NO. 96383-5

SUPREME COURT OF THE STATE OF WASHINGTON

LOWE'S HOME CENTERS, LLC,

Petitioner,

v.

DEPARTMENT OF REVENUE, STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals correctly followed established case law when it held that Lowe's was not entitled to a sales tax refund. RCW 82.08.037 entitles a seller that sells goods on credit to recover the sales taxes it paid on the buyer's behalf if the seller incurs a bad debt on the retail sale. In *Puget Sound National Bank v. Department of Revenue,* 123 Wn.2d 284, 868 P.2d 127 (1994), this Court construed RCW 82.07.037 to require that, in order to qualify for a sales tax refund on bad debts, the seller must have been the person that extended credit to the buyer. Here, a third party lender, not Lowe's, extended the credit.

Absent a statutory amendment, Washington retailers may not claim a sales tax refund on defaulted private label credit accounts owned by third party lenders. Just last year, the Legislature declined to act on a bill that would have broadened RCW 82.08.037 to allow a sales tax refund on bad debts from private label credit accounts. This case does not present an issue of substantial public interest because there is no reason for this Court to revisit the issue.

This case also does not raise an issue of constitutional significance because, for purposes of an equal protection analysis, Lowe's is not in the same class as retailers that make credit sales and incur bad debts. The contractual payments Lowe's made to the buyer's lender were in exchange for valuable consideration and, thus, not equivalent to the uncompensated losses of a seller that cannot collect the sale proceeds from the buyer.

II. RESTATEMENT OF THE ISSUES

1. Under RCW 82.08.037, a seller that sells goods on credit may recover the sales taxes it paid on the buyer's behalf if the seller incurs a bad debt on the retail sale. When a buyer purchased goods from Lowe's using a private label credit card, Lowe's received cash payment of the entire sale proceeds, including the sales taxes Lowe's remitted to the State. Is Lowe's entitled to a sales tax refund on bad debts that merely reduced the amount of additional revenues it received from financing charges?

2. The bad debt sales tax credit and business and occupation (B&O) tax deduction statutes provide a tax benefit to sellers that sell goods on credit and incur bad debts. The statutes deny a similar tax benefit to sellers that contractually agree to share the credit losses incurred by a third party lender that extended credit to their customers. Does the distinction comport with the equal protection clause of the federal constitution?

III. RESTATEMENT OF THE CASE

When a customer purchased goods from Lowe's using a private label credit card, Lowe's received cash payment of the entire sale proceeds, including applicable sales taxes, just as with any other bank-issued credit card. CP 453. Lowe's accounted for the private label credit card transactions as "cash or cash equivalents," the same as if the

customer had paid by cash, check, or an ordinary credit card. CP 60.

It is not true that Lowe's was "the party who had advanced" the sales taxes on the buyer's behalf to the State. Lowe's Pet. for Rev. at 10. Lowe's neither financed its customers' purchases nor paid any sales taxes from its own funds. Rather, Lowe's licensed to subsidiaries of the General Electric Capital Corporation (the Bank) the exclusive right to extend credit under the Lowe's brand to Lowe's' customers. CP 41, 451. The Bank, not Lowe's, extended credit to cardholders, owned the accounts receivables, and wrote off any uncollectible credit card debt obligations. CP 136. Lowe's was not a party to the credit card agreements between the Bank and its customers. CP 30, 343.

Lowe's entered into a separate contractual agreement with the Bank stating that Lowe's had "no right, title or interest" in the private label credit card accounts, outstanding receivables, or related sales documentation. CP 136. The exclusive right to receive payments by the cardholders was "vested in the Bank." *Id.* The agreement specified that the Bank "shall be entitled to retain for its account all Program Revenues, if any, and shall bear all Program Expenses, with respect to the Accounts and Indebtedness" arising from the private label credit accounts. *Id.*

Accordingly, when a customer failed to pay its credit card bill, the Bank, not Lowe's, wrote-off the uncollectible debt on its books and

records. CP 126 ("Gross Write-Offs"); CP 945. Lowe's' books and records did not reflect any unpaid debt obligations relating to the defaulted credit card accounts. CP 52, 113, 945. The basis for Lowe's' claim of entitlement to a bad debt sales tax refund are bad debts *written off by the Bank* that reduced the amount of finance charge income Lowe's was entitled to receive under a profit-sharing agreement with the Bank.

The Bank entered into the profit-sharing agreement as an incentive to Lowe's to promote its customers' use of the private label credit cards. CP 66. Under the profit-sharing agreement, Lowe's was entitled to any additional profits generated from the private label credit accounts once the Bank reached its "target rate" of return. CP 44, 66, 141. The target rate of return was a specified profit margin on the Bank's financing activities.

The Bank gave Lowe's a monthly report listing the revenues and expenses from the private label credit card program. CP 143. The program revenues included finance charges, late fees, returned check fees, and charges from any other services the Bank provided to cardholders. CP 130, 454. Program expenses included various operational costs, including the Bank's bad debt write-offs on defaulted credit accounts. CP 44, 142.

The profit-sharing agreement provided that for purposes of calculating Lowe's' share of the Bank's finance charge income, Lowe's "shall be responsible for Net Write-Offs during such year up to a

maximum of 7.0% of Average Net Receivables." CP 140. This element of the profit-sharing formula is what Lowe's calls its "Bad Debt Guarantee." Pet. for Rev. at 9. Each month, the Bank subtracted the amounts it had written-off as uncollectible (up to the 7% cap) from the amounts it was entitled to collect from the cardholders as part of the formula for calculating Lowe's' share of the Bank's financing income. CP 141.

On its federal income tax returns, Lowe's deducted the bad debts that reduced its profit-share amount as bad debt expenses incurred under a contractual agreement to reimburse third party bad debts. CP 455.

Although Lowe's received cash payment of the entire sale proceeds it was entitled to collect from the buyer on purchases made with a private label credit card, Lowe's claimed sales tax credits and B&O tax deductions on its state excise tax returns for the bad debts that reduced its profit-share amount. The Department of Revenue disallowed the credits and deductions because Lowe's did not incur bad debts on its retail sales; its profit-sharing bad debts were incidental to Lowe's' separate and distinct business transaction with the Bank. CP 419, 427.

Lowe's brought a tax refund action under RCW 82.32.180 in the Thurston County Superior Court, which granted summary judgment to the Department. The Court of Appeals affirmed in *Lowe's Home Centers, LLC v. Department of Revenue*, __ Wn. App. __, 425 P.3d 959 (2018).

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

A. The Court of Appeals' Decision is Consistent with the Plain Meaning of the Bad Debt Tax Credit and Deduction Statutes, as well as Established Case Law

RCW 82.08.037 allows a seller that incurred a credit loss on a retail sale to recover the sales taxes it advanced on behalf of the buyer. The version of the statute in effect for the tax period at issue provided, in part:

> (1) A seller is entitled to a credit or refund *for sales taxes previously paid on bad debts*, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

RCW 82.04.4284 provides a similar B&O tax deduction:

> (1) In computing [B&O] tax there may be deducted from the measure of the tax bad debts, as that term is used in 26 U.S.C. Sec. 166 . . . on which tax was previously paid.

Bad debts, "as that term is used" for federal income tax purposes, are "worthless debts" that are "*owed to the taxpayer*." 26 C.F.R. § 1.166-1(a) (emphasis added). The debt obligation must be "bona fide," meaning it represents an amount the taxpayer previously reported as income and remains legally entitled to collect, which proved uncollectible and was charged off as worthless on the taxpayer's books. *Id.* at (c), (e). Bad debts from unpaid fees or unrealized profits do not qualify. *Id.*

1. The Court of Appeals correctly applied the relevant statutes and tax regulation

The Court of Appeals correctly rejected the argument that Lowe's' contractual payments to the Bank qualify as bad debts on which taxes

were "previously paid" within the meaning of RCW 82.08.037 and RCW 82.04.4284. *Lowe's*, 425 P.3d at 967. Sales taxes and retailing B&O taxes are "paid on" the "selling price," which is the contractual consideration the buyer owes to the seller in exchange for the goods sold. RCW 82.08.010(1)(a). Thus, the "bad debts" referred to in these statutes are amounts the seller previously reported as taxable sale proceeds that proved uncollectible and were written off the seller's books and records. Absent an unpaid debt owed by the buyer to the seller on a retail sale, a seller is not entitled to a sales tax or retailing B&O tax refund for bad debts.

Lowe's remitted sales taxes and paid retailing B&O taxes on sale proceeds it actually received, not on bad debts. The cardholder's failure to repay the Bank that loaned it the funds used to purchase goods had no impact on Lowe's' right to receive (and to retain) the entire sale proceeds owed by the buyer on a retail sale. In fact, Lowe's accounted for the private label credit card transactions as "cash or cash equivalents," the same as if the customer paid by cash, check, or any other bank-issued credit card. CP 60. Lowe's made no entry on its books or records to reverse the amount of retailing revenues it had collected from the buyer when a cardholder defaulted on its credit card debt. CP 52, 113, 945.

The amounts Lowe's purportedly "paid" in reimbursement of the Bank's bad debt losses (which, in substance, were amounts the Bank paid

itself by subtracting its own bad debt write-offs from its own accounts receivables in calculating the amount the Bank paid to Lowe's under their profit-sharing agreement), were not "bad debts" on which sales taxes and B&O taxes were previously paid within the meaning of RCW 82.08.037 and RCW 82.04.4284, respectively. Rather, as the Court of Appeals correctly stated, "Lowe's profit-sharing bad debt resulted from the bargained-for profit-sharing agreements and not debts on sales tax owed to Lowe's on a retail sales transaction.'" *Lowe's*, 425 P.3d at 967.

The Court of Appeals also correctly held that Lowe's did not satisfy the requirement of the pertinent tax regulation that the bad debts for which a taxpayer claims a credit or deduction must be "written off as uncollectible in the taxpayer's books and records." *Lowe's*, 425 P.3d at 972 (discussing WAC 458-20-196(2)(a)). Lowe's contends the tax regulation imposes an "extra-statutory requirement" in requiring that the seller, itself, wrote off the bad debt. Pet. for Rev. at 16.

The tax regulation mirrors the model bad debt rules of the multi-state Streamlined Sales and Use Tax Agreement (SSUTA), as mandated by the Legislature. RCW 82.02.210(3) (requiring that the sales and use tax laws "be interpreted and applied consistently with the [SSUTA]"). The SSUTA provides, in part, that member states must allow a sales tax deduction when a bad debt is "*written off as uncollectable in the*

claimant's books and records and is eligible to be deducted for federal income tax purposes." SSUTA, § 320.C (emphasis added).[1]

The write-off requirement in the tax regulation and the SSUTA model rule give effect to the plain meaning of the bad debt statute, which applies to "bad debts as that term is used in Section 166." For federal income tax purposes, a "bad debt" is an amount arising from a debtor-creditor relationship that was previously reported as income, which proved uncollectible and was charged off the taxpayer's books and records. 26 C.F.R. § 1.166-1(a). The write-off is "the essence of the bad debt deduction." *In re Hoffman*, 16 F. Supp. 391, 393 (E.D. Pa. 1936). *See* 26 C.F.R. § 1.166-2 (debt is "worthless," and, thus, deductible, when it is "charged off" the taxpayer's books).

It is undisputed that the Bank, not Lowe's, is the person that wrote off the unpaid credit card debt obligations. CP 945. Because Lowe's did not own the accounts receivables from the private label credit card accounts, it had nothing to write off as uncollectible when a cardholder defaulted. Whatever entries Lowe's made to reflect its so-called "Bad Debt Guarantee" were not for sale proceeds Lowe's was entitled to collect

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[1] *See* Section 320.C of the Streamlined Sales and Use Tax Agreement, Adopted November 12, 2002 and amended through May 11, 2017, at http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SSUTA%20As%20Amended%202017-5-11.pdf.

from the buyer. As the Court of Appeals explained: "There is no bad debt from the sale. Instead, as discussed above, Lowe's bad debts resulted from its role as a guarantor-creditor rather than a seller, and Lowe's guarantor bad debts under 26 C.F.R. § 1.166-9(a) are not 'directly attributable' to a retail sale." *Lowe's*, 425 P.3d at 969.

The Court of Appeals correctly interpreted and applied WAC 458-20-196(2)(a), holding that the amounts Lowe's paid to cover the Bank's bad debts were not "written off as uncollectible" in Lowe's' books and records and, thus, did not provide the basis for a bad debt refund under RCW 82.08.037, RCW 82.04.4284, and WAC 458-20-196(2)(a).

2. The Court of Appeals' decision is entirely consistent with *Puget Sound*

The Court of Appeals' decision is entirely consistent with *Puget Sound*, this Court's only decision addressing RCW 82.08.037. *Puget Sound*, 123 Wn.2d 284. The Court of Appeals was correct that under *Puget Sound's* rationale, a seller, and not a third party lender, must have sold goods on credit and incurred a bad debt loss on a retail sale in order to qualify for a sales tax refund on bad debts. *Lowe's*, 425 P.3d at 968.

Puget Sound involved an automobile dealer that sold vehicles to its customers through installment sales contracts. A bank acquired the dealer's unpaid consumer debt obligations by a contract of assignment.

When the customers later defaulted on their payment obligations, the bank filed a sales tax refund claim under RCW 82.08.037 for its bad debt losses. The issue was whether the bank could claim a sales tax refund on the defaulted credit accounts.

This Court observed that RCW 82.08.037 applies only to credit losses incurred by a "seller" that engages in "making sales at retail." *Puget Sound*, 123 Wn.2d at 287-88. But this Court held that the bank had "stepped into the shoes" of the seller by virtue of the contract of assignment, and it thereby assumed the rights and liabilities associated with the installment sale contracts, including the seller's right to recover the sales taxes it had advanced on the buyer's behalf. *Id.* at 293.

According to Lowe's, *Puget Sound* stands for the proposition that its right to a sales tax refund turns solely on whether it was eligible to take a bad debt deduction on its federal tax returns for its "guaranty payments" to the Bank. Pet. for Rev. at 13. But under *Puget Sound*, the requisite basis for a sales tax refund is an unpaid debt obligation *originated by a seller*. If that were not the case, there would have been no need for this Court to analyze whether the Bank qualified as the "seller" that had made the credit sale giving rise to a deductible bad debt.

But this Court recognized that a bank ordinarily cannot claim a sales tax refund for its bad debt losses on consumer loans. The bank

qualified only because it assumed the status of the "seller" that extended credit to the retail buyer. *Puget Sound*, 123 Wn.2d at 293. As the seller's assignee, the bank was entitled to the sales tax refund the seller could have claimed if it had maintained *ownership* of the unpaid debt obligations. *Id.* at 290 ("[I]f the dealers had not assigned their installment contracts to the Bank, the dealers would have been entitled to a sales tax refund[.]").

The crux of Lowe's' reliance on *Puget Sound* is that it "stepped into the Bank's shoes" by reimbursing the Bank for its bad debt losses on the private label credit accounts. Pet. for Rev. at 9, 18. But RCW 82.08.037 does not apply to consumer loans originated by banks (which is why the bank in *Puget Sound* could only qualify by stepping into the shoes of a "seller" that extended credit to the buyer). *See Puget Sound*, 123 Wn.2d at 287-88 ("In order for the Bank . . . to be eligible for a sales tax refund, the assignment of the installment contracts must satisfy the 'making sales at retail' requirement."). The Legislature has not seen fit to authorize a sales tax refund for banks that assume the risk of bad debt losses as an ordinary part of the business of consumer lending.

The Court of Appeals correctly rejected Lowe's' flawed rationale for extending the scope of the bad debt sales tax credit far beyond the factual circumstances addressed in *Puget Sound*. It is well-established that statutory tax credits and deductions may not be extended by implication.

TracFone Wireless, Inc. v. Dep't of Revenue, 170 Wn.2d 273, 296-97, 242 P.3d 810 (2010). To qualify, a taxpayer must demonstrate that it clearly comes within the scope of a tax exemption. *Id.* Lowe's does not satisfy this requirement because it did not incur bad debts on its retail sales.

3. The Court of Appeals properly followed its prior decision in *Home Depot*

In holding that a seller must have a bad debt "directly attributable" to a retail sale to qualify for a sales tax refund under RCW 82.08.037, the Court of Appeals properly followed its previous decision in *Home Depot v. Dep't of Revenue*, 151 Wn. App. 909, 215 P.3d 222 (2009), *review denied*, 168 Wn.2d 1008 (2010), and did not create a conflict with that case. *Lowe's*, 425 P.3d at 969. In *Home Depot*, the court held that a retailer was not entitled to a sales tax refund under RCW 82.08.037 on bad debts from private label credit accounts financed and owned by the General Electric Capital Corporation (GE Capital).

Like Lowe's, Home Depot had contracted with GE Capital to establish a private label credit card program. GE Capital was the exclusive owner of the accounts, controlled the credit terms and conditions, bore the risk of all credit losses, and took bad debt deductions on its federal income tax return on defaulted credit accounts. *Id.* at 913. GE Capital paid Home Depot the sale proceeds on a daily basis, minus service fees. The service

fees were calculated to cover GE Capital's bad debt losses and other expenses, and were based on an economic analysis of the anticipated revenues and expenses related to the private label credit cards. *Id.* at 914.

The *Home Depot* court correctly held that RCW 82.08.037 impliedly requires the person claiming a sales tax refund to be "the one holding the bad debt as well as the one to whom repayment on such a debt would be made." *Id.* at 922. The *Home Depot* court further held that Home Depot could not qualify for a sales tax refund by showing it "actually bore the loss" on defaulted credit accounts by making contractual payments that covered GE Capital's bad debt losses. *Home Depot*, 151 Wn. App. at 923. RCW 82.08.037 applies only to bad debts "directly attributable to" a retail sale. *Id.* at 922. The court reasoned that allowing sellers to recover sales taxes based on bad debts resulting in indirect economic harm would contravene the clear legislative intent to disallow reductions in the sales tax base for a seller's costs of doing business. *Id.* at 923-24.

Lowe's tried to distinguish *Home Depot* on the ground that, unlike Home Depot, which paid "service fees" to the Bank and deducted the payments as ordinary expenses on its federal tax returns, Lowe's deducted its purported "guaranty payments" to the Bank as bad debt expenses.

The Court of Appeals correctly reasoned that whatever bad debt expenses Lowe's incurred under its profit-sharing agreement were no

more "directly attributable to" its retail sales than were the service fees paid by Home Depot. *Lowe's*, 425 P.3d at 970. Like the service fees, Lowe's' "guaranty payments" were in exchange for valuable services it received from the Bank, and, thus, not equivalent to the uncompensated losses of a seller that paid taxes on sale proceeds it never received.

In sum, Lowe's' petition for review does not identify any real conflict with existing law. Rather, Lowe's seeks review in order to advocate for a liberal interpretation of the bad debt tax credit and deduction statutes.

B. Lowe's' Petition for Review Does Not Raise an Issue of Substantial Public Interest Meriting Review by this Court

Lowe's asserts that its petition for review raises an issue of substantial public interest because unless the Court of Appeals' decision is reversed, retailers in Washington "can never claim sales tax credits or B&O tax deductions" on defaulted private label credit card accounts originated and owned by third party lenders. Pet. for Rev. at 17. But this Court already has construed RCW 82.08.037 as requiring that a "seller" be the person that extended credit to the retail buyer in order to qualify for a bad debt sales tax credit or refund. *See Puget Sound*, 123 Wn.2d 284.

According to Lowe's, no Washington court "has addressed a PLCC arrangement like the one at issue here." Pet. for Rev. at 5. However,

variations in the terms and conditions of Lowe's' contractual agreement with the financial institutions that provided credit to its customers are immaterial. Lowe's' bad debt refund claim is foreclosed by the undisputed fact that it actually received the entire sale proceeds it was entitled to collect from the buyer on its retail sales. Lowe's was free to share in the profits and losses of the Bank's credit card operations, but it was not free to claim sales tax credits and B&O tax deductions on retail sales for which it was paid in full.

The Court of Appeals' decision is consistent with appellate decisions from other SSUTA member states that have addressed similar variations on what Lowe's calls the "*Home Depot* template." Pet. for Rev. at 3. *See Citibank (South Dakota), N.A. v. Dep't of Taxes*, 202 Vt. 296, 149 A.3d 149, 155 (Vt. 2016) ("the overwhelming majority of courts in similar cases involving similar statutes have held that third-party bad debt does not entitle the retailer or creditor to reclaim the sales tax"); *Sears, Roebuck & Co. v. Roberts,* No. M201402567COAR3CV, 2016 WL 2866141, at *9 (Tenn. Ct. App. May 11, 2016), *application for permission to appeal denied* (Tenn. Sept. 23, 2016) ("The risk that the private label credit card program will be less profitable than anticipated does not qualify as a bad debt."). Lowe's fails to identify any contrary appellate authority.

The availability and scope of a tax exemption or deduction is purely a matter of legislative grace. *Home Depot USA, Inc. v. Levin*, 121 Ohio St.3d 482, 905 N.E.2d 630, 635 (Ohio 2009). Whether RCW 82.08.037 should be extended to retailers like Lowe's, with respect to bad debts incurred by a third party lender, is a question of tax policy for our Legislature, not an issue of substantial public interest warranting review by this Court.

At the behest of national retailers and financial institutions, several state legislatures have enacted legislation authorizing sales tax refunds on defaulted private label credit card accounts. *See, e.g.,* Wis. Stat. § 77.585 (July 2, 2013); Mich. Comp. Laws § 205.54i (October 1, 2007); Texas Tax Code 151.246(c) (Oct. 1, 1999). But the Department is not aware of any appellate court in the country that has construed a statute similar to Washington's to reach this result.

The most recent statutory amendment actually narrowed the scope of RCW 82.08.037. In 2010, the Legislature enacted legislation superseding the *Puget Sound* decision. Laws of 2010, 1st Spec. Sess., ch 23, §§ 1501-03 ("Limiting the Bad Debt Deduction").[2] The effect of this

[2] The *Puget Sound* decision represented the minority view on the assignability of a bad debt sales tax refund. The majority of states that have addressed the issue have strictly construed bad debt refund statutes as applying only to retailers, not third-party assignees of the seller's credit accounts. *Citifinancial Retail Servs, FSB v. Weiss*, 372 Ark. 128, 271 S.W.3d 494, 498-99 (Ark. 2008). When the Legislature amended RCW 82.08.037 in 2004 to conform with the SSUTA's uniform bad debt rules, it clarified that it did not intend to supersede the *Puget Sound* decision at that time. Laws of 2004, ch.

change was to prevent a third-party assignee from claiming a sales tax refund on defaulted credit accounts originated by a seller.

Before and after the 2010 amendment, RCW 82.08.037 applied only to bad debts arising from a *seller's accounts receivables* on a retail sale. Sellers like Lowe's that arranged for a third-party lender to extend credit to their customers have never been entitled to a sales tax refund under RCW 82.08.037 because they have no account receivable---they already have been paid.

In 2017, the Legislature declined to act on a bill that would have allowed a bad debt sales tax refund for retailers that contract with financial institutions that issue private-label credit cards to their customers. *See* S.B. 5910, 65th Leg., Reg. Sess. (Wash. 2017). The proposed legislation would have redefined "bad debt" to include "amounts due on the accounts or receivables that are charged off on the books and records of the lender." S.B. 5910, § 2(8). The fiscal note estimated the amendment would affect approximately 250 retailers who currently are "responsible for" the "unpaid sales taxes" their customers owe to private label credit card companies. Fiscal Note for S.B. 5910, 65th Leg., Reg. Sess. (Wash. 2017). If enacted, S.B. 5910 would have had an estimated fiscal impact of $18 to

153, § 301. But the Legislature never indicated an intent to extend the scope of the bad debt sales tax credit beyond the factual circumstances addressed in *Puget Sound.*

$22 million in annual revenue losses from 2017 through 2021. *Id.*

The House Ways and Means Committee did not hold a hearing on S.B. 5910 during the 2017 legislative session. Unless and until such legislation is enacted, retailers in Washington may not claim a sales tax refund on defaulted private label credit card accounts they do not own. *Cf. Does v. Wash. State Patrol*, 185 Wn.2d 363, 381, 374 P.3d 63 (2016) (considering an unpassed bill to amend a statute as an indication the Legislature did not wish to bring about the change advocated by the appellant).

C. Denying a Sales Tax Refund to Sellers that Do Not Incur Credit Losses on a Retail Sale Does Not Violate Equal Protection

The Court of Appeals correctly rejected Lowe's' argument that for purposes of an equal protection analysis it is in the same class of retailers as those the Legislature intended to benefit. *Lowe's*, 425 P.3d at 974. RCW 82.08.037 and RCW 82.04.4284 provide tax benefits to retailers that paid state excise taxes on sale proceeds they could not collect from the buyer. The statutes distinguish sellers who extend credit to their customers and incur bad debts from those that pay contractual fees to third-party lenders that finance and service consumer credit accounts.

Unlike retailers that make credit sales and incur bad debts, Lowe's received upfront payment of the entire sale proceeds, the same as with any other bank-issued credit card transaction. Whatever payments Lowe's

made in reimbursement of the Bank's bad debts were in exchange for valuable consideration and, thus, were not in the same class for taxation purposes as uncompensated losses sellers experience when they themselves extend credit to customers and are never repaid.

V. CONCLUSION

Lowe's' petition for review fails to satisfy the criteria for review under RAP 13.4(b). The Court of Appeals' decision does not conflict with *Puget Sound* or any other decision of this Court or the Court of Appeals. The Court of Appeals correctly interpreted and applied RCW 82.08.037 consistent with the plain language of the statute, the applicable tax regulation, and the well-established principle that statutory tax credits and deductions are to be strictly construed. Whether the right to a bad debt tax refund should be extended to retailers that enter into profit-sharing agreements with private label credit card companies is a question of tax policy for the Legislature, not an issue of "substantial public interest" warranting this Court's review. The Court should deny Lowe's' petition for discretionary review.

RESPECTFULLY SUBMITTED this 15th day of November, 2018.

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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 15th day of November, 2018, at Tumwater, WA.

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ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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