

February 22, 2006

VIA E-MAIL russell@sccar.com

Mr. Russell Hokanson
Executive Vice President
Snohomish County Camano
Association of Realtors®
3201 Broadway, Suite E
Everett, Washington 98201

Re: City of Sultan Proposed Ordinance No. 907-06

Dear Mr. Hokanson:

You have asked us whether Snohomish County can impose a local sales and use tax under RCW 82.14.030(2) and then rebate the taxes collected to the City of Sultan, which chooses to forgo these taxes in lieu of imposing a local real estate excise tax ("REET") under RCW 82.46.010(3). This letter presents our preliminary findings and conclusions and should not be read to represent our final opinion on the question presented.

We understand Proposed Ordinance No. 907-06 ("907-06") is currently before the City of Sultan City Council. 907-06 would repeal the additional sales and use tax of one half of one percent (0.5%) imposed by Section 3.48.020B of the Sultan Municipal Code ("SMC") and enact an amendment to Section 3.51.010 SMC, which will impose an additional local REET of one quarter of one percent (0.25%), increasing the total REET to three quarters of one percent (0.75%). Currently, the City of Sultan imposes the 0.5 percent sales and use tax and two 0.25 percent REETs, totaling 0.5 percent.

Under state law (RCW 82.14.030(2)), the City of Sultan may impose an additional sales and use tax of up to five tenths of one percent. The City of Sultan may, "[i]n lieu of imposing the tax authorized in RCW 82.14.030(2)" (RCW 82.46.010(3)), impose a REET not to exceed one half of one percent on each sale of real property. The question presented is whether, following the City's decision to impose the additional REET "in lieu of" the additional sales and use tax, the County can impose and then rebate to the City the sales and use tax the City chooses to forgo under RCW 82.14.030(2) and RCW 82.46.010(3).

As a preliminary matter, we are not aware of any express authority which would allow a county to impose and then rebate a sales and use tax that a city chooses to forgo under RCW 82.14.030(2) and RCW 82.46.010(3). Even if the County and City believe that there is implied authority to allow for the imposition and rebate of the sales and use tax, it would seem that the express language of the REET-imposing statute would preclude such a scheme. That statute states:

In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

RCW 82.46.010(3) (emphasis added).

Thus, the above-quoted statute expressly states that the imposition of this REET is “in lieu of” the sales and use tax imposed under RCW 82.14.030(2). This means that the City of Sultan must elect between enacting an additional sales and use tax or an additional REET, but not both, and the express language of RCW 82.46.010(3) requires such an election.

Under rules of statutory construction, the “words ‘in lieu of’ mean ‘in place of,’ [or] ‘instead of.’” State v. Murrin, 85 Wn. App. 754, 758, 934 P.2d 728 (1997) (citing Webster’s Third New International Dictionary 1306 (1969)). When read together, RCW 82.14.020(3) allows cities to impose a 0.5 percent additional sales and use tax, but an alternative REET is set forth in RCW 82.46.010(3). This alternative is also introduced by the phrase, “[i]n lieu of imposing the tax authorized in RCW 82.14.030(2).”

To read the phrase “in lieu of” as permitting a city to receive both the REET and the sales and use tax would be inconsistent with the plain language of the statutes and result in a strained reading of RCW 82.46.010(3). “Statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided.” State v. Stannard, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987). Because the Legislature used the words “in lieu of” and the ordinary meaning of these words is “in place of” or “instead of,” the City of Sultan appears to be prohibited from receiving tax revenues from both RCW 82.14.030(2) and RCW 82.46.010(3).

Mr. Russell Hokanson
February 22, 2006
Page 3

I trust that this preliminary legal analysis is satisfactory. We are available to provide a more in-depth legal opinion upon request.

Very truly yours,

LANE POWELL PC

A handwritten signature in black ink, appearing to read "George C. Mastrodonato", written over the printed name below.

George C. Mastrodonato

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