

Cite as Det. No. 16-0136, 35 WTD 597 (2016)

BEFORE THE APPEALS 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. 16-0136
))	
. . .)	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 medical marijuana management company (“Taxpayer”) protests the Department of Revenue’s (“Department”) assessment of retail sales tax and retailing business and occupation (“B&O”) tax arguing that it was a management company only providing management services to a collective garden, and that neither party made retail sales. Taxpayer also argues that even if there were retail sales, those sales are exempt either as sales of drugs pursuant to a prescription or 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)?

FINDINGS OF FACT

. . . was the President of [collective garden] according to the Washington Secretary of State. The collective garden was a medical marijuana store located [in Washington]. The collective garden registered with the Department on October 1, 2010, but closed its registration with the Department on March 31, 2012.

[President] operated under the business name of [Taxpayer], and registered with the Department on November 1, 2012. Taxpayer closed its registration with the Department on December 31, 2014. Taxpayer reported its gross income under the service & other activities B&O (“service B&O”) tax classification from the fourth quarter of 2012 through the end of 2014. Taxpayer’s address on file with the Department was . . . , WA

The Department’s Taxpayer Account Administration (“TAA”) Division investigated Taxpayer’s business activities. TAA found Taxpayer operated a medical marijuana store at the address of . . . , WA On July 22, 2014, the TAA Division mailed a letter to Taxpayer, stating that Taxpayer

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

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 July 22, 2014, 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. Taxpayer did not respond to the Department’s July 22, 2014, letter.

Due to lack of responses from Taxpayer, the Department mailed Taxpayer two letters dated August 22, 2014, and September 23, 2014, respectively, requesting a detailed business description and a completed schedule of gross income from Taxpayer. On October 21, 2014, Taxpayer’s representative responded stating Taxpayer provided management services. Taxpayer’s representative provided that Taxpayer did not make retail sales and did not collect any retail sales tax from the collective garden’s members. Taxpayer completed the gross income schedule with zero income from retail sales and wholesale sales.

TAA determined that Taxpayer operated a medical marijuana store and made sales of medical marijuana at its premises as the successor of the collective garden because . . . was the President of the collective garden. On November 14, 2014, TAA issued an assessment against Taxpayer for the period of November 1, 2012, through June 30, 2014, based on estimated industry average. The assessment is in the amount of \$. . . , which consisted of service B&O tax small business credit 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 was a management company providing management services to the collective garden, and that neither party made taxable sales because the collective garden gave the medical marijuana or medical related products to its members in exchange for the members’ donations. Taxpayer argues that even if either party made taxable sales, those sales are exempt from sales tax as prescription drugs under RCW 82.08.0281.² 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 support of its argument, Taxpayer provided a copy of its management agreement that it entered with the collective garden. The agreement, in relevant part, provided the following:

[Taxpayer] agrees to:

1. Keep [The collective garden’s] meeting place open regular hours so that members of [The collective garden] may access [The Collective garden’s] resources;
2. Staff [The collective garden’s] office with professional personnel during regular hours if requested to do so;
3. Verify that [The collective garden’s] resources are accessed only by [The collective garden’s] authorized participating patients/members.

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 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.

4. Maintain member applications and resignations.
5. Verify that all prospective members are authorized patients within the meaning of RCW 69.51A.
6. Certify that all [The collective garden's] participating patients/members read and sign the membership agreement.
7. Certify that all participating patients/members complete and sign the membership application.
8. Maintain records of participating patients/members who to resign their membership and complete written resignation.
9. Maintain Certificates/Declarations of Authenticity when tendered.
10. Report to [The collective garden's] participating patients/members [Taxpayer's] expenditures made on behalf of [The collective garden].

[The collective garden] agrees to:

Pay [Taxpayer] reasonable fees and costs for performance of the above terms and conditions at a rate and schedule to be determined by further agreement, frequent review and negotiation.

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).

The term “seller” is a person “making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.” RCW 82.08.010(2); *see also* WAC 458-20-159 (“Rule 159”). As stated in Rule 159:

Every consignee, bailee, factor, agent or auctioneer authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another, and, so selling or calling, is deemed a seller, and shall collect the retail sales tax upon all retail sales made by him, except sales of certain farm property as hereinafter provided.

Taxpayer alleges that the collective garden hired it to provide operational assistance, such as staffing the location, checking authorizations, documenting memberships, and accepting payments. Whether Taxpayer was the principal itself or was actually acting as an agent of a collective garden, the result is the same. Taxpayer’s exchange of medical marijuana or marijuana-infused products for consideration constitute sales under RCW 82.04.040(1)(a). As the seller of

tangible personal property here, whether as agent or as principal, Taxpayer is responsible for collecting and remitting retail sales tax on all sales under RCW 82.08.050(1).

Taxpayer argues that it did not sell tangible personal property as owner, but merely provided management services to the collective garden. Even if Taxpayer provided management services, however, this does not relieve it of its responsibility to collect and remit retail sales tax when making sales. Taxpayer was either [selling] tangible personal property as the owner or as an agent of the collective garden, and it was responsible for collecting and remitting retail sales tax on all sales.

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 (1971). 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. Taxpayer argues it is a management company only, and that its services are subject to the service B&O tax. An agent selling tangible personal property with the authority to sell the property in its own name is also deemed the seller of such property for purposes of the B&O tax. RCW 82.04.480; Rule 159. For B&O tax purposes, Rule 159 provides:

Agents and brokers. Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

- (1) The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

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

- (2) The books and records show the amount of gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales.

Service and other business activities. Every consignee, bailee, factor, agent or auctioneer who makes a sale in the name of the actual owner, as agent of the actual owner, or who purchases as agent of the actual buyer, is taxable under the service and other business activities classification upon the gross income derived from such business.

(Emphasis added.)

Taxpayer has provided neither its 1) books and records showing the transactions were made in the name and for the account of the principal, and showing the name of the actual owner of the property for whom the sale was made; nor 2) books and records showing the amount of gross sales, the amount of commissions, and any other incidental income derived by the broker or agent from such sales. A mere management agreement without the supporting documents listed above in accordance with Rule 159, is not sufficient to demonstrate Taxpayer was [acting] as the agent of the collective garden. Accordingly, Taxpayer is not treated as agent under Rule 159 and is therefore liable for retailing B&O tax on gross receipts from the sale of marijuana.

2. *Whether the Money Taxpayer Received In Exchange for the Medical Marijuana Constitutes Donations?*

Taxpayer also argues that there were no taxable transactions because the collective garden 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). Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he 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

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).

(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:

(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

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.)

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;

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). 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).

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 a 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:

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- (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.

[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, [through] 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.”).

We deny Taxpayer’s petition.

DECISION AND DISPOSITION

We deny Taxpayer’s petition.

Dated this 6th day of April, 2016.