

Washington State Tax Structure Study

Alternatives Subcommittee Paper

4/18/02

Taxes and Fees

(Note: The source of information for this paper is Hugh Spitzer's article titled "Taxes vs. Fees Redux ")

During the past 25 years, state and local governments across the country have reduced their reliance on taxes, especially property taxes, and have increased reliance on user fees and miscellaneous revenues. Factors contributing to this trend include: the property tax revolt of the late 1970's and early 1980's, other restrictions on state and local taxation, policymaker and voter acceptance of fees, and the effectiveness of fees in influencing behavior. Some taxpayers perceive taxes as compulsory payments for services from which they do not necessarily benefit. Fees, on the other hand, are perceived as payments for services received by the taxpayer.

In Washington there are constitutional and other restraints on how both taxes and fees are structured and applied. The distinction can be decisive in whether a particular governmental charge will be upheld when challenged. A charge that is labeled as a fee, for example, may be successfully challenged as an illegal tax.

The attached tables indicate the sources of fee, license, permit, and miscellaneous revenue and recent collection amounts for Washington.

Taxes

Taxes are compulsory payments that do not necessarily bear any direct relationship to the benefits of government goods and services received. Government, through its legislative authority, imposes them on persons or property to raise money for public purposes. There is no connection between the property or activities taxed and the use of the proceeds. There is no connection between the taxpayer burdened and the person or group benefited. Unless the Legislature chooses to earmark taxes, tax revenue may be used for any governmental function that lawmakers reasonably determine is a public purpose. Tax revenue may be placed in any fund, either in the general fund for any use designated by the legislative authority, or in an earmarked fund.

The use of taxes is accompanied by a number of protections to assure fairness in the distribution of the tax burden. For example, the burden of the property tax must be allocated consistent with the "uniformity" provisions of constitution. The maximum

burden of regular levies on any piece of property is limited to one percent of its value, without approval of a supermajority of the voters in a taxing district.

Constitutional uniformity requirements do not apply in their entirety to excise taxes, but those taxes must be uniform within legislatively created classifications. The classifications may not violate equal protection nor may they be arbitrary or abusive. Excise taxes must be geographically uniform. As a result of a challenge to the constitutionality of differential state sales tax rates in certain border counties, the Washington State Supreme Court ruled in 1984 that "...a tax levied for state purposes shall be uniform throughout the state; a tax levied for county purposes shall be uniform throughout the county ..." In addition, taxes may not be imposed except pursuant to express statutory authorization, after the prospective taxpayers have an opportunity to affect the legislative process.

Non-Tax User Fees

User fees, sometimes designated as user charges or permits, are imposed for providing current services or for the sale of products in connection with general government activities. Common examples include tuition fees, professional license fees and permits, regulatory fees, highway tolls, public transportation charges, and parks and recreation charges.

From a legal standpoint non-tax user fees are distinctly different from taxes, both in terms of who bears the burdens and benefits and in terms of the distinct legal protections that have surrounded and regulated the use of those charges.

First, non-tax fees and charges are imposed on specific persons, activities, or properties that receive a service or benefit. Second, they come with a distinct set of legal protections to ensure that the level of each charge does not exceed the cost of service, benefit or mitigation to the person charged. Further, the proceeds are to be used solely for the provision of services, benefits or mitigation and not used for general governmental purposes.

These fees and charges come in a variety of forms. They include the following.

- Commodity charges - such as for governmentally provided water and electricity, often called "rates". The consumer pays for a commodity that is furnished for their comfort and use. Receipts are deposited in a special fund used to defray expenses of producing the commodity.
- Burden offset charges - such as sewer, garbage and storm water rates, are fees that allocate and recover the cost of ongoing public programs to handle negative impacts from those who cause them. Growth impact fees are also burden-offset charges. They are imposed on developers to pay for public parks, streets, roads, schools and fire protection facilities identified in a capital facilities plan and demonstrated to serve or to be "necessitated by" and "that is reasonably related to" specific developments.

They are deposited into special interest-bearing accounts and, if not used within a limited time period, are refunded to the developer.

- Inspection and processing fees - are charges to people who ask government to pay them special attention, or whose activities give rise to special regulatory oversight. Examples include building permit fees, septic or sewer installation charges, professional licensing fees and driver's license fees. These fees are used to pay for the share of the burden that an activity places on government operations. They are not permitted to exceed the proportionate share of providing governmental oversight of the regulated activity.
- Special assessments - are a distinctive form of user charge that allocates the cost of public improvements that increase the value of an asset to the owner of that asset. The rate must relate to the value of the improvements to the property assessed and must be deposited in special accounts for the particular improvements.