened back to August 2012 because Taxpayer has continued operations after closing the account. TAA advised Taxpayer to file its tax returns for periods starting August 2012. Taxpayer did not respond and did not file any tax returns requested by TAA.

On July 9, 2015, TAA issued an assessment against Taxpayer for the period of July 1, 2012, through March 31, 2015, based on the average gross income Taxpayer reported on its excise tax returns for January through December 2012 with a twenty percent increase for each subsequent year. The assessment is in the amount of $ . . . , which consisted of retail sales tax of $ . . . , retailing B&O tax of $ . . . , a delinquent penalty of $ . . . , interest of $ . . . , and a 5% assessment penalty of $ . . . . Taxpayer did not pay the assessment and timely appealed contesting numerous aspects of the Department's assessment.

Taxpayer argues that it is a collective garden as used in RCW 69.51A.085, and it does not sell . . . medical cannabis to consumers.[2] Taxpayer argues that even if there were sales, those sales are

[2] The term "collective garden" is defined, generally, as "qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use . . . ." RCW 69.51A.085(2). The

exempt from sales tax as prescription drugs under RCW 82.08.0281. Taxpayer alternatively argues that those sales are exempt from sales tax as sales of a medicine of botanical origin under RCW 82.08.0283. At the hearing, Taxpayer argued that even if it was subject to the retail sales tax and retailing B&O tax, the Department issued the assessment in error because the assessment was on estimates. Taxpayer has not provided any records to substantiate this argument.

ANALYSIS

1. *Did Taxpayer make retail sales of medical marijuana, and [are] the sales subject to retail sales tax under RCW 82.08.020(1)(a) and retailing B&O tax under RCW 82.04.250(1)?*

"Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration. RCW 82.04.040(1). The term "retail sale" includes every sale of tangible personal property, subject to certain exclusions, none which apply here. RCW 82.04.050(1)(a). Retail sales are subject to retail sales tax under RCW 82.08.020(1)(a). Sellers must collect the full amount of the retail sales tax payable from buyers. RCW 82.08.050(1). If the seller fails to collect retail sales tax from the buyer and remit it to the Department the seller becomes personally liable for the amount of the tax. RCW 82.08.050(3).

Taxpayer argues that as a collective garden, it was not making sales. We disagree. Here, Taxpayer's clients would enter Taxpayer's location, provide their authorization, review and sign a membership application, and exchange payment for medical marijuana. This is a sale because Taxpayer transferred ownership or possession of tangible personal property, medical marijuana, for consideration. RCW 82.04.040(1)(a).

Legislation passed in 2015 supports the conclusion that sales by collective gardens are subject to retail sales tax. RCW 82.08.9998(2) provides a temporary retail sales tax exemption for sales of marijuana and marijuana products by collective gardens in compliance with RCW 69.51A, from July 1, 2015, until June 30, 2016.[3] If collective gardens in compliance with RCW 69.51A were not making retail sales, the legislature would not have needed to pass these exemptions. *See* Det. No. 07-0168, 27 WTD 19 (2008). *City of Seattle v. State*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998) (Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. (citing *Stone v. Chelan County Sheriff's Dep't,* 110 Wn.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Board of County Comm'rs,* 97 Wn.2d 385, 391, 645 P.2d 697 (1982)).

With respect to the retailing B&O tax, B&O tax is levied and collected "for the act or privilege of engaging in business activities." RCW 82.04.220(1). The legislature intended to impose the B&O tax on virtually all business activities carried on within the state. *Time Oil Co. v. State*, 79 Wn.2d 143, 483 P.2d 628 (171). Retail sales are subject to retailing B&O tax under RCW 82.04.250. Since Taxpayer made retail sales of medical marijuana, it is liable for retailing B&O tax on these sales.

---

statutes governing collective gardens address the criminal and civil sanctions that might otherwise be imposed on collective gardens based solely on their assisting with the use of medical marijuana. Ch. 69.51A RCW.

[3] Chapter 4, Laws of 2015, 2nd Spec. Sess. (2ESSHB 2136).

2. *Whether the money Taxpayer received in exchange for the medical marijuana constitutes donations?*

Taxpayer also argues that there were no taxable transactions because it gave the medical marijuana or marijuana related products in exchange for donations from its members. We do not find this argument supported by legal basis. For B&O and retail sales tax purposes, RCW 82.04.040(1) defines "sale" as, "[A]ny transfer of the ownership of, title to, or possession of property for a valuable consideration . . . ." as stated before. RCW 82.04.090 provides "value proceeding or accruing" means "consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued." RCW 82.04.090.

The money received in exchange for tangible personal property (in this case, marijuana) constitutes valuable consideration for purposes of RCW 82.04.040(1). Taxpayer's sales of marijuana are subject to retail sales tax under RCW 82.08.020, unless a specific exemption applied. Even if some of the customers contributed something other than money, those contributions in exchange for marijuana are still "valuable consideration." RCW 82.04.040.

If claiming an exemption, tax exemptions are narrowly construed. Taxation is the rule and exemption is the exception. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Any taxpayer claiming a benefit or deduction from a taxable category has the burden of showing that it qualifies for it. *Id.* at 174-75.

Taxpayer argues that the money it received from its customers were donations not subject to B&O tax. RCW 82.04.4282 provides an exemption for B&O tax if the amounts received are bona fide contributions or donations:

> In computing tax there may be deducted from the measure of [B&O] tax amounts derived from bona fide . . . donations, ... This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others.

The term "donations" means "any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift." WAC 458-20-169(g)(iii) (Rule 169(g)(iii)). In this case, Taxpayer argues the customers were the "donors." Yet, the customers received marijuana, a significant good, when the customers left money.

There was no contribution or donation. Funds do not qualify as "contributions" or "donations" if the funds are not provided for a gratuitous purpose. *Analytical Methods v. Dep't of Revenue,* 84 Wn. App. 236, 243, 928 P.2d 1123 (1996); *see also* Det. No. 13-0156R, 33 WTD 199, 202 (2014). In *Analytical Methods*, the federal agency providing the funds received certain intellectual property rights. In our case, the customers received marijuana. The money the customers gave Taxpayer when Taxpayer gave them marijuana does not qualify as a contribution or donation because it is not gratuitous. Therefore, the sales are not exempt under RCW 82.04.0282.

3. Are the sales of medical marijuana exempt from retail sales tax as sales of drugs pursuant to a prescription under RCW 82.08.0281(1)?

Taxpayer argues that even if it made retail sales, those sales are exempt as sales of drugs pursuant to a prescription under RCW 82.08.0281. RCW 82.08.0281(1) exempts from retail sales tax, ". . . sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription."[4] WAC 458-20-18801 ("Rule 18801") explains that a seller may obtain an exemption certificate for this exemption: "A seller is not required to collect sales tax when it obtains a properly completed exemption certificate indicating prescription drugs, intended for human use sold to medical practitioners, nursing homes, and hospitals, will be put to an exempt use under the authority of a prescription." Rule 18801(403)(b). Otherwise, the retail sales tax must be collected. *Id.*

RCW 82.08.0281(4)(a) defines the term "prescription" as: "[A]n order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe." However, no licensed practitioner may prescribe medical marijuana in Washington.[5]

Under 21 U.S.C. § 812 and RCW 69.50.204, marijuana is a Schedule 1 controlled substance, which cannot be prescribed under federal and state law. *Seeley v. State*, 132 Wn.2d 776, 940 P.2d 604 (1997) (holding "[m]arijuana cannot be legally prescribed, nor can a prescription for marijuana be filled by a pharmacist in Washington . . . ."; *State v. Hanson*, 138 Wn. App. 322, 328-32, 157 P.3d 438 (2007) (holding Washington's Medical Use of Marijuana Act did not implicitly repeal marijuana's classification as a Schedule 1 controlled substance); *see also* Dep't of Revenue Special Notice dated May 31, 2011, entitled "Sales of Medical Cannabis Remain Subject to Sales Tax." Accordingly, medical marijuana is not covered by the exemption for prescription drugs.

We recognize that medical professionals can issue documentation authorizing the use of marijuana, but this does not change the outcome. The legislature enacted Chapter 69.51A RCW, which addresses medical marijuana. RCW 69.51A.030(2)(a) allows health care professionals, including naturopaths, to provide a patient with a valid documentation authorizing the medical use of marijuana,[6] provided certain requirements are met:

---

[4] [Taxpayer does not argue that its medical marijuana is an exempt sale of prescription drugs because it is a "order, formula, or recipe." *See* RCW 82.08.0281. Because Taxpayer does not make this argument, we do not address it in this determination.]

[5] The website for Washington's Department of Health provides, "Healthcare providers cannot write prescriptions for medical marijuana. They may only write recommendations that a patient has a medical condition that may benefit from the medical use of marijuana." http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuanaCannabis/GeneralFrequentlyAskedQuestions#10 (last visited Nov. 24, 2014).

[6] RCW 69.51A.010(7) defines "valid documentation" as:

> (a) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of marijuana; and
> (b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

(Emphasis added.)

> (2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in **section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:
>
> (i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;
>
> (ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;
>
> (iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and
>
> (iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(Emphasis added.)[7]

Taxpayer has not shown any documentation indicating that its customers had documentation authorizing the use of marijuana. Even if Taxpayer could produce such documentation, such documentation does not support Taxpayer's claim for the tax exemption under RCW 82.04.0281. Taxpayer argues that a valid documentation (defined in RCW 69.51A.010(7)) that a health care professional is permitted to provide to a patient, under RCW 69.51A.030(2)(a), equates to a prescription for purposes of RCW 82.08.0281. Taxpayer further contends that a document authorizing use of medical marijuana is a prescription. We disagree. Had the legislature intended such a result, it would not have added the words "to prescribe" to RCW 82.04.0281 in 2003. Chapter 69.51A RCW does not authorize medical professionals "to prescribe" medical marijuana.

Generally, a person claiming a tax exemption, exception, or deduction has the burden of proving he or she qualifies for the tax benefit. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967). Exemptions from a taxing statute must be narrowly construed. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972); *Evergreen-Washelli Memorial Park Co. v. Dep't of Revenue*, 89 Wn.2d 660, 663, 574 P.2d 735 (1978).

---

[7] RCW 69.51A.010(4) defines a "qualifying patient" as a person who:

(a) Is a patient of a health care professional;
(b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
(c) Is a resident of the state of Washington at the time of such diagnosis;
(d) Has been advised by that health care professional about the risks and benefits of the medical use of marijuana; and
(e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

The legislature used the language of "valid documentation," instead of "prescription," when addressing medical marijuana in chapter 69.51A RCW. The legislature's use of the concept of valid documentation, as opposed to prescription, was not the result of a relaxed use of language by the legislature. The legislature intended to limit the exemption in RCW 82.08.0281 to prescribed drugs. Where the legislature uses certain statutory language in one instance, and different language in another, there is a difference of legislative intent. *United Parcel Service, Inc. v. Dep't of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984); *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 397, 103 P.3d 1226 (2005).

Because of the use of different language, "prescription" and "to prescribe" in RCW 82.04.0281 and "valid documentation" in RCW 69.51A.010(7), we conclude that medical marijuana is not prescribed to patients, but rather patients receive valid documentation from a health care professional that allows them to purchase medical marijuana. Therefore, Taxpayer's sales of medical marijuana to consumers do not qualify for the prescription drug exemption under RCW 82.08.0281(1).

4. *Are the sales of medical marijuana exempt from retail sales tax as sales of medicines of a botanical origin under RCW 82.08.0283(1)(b)?*

Taxpayer alternatively argues that those sales are exempt from sales tax as sales of a medicine of botanical origin under RCW 82.08.0283. In 1987, the Legislature began regulating and licensing naturopaths. RCW 18.36A. "The practice of naturopathic medicine includes . . . the prescription, administration, dispensing, and use . . . of . . . naturopathic medicines . . . ." RCW 18.36A.040. RCW 18.36A.020(10) defines the term "naturopathic medicines" as:

> [V]itamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the board. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

(Emphasis added.) In 1998, the Legislature created a sales tax exemption for certain medicines used by naturopaths in their practice. RCW 82.08.0283(1) states, among other things, that the retail sales tax shall not apply to the sale of:

> (b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW;. . . .

(Emphasis added.)

Later the same year, citizens of Washington approved Initiative 692, codified at RCW 69.51A. RCW 69.51A.030(2)(a) allows health care professionals to issue an "authorization" to patients informing them that they may benefit from the use of medical marijuana. Those health care professionals are to discuss with their patients the benefits and risks of using marijuana. Neither the initiative, nor the Legislature's 2011 amendments to it, legalize the commercial sale of medical

marijuana. *See State v. Reis*, 183 Wn.2d 197, 201, 351 P.3d 127 (2015). Rather, the primary purpose of the initiative was to provide an affirmative defense to criminal prosecution for individuals charged with possession of marijuana, if those individuals had valid authorization from a health care professional. *Id*. at 209-11. The initiative said nothing about the creation of a tax exemption for medical marijuana.

The authorizations permitted by the initiative were originally limited to physicians and did not permit naturopaths to issue authorizations. 1999 c. 2 § 6. Only in 2010 did naturopaths become able to issue an authorization for medical marijuana. 2010 c. 284 § 2 (effective June 10, 2010).

Both federal and state law classify marijuana as a Schedule I controlled substance. 21 U.S.C. § 812(c)(10); RCW 69.50.204(c)(22). Consistent with this classification, RCW 18.36A.020(10) limits the legend drugs and controlled substances a naturopath may prescribe to certain Schedule III, IV, and V substances as permitted by rules of the state board of naturopathy. But, the statute does not permit naturopaths to use Schedule I or II legend drugs or controlled substances in their practice, nor does it permit naturopaths to use controlled substances not approved by the board of naturopathy in their practice. This statute makes a clear distinction between controlled substances, such as medical marijuana and botanical medicines. Under RCW 18.36A.040 and 18.36A.020(10), naturopaths cannot prescribe, administer, dispense, or use medical marijuana in their practice since it is a Schedule I controlled substance. The Washington Supreme Court recognized this in *Seeley*. The Court upheld the Legislature's classification and held: "Marijuana cannot be legally prescribed, nor can a prescription for marijuana be filled by a pharmacist in Washington . . . ." *Id*. at 783.

Taxpayer argues that since medical marijuana is of botanical origin, and because naturopaths are health care professionals allowed to provide patients with a valid documentation authorizing the medical use of marijuana, the sale of medical marijuana is exempt from taxation under RCW 82.08.0283(1).

The first problem in this case is that Taxpayer has not shown that the medical marijuana it sold was administered, dispensed, or used in the treatment by a naturopath. However, even if Taxpayer could show this, chapter 18.36A prohibits medical marijuana from being a "naturopathic medicine." *See* RCW 18.36A.020(10). RCW 18.36A.020(10) makes a clear distinction between controlled substances, such as medical marijuana and botanical medicines. If we were to conclude that because marijuana is of botanical origin RCW 82.08.0283(1) exempts the sale of marijuana from taxation, we would render meaningless the distinction drawn between controlled substances and botanical medicines in RCW 18.36A.020(10).

Statutory provisions must be read in their entirety and construed together (*ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807 (1993)), and construed in a manner consistent with the general purpose of the statute (*Graham v. State Bar Ass'n*, 86 Wn.2d 624, 627, 548 P.2d 310 (1976)). "Strained, unlikely or unrealistic" statutory interpretations are to be avoided. *Bour v. Johnson*, 122 Wn.2d 829, 835 (1993); *Christie-Lambert v. McLeod*, 39 Wn. App. 298, 302 (1984)(A statutory provision should be interpreted to avoid strained or absurd consequences that could result from a literal reading). We are required, when possible, to give effect to every word, clause, and sentence of a statute. Det. No. 04-0180E, 26 WTD 206 (2007). No part should be deemed

inoperative or superfluous unless the result of obvious mistake or error. *Id*. (Citing *Cox v. Helenius*, 103 Wn.2d 383, 387-88 (1985)).

We conclude that the botanical medicines referred to in RCW 82.08.0283(1)(b) equate to the botanical medicines referenced in RCW 18.36A.020(10). RCW 82.08.0283(1)(b) specifically refers to items administered, dispensed, or used in the treatment by a naturopath under chapter 18.36A, and that chapter specifically limits the term "botanical medicines" to certain medicines, excluding most controlled substances. Medical marijuana has always been classified as a controlled substance, which is treated separately from the botanical medicines described in RCW 18.36A.020(10). Any other reading of RCW 82.08.0283(1) is contrary to the rules of statutory construction and interpretation outlined immediately above. We therefore conclude that Taxpayer's sales of marijuana are not exempt from retail sales tax under RCW 82.08.0283(1).

The 2015 legislation regarding medical marijuana only reinforces this interpretation. Laws of 2015, ch. 70, Section 17(7)(b). Section 17(7)(c) makes it clear that a naturopath cannot prescribe medical marijuana: "[a]n authorization is not a prescription as defined in RCW 69.50.101." Also, medical marijuana remains a Schedule 1 drug under the state's Controlled Substances Act after the Governor's veto of Sections 42 and 43. *See* Governor's veto message, Laws of 2015, ch. 70, p. 71-72.

The other 2015 legislation regarding medical marijuana, Laws of 2015, 2d Spec. Sess. ch 4, Sections 207 and 208, establishes an exemption from retail sales tax and use tax for sales of medical marijuana from July 1, 2015, until June 30, 2016 . . . . The intent section states that "[i]t is also imperative to distinguish that the authorization for medical use of marijuana is different from a valid prescription provided by a doctor to a patient." *Id*., Section 101(1)(b). The legislature added these exemptions as new sections of Chapters 82.08 and 82.12 RCW, respectively. *Id*., Sections 207 and 208. If collective garden sales of medical marijuana had been exempt under RCW 82.08.0283, the legislature would not have needed to add these sections further showing that there was no intent to previously exempt medical marijuana sales under RCW 82.08.0283. *See John H. Sellen Constr. Co. v. Dep't of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976) ("[T]he legislature does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment.").

5. *Under RCW 82.32.070 and Rule 254, has Taxpayer shown that the Department assessed the tax in error?*

RCW 82.32.070 requires every person liable for payment of excise taxes to keep and preserve suitable records. Specifically, RCW 82.32.070(1) requires:

> Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records and invoices shall be open for examination at any time by the department of revenue. . . .

Rule 254(3)(b), the administrative rule regarding recordkeeping, states in pertinent part:

> It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:
>
> (i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.
>
> (ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.
> . . .

(Emphasis added.)

If a taxpayer fails to keep and preserve suitable records, then RCW 82.32.100(1) provides that the Department "shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax." Thus, in the absence of suitable records, the Department has authority to estimate tax liability based on the available information "as it may deem best." RCW 82.32.100(1) & (2).

Here, Taxpayer asserts that the Department issued the assessment in error, but it did not provide any documents to refute the assessment. Due to the lack of complete records regardless the Department's numerous attempts to obtain records from Taxpayer, the Department exercised its statutory authority to proceed the assessment based on the available records. RCW 82.32.100(1). The available records in this case were the average gross income Taxpayer reported on its excise tax returns for January through December 2012. The Department then issued the assessment based on those records. RCW 82.32.100(2). Taxpayer has not presented any evidence to substantiate its arguments. Therefore, the Department did not issue the assessment in error.

We deny Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 22nd day of June, 2016.