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Taxation

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rule enacted is designed to meet a situation which arises under the Washington Constitution, Article II, section 37, which requires that a section amended be set forth at full length. When two separate subdivisions of the same section are amended in separate acts it is possible, under the holding in *State ex rel. Gebhardt v. Superior Court*¹ that only one of the acts will be given effect; and that which one is held inoperative may depend on whether one does or does not contain an emergency clause. The problem is further complicated by reason of the existing legislative practice of setting forth at full length in amendatory acts each of the RCW sections into which a session law section has been divided in that compilation. Chapter 162 is, therefore, designed to establish a rule of construction in such cases which will give effect to the legislative intent that both amendatory provisions be operative when the two acts amend different parts or subdivisions of the same session law or code section.

ALFRED HARSCH

TAXATION

Revenue-raising Measures. Eight acts passed at the regular and special sessions of the legislature either levy new taxes, increase existing tax rates, extend temporary surtax rates or establish procedures designed to increase the amount of tax collected through changes in administrative practice and procedures.

Chapter 10, Extra Session, is regarded as the major revenue-producing measure of the two sessions. It increases the surtax rate under the business and occupation tax to 60% of the normal tax, for the period beginning May 1, 1955 and ending June 30, 1957, and increases the rates of sales tax and the use tax from 3% to 3⅓% beginning May 1, 1955. Chapters 3 and 14, Extra Session, increase the tax on cigarettes beginning May 1, 1955, making the taxes five cents per package on the popular brands.

Chapter 389 extends, until June 30, 1957, excise taxes which would otherwise have expired in 1955. Section 6 extends the tax on transient rentals under both the business and occupation tax and the retail sales tax. Section 29 extends the 10% surtax on persons rendering public utility services. Section 47 of this chapter also imposes a new tax by extending the business and occupation tax under the wholesaling classification to taxpayers distributing goods from a central warehouse to

¹ 15 Wn.2d 673, 131 P.2d 943 (1942).

two or more retail outlets. Chapter 396 extends the "temporary" tax of 10% on sales of liquor until June 30, 1957.

Chapter 139 imposes an excise tax on house trailers. The tax is in lieu of the personal property tax on such vehicles, whether or not licensed for highway use, and is designed to increase revenue through more effective collection procedures.

In the property tax area Chapters 251 and 253, commonly known as the "Ryder bills," are the most significant, although there are a number of other acts which effect less extensive revisions in procedures of assessment and levy of property tax.

Chapter 251 is designed to secure a more uniform assessment of property for tax purposes, and requires each county assessor to complete a revaluation of all taxable property in the county by January 1, 1958, and each four years thereafter. The Tax Commission is directed to provide assistance in such revaluation and, to insure that the program is carried out, is vested with substantial authority as to methods and procedures to be followed.

Chapter 253 declares that education is a state function and requires that all school district taxes be levied on the equalized values fixed by the State Board of Equalization for purposes of the state-levied property tax. As these equalized values are uniformly higher than the assessed values fixed at the county level the effect will be to increase the tax levied for school district purposes. The validity of this measure under Article VII and Article XI, section 12 of the Washington Constitution has been seriously questioned. The measure, however, was passed with the expectation that it would be challenged on these grounds, with consequent review by the court of its earlier interpretation in *State ex rel. Tax Commission v. Redd*,¹ and following cases.

Substantive and technical amendments. Chapters 95, 110, 137, 236, 389 of the regular session and chapter 10 of the special session contain various substantive and technical changes in the state excise tax laws.

Chapter 95 amends RCW 82.04.025 to exempt from the business and occupation tax certain accommodation sales. This amendment calls for a revision of Tax Commission Rule 208 and will operate to narrow the scope of this rule in some respects and to broaden it in other respects.

Chapter 110, amending RCW 83.32.090 postpones the delinquency date for excise tax returns from the 25th day of the month in which

¹ 166 Wash. 132, 6 P.2d 619 (1932).

the tax becomes due to the last day of such month.

Chapter 137, amending RCW 82.08.030 (9) and RCW 82.12.030 (10), exempts sales or use of cattle or milk cows used on the farm from the retail sales tax and the use tax.

Chapter 389, sections 25 and 26, amend RCW 82.12.020 and RCW 82.12.030. These amendments extend the application of the use tax to property acquired by bailment unless the bailor has already paid the tax on such property.

Chapter 389, sections 24 and 27, amend RCW 82.12.010 (5) and RCW 82.12.040. These sections add a new sentence to the definition of "consumer," making one who distributes or displays tangible property for the primary purpose of selling products or services a consumer for the purposes of the Revenue Act. Transferors as well as vendors are also made responsible for collection of the use tax. These amendments incorporate in the statute a prior administrative interpretation.

Chapter 389, section 28, which amends RCW 82.16.010 (9), revises the definition of "highway transportation business" for the purposes of the public utility tax. As redefined, the term includes all motor vehicle carriers for hire (except those engaged in urban transportation business), whether such hauling service is performed in whole or in part on private roads or private land as well as those performing such service on the public highways.

Chapter 389, sections 31 and 34, relate to the tax on mechanical devices and amend RCW 82.28.010 (2) and 82.28.040. The first of these amendments prohibits offsetting of gains and losses on the operation of several machines and the second amendment prohibits offsetting of losses of one month against the gains of any other month. These amendments merely confirm the administrative interpretation of the statutory language prior to the amendments.

Chapter 389, section 40, amending RCW 82.32.340, permits the Tax Commission to charge off as uncollectible tax or penalty which remains uncollected for twelve years.

Chapter 10, Extra. Session, section 4, amends RCW 82.04.060 defining "sale at wholesale." The amendment is a clarifying one, designed to express more aptly that the term applies to sales made to non-consumers rather than to consumers of property purchased.

The only amendments of the inheritance and gift tax statutes are found in chapters 118 and 119. Chapter 118 repeals RCW 83.16.050, relating to valuation of property in a foreign estate liable to taxation in this state. Chapter 119 permits the Tax Commission to waive assess-

ment of interest upon gift tax when good cause is shown.

Chapter 160 is of interest in connection with state inheritance and state gift tax, as well as federal estate and gift tax, because of the tax-saving possibilities it may afford in certain cases. This act authorizes the release of a power of appointment by the donee of the power and sets forth the manner in which such releases may be effected.

ALFRED HARSCH

TORTS

Public Nuisances. RCW 7.48.140 enumerates acts or conditions constituting public nuisances. Chapter 237 adds a paragraph to it which is as incongruous as a goat in a dog show. It is now said to be a public nuisance for the owner or occupier of land, knowing of the presence thereon of a well, septic tank, cesspool or other hole or excavation ten inches or more in width at the top, and four feet or more in depth, to fail to cover, fence, or fill the same, or provide other proper or adequate safeguards, unless the hole be one hundred square feet or more in area or one which is open, apparent, or obvious.

Law must change, of course, but it is disconcerting to come without warning upon a statute which simply dumps the thinking of over four hundred years. For that long it has been clear that a nuisance, to be considered public, must affect an interest common to the general public rather than of a particular individual, and moreover that it must interfere with those who come in contact with it in the exercise of a public right. So long as private ownership of land obtains no one has a public right of entry, and since there is no way to come in contact with a hole in the ground except by entry it would seem that the statute poses a dilemma which the court must solve either by dropping the concept of public nuisance or the statute. Nor should the threat to the privilege of the landowner to do about what he pleases with his land so long as he does not unreasonably interfere with others outside of it go unnoticed; most liberties are lost by dribbles, not floods, and no one can imagine what the next "public nuisance" may be said to be.

The consequences in civil liability for violating the statute are not clear. The theory of the civil action for public nuisance is set forth in RCW 7.48.210, which requires that the nuisance be "especially injurious to [plaintiff]" before it may be maintained; surely the court would not apply this to trespassers, and the statute scarcely changes the position of the business invitee, who would be protected in any