

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

AUTOMOTIVE UNITED TRADES
ORGANIZATION, a Washington nonprofit
corporation, TOWER ENERGY GROUP, a
California corporation,

Plaintiffs,

v.

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

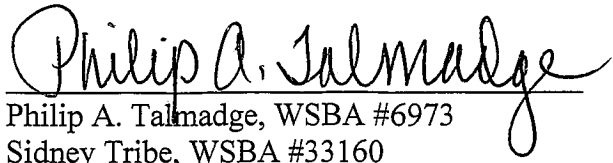
Defendants.

NO. 10-2-43108-0KNT

NOTICE OF APPEAL
TO THE WASHINGTON
SUPREME COURT

Plaintiffs Automotive United Trades Organization and Tower Energy Group seek review by the Washington Supreme Court of the Order Granting State's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment entered by the Honorable Cheryl Carey on April 8, 2011. A copy of the pleading for which review is sought is attached hereto.

DATED this 5th day of May, 2011.



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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

AUTOMOTIVE UNITED TRADES ORGANIZATION, a Washington nonprofit corporation; TOWER ENERGY GROUP, a California corporation,

Plaintiffs,

v.

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

Defendants.

NO. 10-2-43108-0 KNT

[PROPOSED] ORDER GRANTING STATE'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come on regularly before the above entitled Court, Plaintiffs Automotive United Trades Organization and Tower Energy Group (collectively "AUTO"), being represented by Phil Talmadge and Sydney Tribe of Talmadge/Fitzpatrick, and State of Washington and State Treasurer Jim McIntyre (collectively "State") being represented by Laura J. Watson and Kelly T. Wood, Assistant Attorneys General and David M. Hankins, Senior Counsel, and the Court having reviewed the files, considered the pleadings of and in opposition to the State's Motion for Summary Judgment and of and in opposition to AUTO's Motion for Summary Judgment, and having heard the arguments of counsel, and having

1 reviewed the parties' proposed orders in the alternative, and being fully advised in premise,
2 the Court enters the following Findings of Fact, Conclusions of Law, and Order.

3 **I. FINDINGS OF FACT**

4 1.1 In 1988, voters approved Initiative 97. Initiative 97 created the Model Toxics
5 Control Act (MTCA) which governs the investigation and cleanup of contaminated properties
6 within the State. Initiative 97 also created the Hazardous Substance Tax to fund the
7 implementation of MTCA. The Tax is codified at RCW 82.21.

8 1.2 The Hazardous Substance Tax is imposed on the first in-state possession of a
9 hazardous substance within the state (including gasoline and other motor vehicle fuels) at a rate
10 of 0.7 percent multiplied by the wholesale value of the substance.

11 1.3 In 1944, voters approved Amendment 18 to the Washington Constitution (const.
12 art. 11, § 40). Amendment 18 requires that certain revenues be deposited into the Motor
13 Vehicle Fund and used for highway purposes.

14 **II. CONCLUSIONS OF LAW**

15 2.1 There are no disputed issues of material fact.

16 2.2 AUTO has the burden of establishing that the deposit of Hazardous Substance
17 Tax revenues applicable to motor vehicle fuel into the State Toxics Control Account and the
18 Local Toxics Control Account and use of such revenues to prevent and remediate hazardous
19 substance pollution violates Amendment 18 beyond a reasonable doubt.

20 2.3 AUTO's claim was not filed within a reasonable time under the Uniform
21 Declaratory Judgments Act (Chapter 7.24 RCW) and/or is otherwise barred by the doctrine of
22 laches.

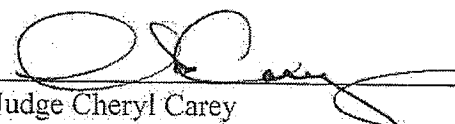
23 2.4 Amendment 18 to the Washington Constitution does not require that Hazardous
24 Substance Tax revenues applicable to motor vehicle fuel be deposited into the Motor Vehicle
25 Fund and used for highway purposes.

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III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court orders as follows: the State's Motion for Summary Judgment is hereby **GRANTED**; AUTO's Motion for Summary Judgment is hereby **DENIED**; this matter is **DISMISSED WITH PREJUDICE**.

DONE IN OPEN COURT THIS 8 day of April, 2011.


Judge Cheryl Carey

Presented by:

ROBERT M. MCKENNA
Attorney General

/s/ Kelly T. Wood

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Attorneys for Plaintiffs

DECLARATION OF SERVICE

On said day below I emailed and deposited in the U.S. Mail a true and accurate copy of the Notice of Appeal to the Washington Supreme Court in King County Cause No. 10-2-43108-0KNT to the following parties:

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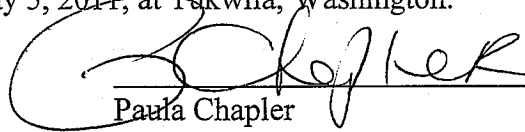
Rodney L. Brown, Jr.
Cascadia Law Group
1201 3rd Avenue, Suite 320
Seattle, WA 98101-3075

Original efiled with filing fee with:

King County Regional Justice Center
Clerk's Office
401 4th Avenue North
Kent, WA 98032

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 5, 2011, at Tukwila, Washington.



Paula Chapler
Talmadge/Fitzpatrick