

SUPREME COURT OF THE STATE OF WASHINGTON

LOWE'S HOME CENTERS, LLC,

Petitioner,

v.

DEPARTMENT OF REVENUE,
STATE OF WASHINGTON,

Respondent.

MOTION TO STRIKE
PETITIONER'S "REPLY
TO ANSWER TO
PETITION FOR
REVIEW"

I. IDENTITY OF MOVING PARTY

Respondent, Department of Revenue, asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

The Department asks the Court to strike the reply brief of the petitioner, Lowe's Home Centers, LLC, which was filed in violation of RAP 13.4(d).

III. FACTS RELEVANT TO MOTION

On October 5, 2018, Lowe's filed a petition for discretionary review under RAP 13.4(a), seeking review by this Court of the published decision of the Court of Appeals in *Lowe's Home Centers, LLC v. Department of Revenue*, No. 50080-9-II, dated September 5, 2018. Due to a delay in the payment of the filing fee, the Clerk's office used October

15, 2018 as the date for calculating the 30-day period for filing an answer to the petition for review.

On November 15, 2018, the Department filed an answer to Lowe's' petition for discretionary review, as authorized by RAP 13.4(d). The Department's answer raised no new issues in addition to those raised in Lowe's' petition for review. Rather, the Department argued that the issues presented by Lowe's do not warrant this Court's acceptance of review under the criteria set forth in RAP 13.4(b).

On November 29, 2018, in reply to the Department's answer, Lowe's filed a document titled, "Reply to Answer to Petition for Review of Lowe's Home Centers, LLC." In its reply, Lowe's presents 16 pages of additional argument as to why this Court should grant its petition for review.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 13.4(d) unambiguously provides that a party may file a reply brief to an answer "only if the answering party seeks review of issues not raised in the petition for review." A reply may not be filed when the answering party only presents arguments as to why review should be denied. *See Doe v. Gonzaga University*, 143 Wn.2d 687, 700 n.8, 24 P.3d 390 (2001) (granting a motion to strike a reply where answering party did not seek review of additional issues but merely argued that review should

be denied), and *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 140 n.6, 124 P.3d 640 (2005) (striking portions of a reply that went beyond addressing the answering party's request for attorney fees). The answer filed by the Department did not seek review of any issue; rather, the Department argued that Lowe's had failed to raise an issue warranting this Court's acceptance of review under RAP 13.4(b). Lowe's' reply brief clearly was submitted in violation of RAP 13.4(d) and therefore should be stricken and returned to Lowe's.

V. CONCLUSION

A reply is only permitted when the respondent states its own request for review of a different issue in its answer to a petition for review. The Department has not sought review of any issue. The Department's answer only argues that Lowe's' petition for review should be denied. Thus, Lowe's' reply to the Department's answer should be stricken.

RESPECTFULLY SUBMITTED this 3rd day of December, 2018.

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PROOF OF SERVICE

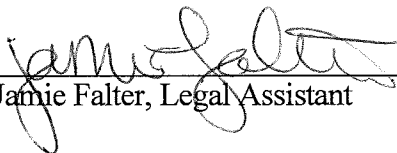
I certify that I served a copy of this document, via electronic mail,
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I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 3rd day of December, 2018, at Tumwater, WA.



Jamie Falter, Legal Assistant

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

December 03, 2018 - 11:04 AM

Transmittal Information

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