

Statutory Construction Clauses and the Tax Avoidance Provisions

Jeff Mitchell

OPR

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Purpose of Today's Discussion

- To describe legislatively created statutory construction clauses and their use by courts to resolve ambiguous language.
- Statutory Construction Clause from Earlier Versions of SSB 6143:

NEW SECTION. **Sec. xxx.** Sections 201 through 212 of this act must be construed liberally to effectuate the legislature's intent to ensure that all businesses and individuals pay their fair share of taxes.

Statutory Construction in a Nutshell

1. The primary objective of any statutory construction inquiry is "to ascertain and carry out the intent of the Legislature."
Homestreet, Inc. v. State, Dept. of Revenue, 166 Wn.2d 444 (2009).
2. "A statute that is clear on its face is not subject to judicial construction." *State v. J.M.*, 144 Wash.2d 472 (2001).
3. If a statute is subject to more than one reasonable interpretation (i.e. ambiguous) a court will resort to **canons (rules) of statutory construction**, legislative history, and relevant case law for assistance in discerning legislative intent. *See Christensen v. Ellsworth*, 162 Wn.2d. 365 (2007)

Canons of Statutory Construction

- “Default” Rules of Thumb to Decipher the Meaning of a Statute that is Determined to Be Ambiguous
- Substantive Canons
 - Instruct a court to favor interpretations that promote certain policy results
 - Example: Criminal statutes are construed narrowly
 - Example: Tax exemption statutes are construed narrowly from the taxpayer’s perspective.
 - The Legislature can direct a court through a statutory construction clause to favor a particular result.

Statutory Construction Clauses

Two Different Approaches

- **Narrow Construction:** Ambiguous language is given its exact and technical meaning. No other implications are made.
- **Broad Construction:** Ambiguous language is interpreted in a way that implements the broader object and purposes of the legislation.

Conclusion

- A statute determined to be unambiguous by a court is not subject to judicial construction – i.e. a court should not be relying on a statutory construction clause in this situation.
- In the case of ambiguous tax avoidance language, should the Legislature provide explicit direction to the courts to interpret the language either broadly or narrowly?