
TAX - WASHINGTON

Green Collar Club v. State Department of Revenue

Court of Appeals of Washington, Division 2 - March 27, 2018 - 413 P.3d 1083

Three taxpayers, which were involved in medical marijuana collective gardens, filed actions against Department of Revenue for sales tax refunds, and the actions were consolidated.

The Superior Court granted summary judgment in favor of Department. Taxpayers appealed.

The Court of Appeals held that:

- Two taxpayers involved in management services for gardens were engaged in retail sales of medical marijuana, and thus were subject to retail sales tax;
- Sales of medical marijuana were not exempt from taxation under prescription drug exemption; and
- Sales of medical marijuana were not exempt from taxation under naturopathic medicine exception.

Two taxpayers, which were involved in providing management services to medical marijuana collective gardens, engaged in retail sales of medical marijuana, and thus were subject to retail sales tax, though taxpayers asserted that their formation and management agreements demonstrated that they were only engaged in management services and not retail sales; substance of actual conduct and not agreements defined whether taxpayers engaged in taxable conduct, and taxpayers accepted valuable consideration in exchange for medical marijuana, as they staffed facilities where individuals made monetary "contributions" for medical marijuana based on specific prices.

Valid documentation from health care professional required for patient's purchase of medical marijuana was not "order" within statutory definition of "prescription," meaning an "order, formula, or recipe issued by a duly licensed practitioner," and thus prescription drug exemption from retail sales tax on "sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription" did not apply to sales of medical marijuana by taxpayers, which were involved in medical marijuana collective gardens, though valid documentation might contain many of same characteristics including medical practitioner's name; valid documentation was not a command to use or dispense medical marijuana, and documentation did not provide instructions specifying patient treatment and care.

Medical marijuana was not "naturopathic medicine" within naturopathic scope of practice and, thus, did not qualify for naturopathic medicine exemption from retail sales tax for "[m]edicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed" in naturopathy, though naturopaths could provide valid documentation for patient to obtain medical marijuana; naturopaths were not authorized to prescribe, administer, dispense, or use medical marijuana in their practice, as "schedule I" drugs were not included in statutorily enumerated treatments that naturopaths could utilize, and marijuana was "schedule I" controlled substance.

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