

Homeowner's Associations: Avoiding Tax Landmines

June 2013

Mark Hugh PLLC

About the Instructor

Mark Hugh is the principal of Mark Hugh PLLC, a firm devoted exclusively to serving clients with state and local tax issues.

He is a frequent trainer and speaker regarding state and local tax issues, and his audiences since 1992 have included accountants, industry groups, attorneys, and Washington legislators. His work includes planning and tax reporting reviews for a variety of organizations. He has represented hundreds of taxpayers at all levels, from field auditors to administrative appeals with both the Department of Revenue and the Washington State Board of Tax Appeals. He is the author and instructor of *Washington State and Local Taxes* and various other publications.

He is a CPA, a graduate with honors from the University of Washington, and holds a master's degree in federal income taxation from Golden Gate University. He is the winner of the Washington Society of Certified Public Accountants award for Outstanding Discussion Leader, the award for Public Service, and the Chair's Award for outstanding service as a board member.

Mark is also author and instructor of *Washington CPA Ethics and New Developments*, a Washington State Board of Accountancy approved course for regulatory ethics.

He was a four-term board member of the Washington Society of Certified Public Accountants, formerly the organization's treasurer, and was the 2011 to 2012 Board President. He was also a three-year member of the AICPA Council, the governing body of the American Institute of Certified Public Accountants.

Materials copyright 2013 Mark Hugh PLLC
P.O. Box 50628
Bellevue, WA 98015

mark@markhugh.com
(425) 641-2992

Taxes on Today's Menu

- ▶ Washington Business & Occupation (B&O) tax
- ▶ State and local public utility taxes
- ▶ State and local sales taxes
- ▶ State and local use taxes

Copyright 2013 Mark Hugh PLLC

The B&O Tax in General

- ▶ A gross receipts tax system
- ▶ Reimbursements are included within “gross receipts”
- ▶ All HOA activities are presumed taxable, barring a specific deduction
- ▶ Different rates apply to different activities
- ▶ B&O tax rates are low, but a high tax base
- ▶ Small Business B&O tax credit reduces risk

Copyright 2013 Mark Hugh PLLC

The B&O Tax and HOA's

- ▶ The B&O deduction for common area charges
- ▶ A deduction for amounts used for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property
- ▶ Excludes property where fees or charges are made for use by the public who are not guests accompanied by a member

Copyright 2013 Mark Hugh PLLC

Includible and Excludable Areas

- ▶ Deduction includes areas required for common access such as reception areas, halls, stairways, parking, and may include recreation rooms, swimming pools and small parks or recreation areas
- ▶ Deduction excludes extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas

Copyright 2013 Mark Hugh PLLC

Other B&O Taxable Amounts

- ▶ Specific charges to members for specific services are generally taxable
- ▶ Amounts excluded from the common area deduction generally taxable
- ▶ Examples include maintenance, cleaning, and repairs of a specific owner's property
- ▶ Miscellaneous charges for replacement property
- ▶ Special services such as yard waste removal
- ▶ Special assessments not assessed to all members
- ▶ Tax effect of the Small Business B&O tax credit

Copyright 2013 Mark Hugh PLLC

The Public Utility Tax and HOA's

- ▶ From Washington's "activity based tax" system
- ▶ Taxes assessed at very high rates on water and power distribution activities
- ▶ Water distribution rate is over 5%
- ▶ Local utility taxes may be due at similar rates
- ▶ B&O common area deduction does not apply
- ▶ Department prior cases impose the tax on HOA's

Copyright 2013 Mark Hugh PLLC

The Sales Tax in General

- ▶ Two perspectives, both as a buyer and as a seller
- ▶ Applies to sales of goods and services related to property
- ▶ General exemptions from the sales tax
- ▶ Due from the consumer, but seller is liable for the tax as a collection agent for the state
- ▶ Sales tax rates high, 9.5% in many areas
- ▶ A trust fund, misdemeanor for not remitting

Copyright 2013 Mark Hugh PLLC

The Sales Tax and HOA's

- ▶ Amounts excluded from the common area deduction may be taxable
- ▶ Examples include amusement and recreation services, physical fitness services
- ▶ Maintenance, cleaning, and repairs of a specific owner's property
- ▶ Miscellaneous charges for replacement property

Copyright 2013 Mark Hugh PLLC

The Use Tax in General

- ▶ A compensating tax
- ▶ Same items and same rates as the sales tax
- ▶ Examples include untaxed services such as casual labor, construction, maintenance, and landscaping
- ▶ Goods purchased from out of state by phone or internet
- ▶ Software licenses and electronic services

Copyright 2013 Mark Hugh PLLC

The Use Tax and HOA's

- ▶ No special exemptions exist for HOA's
- ▶ A source of Department of Revenue audits
- ▶ Payable either through the filing of a Washington State Combined Excise Tax return for registered filers; or
- ▶ A Consumer Use Tax Return for unregistered filers

Copyright 2013 Mark Hugh PLLC

Questions?

- ▶ (425) 641-2992
- ▶ mark@markhugh.com
- ▶ *Washington Sales Tax and New Developments*, a four hour webcast that covers sales tax fundamentals, new developments, and tax audits
- ▶ *Washington Business Taxes and New Developments*, a eight hour seminar that covers both the B&O and sales taxes

Copyright 2013 Mark Hugh PLLC