

JUN 23 2015

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Ronald R. Carpenter
Clerk

No. 91489-3

**SUPREME COURT
OF THE STATE OF WASHINGTON**

JESSICA MAE MATHESON, d/b/a))	
JESS'S WHOLESALE))	
)	PETITIONER'S ANSWER
Petitioner,))	TO RESPONDENT STATE
)	OF WASHINGTON'S
v.))	OBJECTION TO
)	PETITIONER'S REPLY
STATE OF WASHINGTON,))	BRIEF
DEPARTMENT OF REVENUE,))	
)	
Respondent.))	

Pursuant to permission granted in the June 11, 2015 letter of Susan L. Carlson, Supreme Court Deputy Clerk, Jessica Mae Matheson, through her attorney, Robert E. Kovacevich, submits the following answer to the motion.

Matheson deemed a reply necessary for the reason that the following issues were not raised in Matheson's Petition, but were raised in the Respondent's answer.

At number SIX at page 6 of Matheson's Petition for Review, Matheson contended that she could transport cigarettes without giving notice to the state of Washington. The state of Washington's answer at footnote 1, page 2, concluded that "Matheson did not provide advance notice or pay cigarette taxes and her business did not qualify as an 'Indian tribal organization' as defined in RCW § 82.24.010(6)." This is one of the most material issues in the case. The statement concluding that Matheson was not a tribal wholesaler inserted a new issue not raised in the Petition. Matheson's reply (page 7) was that 82.24.010(6) *did* include Matheson. She was a tribal wholesaler. RCW § 82.24.010(6) states in part "Indian tribal organization'. . .includes an Indian wholesaler. . .that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian Country." Matheson also had a state wholesaler license at the time. This new issue required a reply.

The same footnote states: "Cigarette tax stamps must be affixed to all packages of cigarettes for sale in the state of Washington, citing

RCW § 82.24.030.” This statement inserts a new issue on the same number SIX at page 6 of Matheson’s Petition for the reason that the wholesaler definition, RCW § 82.24.030(5), excepts Indian Tribe/State compacts. RCW § 82.24.300 excepts deliveries to a compact reservation. RCW § 82.24.290 exempts military sales. RCW § 82.24.250(7)(b) allows deliveries of unstamped cigarettes to military commissaries, without notice. A reply was needed to point out the statutory exceptions to Respondent’s statement. The Puyallup Tribe, where Matheson delivered, had a compact with the state. Anyone can possess cigarettes in this state without tax stamps on them if bought legally somewhere else, or if bought from an Indian tribe or military bases.

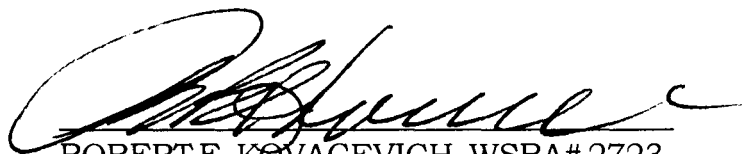
The third new issue raised in the state of Washington’s answer is at page 4 of its reply on burden of proof. Matheson’s reply is that a court or administrative tribunal must satisfy its own jurisdiction and jurisdiction to hear the case has no burden of proof (Matheson’s reply, pages 9 and 10).

The reply should have been filed in 15 days. Matheson misread RAP 13.4(d). There is no harm to the state. The issues presented are

emerging issues due to the newly added CR 82.5 and the impact of Indian law due to the emergence of increased Indian/state issues emanating from increased economic impact of Indians and Indian tribes due mainly to Indian casinos first allowed in 1989. Law school Indian law courses were rarely taught prior to this time and are now common place. Material constitutional issues are presented “an unjustifiably high risk that meritorious claims” will not be heard if the reply is not allowed. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982); *Nielsen v. Washington State Department of Licensing*, 177 Wash.App. 45, 55, 309 P.3d 1221 (2013) rev. den. 175 Wash.2d 1012 (2012).

Wherefore, since significant constitutional questions pervade the case, Petitioner requests that the reply be allowed.

RESPECTIVELY SUBMITTED this 22nd day of June, 2015.



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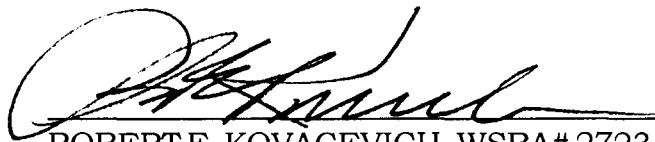
PROOF OF SERVICE

I certify that I served a copy of this document, via electronic and regular mail, to the following:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22nd day of June, 2015, at Spokane, Washington.



ROBERT E. KOVACEVICH, WSBA# 2723
Attorney for Petitioner