



REVISED SALT Alert! 2024-15: Washington Supreme Court Agrees that Insurance Company Affiliate Qualifies for Insurance Business B&O Tax Exemption

The Washington State Supreme Court determined that Envolve Pharmacy Solutions (Envolve), an affiliate of Coordinated Care (CC)—both subsidiaries of Centene Corporation—is entitled to an exemption from Washington Business & Occupation (B&O) tax on receipts earned from providing services to CC. The “insurance business exemption” exempts from B&O tax “any person in respect to insurance business upon which a tax based on gross premiums is paid to the state.”¹ CC contracts with the Washington State Health Care Authority to administer health insurance benefits to people in Washington; CC further subcontracts with Envolve to provide a variety of administrative and pharmacy benefit management services. CC pays the annual Washington Insurance Premium tax on premiums received from consumers. The question that eventually found its way to the state high court was whether Envolve, as an affiliate of an entity that paid gross premiums tax, qualified for the exemption on the amounts received from CC for the services it performed.

The Washington Department of Revenue has historically interpreted the insurance exemption statute to apply to a corporate affiliate that has contracted with another corporate affiliate provided that the primary corporate affiliate pays the premiums tax. In 2013, Envolve received a letter ruling from the Department stating that an affiliate of CC did not have to pay the premiums tax or B&O tax on any activity that was “functionally related” to CC’s insurance business, providing CC paid the premiums tax. Subsequently, Envolve filed a refund claim for B&O tax it had previously paid on activities that Envolve now considered functionally related to CC’s insurance business. The Department denied the refund claim, opened an audit of Envolve, and assessed over \$3 million in unpaid B&O taxes plus interest and penalties, for years dating back to 2010. Envolve filed an appeal, and the matter eventually made its way to the state supreme court.

The Department’s position on appeal was that the insurance business exemption was only available to taxpayers who themselves had paid the state’s insurance premiums tax. It further argued that some of the services provided by Envolve were actual health care services, not services functionally related to insurance business.

Affirming the Court of Appeals, the supreme court rejected the Department's arguments. First, the court found that the plain language of the exemption statute did not require the taxpayer seeking the exemption to be the entity that paid the premiums tax. The legislature had used the passive voice to state that the exemption was available when the premiums tax had been paid on insurance business – without describing by whom the tax must have been paid. Therefore, the tax **exemption** was available to *any* entity.

Second, the court determined that the services provided by Envolve (including establishing and maintaining provider networks, quality assurance, benefit management, claims processing, subscriber and provider reimbursement, and cost control measures, among others) were not actual health care services but were all administrative activities and central to the insurance function, noting that none of Envolve's activities met the statutory definitions of "health care," "health care services," or "comprehensive health care services."² In fact, "everything Envolve does is functionally related" to CC's insurance business, because that is the reason for Envolve's existence. Therefore, the court held that Envolve was exempt from the B&O tax on receipts from all its activities because they were all functionally related to CC's insurance business upon which the gross premiums tax had been paid. Four justices dissented on the basis that the interpretation of the majority both on entities qualifying for the exemption and the services covered was too broad in scope and subverted the intent of the B&O tax to fall on most businesses.

KPMG Observations

Any company that has paid Washington B&O tax on receipts from the provision of services related to insurance business on which gross premiums tax has been paid may be in a position to qualify for the insurance business exemption. While Envolve was an affiliate of CC, the payer of the premiums tax, the court, emphasizing the "any person" language in the statute, seemingly left open whether an affiliation with the payer of the premiums tax is required to qualify.

The court's majority decision also implies some expansiveness in applying the Department's long-standing "functionally related" test. Certainly, the specific services provided by Envolve in this case qualify for exemption. The court also spoke of services previously recognized by the Department as functionally related to the insurance business, including accounting, human resources, and data processing. Other potentially exempt activities that could be evaluated include several on which the Department has issued recent guidance, including property loss inspection, loss prevention, appraising insured property, rate setting, underwriting, and settlement negotiation.

Contacts

For questions regarding *Envolve Pharmacy Solutions v. Dept. of Revenue*, please contact [Patrick Lee](#) or [Michele Baisler](#).

Footnotes

¹ Wash. Rev. Code § 82.04.320.

² Wash. Rev. Code §§ 48.44.010(10); 48.46.020(4); 70.02.010(15).