

Cite as Det. No. 16-0150, 36 WTD 195 (2017)

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

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 16-0150
)	
... )	Registration No. . . .
)	

[1] RCW 82.04.040: SALE. A “sale” occurs where medical cannabis (property) is transferred in exchange for money (valuable consideration).

[2] RCW 82.08.0281; RCW 69.51A.010(1)(c): PRESCRIPTION DRUG. Authorization for medical use of cannabis is not a prescription; therefore, sales of medical cannabis are not exempt from retail sales tax as sales of prescription drugs.

[3] RCW 82.08.0283; RCW 18.36A.020(10): NATUROPATHIC MEDICINE. Medical cannabis is a Schedule 1 controlled substance and excluded from the definition of “naturopathic medicine.” Medical cannabis cannot be prescribed, administered, dispensed, or used, in the treatment of an individual, by a naturopath and the sale of medical cannabis is not exempt from retail sales tax as a sale of naturopathic medicine.

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.

Anderson, T.R.O. – A collective garden disputes the assessment of retail sales tax on medical cannabis products and asserts that no taxable transactions occurred, but if they did, such products are exempt from retail sales tax as a prescription drug and/or medicine of botanical origin. Petition is denied.<sup>1</sup>

ISSUES

1. Whether, under RCW 82.04.040, a sale occurs when a collective garden provides medical cannabis products to qualifying patients in exchange for money.
2. Whether medical cannabis products are exempt from retail sales tax as a prescription drug under RCW 82.08.0281.

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

3. Whether medical cannabis products are exempt from retail sales tax as medicine dispensed by a naturopath under RCW 82.08.0283.

### FINDINGS OF FACT

[Taxpayer] states that it operates a “collective garden” which dispenses medical cannabis products, such as cannabis, edibles, drinks, lotions, clones, and hash, to “qualified patients.”<sup>2</sup> In exchange for providing one or more of these products, the qualified patients pay Taxpayer money. Taxpayer tracks the amount of medical cannabis products dispensed and money received in a bookkeeping computer program called [Program].

Taxpayer has never reported or paid taxes to the Washington State Department of Revenue (“Department”). In March of 2015, the Department’s Compliance Division (“Compliance”) contacted Taxpayer to review Taxpayer’s books and records for the period of October 1, 2013, through December 31, 2014 (the “Assessment Period”). In April of 2015, Taxpayer provided Compliance with monthly reports from [Program] during the Assessment Period.

Based upon this documentation, Compliance issued an estimated assessment against Taxpayer for the Assessment Period in the amount of \$ . . . – which is comprised of \$ . . . in tax (retailing business and occupation [(B&O)] tax and retail sales tax) and \$ . . . in interest and penalties. The assessment states, “The assessment will be adjusted to actual figures when you provide completed tax returns for all periods.” To date, the Taxpayer has not provided completed tax returns.

Taxpayer appeals the estimated assessment on several grounds.

First, Taxpayer points out that he operates a “collective garden” as the term is defined in RCW 69.51A.085. Taxpayer explains that collective gardens may only provide medical cannabis products to individuals who participate in the collective garden’s production of medical cannabis and, although the collective garden receives money in exchange for medical cannabis, any money received is a donation. Thus, Taxpayer concludes the exchange of money for cannabis is not a sale or taxable transaction.

However, to the extent we determine a sale occurs when medical cannabis is exchanged for money, Taxpayer asserts that the following two provisions exempt the sale of medical cannabis from retail sales tax: (1) RCW 82.08.0281 – Taxpayer asserts that medical cannabis is the sale of a “prescription drug” [and] (2) RCW 82.08.0283 – Taxpayer asserts that medical cannabis is the sale of medicine of botanical origin dispensed or used in the treatment of an individual by a person licensed under chapter 18.36A RCW.

### ANALYSIS

Washington permits “qualifying patients” to establish “collective gardens” for the purpose of growing medical cannabis for personal use. RCW 69.51A.085.<sup>3</sup> Collective gardens pre-date the

---

<sup>2</sup> We explain below that both “collective garden” and “qualified patients” are terms defined by statute.

<sup>3</sup> “Qualifying patient” is defined in RCW 69.51A.010 and requires an individual to be a patient of a health care professional (“HCP”), diagnosed by that HCP as having a terminal or debilitating medical condition, is a resident of

legalization of cannabis for non-medical use (recreational).<sup>4</sup> In authorizing the medical use of cannabis, the Legislature sought to protect patients, providers, and health care professionals, from the criminal sanctions and/or civil consequences associated with cannabis (at the time). RCW 69.51A.005. At no point does Chapter 69.51A “Medical Cannabis” (the chapter governing collective gardens) address taxation. Thus, whether Taxpayer is a collective garden under RCW 69.51A.085 is not relevant to our analysis. At issue is whether Taxpayer’s exchange of medical cannabis for money is a taxable transaction.

First, Taxpayer disputes whether sales occurred when it received money in exchange for providing medical cannabis because the money received was allegedly a donation.

By way of background, generally, “retail sales” in Washington are subject to both the retailing B&O tax and retail sales tax unless an exemption or exclusion applies. RCW 82.04.250(1); RCW 82.08.020(1). The retailing B&O tax applies to the gross proceeds of retail sales and the retail sales tax applies to the selling prices of retail sales. RCW 82.04.250(1); RCW 82.08.020(1).

“‘Sale at retail’ or ‘retail sale’ means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business . . .” RCW 82.04.050(1)(a). And, “tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. RCW 82.08.010(7). Medical cannabis is tangible personal property. RCW 82.08.010(7).

“‘Sale’ means any transfer of the ownership of, title to, or possession of property for a valuable consideration . . . .” RCW 82.04.040(1). “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. Money is valuable consideration. *See* RCW 82.04.090.

Here, we have the two required components of a sale: (1) Property – medical cannabis and (2) Valuable consideration – money. All that remains to be determined is whether the medical cannabis (property) was transferred for the money (valuable consideration). *See* RCW 82.04.040(1). Taxpayer asserts that it did not receive money for medical cannabis and any money received was a donation.

A review of Taxpayer’s [Program] screen-prints reveals a category called “On-Hold & Un-Paid Visits.” This category indicates that Taxpayer expected payment in exchange for medical cannabis, which contradicts Taxpayer’s assertion that any money received was merely a donation. As documentary evidence, created contemporaneously with Taxpayer’s exchanges of medical cannabis, the [Program] screen shots carry more weight than Taxpayer’s unsupported assertion that medical cannabis recipients simply donated money. Accordingly, we conclude that in the course of its business activities, Taxpayer transferred medical cannabis in exchange for money.

---

Washington at the time of such diagnosis, has been advised by that HCP about the risks and benefits of the medical use of cannabis, has been advised by that HCP that he/she may benefit from the medical use of cannabis, and has an authorization from his/her HCP.

<sup>4</sup> The Legislature created and authorized collective gardens in ESSB 5073 §403, effective July 22, 2011. Recreational cannabis became legally available for purchase on July 8, 2014 ([http://www.liq.wa.gov/mj2015/faqs\\_i-502](http://www.liq.wa.gov/mj2015/faqs_i-502)) by voter approval of statewide Initiative 502.

And, when Taxpayer transferred medical cannabis to qualified patients in exchange for money, Taxpayer made sales of such medical cannabis. RCW 82.04.040(1); 34 WTD 273 (2014) (A collective garden's transfer of medical cannabis in exchange for cash, services, or other consideration, constitutes a "sale" under RCW 82.04.040(1)).<sup>5</sup> These sales are retail sales, subject to retailing B&O tax and retail sales tax, unless an exemption or exclusion applies. RCW 82.04.050(1); RCW 82.08.020(1).

### Prescription Drug

Taxpayer asserts that sales of medical cannabis are exempt from retail sales tax under RCW 82.08.0281(1) because medical cannabis is dispensed pursuant to a prescription.

Sales of certain drugs are statutorily exempt from retail sales tax. As relevant here, RCW 82.08.0281(1) specifically exempts those drugs dispensed pursuant to a prescription. "Prescription" means an order, formula, or recipe<sup>6</sup> 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."<sup>7</sup> RCW 82.08.0281(4)(a).

Medical cannabis fails to qualify as a prescription under the plain language of Chapter 69.51A RCW. A qualifying patient receives an "authorization" for the medical use of cannabis – not a "prescription." RCW 69.51A.010(19). "Authorization" is statutorily defined to mean:

---

<sup>5</sup> Legislation passed in 2015 supports the conclusion that collective gardens are making retail sales. RCW 82.08.9998(2) provides a temporary retail sales tax exemption for sales of cannabis products by collective gardens in compliance with RCW 69.51A, from July 1, 2015, until June 30, 2016. 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 . . . .

<sup>6</sup> [An "order, formula, or recipe" requires more than a professional opinion on the benefits of a substance. The technical meanings of "order," "formula," and "recipe" are the appropriate meanings to apply. See *Tingley v. Haisch*, 159 Wn.2d 652, 658, 152 P.3d 1020 (2007) (holding that where words carry special significance in a particular field, the court should resort to a technical definition).

An "order" is defined as: "[i]nstructions from a health care provider specifying patient treatment and care. A directive mandating the delivery of specific patient care services." TABER'S CYCLOPEDIA MEDICAL DICTIONARY 1678 (22d. ed. 2013). A "formula" is defined as "[a] rule prescribing ingredients and proportions for the preparation of a compound." TABER'S, *supra*, at 960; see also STEDMAN'S MEDICAL DICTIONARY 762 (28<sup>th</sup> ed 2005) (defining "formula" as "[a] recipe or prescription containing directions for the compounding of a medicinal preparation."). A "recipe" is defined as: "The superscription of a prescription, usually indicated by the sign Rx. 2. A prescription or formula." STEDMAN'S, *supra*, at 1654; see also TABER'S, *supra*, at 1995 (defined as "Take, indicated by the sign R. 2. A prescription or formula for a medicine.").

The facts presented in this case do not show that the sales of medical marijuana at issue meet the definitional requirements of the terms "order, formula, or recipe."]

<sup>7</sup> [The legislature has exempted from retail sales taxation only those drugs that are "dispensed to patients." "by a duly licensed practitioner authorized . . . to prescribe." RCW 82.08.0281(1), (4)(a). No duly licensed practitioner in Washington can legally prescribe marijuana. Therefore, medical marijuana is not a prescription, as that term is defined in RCW 82.08.0281.]

- (i) 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 opinion, the patient may benefit from the medical use of marijuana; and
- (ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

RCW 69.51A.010(1)(a). The statute defining "authorization" then goes on to state: "(c) An authorization is *not a prescription* as defined in RCW 69.50.101." RCW 69.51A.010(1)(c)(emphasis added); *see* RCW 69.50.101(3)(kk) ("Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the State of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.") Thus, an "authorization" is statutorily defined and specifically applicable to the medical use of cannabis; it is distinct and different from a "prescription."

A person claiming a tax exemption, exception, or deduction has the burden of proving that 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). Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 358, 13 P.2d 1084 (1932). 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).

Taxpayer provided medical cannabis to qualifying patients possessing "authorizations," and, as explained above, an "authorization" is not a "prescription." We have no evidence to suggest that Taxpayer ever provided medical cannabis pursuant to a prescription. Accordingly, Taxpayer has failed to show that its sales of medical cannabis are exempt from retail sales tax under RCW 82.08.0281.<sup>8</sup>

### Medicine of Botanical Origin

Taxpayer also asserts that sales of medical cannabis are exempt from retail sales tax under RCW 82.08.0283(1)(b) because medical cannabis is a medicine of botanical origin dispensed or used in the treatment of an individual by naturopaths licensed under chapter 18.36A RCW.

As relevant here, RCW 82.08.0283 exempts the sale of certain medical items from retail sale tax and states, "(1) The tax levied by RCW 82.08.020 shall not apply to sales 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; . . ."

Chapter 18.36A RCW "Naturopathy" governs naturopaths and requires persons wishing to practice naturopathy in Washington to be licensed. RCW 18.36A.030. The practice of naturopathic medicine includes the prescription, administration, dispensing, and use of naturopathic medicines. RCW 18.36A.040. "Naturopathic medicines" are defined to mean:

---

<sup>8</sup> In addition, we note that our conclusion is consistent with Department guidance issued prior to the Assessment Period, which states that medical cannabis is not exempt from retail sales tax as a prescription drug. *See* Special Notice Dated May 31, 2011, entitled "Sales of Medical Cannabis Remain Subject to Sales Tax."

[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.*

RCW 18.36A.020(10)(emphasis added).

“Botanical medicine” is not defined in Chapter 18.36A RCW; however, we need not determine whether cannabis is a botanical medicine because it is a Schedule I controlled substance and cannot be a “naturopathic medicine” under RCW 18.36A.020(10). RCW 69.50.204 contains a list of Schedule I controlled substances, and cannabis (also known as marijuana) is listed as a hallucinogenic substance. RCW 69.50.204(c)(22). RCW 18.36A.040 clearly limits “naturopathic medicine” to include only controlled substances that are codeine and testosterone products contained in Schedules III, IV, and V. Because cannabis is not a “naturopathic medicine,” it cannot be dispensed or used in treatment by a licensed naturopath.

Taxpayer appears to assert that issuing a medical cannabis authorization is the same as dispensing medical cannabis or using it in treatment. We disagree. Naturopaths are health care professionals that may legally issue medical cannabis “authorizations.” RCW 69.51A.010(5), (1). But, as explained above, that is all they may legally do – issue a medical cannabis “authorization” which is a statutorily defined concept specific to medical cannabis – the medical cannabis statutes provide no authority for health care professionals to “dispense” medical cannabis or “use” it in the treatment of patients. *See* Chapter 69.51A RCW.

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). Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 358, 13 P.2d 1084 (1932). 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).

Naturopaths are not legally permitted to dispense medical cannabis or use it in treatment because it is not a “naturopathic medicine.” RCW 18.36A.020(10). . . .

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 22nd day of April 2016.