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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 FOR KING COUNTY

7 AUTOMOTIVE UNITED TRADES
8 ORGANIZATION, a Washington nonprofit
9 corporation, TOWER ENERGY GROUP, a
10 California corporation,

11 Plaintiffs,

12 v.

13 STATE OF WASHINGTON; and JIM MCINTYRE,
14 WASHINGTON STATE TREASURER,

15 Defendants.

NO.

COMPLAINT FOR
DECLARATORY
RELIEF

16 COME NOW the plaintiffs Tower Energy Group ("Tower") and Automotive United Trades
17 Organization ("AUTO") and state as follows:

18 I. IDENTITY OF PARTIES

19 1. AUTO is a nonprofit corporation duly licensed to do business in the State of Washington
20 that has members in South King County and across the state. AUTO is a trade association protecting the
21 interests of automotive-related businesses and trades. Many of those trades and businesses that are
22 members of AUTO possess, sell, distribute, and/or use motor vehicle fuel as part of their business.

23 2. Tower Energy Group ("Tower"), is a for-profit California corporation doing business in
24 the State of Washington. Tower is a leading independent petroleum wholesaler, distributing unbranded
25 gasoline and diesel to the Western, Mid-Atlantic, and East Coast states of the U.S. Tower is a
26 wholesaler member of AUTO that directly pays the Hazardous Substance Tax ("HST").

1 3. The State of Washington, through the Department of Licensing, collects the HST. It is
2 responsible under the Constitution and laws of the State of Washington to ensure that HST tax revenue
3 is raised and dispersed in accordance therewith.

4 4. The Office of the Washington State Treasurer is an agency of the State of Washington
5 which has as its responsibility the safety, security, and proper management of the funds of Washington
6 State.

7 II. CLAIM: ARTICLE 1 § 40
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9 5. The Eighteenth Amendment to the Washington Constitution, article 1 § 40, (“18th
10 Amendment”) provides for a “special fund,” the Motor Vehicle Fund (“MVF”), as enacted in RCW
11 46.68.070. The purpose of the MVF is to receive all revenues for license fees for motor vehicles and
12 excise taxes on the sale, distribution or use of motor vehicle fuel. The 18th Amendment mandates that
13 excise taxes on motor vehicle fuel be deposited in the MVF and used only for highway purposes as
14 defined therein.

15 6. RCW 82.21.030 codifies Washington State’s HST. The HST is an excise tax on
16 hazardous substances, including petroleum products such as motor vehicle fuel. The HST imposes a tax
17 on motor vehicle fuel in Washington State. The tax is calculated based on the wholesale value of the
18 fuel.

19 7. Proceeds from the HST are deposited into Washington’s toxics control account. RCW
20 70.105D.070. That account is not used for highway purposes as that phrase has been defined by article
21 II, § 40 of the Washington Constitution and interpreted by the Washington Supreme Court.
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23 8. The HST is an excise tax on motor vehicle fuels. The failure to deposit the revenues
24 derived from the HST into the MVF violates the 18th Amendment. Plaintiffs Tower and AUTO are
25 aggrieved by the State’s action to collect the HST on motor vehicle fuel from AUTO’s members and to
26

1 divert those revenues to non-highway purposes. The State's actions interfere with, impair, or
2 immediately threaten the plaintiffs' constitutional rights.

3 III. STANDING

4 9. AUTO's members, including Tower, are Washington taxpayers who pay the HST that is
5 the subject of this complaint, either directly or indirectly. AUTO's members, including Tower also rely
6 directly on the Washington State highway system for their business. They sell fuel to persons and
7 businesses using the highway system. They daily rely on the highways to send and receive business-
8 related shipments, for commuting, and other transportation. As participants in the automotive industry,
9 AUTO's members are uniquely reliant upon a strong highway system for use by their customers: the
10 owners of motor vehicles. Without a safe, efficient, and extensive highway structure, not only could
11 their customers not reach AUTO members' retail locations that generate revenue, those customers would
12 have no need of their products whatsoever. Without good roads, AUTO's members would not be in
13 business. One of AUTO's goals is to make it easier for every Washington business and consumer to
14 have inexpensive and efficient use of roads and highways, where its members' products are used.

15 10. The plaintiffs are adversely affected by the diversion of motor vehicle fuel excise taxes
16 from the MVF to non-highway purposes. Highway projects are already underfunded, including a \$2
17 billion shortfall in the critical replacement needed for the State Highway 520 bridge. Other
18 contemplated revenue sources for that project include tolls on drivers using the I-90 bridge. As
19 highways degrade and become obsolete, congestion, taxes and fees grow. AUTO's members are
20 directly harmed by the diversion of motor vehicle taxes from the MVF. AUTO's members are also
21 harmed in their business by the harm to their customers, who need safe, efficient highways.

22 11. AUTO's members are also aggrieved in that they pay the HST and do not want to see
23 their tax dollars, or the tax dollars of any Washington taxpayer, diverted to an unconstitutional use.

