

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jun 25, 2015, 12:25 pm
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NO. 91489-3

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**SUPREME COURT
OF THE STATE OF WASHINGTON**

JESSICA MAE MATHESON, d/b/a
JESS'S WHOLESALE,

Petitioner,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Respondent.

DEPARTMENT OF
REVENUE'S REPLY
IN SUPPORT OF
OBJECTION

I. INTRODUCTION AND RELIEF REQUESTED

Petitioner admits that her unauthorized Reply Brief in support of her Petition for Review was untimely filed. Pet. Ans. to Obj. at 3. The Court should strike her Reply Brief on this basis alone. As to the merits, Petitioner misreads RAP 13.4(d). Respondent has not raised any issues that were not addressed by the Court of Appeals, and the Court of Appeals addressed all of Petitioner's issues. Therefore, the Court should not consider Petitioner's Reply Brief.

II. ARGUMENT

A. Petitioner Admits To Failing To Comply With The Deadline In RAP 13.4(d).

Petitioner admits she misread the rule and failed to timely file her Reply Brief in Support of the Petition for Review, which was due 15 days

after the Department filed and served its answer to the Petitioner's amended petition for discretionary review. Pet. Ans. to Obj. at 3; *see* RAP 13.4(d). Petitioner's reply was filed 28 days after the Department's answer, 13 days late. Petitioner offers no further explanation, except to offer that the Department is not harmed. Pet. Ans. to Obj. at 3-4. Because Petitioner failed to comply with the deadline or seek permission for an extension of the deadline, her brief should be stricken and not considered by the Court.

B. Petitioner Misconstrues RAP 13.4(d).

A party may file a reply brief to an answer to a petition for discretionary review only "if the answering party seeks review of issues not raised in the petition for discretionary review." RAP 13.4(d). The Department's answer does not seek review of any issues that were not raised in the petition. The unpublished opinion addressed and rejected all of Petitioner's arguments. The Department prevailed in total in the Court of Appeals, and there was no issue the Department needed to raise for review. Because the Department did not raise any new issues, Petitioner was not entitled to file a reply brief.

Petitioner claims that the Department raised "issues" in its Answer to the Petition for Review that had to be addressed. Pet. Ans. to Obj. at 2. ("This new issue required a reply."). Matheson contended in her petition

for review that she could transport cigarettes without advance notice. *Id.* The Department responded to that contention by explaining that she did not qualify for the exemption from this requirement under RCW 82.24.010(6) because she did not qualify as an “Indian tribal organization.” Answer to Petition at 2, n.1. Matheson now contends she was a tribal wholesaler and therefore a reply was required. Pet. Ans. to Obj. at 2. Matheson also contends this is “one of the most material issues in the case.” *Id.* That contention has absolutely nothing to do with the present case. This case is about the revocation of her business license to operate as a licensed Washington Cigarette Wholesaler.

Matheson’s new contention also contradicts the evidence in the record. In the hearing before the Board of Tax Appeals, where she contested the tax assessment for failing to report the disposition of the cigarettes, one of Matheson’s own witnesses testified that Matheson was “not on the approved list” for vendors to sell cigarettes on behalf of the Puyallup Tribe. AR at 116. She has never offered evidence that she had a tribal license from either the Puyallup Tribe or the Coeur d’Alene Tribe. Her claim that she delivered the cigarettes to the Puyallup Tribe, Pet. Ans. to Obj. at 3, is directly contradictory to her answers in discovery where

she indicated that all cigarettes were “hailed or delivered” to the Coeur d’Alene Indian Reservation and to her witness who testified “Baby Zack’s never bought any cigarettes from Jess’s Wholesale.” AR at 112, 116.

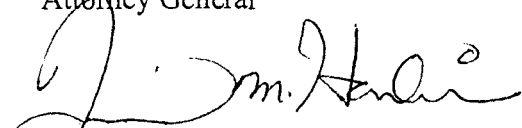
In the guise of responding to “new issues,” Matheson herself raises issues that are not germane to this appeal, and this Court should not consider her reply brief supporting her petition.

III. CONCLUSION

Under RAP 13.4(d), Petitioner had no right to file a reply brief in support of her petition for review, and even if such a right existed in this case, she did not comply with the deadline in RAP 13.4(d) for filing the brief and she has offered no valid justification for her noncompliance. The Department’s answer does not raise issues that it wants this Court to consider. The Department asks the Court to strike the reply brief.

RESPECTFULLY SUBMITTED this 25th day of June, 2015.

ROBERT W. FERGUSON
Attorney General



DAVID M. HANKINS, WSBA No. 19194
Senior Counsel
Attorneys for Respondent
Revenue Division, OID No. 91027
P.O. Box 40123
Olympia, WA 98504-0123


PROOF OF SERVICE

I certify that I served a copy of this document, via electronic mail,
per agreement, on the following:

Robert Kovacevich
Robert E. Kovacevich PLLC
818 W. Riverside, Suite 525
Spokane WA 99201
kovacevichrobert@qwestoffice.net

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

DATED this 25th day of June, 2015, at Tumwater, WA.


Julie Johnson, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Johnson, Julie (ATG)
Cc: Hankins, David (ATG)
Subject: RE: Matheson v. DOR - Supreme Court No. 91489-3 - DOR's Reply in Support of Objection

Rec'd 6/25/15

From: Johnson, Julie (ATG) [mailto:JulieJ@ATG.WA.GOV]
Sent: Thursday, June 25, 2015 12:25 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Hankins, David (ATG)
Subject: Matheson v. DOR - Supreme Court No. 91489-3 - DOR's Reply in Support of Objection
Importance: High

Please find the attached reply for filing in the above-referenced case. Let me know if you have any questions.

Thanks,

Julie Johnson, LS II
Revenue Division
Office of the Attorney General
360.586.9674
juliej@atg.wa.gov