

No. 60301-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

GROUP HEALTH COOPERATIVE,

Respondent,

v.

CITY OF SEATTLE,

Appellant.

BRIEF OF AMICUS CURIAE
ASSOCIATION OF WASHINGTON BUSINESS

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I. INTRODUCTION

Respondent Group Health Cooperative (“Group Health”) cross-appeals from the trial court's summary judgment rulings concerning appellant City of Seattle's compliance with the refund interest calculation provision of RCW 35.102.080 and the city's consequent authority to impose its B&O tax during its period of non-compliance under RCW 35.102.140. Both statutory provisions derive from Laws of 2003, ch. 79 (Engrossed House Bill (“HB”) 2030).

As the statewide organization principally responsible for drafting, supporting, and advocating for the passage of HB 2030 in 2003, as well as a foundational participant in the various stakeholder studies and task forces before and after the passage of HB 2030, the Association of Washington Business (“AWB”) respectfully seeks permission to file this short amicus brief to address the court on its perspective on the context of HB 2030 and its application in this case.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

AWB, founded in 1904, is the state's oldest and largest general business trade association. AWB represents over 6,600 member businesses, of whom 85 percent are small businesses employing fewer than 50 workers, and who are engaged in all sectors of industry and aspects of commerce across Washington. In total, AWB members employ

over 750,000 individuals in Washington. Despite their manifest diversity, AWB members share in common taxpayer status under the various business tax laws of this state and its political subdivisions. AWB therefore frequently appears as a party or amicus curiae in state and local tax cases of consequence to its membership.¹

III. ISSUE OF CONCERN TO AMICUS CURIAE

Whether the City of Seattle may impose its B&O tax during a period of non-compliance with RCW 35.102.080 when the plain language of RCW 35.102.140 unambiguously establishes that “[a] city that has not complied with the requirements of RCW 35.102.020 through 35.102.130 by December 31, 2004, may not impose a tax that is imposed by a city on the privilege of engaging in business activities”? *Cf. Br. of Resp't* at 2.

¹ See, e.g., *Association of Washington Business v. Dept. of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005); *Agrilink v. Dep't of Revenue*, 153 Wn.2d 392, 103 P.3d 1226 (2005); *U.S. Tobacco Sales & Marketing Co., Inc. v. Dept. of Revenue*, 128 Wn. App. 426, 115 P.3d 1080 (2005), *rev. granted*, 157 Wn.2d 1001 (2006); *Aaro Medical Supplies, Inc. v. Dept. of Revenue*, 132 Wn. App. 709, 132 P.3d 1143 (2006), *rev. denied*, 159 Wn.2d 919 (2007); *Texaco Refining and Marketing, Inc. v. Dept. of Revenue*, 131 Wn. App. 385, 127 P.3d 771 (2006), *rev. denied*, 158 Wn.2d 1012 (2006); *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 156 P.3d 185 (2007); *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 157 P.3d 847 (2007).

IV. STATEMENT OF THE CASE

For brevity's sake, AWB adopts, as if set forth herein, the Statement of the Case provided by Group Health in its *Brief of Respondent* at pages 3-9.

V. ARGUMENT

ASSUMING THE CITY OF SEATTLE WAS OUT OF COMPLIANCE WITH RCW 35.102.080 BETWEEN 2004-2006, IT LACKED AUTHORITY TO IMPOSE ITS BUSINESS & OCCUPATION TAX.²

In considering Group Health's assignment of error, it is important background for the court to understand the vexation of the taxpaying business community in Washington State that led to the passage of HB 2030 in 2003. While recognizing the importance of revenue to fund essential local government services, the Legislature found:

. . . that businesses in Washington are concerned about the potential for multiple taxation that arises due to the various city business and occupation taxes and are concerned about the lack of uniformity among city jurisdictions. The current system has a negative impact on Washington's business climate.

RCW 35.102.010. That finding prefaced a complete statutory scheme intending to:

² AWB agrees for brevity that the record demonstrates the city's non-compliance with RCW 35.102.080 until 2006, and that the matter is not moot; both points are taken up in the *Br. of Resp't* at 33-35, 43-44 and not belabored here. AWB's interest as amicus centers on the background,

. . . provide for a more uniform system of city business and occupation taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities.

Id. This uniform system replaced a patchwork quilt of voluntary (and inconsistent) adherence to a model ordinance approach to imposing and administering business taxes on the part of Washington cities prior to 2003. As business representatives testified in favor of the bill in legislative committee hearings, “[i]t is important to make the model ordinance mandatory, otherwise there is no level playing field. It is important to have the definitions tied to the state business and occupation (B&O) tax code.” House Bill Report, Engrossed House Bill 2030, 58th Leg., Reg. Sess., at 8 (Wash.2003).

Passage of a legislative mandate on uniform municipal taxation was a matter of executive branch request legislation and was a central component of then-Governor Gary Locke's Competitiveness Council agenda. Because Washington's business community pays a roughly consistent 52.9 percent of the state's overall taxing revenue, a share which presently is the 10th highest in the nation, Washington Alliance for a Competitive Economy, 2008 Competitiveness Redbook: Key Indicators of Washington State's Business Climate 10 (2007), tax and fiscal policy is a

purpose, and straightforward application of RCW 35.102.140 as a consequence of non-compliance.

perennial business climate concern and widely discussed as an central component of the state's global economic competitiveness.

Taking steps to address key elements of this concern earlier this decade, Governor Locke's Competitiveness Council process resulted in a recommendation that the Legislature “enact legislation that reflects the following standards: Uniformity; local control; revenue neutrality; simplicity; nexus; fairness; and no multiple taxation.” Washington Competitiveness Council Final Report (2002) at 8, <http://www.digitalarchives.wa.gov/GovernorLocke/wcc/final.pdf> (last visited May 4, 2008).

In its 2003 scorecard, the Competitiveness Council touted the enactment of HB 2030 as a “remarkable achievement” and one that would lead to “[s]implification of municipal B&O taxation and elimination of taxation of the same revenue by multiple cities.” Washington Competitiveness Council Competitiveness Scorecard (2003) at 3, <http://www.digitalarchives.wa.gov/GovernorLocke/wcc/scorecard.pdf> (last visited May 4, 2008).

It is important to stress that this vision could only be realized, and the competitiveness frustration resolved, if cities complied with the legislature's reform mandate and did so within the roughly 18-month grace period the Legislature provided.

That's why section 14 of HB 2030, codified at RCW 35.102.140, is so central to the entire statutory scheme. As the enforcement provision of HB 2030, the section is plain on its face: cities not complying with the provisions of the law within the provided time frame lose the authority to impose their B&O tax while out of compliance. There is very little doubt that is what the Legislature intended and it is the most basic rule of statutory interpretation that “the court should assume that the legislature means exactly what it says.” *City of Kent v. Jenkins*, 99 Wn. App. 287, 290, 992 P.2d 1045 (2000).

In this case, the city seeks to avoid the full effect of RCW 35.102.140 because it views that effect (as, apparently, did the trial court) as unduly harsh. But the very purpose of section .140 was to provide a strong incentive to cities to bring their B&O tax into compliance with the requirements of House Bill 2030, and it is the obligation of the court “to give the plain language of a statute its full effect, even when its results may seem unduly harsh.” *Geschwind v. Flanagan*, 121 Wn.2d 833, 839, 854 P.2d 1061 (1993).

The city's opinion about its own process for complying with the law is now well known. *See* Clerk's Papers (“CP”) at 228 (city e-mail stating “we are not going to do exactly what they have directed and see if anyone challenges what we do.”). Squarely addressing that kind of

impulse on the part of non-conforming cities is *exactly* why HB 2030 contained section 14.

Read within the context of a self-enforcing statute, section 14 makes perfect sense: comply or lose the power to tax business activities. HB 2030's promise of municipal tax uniformity, fairness, nexus, and apportionment are critical to the state business community. The city's policy-based disagreements with the underlying law and desire to avoid its enforcement mechanism are no reason to depart from the plain language of the statute and the very clear intent of the Legislature.

VI. CONCLUSION

For the foregoing reasons, AWB urges the court to reverse the decision of the trial court with respect to the calculation of refund interest under RCW 35.102.080 and the authority of appellant to impose its B&O tax under RCW 35.102.140.

Respectfully submitted this 5th day of May, 2008.

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