BEFORE THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

RAINIER MOUNTAINEERING, INC., Appellant,	)	Docket No. 37206
v.	)	Re: Excise Tax Appeal
STATE OF WASHINGTON DEPARTMENT OF REVENUE, Respondent.	)	FINAL DECISION

This matter came before the Board of Tax Appeals (Board) for an informal hearing on February 28, 1991. W. Gerald Lynch, Attorney, appeared for Appellant, Rainier Mountaineering, Inc. (Rainier Mountaineering). Trish Adler, Administrative Law Judge, appeared for Respondent, Department of Revenue (Department).

This matter was originally heard by the Board's Senior Tax Referee. A Proposed Decision was issued on November 16, 1990, substantially in favor of Rainier Mountaineering. The Department filed exceptions to the Proposed Decision. Upon review of the Proposed Decision, this Board ordered the matter reheard before the entire Board. This Board heard the testimony, reviewed the evidence and considered the arguments made on behalf of both parties. This Board now makes its final decision.

ISSUE

The issue in this appeal involves the application of the leasehold excise tax, RCW 82.29A, to fees paid by Rainier Mountaineering to the National Park Service. Rainier Mountaineering argues that the fees which are paid for its "concession right" to operate a guide service and climbing school on Mount Rainier are exempt from the leasehold excise tax. The Department argues that the leasehold excise tax is measured by all payments to the National Park Service, including fees based upon receipts from Rainier Mountaineering's climbing and guiding activities.

FACTS

Rainier Mountaineering has operated a commercial guiding and climbing service in Mount Rainier National Park (Park)

since 1968. The company originally operated under a subcontract with the major park concessionaire. In 1980, Rainier Mountaineering and the National Park Service entered into a formal contract agreement granting the company the exclusive right to operate a guide service and climbing school above the 8,000 foot level on Mount Rainier. Rainier Mountaineering, in return for payment of an escalating percentage of its gross receipts derived from climbing, guiding, and sales and rentals of equipment to its clients, received the right to: (1) operate snow and ice climbing schools, and guided summit and all other climbs within the Park at elevations greater than 8,000 feet above sea level; (2) conduct guided day hikes to the Paradise Ice Caves; and (3) sell and rent merchandise specifically for use in mountain climbing and hiking.

The rights acquired by Rainier Mountaineering are "exclusive", in the sense that no other commercial guiding service may exercise the rights granted above. The contract provides that Rainier Mountaineering shall have the "right of first refusal" to provide such services as requested by the superintendent of the Park. Only in the event that Rainier Mountaineering declines to provide such services will the National Park Service permit another commercial guide service to operate in the Park. As a practical matter, the National Park Service enforces this contract in such a manner that other commercial guide services are effectively precluded from conducting summit climbs or ice and snow climbing schools. During the years in question, the National Park Service has regularly issued citations to other commercial guide services operating climbs and hikes in the Park. However, Rainier Mountaineering shares the use of the climbing routes with non-commercially guided individual climbers and private climbing parties.

In addition to a percentage of gross receipts, Rainier Mountaineering also pays an amount for the use and occupancy of two structures. It occupies one floor of a four-story building (the "guide shack") located at Paradise on the 5,400 foot level which is used for instruction, equipment rental, and retail sales, as well as its administrative headquarters during the climbing season. It also occupies a small stone hut at Camp Muir at the 10,000 foot level. This hut is used to cook meals for its climbing and guiding clients. Rainier Mountaineering pays an annual fixed fee equivalent to the

fair rental value of these properties, as determined by the National Park Service.[1]

During the years in question, the rental fees for the two buildings have declined substantially as a percentage of the overall fees paid by Rainier Mountaineering. In 1984, 44.7 percent of the fees paid by Rainier Mountaineering consisted of rental fees. Fees based on guiding and climbing constituted 49 percent; and fees based on retail sales and rentals constituted 6 percent. By 1987, the rental fees had declined to 10.4 percent. Fees based on receipts from climbing and guiding had risen to 75 percent and fees based on retail sales and rentals had risen to 14.3 percent. The majority of Rainier Mountaineering's gross receipts come from climbing and guiding fees. Between 1984 and 1987, 80 to 90 percent of such receipts were from climbing and guiding fees.

The vast majority of Rainier Mountaineering's climbing and guiding revenues is derived from guided summit climbs. The company processes approximately 4,500 clients per year. Of that number, approximately 4,000 are attempting a summit climb (about 2,000 make it). An additional 4,000 to 5,000 individuals attempt a summit climb on their own. The typical summit attempt involves three days of activities. On the first day, the clients check in at Rainier Mountaineering's guide shack at Paradise. The clients may purchase or rent equipment needed for the summit attempt. The first day is spent on snowfields above Paradise instructing clients on the basics of mountaineering skills. The second day begins with a climb to Camp Muir at the 10,000 foot level. The clients and guides are housed in two wooden bunkhouses (owned by Rainier Mountaineering and not part of this appeal). At approximately 2 a.m. the next day, the guided parties leave Camp Muir for the summit. If successful, the parties reach the summit about 9 a.m., returning to Camp Muir by noon and Paradise by 4 p.m. Other than check-in and rental or purchase of equipment, the clients themselves do not use the buildings rented by Rainier Mountaineering.

The Department audited the books and records of Rainier Mountaineering for the period 1984-1987. The Department determined that the company was subject to the leasehold

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[1] The rental fee is based upon market value of the properties as determined by the replacement cost of the properties less applicable depreciation. The National Park Service hired a professional appraiser to estimate the market value of the two properties occupied by Rainier Mountain-eering. The parties do not dispute this market value.

excise tax, and assessed the tax based on both the fees paid for the use and occupancy of the buildings, as well as the fees paid with respect to the climbing and guiding service and retail rental and sales. Rainier Mountaineering protested the assessment of the tax to the extent it was based upon payments in respect to its climbing and guiding service and retail rentals and sales. The Department's Interpretations and Appeals Division upheld the assessment. This appeal followed.

ANALYSIS AND CONCLUSIONS

This case requires us to reconcile an ambiguous statute with the history and purposes of the leasehold excise tax. It is a matter of some importance to both the Department and Rainier Mountaineering.

I.

The Statutory Pattern

The purpose of the leasehold excise tax is to "fairly compensate governmental units for services rendered to . . . lessees of publicly owned property." RCW 82.29A.010. Prior to the enactment of the leasehold excise tax, lessees of publicly owned property paid an ad valorem tax on their leasehold estates. See e.g., Pier 67, Inc. v. King County, 89 Wn.2d 379, 573 P.2d 2 (1977). The present tax was enacted after a six-year controversy over the manner of taxing benefits received by these lessees. Japan Line, Ltd. v. McCaffree, 88 Wn.2d 93, 558 P.2d 211 (1977).

The statute imposing the tax, RCW 82.29A.030(1), provides: "There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest . . .".

By its terms, the taxable event is limited to the use or possession of public property only through a leasehold interest. A "leasehold interest" means: "an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, . . . granting possession and use, to a degree less than fee simple ownership . . .". RCW 82.29A.020(1).

The amount of the leasehold excise tax is measured by "contract rent", defined as: "the amount of consideration due as payment for a leasehold interest . . .". RCW 82.29A-.020(2)(a). The term contract rent does not include payments made by the lessee for concession rights (if any) granted in conjunction with the lease. The statute provides:

> Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

RCW 82.29A.020(2)(a).

The statute, perhaps deliberately,[2] does not define the term "concession right". In MAC Amusement Co. v. Department

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[2] Given the constraints of time and the English lan-guage, the legislature sometimes leaves certain issues to be resolved by administrative agencies. Hama Hama Co. v. Shorelines Hearing Board, 85 Wn.2d 441, 536 P.2d 157 (1975). This appeal concerns one of those issues left for adminis-trative resolution. The Department, apparently waiving attorney/client privilege and executive privilege (RCW 42.17.310(1)(i)), has introduced a memorandum written to then Governor Evans by his legal counsel, Chi-doo "Skip" Li, contemporaneous with the passage of the leasehold excise tax, Laws of 1975, 2d Ex. Sess., ch. 61. In that memorandum, Mr. Li explained the genesis of the language excluding concession rights from the definition of contract rent as follows:

> The language on page 3, lines 12-17 was one of the disputed areas between the House and Senate. The Senate had taken this language out but the House refused to back down and prevailed in the conference committee. It applies to leases such as in the Seattle Center Food Circus where concession-aires pay a percentage of gross income for their space, but the amount paid also includes other services and benefits such as utilities, security, and other costs of occupancy. It also applies to the situation of the Ramada Inn across from the airport in Spokane. Ramada pays to the Port of Spokane an extremely high rental for that property, and the reason is that they have an exclusive right to maintain a motel in the immediate vicinity of the airport. Under the language of this bill, the Dept. of Revenue must determine that portion of the

of Revenue, 95 Wn.2d 963, 633 P.2d 68 (1981), the court held that a "concession right" is equivalent to a "franchise right", sometimes termed a "monopoly right". The taxpayer in that case had, among other rights, the exclusive right to operate all rides and games at the Seattle Center. The court distinguished a "concession right" from a leasehold interest on the basis of exclusivity, noting that a concession right could exist even where the exercise and value of the concession right was "inherently dependent" upon the use and possession of publicly owned property. Thus, the term "concession right", as construed in MAC Amusement, at a minimum denotes an exclusive right to operate a business upon government-owned property. Although a grant of exclusivity is not an essential element of a franchise (See 36 Am. Jur. 2d Franchises { 29 (1968)), such a right is frequently granted and could enhance the value of the franchise under the appropriate circumstances.

A franchise or concession right is distinguishable from a leasehold interest. A "leasehold interest", as defined in RCW 82.29A.020(1), is an interest in publicly owned real or personal property "granting possession and use, to a degree less than fee simple ownership . . .". A franchise or concession right, on the other hand, although frequently associated with the use or possession of government-owned property, does not necessarily embody a right to possess and use government-owned property. To the extent that a concession right and a leasehold interest are held by the same person, the concession right must therefore be in addition to rights which inhere in the leasehold interest. MAC Amusement, supra.

A franchise or concession right is also distinguishable from a license to use real property.

> A license in respect of real property may be generally defined as a mere personal privilege to do acts upon the land of the licensor, of a temporary character, and revokable at the will of the latter unless, according to some authorities, expenditures contemplated by the licensor when the license was given have been made in the meantime. A franchise, however, is neither personal nor temporary, and it is not revokable at the mere will of the grantor, in the absence of a reservation of such right.

> rental which actually relates to the leasehold for taxation purposes. This question will undoubtedly be the subject of litigation. . . .

(Citations omitted.) 36 Am. Jur. 2d Franchises { 2 (1968).

A franchise is personal property, taxable as such. Commercial Electric Light and Power Co. v. Judson, 21 Wash. 49, 56 P. 829 (1899); United States v. Puget Sound Power and Light, 147 F.2d 953 (9th Circuit, 1944). It is not one of the types of intangible property which is generically exempt from taxation. See RCW 84.36.070. However, to the extent that a non-public utility franchise includes the right to occupy or use publicly owned property, such a right of use or occupancy is exempt from ad valorem taxation. RCW 84.36.451.

II.

Does Rainier Mountaineering possess a concession right?

A.

At the outset, the Department contends that the exclusion of concession rights from the measure of the leasehold tax amounts to an exemption from taxation. Accordingly, the Department argues that we must strictly construe the statutes in favor of the tax, and not extend the exemption beyond the scope clearly intended by the legislature. Pacific Northwest Conference of Free Methodist Church of North America v. Barlow, 77 Wn.2d 487, 463 P.2d 626 (1969). In MAC Amusement, the court appeared to adopt the rule of strict construction in construing the leasehold excise tax.[3] In dissent, Justice Dolliver pointed out that the issue before the court was not to construe the scope of an exemption, but rather the scope and extent of the tax itself.

We believe the issues before us primarily involve the scope and extent of the tax itself. Exclusion of payments for concession rights from the measure of the tax does not necessarily create a tax exemption for Rainier Mountaineering. Concession rights, to the extent that they can be considered as franchise rights, remain theoretically subject to ad valorem taxation if they have value. The question, then, is under what system of taxation--excise or ad valorem--shall these concession rights be taxed.[4]

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[3] The court mentioned the rules of strict statutory construction but nevertheless proceeded to construe the term "concession right" solely in light of the purpose for the tax. MAC Amusement, supra at 966-67.

[4] The only true tax exemption created in the 1975 leasehold excise tax act was a property tax exemption for: "Any and

Accordingly, we hold in the case before us that the statutory provisions of RCW 82.29A, to the extent they are ambiguous, are to be construed according to the usual rules of statutory construction in accordance with legislative intent and in light of the purposes of the tax.

B.

The next issue is whether Rainier Mountaineering has a "concession right" separate and apart from its right to occupy and use Park property. Rainier Mountaineering argues that the federal law authorizing the National Park Service to enter into agreements for commercial use of Park facilities is couched in terms of the grant of "concession rights". See Public Law, 89-249. The Department argues that contract "labeling" is not determinative of the nature of the rights granted. We agree with the Department. "Labeling" of an agreement is not determinative of its content. The definition of "leasehold interest" set forth in RCW 82.29A.020(1) is broad and all encompassing. It includes an interest in publicly owned property stemming from any agreement, written or verbal, without regard to whether the agreement is labeled a lease, license, or permit.

As noted above, the court in MAC Amusement equated the term "concession right" to a monopoly franchise right. The court defined the term "franchise" to mean: "the right granted by the state or a municipality to an existing corporation or to an individual to do certain things which a corporation or individual otherwise cannot do . . .". (Citations omitted.) MAC Amusement, supra at 969.

In the present case, the agreement between Rainier Mountaineering and the National Park Service grants the company an exclusive right to conduct a commercial climbing and guide service above the 8,000 foot level in the Park. Rainier Mountaineering argues that this grant constitutes a "concession right" indistinguishable from the exclusive right to operate all rides and games at the Seattle Center involved in the MAC Amusement case.

The Department argues that agreement does not establish a concession right because the terms of the agreement do not empower Rainier Mountaineering to do anything that any other

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all rights to occupy or use any [publicly owned] real or personal property . . .". Laws of 1975, 2d Ex. Sess., ch. 61, { 14, Codified as RCW 84.36.451.

similarly situated service provider is precluded from doing. The Department argues:

> Anyone who operates the same type of business as the taxpayer's could compete for this lease and occupy the premises. The lease permits other concessionaires operating prior to the lease to continue operations; it permits the Park Service to add land and lease to other concessionaires; and it permits the Park Service to authorize other concessionaires to offer services if Rainier Mountaineering chooses not to do so.

Respondent's Memorandum in Support of Petition for Rehearing, at 6.

We disagree with the Department. We find the agreement between Rainier Mountaineering and the National Park Service establishes a "concession right". Under the terms of the agreement, no other commercial guide service can operate above the 8,000 foot level in the Park. There are no other commercial guide services still in existence which operated prior to Rainier Mountaineering. The agreement does permit the National Park Service to authorize other guide services to operate on land added to the Park, but the probability of actual implementation of this provision is purely speculative and remote at best. Finally, Rainier Mountaineering's "right of first refusal" does not destroy the exclusivity of Rainier Mountaineering's rights. It merely grants Rainier Mountaineering the right to determine if it wishes to remain the exclusive provider of climbing and guiding services in the Park.

In sum, the agreement between Rainier Mountaineering and the National Park Service, regardless of labeling, grants Rainier Mountaineering an exclusive right to operate a commercial climbing and guiding service in the Park. This is a right to perform an act which a corporation or individual otherwise cannot do. It is therefore a monopoly franchise right or "concession right" within the meaning of the term as used in RCW 82.29A.020. MAC Amusement, supra.

III.

To what extent, if any, are payments for Rainier Mountaineering's concession right excludable from the measure of the leasehold excise tax?

A.

What is the proper methodology to be employed in separating payments made for a concession right from payments made for a leasehold interest?

Our conclusion that Rainier Mountaineering possesses a "concession right" clarifies, but does not resolve, the basic dispute between the parties. This dispute centers on the issue of separating payments made in return for a concession right from payments made in return for a leasehold interest.

The parties approach this issue from opposite directions. Rainier Mountaineering would sort out the payment for its concession right by first determining the fair market rental of the leasehold property, which it considers to include only the guide shack and the cooking hut. Any excess payment would then be attributed to the value of the concession right. On the other hand, the Department would value the totality of the rights granted to Rainier Mountaineering, and then deduct the value of the concession right. The Department considers the leasehold property to include not only the buildings in question, but also the territory upon which Rainier Mountaineering conducts its climbing and guiding business; i.e., all land in the Park above the 8,000 foot level. The Department would place the burden on the lessee to show the value of the concession right. In the Department's view, in order to qualify for a deduction from "total consideration paid by the lessee", the payment must be clearly based upon a concession, right, or privilege which is of value to the lessee and which does not inhere in or depend upon the quantity or value of goods or products sold on the leasehold property.

Either approach, properly applied, would be an acceptable method of separating payments for the leasehold interest from payments made for the concession right. In MAC Amusement, the trial court determined the rent subject to the leasehold excise tax to be the rent one might pay for similar property surrounding the Seattle Center. MAC Amusement, supra at 970. The court's approach is similar to that suggested by Rainier Mountaineering. The methodology at a minimum consists of two steps:

1. Define the property included in the leasehold interest, including all rights inherent therein.

2. Determine the fair market rental for the leasehold interest according to market rents for similarly valued property. This may require one to determine the fair market value of the leasehold interest by means of comparable sales,

capitalization of income, or cost of construction of the improvements on the leasehold property. (See RCW 84.40.030.)

If the payment made by the lessee to the governmental lessor is in excess of fair market rental for similarly valued property, the excess can most likely be attributed to payment for a concession right. The burden of proof is on the taxpayer/lessee to establish that the concession right has value in addition to the value of the leasehold interest.

B.

What property rights are included in Rainier Mountaineering's leasehold interest?

Rainier Mountaineering's position assumes that its leasehold interest only extends to property in which it has the right of exclusive possession.[5] If we were to accept Rainier Mountaineering's assumption, the amount subject to tax would at most be the fixed payments made for use and occupancy of the buildings and the percentage payments attributable to sales and rentals of climbing equipment at the guide shack.

On the other hand, the Department contends that the property subject to the leasehold interest includes the entire mountain above the 8,000 foot level. According to the Department, Rainier Mountaineering has a license to use this property for commercial guiding and climbing. In the Department's view, a bare license to use governmental property falls within the definition of "leasehold interest" as set forth in RCW 82.29A.020(1).

The first step--defining the property included in the leasehold interest--is thus crucial. Resolving this question requires us to construe the scope and extent of the lease-hold excise tax. The statute defining the term "leasehold

[5]F Rainier Mountaineering would view Washington's lease-hold excise tax scheme to extend only to the property inter-ests included in a typical possessory interest tax such as California's. The California tax extends only to property in which the lessee has a right of exclusive possession. Thus, the taxable possessory interest of a car rental business at an airport is limited to occupancy of counterspace and cannot be valued with reference to a possessory interest in the entire airport. Hertz Corp. v. County of San Diego, 275 Cal. Rptr. 307 (Cal. Ct. App. 4th Dist. 1990).

interest", RCW 82.29A.020(1), is somewhat ambiguous. As defined in the statute, the term means "an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, . . . granting possession and use, to a degree less than fee simple ownership . . .". (Emphasis supplied.)

The statutory phrase, "possession and use", above, could be read to require that the agreement must grant both possession and use in order to create a leasehold interest. Normally, a lease grants both possession and use. However, we are not free to construe the statute as a matter of first impression. The language in question has been construed in MAC Amusement. In that case, the court held that pedestrian thoroughfares intersecting the Seattle Center Fun Forest constituted a part of the leasehold interest, even though the lessee did not have exclusive possession of these thoroughfares. The court noted:

> By definition, the taxable rent is that rent paid for a "leasehold interest," which is defined as not only including leases, but also permits and licenses. RCW 82.29A.020(1). The taxable rent additionally includes those sums paid for the use as well as the possession of public property. RCW 82.29A.030. From these provisions, it would appear the legislature intended to tax those areas the use of which was bargained for. Those provisions, by including uses and permits, give "leasehold" a meaning not ordinarily contemplated by that term.

MAC Amusement, supra at 970-71.

We have previously concluded that the agreement between Rainier Mountaineering and the National Park Service grants an exclusive right to use all territory in the Park above the 8,000 foot level for commercial guiding and climbing services. It is not a totally exclusive right to use the territory in the sense that the general public may also use the same territory, albeit for noncommercial, recreational purposes. Nevertheless, the public's use does not interfere with, nor necessarily detract from, the exclusive rights granted Rainier Mountaineering. In any event, the alpine territory comprises an area the use of which has been bargained for by Rainier Mountaineering.

We must therefore reject Rainier Mountaineering's argument that only the payments made for the occupancy of the buildings are subject to the leasehold excise tax. The

property rights comprising the leasehold interest include not only the right to occupy and use the guide shack and cooking hut, but also the right to use the climbing routes for commercial climbing and guiding purposes.

C.

What is the fair market rental for Rainier Mountaineering's leasehold interest?

Having determined the nature and extent of the property rights included in the leasehold interest, the next step is to determine the fair market value of those rights. The Department's position assumes that there is no independent value to a concession right when the lessee's franchise right consists of nothing more than a right to sell goods and services on the leased premises. In most cases, this seems to be a safe assumption. For example, in the case of the general store within the boundaries of a national park, the value of the store premises, and hence its fair market rental, is fixed by the income which can be generated from sales at the store. The exclusive right to make sales at the store is inherent in the right of possession of the store premises. That value is presumably no different, except in unusual circumstances, from the value of similar store premises in the private sector. The same would be true of similar facilities, such as restaurants, resorts, and other recreational facilities of a type commonly operated in the private sector. One exception would be where, in addition to the leasehold interest in the premises, the governmental owner agrees to exclude all others from operating a competing business. MAC Amusement, supra. The grant of exclusivity would undoubtedly have value to the lessee when such a competing business would likely be operated on a financially feasible basis given the demand for the product or service in the market area under the government's jurisdiction.

Rainier Mountaineering has the burden of showing the value of its concession right. On the record before us, we believe that Rainier Mountaineering's exclusivity rights have some value. The testimony revealed that competing commercial guiding services from time to time attempt to operate in the Park. This fact alone indicates a demand for additional guiding and climbing services in the Park. Given the relatively low capitalization required to operate a guide service, limited financial resources are apparently not a significant barrier to entry in the commercial guiding and climbing business. But for the grant of exclusivity, it appears that Rainier Mountaineering would face significant competition, the result of which would undoubtedly reduce its

market share and gross revenues, and hence the value of its right to use the climbing routes above 8,000 feet. Rainier Mountaineering has thus demonstrated that the concession right has value in addition to its leasehold interest.[6]

The question remains: how much value? On the record before us, we are unable to answer this question. Other than Rainier Mountaineering's evidence as to the fair market value of the buildings, there is no evidence in front of us which would permit us to determine with any degree of precision the fair market value of the entire leasehold interest or its fair market rental. It is not possible to determine the value of the underlying realty, given the lack of market evidence concerning sales of semi-dormant volcanoes. The value of Rainier Mountaineering's license to use the climbing routes is in large part dependent upon its exclusivity rights. Approaching the question from the Department's point of view, there is also no evidence by which we could determine the value of Rainier Mountaineering's exclusivity rights.

For the foregoing reasons, we conclude that Rainier Mountaineering has failed to establish the value of its concession rights. It has therefore failed to demonstrate what portion of its payments to the National Park Service are in return for a concession right. On the other hand, the Department's assessment is based on the erroneous position that Rainier Mountaineering possesses no concession right of value in addition to its leasehold interest. This raises the possibility, if not the probability, that the assessment is based in part on payments for "concession rights". Accordingly, we must remand the matter to the Department for redetermination of the assessment.

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[6] This conclusion requires us to reject the Department's argument to the extent it implies that payment for a concession right is never excludable when the concession right's value inheres in or depends upon the quantity or value of goods or products sold on the leasehold property. We do not believe the legislature intended this result. Most government "concession" or franchise rights involve to some extent the occupancy or use of government property. Indeed, the value of the exclusivity right examined in MAC Amusement was inherent in and depended upon the income which could be generated from sales of rides and games at the Seattle Center Fun Forest. According to the Department's own evidence, the legislature intended to exclude this concession right from the reach of the leasehold excise tax.

DECISION

The assessment made by the Department against Rainier Mountaineering is vacated. The matter is remanded to the Department of Revenue for determination of the fair market rental for the leasehold interest held by Rainier Mountaineering and the amount of payment, if any, for its concession right.

DATED this _____ day of _____, 1991.

BOARD OF TAX APPEALS

_____
RICHARD A. VIRANT, Chair

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MATTHEW J. COYLE, Vice Chair

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LUCILLE CARLSON, Member

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A timely Petition for Reconsideration may be filed to this Final Decision within ten days pursuant to WAC 456-10-755.