

WILLIAM SCHEIDLER
1515 Lidstrom Place E.
Port Orchard, WA 98366
360-769-8531

IN PRO PER

BOARD OF TAX APPEALS OF THE STATE OF WASHINGTON

WILLIAM SCHEIDLER,
APPELLANT,
Mary Scheidler (appellant per BoTA)

V

KITSAP COUNTY ASSESSOR
RESPONDENT,

Docket No.: 11-507 to 11-510

Appellant's Opening Brief

**I STATEMENT OF APPELLANT'S APPEALS -- FOR EACH AND EVERY APPEAL
CAPTIONED ABOVE, INCLUDING 11-510 -- COMPLAINS AND FOR CAUSES OF ACTION
ALLEGES AS FOLLOWS:**

“The Kitsap County Assessor is defrauding County Citizens with incorrect instructions...”

This appeal concerns the statutory conditions with respect to categories [a-i] that are set by RCW 84.36.383(5) to determine disposable income. Those conditions with respect to [a-i] state that disposable income is IRS adjusted gross income plus [a-i] ...

- 1) **“to the extent [a-i] are not included in” adjusted gross income; or to the extent [a-i]**
- 2) **“have been deducted from adjusted gross income”**.

The meanings of these statutory conditions are explicit from the language itself. The Assessor's various “language editions and meanings” he imposes upon applicants that change the expressed statutory conditions are unauthorized and are unlawful. Furthermore, because the laws of statutory construction are well established and have been in place prior

1 to the Assessor's home-grown variations of these statutory conditions the Assessor must be
2 found 'negligent or fraudulent' in his conduct.¹

3 [SEE Exhibits A2, A3 and A4. Which are Tax payer petitions for each and every year under
4 appeal made to the Board of Equalization, Exhibit A2-1-4; Block 5.]

5 **Appellant is damaged by the 'alleged unlawful conduct' and seeks the following
6 relief, plus any other relief justice demands.**

7 **Class Status is requested. RCW 84.36.383 has broad public importance and affects
8 every homeowner of this state as it carries out a constitutional provision, Art 7, Sec
9 10.**

10 **Appellant request a jury trial per Article 1, Section 21 to decide issues of fact: Has the
11 Assessor and Alan Miles violated:**

12 **RCW 4.96.010**

13 **Tortious conduct of local governmental entities -- Liability for damages.**

14 **(1) All local governmental entities, whether acting in a governmental or proprietary
15 capacity, shall be liable for damages arising out of their tortious conduct, or the
16 tortious conduct of their past or present officers, employees, or volunteers while
17 performing or in good faith purporting to perform their official duties, to the same
18 extent as if they were a private person or corporation. Filing a claim for damages
19 within the time allowed by law shall be a condition precedent to the
20 commencement of any action claiming damages. The laws specifying the content
21 for such claims shall be liberally construed so that substantial compliance
22 therewith will be deemed satisfactory.**

23 **RCW 84.36.381 The Senior/disabled person property tax program.**

24 **RCW 9A.60.030**

25 **Obtaining a signature by deception or duress.**

26 **(1) A person is guilty of obtaining a signature by deception or duress if by deception
27 or duress and with intent to defraud or deprive he or she causes another person to
28 sign or execute a written instrument. EXHIBIT 3.**

RCW 9A.60.050

False certification.

¹ Harlow itself said as much: "If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." Id., at 818-819, 102 S.Ct., at 2738; see also Butz, 438 U.S., at 506, 98 S.Ct., at 2911 (" [I]t is not unfair to hold liable the official who knows or should know he is acting outside the law . . . "). 523 U.S. 574 - Crawford-El v. Britton

1 (1) A person is guilty of false certification, if, being an officer authorized to take a
2 proof or acknowledgment of an instrument which by law may be recorded, he or she
3 knowingly certifies falsely that the execution of such instrument was acknowledged
4 by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor.

4 **RCW 9A.80.010**

5 **Official misconduct.**

6 (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or
7 to deprive another person of a lawful right or privilege:

7 (a) He or she intentionally commits an unauthorized act under color of law; or

8 (b) He or she intentionally refrains from performing a duty imposed upon him or
9 her by law.

(2) Official misconduct is a gross misdemeanor.

10 **RCW 9.72.090 Perjury.**

11 a) Has Alan Miles and James Avery committed perjury when they claim under
12 oath that Scheidler fails to qualify for the statutory exemption for 2007, 2008, 2009
13 due to their claimed income calculations? Appellant claims respondent and his
14 counsel income determinations are false.

13 b) Has Alan Miles and James Avery committed perjury when they claim under
14 oath that Scheidler's disposable income for 2009 was \$23,589? This claim by
15 respondent and his counsel, according to appellant, is false.

15 c) Has Alan Miles and James Avery committed perjury when they state in their
16 response to Appellant's first discovery request by saying, "WAC 456-09-510(3)
17 requires Board authorization for propounding requests for admission. The
18 appellant has not obtained such authorization..." Both claims by respondent and
19 his counsel are false based upon the true language of WAC 456-09-510(3) and the
20 evidence provided _____.

19 **Public Duty mandated by RCW 2.48.210 and RCW 84.36.379-389,**

20 **Has Mr. Avery and Mr. Miles violated their public duty, which is "to employ such
21 means as are consistent with truth and honor"; "to never seek to mislead the judge
22 or jury by any false statement of fact or law"; "to make a reasonable effort under the
23 circumstances to prevent a violation of a law he is charged with enforcing and the
24 violation results in injury to a person within the class the law is intended to protect."**

**BAILEY v. FORKS 108 Wn.2d 262, 737 P.2d 125. Their violation of the laws noted
25 herein is evidence of their public duty violations.**

25 **Has the Assessor inflicted intentional harm? ...negligent harm?**

26 **Has the Assessor violated 42 U.S.C. § 1983?**

1 **Has the Assessor violated the ADA by creating a false program perpetrated upon**
2 **disabled individuals?**

3 **II INTRODUCTION**

4 The Assessor's statutory role delegated by the WA Legislature under RCW
5 84.36.385(5) and (6) is two fold: to disseminate the *qualifications and manner of making*
6 *claims and determining an applicant's eligibility* for the Senior/disabled citizens property tax
7 reduction program as defined by RCW 84.36.381.

8 Scheidler's cause of action concerns both the "information" that is being
9 disseminated by the assessor regarding the *qualifications and manner of making claims and*
10 *the assessors determination of eligibility* for the program under RCW 84.36.381.

11 *That information disseminated by the Assessor is simply inaccurate and as a*
12 *consequence the determination of eligibility is also inaccurate. **The 'application' itself is***
13 ***proof of this fact. Ex 6 and 7.***

14 The Assessor has no authority to alter, or amend, or render irrelevant, the laws passed
15 by the legislature.² The Assessor is intentionally and willfully violating the law.

16 **Affidavit of William Scheidler**

17 I, William Scheidler, claim the Kitsap County Assessor, with the aid of his counsel Alan
18 Miles, Esq., by deception and in violation of an attorney's oath to uphold the standards of
19 truth and honor (See RCW 2.48.210), caused me to violate the terms of RCW 84.36.379-
20 389 by requiring me to sign my application, which misstates my true income. Said another
21 way, RCW 84.36.379-389 is clear and unambiguous and I wanted to follow the law as the
22 law is written.

23 I filed a lawsuit, pre application, for declaratory relief, arguing I would be subjected to a
24 crime unless the court granted declaratory relief. Included by reference are Clerks Paper
25 001-004 filed in that case. That effort was dismissed as not ripe, which was the position of

26 ² **IN RE CONSOLIDATED CASES 123 Wn.2d 530, (1994)** [7] Statutes – Construction – Administrative Construction
27 – Deference to Agency – Agency Authority. A court does not defer to an administrative agency's determination of the
28 scope of its own authority.

1 the Assessor in that matter. The Appellate Courts stood down and let the issue take its
2 unfortunate course.

3 The Assessor is determined to create his own version of the RCW 84.36.379-389
4 program that is intended to force applicants, such as myself, to miscalculate their income so
5 as to be fraudulently denied their statutory rights. The specific statute that is misapplied by
6 the assessor is RCW 84.36.383(5). This statute requires a conditional test be performed to
7 the subcategories, a-i, of RCW 84.36.383(5) to determine if any subcategory a-i, was not
8 already included by the taxpayer in calculating disposable income. I have conducted this
9 conditional test on subcategories a-i, and I attach the result of this conditional calculation of
10 disposable income as **Appendix A**. The Assessor has not, or the Assessor fails to, or the
11 Assessor is intentionally misapplying this conditional test before addressing items (a-i), and
the consequence is a false calculation of disposable income.

12 Without any other options, I signed the applications under duress (**EXHIBIT A3**), and
13 included a statement for the duress (**Exhibit A4**). Also included by reference are the
14 pleadings and court filings re Superior Court Cause 08-2-02882-0 and Court of Appeals II,
15 #387816 which, as a whole, define the circumstances by which all my “options” were taken
16 away by the Assessor’s legal tactics that ended in my signing my applications under duress.
Signed under penalty of perjury.  _____, William Scheidler,
17 Appellant.

18 **III Facts: Offers of Proof**
19 **(EXPRESS STATUTORY INTENT)**

20 Scheidler, indeed any WA State Citizen, has a right to apply for a RCW 84.36.379-389
21 property tax reduction. (Class status is requested) Scheidler, indeed all applicants in that
22 pursuit, is then required under RCW 84.36.385 to file a lawful, per RCW 84.36.387,
23 application under RCW 84.36.381 and solely upon forms as prescribed and furnished by the
24 department of revenue per RCW 84.36.385(1). “...each local assessor is hereby directed to
25 **publicize the qualifications and manner of making claims under RCW [84.36.381](#)**
26 **through [84.36.389](#) ...”** [reference RCW 84.36.385(6)] Upon an applicant’s submission of

1 an application under 84.36.381, "***if the assessor finds*** that the applicant does not meet the
2 qualifications as set forth in RCW [84.36.381](#), as now or hereafter amended, the claim or
3 exemption shall be denied but such denial shall be subject to appeal under the provisions of
4 RCW [84.48.010](#)(5) and in accordance with the provisions of RCW [84.40.038](#)," see RCW
5 84.36.385(5) **It is the legislatures explicit directive that the definitions used in RCW**
6 **[84.36.381](#) through [84.36.389](#), except where the context clearly indicates a different**
7 **meaning, means what the legislature states as its meaning. See RCW 84.36.383, top**
8 **sentence.**

8 The amount that the person shall be exempt from an obligation to pay shall be
9 calculated on the basis of combined disposable income, as defined in RCW 84.36.383.

10 RCW 84.36.383(5). The term "disposable income" is defined as follows:

11 "Disposable income" ***means adjusted gross income [AGI] as defined in the***
12 ***federal internal revenue code***, as amended prior to January 1, 1989, or such subsequent
13 date as the director may provide by rule consistent with the purpose of this section, ***plus all***
14 ***of the following items to the extent they are not included in or have been deducted***
15 ***from adjusted gross income: [EMPHISIS]***

- 15 (a) Capital gains, other than gain excluded from income under section 121 of the
16 federal internal revenue code to the extent it is reinvested in a new principal residence;
17 (b) Amounts deducted for loss;
18 (c) Amounts deducted for depreciation;
19 (d) Pension and annuity receipts;
20 (e) Military pay and benefits other than attendant-care and medical-aid payments;
21 (f) Veterans benefits, other than:
22 (i) Attendant-care payments;
23 (ii) Medical-aid payments;
24 (iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code
25 of federal regulations, as of January 1, 2008; and
26 (iv) Dependency and indemnity compensation, as defined in Title 38, part 3,
27 section 3.5 of the code of federal regulations, as of January 1, 2008;
28 (g) Federal social security act and railroad retirement benefits;
(h) Dividend receipts; and
(i) Interest received on state and municipal bonds.

25 Scheidler submitted his applications for his property tax exemptions intending to use
26 the best measure of disposable income – IRS adjusted gross income – and submitted his

1 complete IRS Tax Returns for all the years under appeal, EX A24. See RCW 84.36.379 and
2 383(5). The Assessor manipulated Scheidler's IRS adjusted gross income in his own way to
3 falsely increase 'disposable income'. As a consequence Scheidler was denied his statutory
4 exemption by the Assessor's fraud.

5 1. Why did the Assessor increase Scheidler's disposable income by adding
6 Scheidler's financial "losses" to Adjusted Gross Income?

7 ♦ Why is the Assessor penalizing Scheidler because Scheidler's household
8 chooses to manage their own savings?

9 ♦ Why doesn't the Assessor penalize individuals whose households utilize
10 'investment professionals' in the management of their savings?

11 ♦ Why are 'financial losses' deemed by the assessor as enhancing a person's
12 ability to pay their tax?

13 2. Why has the Assessor increased Scheidler's disposable income by adding
14 'depreciation' to Adjusted Gross income?

15 ♦ Why is the Assessor penalizing Scheidler for the "business they are trying to
16 cultivate" as a way to offset appellant's loss of income?

17 ♦ Why is the Assessor double counting amounts for depreciation?

18 These questions and more begin to show how the Assessor's scheme is absurd –
19 i.e., considering financial losses an enhancement to a person's ability to pay their tax;
20 irrational – adding financial losses to increase income; discriminatory – penalizing
21 individuals who handle their own savings; and in violation of every rule of statutory
22 construction.

23 (FACTS IN SUPPORT OF THE PLAIN READING OF THE STATUTORY
24 LANGUAGE)

25 **Exhibit A5** are legislative bills, SSB 5256, SB 5204, [Also SB 5034 C 270 L 04,
26 effective June 10, 2004, and is included by reference], in which the legislature affirms their
27 meaning of the language embodied in RCW 84.36.383 (5) with respect to the definition of

1 disposable income. The legislature clearly states in these bills that the conditions that apply
2 to categories [a-l] of sub section (5) are as follows.

3 *“Disposable income is defined as the sum of federally defined adjusted gross income
4 and the following, **if not already included:**”*

5 *The Assessor departs from this simple instruction by requiring applicants to add categories
6 [a-i] in various and irrational ways. See Exhibits A6-A12.*

7 (FACTS IN CONFLICT WITH STATUTE)

8 **Exhibit A6** is the Kitsap County Application for the year 2008. Kitsap County’s
9 application, on its face, is unlawful. The instructions found on page three, first paragraph,
10 misquote the statutory language. It says....

11 If you file a tax return with the IRS and ***your return included any deductions*** for the
12 following items or if any of these items were not included in your adjusted gross
13 income, they must be reported on your application for purposes of this exemption
14 program:

- 15 ◆ Capital Gains, ***(cannot offset with losses.)***

16 *An applicant cannot arrive at a lawful result by following unlawful instructions.*

17 **Exhibit A7** is the Kitsap County Application for the years 2008- 2011. . Kitsap
18 county’s applications, on their face, are unlawful. The application at B, C, D, again
19 misquotes the statutory language. The pertinent language is found on page 3, and states,

20 “B. Capital Gains not already included in Line A. Do not use losses to offset gains.
21 Do not include the gain from the sale of your principal residence if you used the gain
22 to purchase a replacement principal residence within the same year.”

23 “C. Deductions for Losses (including capital losses). If your adjusted gross income
24 includes deductions for losses, those amounts must be added back. Include
25 deductions for losses from business ventures and rentals as well as capital losses.”

26 “D. Deductions for Depreciation. If your adjusted gross income includes deductions
27 for depreciation, those amounts must be added back. If you deducted depreciation
28 as a business and/or rental expense that resulted in a loss, recalculate the net

1 income/loss without the deduction for depreciation expense. If there is still a net loss
2 enter -0- here, if there is net income enter the net income here.”

3 *The County’s application combines two categories, a and b, into one. Such a tactic renders*
4 *the intent of using ‘categories’ irrelevant. An applicant cannot arrive at a lawful result by*
5 *following unlawful instructions.*

6
7 **Exhibit A8** is a document obtained from WA State Representative Jan Angel, which
8 is a Dept of Revenue handout to County Assessors. Clearly the DOR has misinformed
9 County Assessors by misquoting the language of RCW 84.36.383(5). And by implication
10 mishandles subcategories a-i of this statute.” Paragraph 5 of that handout misquotes RCW
11 84.36.383(5). It says,

12 RCW 84.36.383(5) defines “disposable income” as adjusted gross income as defined
13 in the internal revenue code plus all of the following items to the extent they **were**
14 **include in** or excluded from adjusted gross income.

15 The meaning conveyed by this paragraph could be expressed simply as “plus the
16 following”... eliminating any conditions whatsoever imposed upon subcategories a-i. In
17 other words, the Dept. of Revenue has rendered the ‘conditions’ with respect to categories
18 a-i of RCW 84.36.383(5) irrelevant.

19 **Exhibit A9** is an email exchange between Scheidler and Peggy Davis of the DOR.
20 The email exchange speaks for itself. In reading the email exchange, Peggy Davis cannot
21 use consistent language to explain both the Law and the Assessor’s calculation scheme.

22 When referring to RCW 84.36.383(5) Peggy Davis uses this phrase with respect to
23 categories ‘a-i’ of this statute, “plus the following **to the extent not included** in IRS
24 adjusted gross income.”

25 Peggy Davis, when explaining the Assessor’s instructions uses this phrase in
26 referring to categories ‘a-i’ “**to the extent the following items are included** in IRS
27 Adjusted Gross Income.”

1 These two explanations -- RCW 84.36.383(5) v the Assessor's calculation scheme --
2 are at odds ... they say opposite things. The email testimony of Peggy Davis confirms the
3 Assessor is misapplying the law.

4 **Exhibit A10** is an email exchange between Scheidler and Harold Smith of the DOR.
5 The email exchange speaks for itself. The pertinent point of this evidence is Mr. Smith
6 refused to answer any questions that would need to be answered so as to understand the
7 "conditional test" required by RCW 84.36.383(5). When asked if IRS line-items 6-22 are
8 **included in** the calculation of line 37 (AGI), Mr. Smith REFUSED to answer. Mr. Smith's
9 conduct is consistent with 'fraud.'

10 **Exhibit A11** is an email exchange between Scheidler and the Kitsap County
11 Assessor, James Avery. The email exchange speaks for itself. The portion of significance is
12 that Avery argues that a persons "disposable income" must be increased by an equivalent
13 amount for any "loss" that can be found in a person's Tax Return. In other words, the
14 'greater is a person's financial losses the higher the person's disposable income. This is an
15 absurd notion that the more losses a person suffers the greater is his ability to pay property
16 tax.

17 **Exhibit A12** are the Assessor's exhibits D, included by reference per RCW
18 34.05.452(4)], which calculate Scheidler's disposable income for each of the years under
19 appeal, including year 2010. Scheidler contests the Assessor's calculation for tax year
20 2010 for the same reasons as the other years – the assessor's fraud upon citizens.

21 The Assessor's calculations are all wrong because the Assessor has not applied the
22 statute as written. The Assessor is using his own version of the program and not the
23 programs as passed by the legislature.

24 Line items 'B, C, and D' of Assessor's Exhibits D reverse the statutory condition by
25 stating that 'if your adjusted gross income includes deductions for loss/depreciation...'
26 These line- items are found on Schedule's D and C, and on IRS Form 1040, lines 12-14.
27 The Statute states differently in that the items referenced by lines B, C, and D of Assessor's
28 exhibit D are of concern only 'if they have not already been included' in adjusted gross
income. A taxpayer has already included those items, at least to some extent (see IRS

1 Schedule C and D and IRS Form 1040, lines 12-14), in accordance with the IRS instructions
2 for the calculation of adjusted gross income. (Note: IRS Schedule D losses over \$3000 are
3 not included in the calculation of adjusted gross income and must be included when
4 determining disposable income so as to eliminate 'carryovers' and in keeping with the
5 legislatures intent that an application is a function of income for each year)

6 **Exhibit A13** are decisions of the WA Board of Tax Appeals [BoTA]– Dockets 55692,
7 56336, and 55067. [These are included by reference per RCW 34.05.452(4)]. The
8 decisions of the BoTA are all half-truths meant to deceive and are a violation of due
9 process.³ The Board's Public duty is to prevent a wrong, not engage in conduct to foster or
10 conceal that wrong.

11 **Exhibit A14**, included by reference, [per RCW 34.05.452(4)] Board of Tax Appeal file
12 #BE –592-97. The Board's decision clearly places great weight on a "person's assets"
13 which have nothing whatsoever to do with the computation of 'disposable income'. The
14 Board's emphasis on "Assets" is unjustified by any statutory language or rule of statutory
15 construction. Article 7, Section 10 of the WA State Constitution is clear... the Legislature
16 may "**limiting of the relief to those property owners below a specific level of income**".

17 **The Board of TAX Appeals has defined for itself that a person's "assets" or
18 "savings" are factors to be considered for qualification to the RCW 84.36.379-389
19 program.**

20 **Furthermore the Board has determined for itself what a person's 'assets are'
21 without any rationale to actual reality --- are these purported assets noted by the
22 Board "gross assets, net assets, borrowings...). The Board of TAX Appeals has
23 violated well established rules of statutory construction so as to invent their own
24 criteria for qualification to the Retired/disabled program. The Board has violated their
25 public duty and should be sanctioned.**

26 (FACTS SUPPORTING ABUSE OF THE LEGAL PROCESS BY RESPONDENT)

27 ³ **IKEDA v. CURTIS 43 Wn.2d. 449, 450** (1953) "Fraudulent misrepresentations may be effected by half-truths
28 calculated to deceive; and a representation literally true is actionable if used to create an impression substantially false.

1 **Exhibit A1**, Email communication with Steve Saynisch. The email communication
2 speaks for itself and documents the objection to the Board's ex parte communication with
3 'fact witnesses' to be called at trial.

4 **Exhibit A15**, included by reference [per RCW 34.05.452(4)] are Scheidler's
5 declaratory and injunctive lawsuit filed against the County, dismissed as not ripe, and the
6 ensuing appeal from dismissal [affirmed]. Noted as Superior Court # 08 2 02882 0; and
7 Court of Appeals II #387816

8 **Exhibit A16**, Attached hereto Ellerby's letter to Kitsap County noted as Plaintiff's
9 exhibit E-33 and E-34; and Ellerby's notice of Withdrawal citing 'at the request of the Kitsap
10 County Prosecutor'. These documents show Kitsap County's long history in "tactical
11 warfare" by using the "legal process" to thwart all efforts to expose Kitsap's fraud.

12 **Exhibit A17**, Complaints made to the Attorney General alleging Dept of Revenue
13 misconduct. These documents attest to Scheidler's long and arduous quest to right-the-
14 wrong of Kitsap. Of particular note is the AG's vague and contradictory statements in
15 justifying the "various WAC and Agency conduct" versus the exact language of the law –
16 RCW 84.36.383(5)

17 **Exhibit A18**, Email communication between Scheidler and Brett Durbin and Cam
18 Comfort of the WA State Attorney General's office. Of particular note are the various
19 "editions" of the statutory language of RCW 84.36.383(5)... and the various 'editions' of
20 'capital gains ... and the various statements regarding losses. All of these "variations" are
21 on their face, violations of law. NO person has a right to misrepresent the true language of
22 law or "editorialize" the language of laws to satisfy some other motive. These email
23 communications implicate all the agencies under the States Executive Officer .. the
24 Governor. The motives of the Governor are readily apparent... keep taxes low for high
25 income wage earners at the expense of the retired/disabled who must "live off" their
26 retirement savings and are too old, weak or poor to mount a legal challenge.

27 **EXHIBIT A19**, email exchange between Scheidler and Kitsap Prosecuting Attorney
28 Russell Hauge alleging misconduct by Alan Miles.

1 **EXHIBIT A20** King County’s applications for the RCW 84.36.379-389 exemption
2 program. These exhibits validate the substantive differences in the administration of the
3 exemption program among assessors. Most notably King County’s request for
4 documentation as “year end statements, or an entire copy of an IRS return”. This notable
5 difference is baring on constitutional privacy violations. Kitsap County “mandates”
6 applicant’s submit their IRS tax return. This notable difference between King and Kitsap
7 also implies “other” measures of “disposable income” are possible. And therefore is the
8 reason the legislature wrote RCW 84.36.383(5) as they did... to insure all “methods” of
calculating ‘disposable income’ are ‘structurally’ similar.

9 **EXHIBIT A21 CR 26 – CR 37** Discovery materials – when and if the Board permits
10 discovery

11 **EXHIBIT A22 CR 26 – CR 37** Discovery materials – when and if the Board permits
12 discovery

13 **EXHIBIT A23**, Notice of Appeal. Included by reference [per RCW 34.05.452(4)].

14 **EXHIBIT A24** TAX Returns for Docket 11-507 to 11-510

15 **EXHIBIT A25**, Court filing: Assessor’s opposition to Scheidler’s request for
16 declaratory and injunctive relief. This document is offered to show how the assessor’s
17 defense counsel, Alan Miles, lies to the court in his portrayal of Scheidler’s case. The reality
18 of the instant case and the predicament in the “subject matter” is proof of Miles’ deception in
19 Superior Court. This is evidence of ‘fraud upon the court’ and further evidence of Miles
20 compelling documentation that they are actively engaged in hiding the assessors fraud.
21 This conduct by Alan Miles/Jim Avery is proof of their planning and execution of that plan to
22 defraud and hide the fraud.

23 **EXHIBIT A26, Textbook: “Writing for Career-Education Students”,** Andrew W.
24 Hart, James A Reinking. “Chapter 4: Classification. Classification is a useful way to explain
25 a large, complex, or hard-to-grasp topic.” Page 56. “Avoid Overlapping Categories... in
26 other words, each category must be a separate grouping that does not extend into the
“territory” of another grouping.” Page 59....

1 Clearly Kitsap County's applications, on their face, commingle categories [a-i] of
2 RCW 84.36.383(5) and in this way destroy each categories unique "territory" and the
3 legislatures intended purpose in using categories to explain a hard-to-grasp topic.

4 **EXHIBIT A27**, A letter from Kitsap's counsel that speaks for itself and shows how the
5 Assessor and his counsel utilize any means in trying to prevent appellant's rightful appeal.
6 This letter demands appellant dismisses his rightful appeal under unjustified threats.

7 **IV POINTS OF LAW.**

8 **The following points of law represent well-established legal precedent at the time of the events
9 subject to these appeals and resulting in the allegations of this complaint.⁴**

10 RCW 84.36.379-389, is the legislature's enactment of the Article 7, Section 10 RETIRED
11 PERSONS PROPERTY TAX EXEMPTION. Notwithstanding the provisions of Article 7,
12 section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax
13 exemption **shall be allowed** as to real property:

14 The legislature shall have the power, by appropriate legislation, to grant to retired property
15 owners relief from the property tax on the real property occupied as a residence by those
16 owners. The legislature may place such restrictions and conditions upon the granting of
17 such relief as it shall deem proper. Such restrictions and conditions may include, but are not
18 limited to, the limiting of the relief to those property owners below a specific level of income
19 and those fulfilling certain minimum residential requirements.

20 The WA State Supreme Court has held when construing a statute that...

- 21 1. Statutes - Construction - Purpose - In General. A statute should be interpreted to further,
22 not frustrate, its intended purpose. **Bostain v. Food Express, Inc. 159 Wn. 2d. 700 701
23 (2007).**
- 24 2. Statutes - Construction - Administrative Construction - Deference to Agency - Conflict
25 With Statutory Mandate. Deference to an agency's interpretation of a statute is
26 inappropriate if the interpretation conflicts with a statutory mandate. Id., **Bostain v. Food
27 Express, Inc. 159 Wn. 2d. 700 701 (2007)**
- 28 3. [Legislative Intent - In General. The primary goal of statutory construction is to carry out
legislative intent.
4. Unambiguous Language - In General. If a statute is plain and unambiguous, its meaning
must be derived primarily from the language itself.

4 Harlow itself said as much: "If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." Id., at 818-819, 102 S.Ct., at 2738; see also Butz, 438 U.S., at 506, 98 S.Ct., at 2911 (" [I]t is not unfair to hold liable the official who knows or should know he is acting outside the law . . . "). 523 U.S. 574 - Crawford-El v. Britton

- 1 5. Meaning of Words - Ordinary Meaning - Manifest Contrary Intent. Statutory words are
- 2 not given their ordinary meaning when a contrary intent is manifest.
- 3 6. Ambiguity - What Constitutes - In General. When statutory language is susceptible to
- 4 more than one reasonable interpretation, it is ambiguous.
- 5 7. Superfluous Provisions. Statutes must not be construed in a manner that renders any
- 6 portion thereof meaningless or superfluous.]⁵
- 7 8. Unambiguous Language - In General. An unambiguous statute is applied as written; it is
- 8 presumed that the Legislature means exactly what it says. ⁶
- 9 9. Purpose - Considered as a Whole. A statute is construed to carry out its manifest
- 10 objective. In achieving that objective, the statute is construed as a whole, with effect
- 11 given to all the language used; all the provisions of the statute must be considered in
- 12 relation to each other and harmonized, if possible, to ensure the proper construction of
- 13 each provision.⁷
- 14 10. Rational Interpretation – Avoiding Absurdity. A statute should be given a reasonable
- 15 construction that avoids absurd or strained consequences. ⁸
- 16 **11. Construction - Unambiguous Statute - In General. An unambiguous statute is not subject**
- 17 **to construction, and the courts may not add language to a clear statute even if it**
- 18 **believes that the legislature intended some additional provisions.**
- 19 12. Taxation - Statutory Provisions - Construction. Ambiguous taxing statutes should be
- 20 construed in favor of the taxpayer. ⁹
- 21 13. [3] Taxation - Statutes - Construction - Tax Enactments - Ambiguities - Resolution in
- 22 Favor of Taxpayer. An ambiguity in a tax statute is construed most strongly against the
- 23 government and in favor of the taxpayer.¹⁰
- 24 14. Kelly v. Wyman, 294 F.Supp. 893, 899, 900 (1968). The court rejected the argument that
- 25 the need to protect the public's tax revenues supplied the requisite "overwhelming
- 26 consideration." **Goldberg v. Kelly 397 U.S. 254** ¹¹

17 ⁵ [Footnotes 1-5] STATE v. CARSON 128 Wn.2d 805 (1996)

18 ⁶ [6] KENT v. BEIGH 145 Wn.2d 33 (Oct. 2001)

19 ⁷ [7] SEATTLE v. FONTANILLA 128 Wn.2d 492, (1996)

20 ⁸ [8] JONES v. STEBBINS 122 Wn.2d 471, P.2d 1009, (1993)

21 ⁹ [9-10] VITA FOOD PRODUCTS v. STATE 91 Wn.2d 132, 587 P.2d 535 (1978)

22 ¹⁰ Estate of Hemphill v. Dep't of Revenue. 153 Wn.2d 544 (2007)

23 ¹¹ **Goldberg at 262** Such benefits are a matter of statutory entitlement for persons qualified to receive them.[8] Their

24 termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an

25 argument that public assistance benefits are "a `privilege' and not a `right.'" Shapiro v. Thompson, 394 U. S. 618, 627 n.

26 6 (1969). Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to

27 disqualification for unemployment compensation, Sherbert v. Verner, 374 U. S. 398 (1963); or to denial of a tax

28 exemption, Speiser v. Randall, 357 U. S. 513 (1958); or to discharge from public employment, Slochower v. Board of

Higher Education, 350 U. S. 551 (1956).[9] The extent to which procedural due process 263*263 must be afforded the

recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," Joint Anti-Fascist Refugee

Committee v. McGrath, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's

interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in

Cafeteria & Restaurant Workers Union v. McElroy, 367 U. S. 886, 895 (1961), "consideration of what procedures due

process may require under any given set of circumstances must begin with a determination of the precise nature of the

government function involved as well as of the private interest that has been affected by governmental action." See also

Hannah v. Larche, 363 U. S. 420, 440, 442 (1960). **Goldberg v. Kelly 397 U.S. 254**

- 1 15. Because RCW 84.36.379-389 is a contract between Senior/Disable citizens and the
2 state, the Supreme Court has held in **7 Wn.2d 20, HARRY BYRNE, v. BELLINGHAM**
3 **CONSOLIDATED SCHOOL DISTRICT** [4] SAME - CONSTRUCTION - LANGUAGE OF
4 INSTRUMENT - AMBIGUITY - CONSTRUCTION AGAINST PARTY PREPARING
5 CONTRACT. Ambiguities in a written instrument are to be resolved against the party
6 who prepared it.
7 16. **Article 1, Section 1**, states that, "All political power is inherent in the people, and
8 governments derive their just powers from the consent of the governed, and are
9 established to protect and maintain individual rights." That being the case, statutory
10 ambiguities must be resolved in favor of the people and against governments. The
11 government must not govern from the shadows.
12 17. To determine if a regulation results in a denial of due process, the court engages in a
13 balancing test. We ask: "(1) whether the regulation is aimed at achieving a legitimate
14 public purpose; (2) whether it uses means that are reasonably necessary to achieve that
15 purpose; and (3) whether it is unduly oppressive on the landowner."¹²
16 18. [6] STATUTES - VALIDITY - CHALLENGE - FACIAL CHALLENGE - SINGLE VALID APPLICATION -
17 EFFECT. A STATUTE IS NOT FACIALLY UNCONSTITUTIONAL IF THERE IS AT LEAST ONE WAY THE
18 STATUTE CAN BE APPLIED WITHOUT VIOLATING A CONSTITUTIONAL GUARANTY OR PRINCIPLE.
19 STATE V. HUGHES 154 WN.2D 118, 119 APR. 2005

20 State law also requires all attorneys take a statutory oath, which states explicitly...

21 **RCW 2.48.210 OATH ON ADMISSION.**

22 Every person before being admitted to practice law in this state shall take and subscribe the
23 following oath:

24 I do solemnly swear:

25 I am a citizen of the United States and owe my allegiance thereto;

26 ***I will support the Constitution of the United States and the Constitution of the***
27 ***state of Washington;***

28 I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to
be unjust, nor any defense except such as I believe to be honestly debatable
under the law of the land, unless it be in defense of a person charged with a public
offense; I will employ for the purpose of maintaining the causes confided to me
such means only as are consistent with truth and honor, and will never seek to
mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will

12 MISSION SPRINGS v. CITY OF SPOKANE Apr. 1998 134 Wn.2d 947, 954, 988 P.2d 250

1 accept no compensation in connection with his business except from him or with his
2 knowledge and approval;
3 I will abstain from all offensive personality, and advance no fact prejudicial to the honor
4 or reputation of a party or witness, unless required by the justice of the cause with which
5 I am charged;
6 I will never reject, from any consideration personal to myself, the cause of the
7 defenseless or oppressed, or delay any man's cause for lucre or malice. So help me
8 God.

9 V ARGUMENT

10 **A) RCW 84.36.383(5), the statutory scheme for determining 'disposable income', is 11 clear on its face and therefore is not ambiguous.**

12 A person should do exactly what the plain reading of this statute says to do. The
13 statute as written presents no constitutional issues and treats all applicants fairly without
14 discriminating against anyone, nor penalizes anyone for how they handle their savings.

15 All the language of RCW 84.36.379-389 is wonderfully harmonious – none of the
16 words used are ambiguous when taken as a whole. There are NO other interpretations that
17 preserves all the intended use of the words of RCW 84.36.379-389 and preserves all the
18 points of law that apply to statutory construction.

19 Therefore the 'home-grown' renditions of RCW 84.36.383(5) that the Assessor forces
20 upon applicants is unlawful as it violates the WA State Constitution Article 7 Section 10,
21 violates the legislative intent, violates the rules of construction and violates common writing
22 conventions!

23 **B) In keeping with the principle that no words of a statute are to be rendered 24 irrelevant or superfluous...**

25 **These words of RCW 84.36.379-389 must be given sensible meaning or the meaning prescribed
26 by the legislature.**

27 ***"not included"***

28 as opposed to 'included.' The language used by the assessor, in judging items (a-
i) of .383(5) says 'plus the following to the extent that they were **included**. The

1 calculation the Assessor employs in determining disposable income relies upon
2 his rewriting the statute in which he substitutes the terms "not included" with
"included".

3 ***"deducted from adjusted gross income"***

4 as opposed to the phrase used by the Assessor, 'used to reduce adjusted
5 gross income,' or 'deducted from gross income.' Even if the denoted phrase is
6 ambiguous and can mean, "used to reduce adjusted gross income" rather than
7 the precise and explicit statutory language "deducted from adjusted gross
8 income" it is the latter meaning that must be used. Ambiguities in Laws as well
as contracts must be resolved against the drafter and in favor of the
citizen/enactment. *Id.*, **7 Wn.2d 20, HARRY BYRNE, v. BELLINGHAM**
CONSOLIDATED SCHOOL DISTRICT; Art 1 § Sec 1. ; Id., Bostain

9 ***"income"***

10 as opposed to savings, borrowings, inheritance... In other words, why did the
11 legislature state the best measure of a person's ability to pay as IRS adjusted
12 gross income? The assessor's scheme is based upon his 'version" of an ability to
13 pay as some perversion of IRS AGI so as to capture a combination of savings, net
14 worth, gross income, **losses**... A persons 'savings' have already been addressed
15 in prior years. Furthermore, 'savings' of the retired or retired due to disability may
16 be all the funds a person has to sustain their future life! **[EMPHASIS]** The
Assessor's scheme 'digs' into savings again-and-again to increase 'present year'
income. Furthermore, the Assessor's home-grown scheme relies upon the absurd
notion that "financial losses" are income and count towards a persons ability to
pay.

17 ***"Adjusted Gross Income [AGI]"***

18 as opposed to Gross Income. In other words, why did the legislature pick AGI
19 (i.e.. line 37 of IRS Form 1040) if they intend that the Assessor deconstructs
20 AGI by backing out the very line items that went into calculating line 37? Why
21 didn't the legislature, as a matter of common sense, begin at IRS line 6 and
then add items a-i as the assessor believes? The Assessors home-grown
scheme relies upon these words that replace the true language of RCW
22 84.36.383(5).... The assessor says that the categories a-i must be included if
23 "they are included in or excluded from adjusted gross income". This
instruction simple means "plus the following" and, on its face, is a false
24 statement of the law in both language and meaning.

25 ***"per IRS coded"***

1 as opposed to the Assessor's scheme, as opposed to the WACs, which are the
2 Assessor and DOR's attempt to redefine what IRS Code means. Said another
3 way, the categories a-i of RCW 84.36.383(5) must be treated in the same way as
4 IRS code.

4 ***"unless the context clearly indicates a different meaning"***

5 Clearly the legislature states in RCW 84.36.383(5) that it is IRS code which
6 governs the meaning of the terms used in the statutory language. There is NO
7 language to suggest the Assessor has any authority to 'redefine' any provision
8 of RCW 84.36.381, which is the statute he is to administer. It is a strained
9 concept to accept the argument that the legislature would give all 39 county
10 assessors authority to "interpret" the law.

9 ***"disposable income"***

10 as opposed to fictional income such as when you call "losses" income and add
11 'losses' as a positive amounts to increase income as the Assessor does.

11 ***"capital gains"***

12 per IRS Code AS OF 1989 or later ... as opposed to "capital gains" per the WAC,
13 or per some version of what constitutes "capitals gains" as the Assessor
14 demands.

15 ***"losses"***

16 per IRS Code AS OF 1989 or later... In other words, 'losses' are 'added' as a
17 'loss' – ie., a negative amount. This is documented by the instructions for IRS
18 form 1040. The Assessor's scheme doesn't treat 'losses' as the IRS treats losses.
19 Rather the Assessor adds 'losses' as a "positive" amount to increase "income" by
20 the amount of the loss. This is absurd to think a person's ability to pay is
21 enhanced by suffering a 'loss!'

20 ***"line 22 of Form 1040 per IRS Code"***

21 states, ADD AMOUNTS IN THE FAR RIGHT COLUMN. Clearly losses ***are***
22 ***included*** in the calculation of line 22, and not deducted from line 37. This is to
23 be emphasized. Amounts in the far right column are "included" in the
24 calculation of line 37. None of these line-items have been deducted from line
25 37. There is NO ambiguity in this fact as the FORM 1040 is its proof!

24 ***"Categories [a-i] of RCW 84.36.383(5) "***

25 "Categories" are used to differentiate unique characteristics. Categories
26 should NOT overlap. See Exhibit A26. The Assessor's home-grown scheme
27 mixes and matches these categories to arrive at his intended outcome.

1 " **best measure** of a retired person's ability to pay taxes is that person's disposable
2 income as defined in RCW [84.36.383](#). " The best measure implies it may not be the
3 only measure that a person can utilize to determine their "disposable income". A
4 person does not have to provide their IRS TAX return under ANY statutory authority...
5 ONLY that a person must submit evidence to support their income calculation.
6 Whatever documentation is supplied it must be treated IAW items a-i of RCW
7 84.36.383(5). Said another way.... RCW 84.36.383(5) is intended to duplicate and
8 equivalate the income calculation regardless of what documentation is provided to
9 support the applicant's disposable income calculation.

10 It is clear from the words used that the Legislature intends that "yearly income" must
11 'capture' all of the elements of subsection (5)(a-i) so that NO "yearly" amounts are carried
12 forward to, or offset by, another year's amount. Said another way, a "capital loss' carry
13 forward will cause a portion of a 'capital gain' in the present year to be "NOT INCLUDED".
14 Therefore "carry forwards" are NOT allowed. Any portion of a 'Capital Gain that is offset by a
15 "carry forward" amount must be deemed "not included" in the 'current year'. Regarding
16 'amounts deducted for loss – those amounts "not included" would be the amounts that must
17 be "carry forward" to future years that are realized in the 'present year'. That is not allowed.
18 "Losses" must be included in the present year. AND these "losses" must be "included" as
19 the IRS treats losses. Appellant complies with these statutory requirements in calculating his
20 disposable income as presented in **APPENDIX A** .

21 All the language of RCW 84.36.383(5) is wonderfully harmonious. There is NO other
22 interpretation that preserves all the words used in RCW 84.36.379-389 and conforms to all
23 rules of statutory construction. The Assessor's scheme is absurd, relies upon strained logic
24 and, on its face, misstates the law.

25 **C) The best measure of a person's ability to pay is 'Disposable Income.'**¹³

26 Scheidler endeavors to use the 'best measure' to calculate his income. Scheidler
27 provided his IRS Tax Return for each of the years under appeal. Scheidler's IRS Adjusted
28 Gross income included items a-i of RCW 84.36.383(5). Those a-i statutory items are
included on lines 7-37 of Scheidler's IRS Form 1040. None of those statutory items, a-i,
were deducted from Scheidler's IRS Adjusted Gross income. A line-by-line calculation of
Scheidler's disposable income, for each year under appeal, is included in **Appendix A**

1 **D) Board of Tax Appeals previous rulings.**

2 The WA State Board of Tax Appeals has in numerous opinions ‘declared’ losses
3 cannot be used to offset income. This ‘declaration’ is ambiguous, it all depends upon ‘what
4 “losses” are considered and what income’ is being ‘offset.’ The Board has never addressed
5 the “conditional test” required by RCW 84.36.383(5) in making its bare declaration about
6 ‘losses’. The Board has never shown a statutory connection to support the notion that
7 “losses” already included in the IRS computation of AGI must be added back – as a
8 ‘positive’ number -- wherever “losses” can be found within IRS forms and schedules, so as
9 to increase income. The Board provides no reasoning with respect to ‘losses’ that are noted
10 on one or more of the lines 6-36 of IRS form 1040, versus losses noted after line 37 – e.g.,
11 losses noted in Schedule A, which are ‘deducted from line 37. The BoTA explains none of
12 its ‘declarations’ about the law in relation to the words that make up the law or how the law
13 describes amounts included in IRS line 37, or those amounts deducted from line 37. The
14 Board has never addressed the ‘constitutional issues’ raised when the Board’s self-created
15 ambiguity is resolved by third parties in a manner that discriminate against how a retired
16 individual utilizes his “savings”.

17 The WA State Board of Tax Appeals has in numerous opinions declared “capital
18 gains cannot be offset by capital losses”. This ‘declaration’ is ambiguous, it all depends in
19 which year the “Capital loss” is realized. “Capital Losses” carried forward from prior years
20 are clearly losses that have been accounted for previously **“IF”** RCW 84.36.383(5) is being
21 properly administered. Nevertheless, there is NO reasoning the Board provides with
22 respect to ‘capital losses’ or its ‘declarations’ about the law in relations to the words that
23 make up the law or the constitutional implications raised when the Board’s self-created
24 ambiguity is resolved by third parties in a manner that discriminates against how a retired
25 individual utilizes his “savings”.

26 The WA Supreme Court has held in **WILSON v. HORSLEY 137 Wn.2d 500,**

27 ¹³ RCW 84.36.379

1 “To constitute **a clear abuse of discretion**, the court's decision must be manifestly
2 unreasonable, based on untenable grounds, or made for untenable reasons” [the
3 BoTA in this case]

4 In **RIVERS v. CONF. OF MASON CONTRACTORS 145 Wn.2d 674, (2002)** Justice
5 Chambers writes that [an abuse of discretion occurs]

6 “if the “record is bare of reasoning that would allow us to review the trial court's
7 reasoning.” [the BoTA's reasoning in this instance]

8 The Board has in numerous rulings stated ‘ambiguities in the statutory language are
9 resolved against the claim of exemption’. There are no statutory ambiguities as the law is
10 written. The only ambiguities are those introduced by the BoTA. Therefore this BoTA
11 precedent “holding” is irrelevant. Notwithstanding the irrelevance, it is nonetheless
12 **unconstitutional**. Equal protections are implicated because the Senior/disabled citizen
13 program is a **right** rather than a **privilege**. The program is the legislature's way of meeting
14 Article 7, Section 10 Retired Persons Property Tax Exemption. The same standard of law
15 must apply as that adopted by the WA Supreme Court in **153 Wn.2d 544, Estate of
16 Hemphill v. Dep't of Revenue**.

17 [3] Taxation - Statutes - Construction - Tax Enactments - Ambiguities - Resolution in
18 Favor of Taxpayer. An ambiguity in a tax statute is construed most strongly against the
19 government and in favor of the taxpayer. See also, **Goldberg v. Kelly 397 U.S. 254**
20 **supra**.

21 **Furthermore:** Article 7, Section 10, and its statutory enactment's, impose no tax! Said
22 another way, RCW 84.36.379-389 is not a “taxing” statute. The amount of the TAX levied is
23 not in dispute. What is in dispute is the administration of the “exemption program”. The
24 “exemption program” in no way changes the “amount of the property tax levied”. The WA
25 State Board of Tax appeals in making its rulings, confounds a ‘taxing’ statute” and a
26 “exemption statute.” Property taxes have been determined independently of any
27 “exemption.” Said another way, the amount of the property tax does not change... the
28 amount of the property tax that must be paid is what is to be determined.

1 The WA State Board of Tax appeals violates the Court's conditions stated in
2 **WILSON, RIVERS** and **HEMPHILL**, and its decisions are a nullity.¹⁴ For these reasons, the
3 Board's prior rulings have no precedent value whatsoever.

4
5 **E) The Assessor misstates to the public RCW 84.36.383(5). This fraud upon**
6 **citizens leads to absurd results.**

7 **FACTS: The Statutory language central to this appeal, RCW 84.36.383(5), contains**
8 **qualifying phrases --- "Disposable income" means adjusted gross income [AGI] as**
9 **defined in the federal internal revenue code, as amended prior to January 1, 1989, or**
10 **such subsequent date as the director may provide by rule consistent with the purpose of this**
11 **section, plus all of the following items to the extent they are not included in or have**
12 **been deducted from adjusted gross income: [EMPHISIS]**

- 13
14
15
16
17
18
19
20
21
22
23
24
25
- ◆ The statutory phrase "**not** included in ...adjusted gross income¹⁵" is not the same as the phrase used in the Assessor's instructions, forms or in the income calculation scheme that states "if any of the following are included in... adjusted gross income" -- or some variant to that extent. See **Exhibits A3, A6 and A7** referenced above.

16 **FRAUD, ABUSE OF OFFICE**

17 The Assessor has created a home-grown program for Senior/disabled/low
18 income/widows(ers) that bares no relationship to the statutory programs. First point: The
19 Assessor's calculated income for applicants includes again select items from the categories
20 'a-i' of RCW 84.36.383(5). Particularly item 'b' – deductions for loss and item 'c' – amounts
21 deducted for depreciation. Second point: It is unclear if, or why not, items 'a, d-i' are not
22 double counted. Third point: The Assessor's Scheme 'deconstructs' the very components,
23 i.e., Schedule D; Schedule C, etc., that when into calculating IRS Adjusted Gross Income.
24 The Legislature stated in RCW 84.36.383, the best measure of a person's ability to pay is
25 IRS Adjusted Gross Income. Why would the Assessor deconstruct AGI?

26 ¹⁴ An invalidly enacted statute is a nullity. Once a statute is invalidated, the law remains as it existed prior to the
27 enactment. STATE v. SPEED 96 Wn.2d 838, 640 P.2d 13 (1982)

1 The Legislature’s expressed intent is that ‘disposable income is AGI as defined in the
2 Internal Revenue Code.’ The Assessor, by ‘deconstructing’ the components needed for the
3 Calculation of AGI, is an absurd interpretation of RCW 84.36.383(5). Said another way, the
4 legislature choose ***IRS AGI***, line 37 of IRS Form 1040. Why line 37 when the legislature
5 could have chosen line 6? It is absurd to begin at IRS line 37 and then work backwards to
6 deconstruct all that went into calculating line 37 as the assessor chooses to do.

7 For EXAMPLE. Had the legislature chosen line 6, IRS ***Gross Income***, only then
8 does the Assessor’s scheme begin to make sense. In this case losses are in fact “deducted
9 ***from line 6***”, “losses have in fact not been included in *line 6*” --- **HAD** the Legislature
10 chosen “***line 6***” rather than “***line 37***” the Assessor’s interpretation would not be challenged.

11 The Assessor’s calculation, for each of the years under appeal, for a second time
12 ‘included losses’ but not as losses to offset Gross income, instead the assessor changed
13 the loss into a gain and added that amount to AGI so as to increase ‘disposable’ income by
14 the amount of a loss. This is simply counter to common sense, counter to any definition of
15 “income”, counter to any definition of ability to pay. The manner in which the Assessor
16 “double counts” losses and depreciation by “adding” these amounts as a “positive” values to
17 IRS Adjusted Gross cannot be supported by the plain reading of RCW 84.36.383(5); cannot
18 be supported by the common understanding of phrases “not included in” and “deducted
19 from”. [Reference: See again Exhibits A-I in which the Assessor/DOR has replaced the
20 statutory language of RCW 84.36.383(5) -- “to the extent they have not been included in” –
21 with the phrase “and ***your return included any deductions*** for the following items”]; and
22 cannot be supported by the common understanding of adding losses. For the Assessor to
23 employ this untenable calculation scheme serves to artificially increase income. That then
24 has an adverse affect on an applicant’s program qualifications.

25
26 ¹⁵ RCW 84.36.383(5)

1 **F) The manner in which the Assessor applies RCW 84.36.379-389 is**
2 **unconstitutional. Whereas the plain reading of RCW 84.36.379-389 presents no**
3 **constitutional issues.**

4 RCW 84.36.383, as applied by the Assessor results in unequal treatment based upon
5 type of investments. The Assessor's scheme punishes one type of "investment(or)" over
6 another.

7 The Assessor's treatment of losses by adding Schedule D losses as gains
8 discriminates between individuals who invest their own funds versus individuals who choose
9 to let a mutual fund manage their funds.

10 In truth, mutual funds, trust funds, annuities and the like, [i.e., funds] engage in the
11 same "buying and selling" as individuals who buy and sell for themselves. The assessor
12 penalizes the individual investor but not the fund investor. The buying and selling that funds
13 do on behalf of the individual escapes the assessor's tactic of "adding back losses to
14 increase income". Individuals who utilize funds only register the income/loss that results in
15 the funds "buying and selling" or in the selling of the 'fund' itself. **NOT** every transaction the
16 fund makes whether a loss or gain is noted on any individual tax return. Neither the
17 individual nor the Assessor has any way of knowing how many transactions a 'fund' makes.
18 Therefore the losses realized by these funds are not added back as positive amounts to
19 increase income for these individuals. See **Appendix A** for proof of this fact.

20 The Assessor's calculation, for each of the years under appeal, for the second time
21 included amounts for depreciation but not as an offset to income. Rather the assessor
22 treated amounts for depreciation as amounts to be added as a positive number to increase
23 AGI. Amounts for depreciation were already included in Schedule C.

24 Furthermore, by the scheme of the assessor, when the "asset", which as been
25 depreciated, is sold the 'gain' is the result of the selling price less its 'depreciated basis'. The
26 Assessor's scheme, by adding back all the depreciated amounts, confounds the
27 "depreciated basis" and unjustly adds "gains" reported upon the sale of those assets. This
28 is "triple" manipulation of 'depreciation' so as to increase AGI in both the present years and

1 to insure future years income will be higher from any sale of those assets when a gain is
2 realized.

3 The Assessor's calculation, for each of the years under appeal, for a second time
4 included business losses, not as a loss but as a gain. Business losses were already
5 included on IRS Form 1040, line 12 as an offset to Income. Business losses are not
6 deducted from Adjusted Gross Income, which is line 37. Furthermore the Assessor's unique
7 treatment of Business Losses fails to differentiate between "businesses that are established
8 with a persons "savings, borrowings or through income". The Legislature explicitly omits
9 "savings and borrowings" as "disposable income". However when the Assessor adds back
10 business losses, that tactic is treating savings as part of the equation in determining income.
11 These amounts (savings, borrowings...) should not be commingled and treated as "income."

12 The Assessor uses this language "Capital gains (cannot offset with losses)" as stated
13 in the application. The parenthetical phrase "(cannot offset with losses)" inappropriately
14 combines RCW 84.34.383(5)(a) with RCW 84.34.383(5)(b). Further, RCW 84.34.383(5)(b)
15 is set forth later in the list on the application. The Assessor's home-grown scheme in
16 "overlapping categories" runs against the writing convention for using categories. See **EX A**

17 **26**

18 **G) With the aid of Alan Miles, the Assessor's administration of RCW 84.36.381 is**
19 **arbitrary; it is unlawful – it constitutes official misconduct, fraud, and violations**
20 **of law, due process, court rules, and Rules of Professional Conduct.**

21 Assessor's is misrepresenting the qualifications and manner (RCW 84.36.385(6))
22 required to participate in the program. The assessor is hiding a statutory program available
23 to Appellant and others similarly situated through this misrepresentation.

24 The Assessor's misrepresentation begins with the application form required by RCW
25 84.36.385(1). The application form itself misstates RCW 84.36.383(5). Furthermore, The
26 document has not been through proper administrative procedure to merit deference nor is it
27 binding upon the Assessor or the public. **ASS'N OF WASH. BUS. V. DEP'T OF REVENUE**
28 **431 155 Wn.2d 430.**

1 **VII DAMAGES:**

- 2 1) Compensatory Damages
- 3 2) Nominal Damages
- 4 3) Pain and Suffering
- 5 4) Costs and expenses
- 6 5) Any other award justice demands

7 **VIII CONCLUSION**

8 The Assessor has changed the wording and the meaning of RCW 84.36.383(5) and in doing
 9 so has created a "false program" that artificially disqualifies by double counting certain
 10 quantities twice or in discriminating against individuals in the manner they hold their
 11 retirement savings. The assessor's long term practice of "defrauding" county residents has
 12 been a collaboration with the county prosecutor as shown by the "legal tactics" the county
 13 prosecutor has used to "prevent" a court from reaching the merits of the assessors scheme.
 14 Public officials have a 'duty to citizens' to be honest and to obey the law, the conduct of
 15 these individuals is proven to be well below the standard of truth and honor that is required
 16 by public official and they must be held accountable.

17 DATED: July 13, 2012

18 I attest to the foregoing to be my true and accurate belief.

19
20 

21 WILLIAM SCHEIDLER
 22 In Pro Per
 23 1515 Lidstrom Place E.
 24 Port Orchard, WA 98366
 25 360-769-8531