



**TABLE OF CONTENTS**

Page

I.	ASSIGNMENT OF ERROR .....	1
II.	ISSUE PRESENTED.....	1
III.	STATEMENT OF THE CASE.....	1
IV.	SUMMARY OF ARGUMENT .....	3
V.	ARGUMENT.....	4
	A.    Under the plain language of RCW 82.32.150, AOL is only required to pay all of the taxes for the period it is contesting. ....	4
	1.    The Department’s position in this case is contrary to both the statute and its own practice.....	7
	2.    The Department’s position in this case would lead to absurd results.....	9
	3.    The statute does not require payment of “assessments” to institute a suit for a refund of taxes paid. ....	10
	4.    Requiring payment of assessments that are not due before commencing a suit for a refund of taxes paid would create a conflict in the statutory scheme.....	15
	B.    Since the Superior Court has subject matter jurisdiction on the basis of the Constitution (Art. IV, § 6), AOL need only satisfy the spirit of the statutory procedural requirements of RCW 82.32.150, which it has done. ....	18
VI.	CONCLUSION.....	20

## TABLE OF AUTHORITIES

Page

### Cases

<i>Agrilink Foods, Inc. v. State, Dept. of Revenue</i> , 153 Wn.2d 392, 103 P.3d 1226 (2005).....	passim
<i>Appeal of Des Moines Sewer Dist., U.L.I.D. No. 29</i> , 97 Wn.2d 227, 643 P.2d 436 (1982).....	19
<i>Bellingham Community Hotel v. Whatcom County</i> , 12 Wn.2d 237, 121 P.2d 335 (1942).....	8
<i>Blanchard v. Golden Age Brewing Co.</i> , 188 Wash. 396, 63 P.2d 397 (1936).....	18
<i>City Nat. Corp. v. Franchise Tax Bd.</i> , 146 Cal.App.4th 1040, 53 Cal.Rptr.3d 411 (2007) .....	16, 17
<i>Comm'n of Internal Revenue v. Sunnen</i> , 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948).....	8
<i>County of Los Angeles v. Southern California Edison Company</i> , 112 Cal.App.4th 1108, 5 Cal.Rptr.3d 575 (2003).....	19
<i>Dept. of Cal., Veterans Foreign Wars of U.S. v. Kunz</i> , 125 Cal.App.2d 19, 269 P.2d 882 (1954).....	12, 13
<i>Dougherty v. Department of Labor &amp; Indus.</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003).....	19
<i>Flora v. United States</i> , 362 U.S. 145, 80 S.Ct. 630, 4 L.Ed.2d 623 (1960).....	14
<i>Franchise Tax Board v. Bonds</i> , 212 Cal.App.3d 1343, 261 Cal.Rptr. 236 (1989) .....	18
<i>Gig Harbor Athletic Club, Inc. v. State of Washington Department of Revenue, Board of Tax Appeals No. 99-89</i> (2001) .....	6
<i>Glaubach v. Regence Blue Shield</i> , 149 Wn.2d 827, 74 P.3d 115 (2003).....	10
<i>HomeStreet, Inc. v. State, Dept. of Revenue</i> , 139 Wn.App. 827, 162 P.3d 458 (2007).....	9

**TABLE OF AUTHORITIES**  
**(continued)**

	Page
<i>In re King</i> , 961 F.2d 1423 (9th Cir. 1992).....	17
<i>James v. County of Kitsap</i> , 154 Wn.2d 574, 115 P.3d 286 (2005).....	18, 19
<i>Kirkland v. Dep't of Revenue</i> , 45 Wn.App. 720, 727 P.2d 254 (1986).....	11
<i>Marley v. Dept' of Labor and Indus.</i> , 125 Wn.2d 533, 886 P.2d 189 (1994).....	19
<i>Masi v. Nagle</i> , 5 Cal.App.4th 608, 7 Cal.Rptr. 423 (1992) .....	13
<i>Milhous v. Franchise Tax Board</i> , 131 Cal.App.4th 1260, 32 Cal.Rptr.3d 640 (2005) .....	19
<i>Morrison-Knudsen Co. v. Department of Rev.</i> , 6 Wn.App. 306, 493 P.2d 802 (1972).....	11
<i>Qwest v. City of Bellevue</i> , 161 Wn.2d 353, 166 P.3d 667 (2007).....	8
<i>Roon v. King County</i> , 24 Wn.2d 519, 166 P.2d 165 (1946) .....	18
<i>State v. Jacobs</i> , 154 Wn.2d 596, 115 P.3d 281 (2005).....	4, 15
<i>State v. Lilyblad</i> , 163 Wn.2d 1, 177 P.3d 686 (2008).....	15
<i>Tele-Vue Systems, Inc. v. State of Washington Department of Revenue</i> , Board of Tax Appeals No. 96-11 (2000).....	6
<i>United Parcel Serv., Inc. v. Dep't of Revenue</i> , 102 Wn.2d 355, 687 P.2d 186 (1984).....	14
 <b>Statutes</b>	
47 U.S.C. § 151 (1999).....	2
RCW 2.08.010 .....	18
RCW 82.04.065 .....	2
RCW 82.04.260(4).....	12
RCW 82.04.297 .....	2
RCW 82.08 .....	5
RCW 82.32.045(1).....	5, 6, 8, 10

**TABLE OF AUTHORITIES**  
**(continued)**

	Page
RCW 82.32.050 .....	6
RCW 82.32.050(1).....	6
RCW 82.32.150 .....	passim
RCW 82.32.160 .....	6, 7, 8, 15, 16, 19
RCW 82.32.180 .....	5, 8, 20
West's Ann. Cal. Un. Ins. Code § 1178(d).....	13
 <b>Constitutional Provisions</b>	
Constitution, Art. IV, § 6 .....	3, 18
 <b>Other Authorities</b>	
Department of Revenue Determination No. 91-188, 11 WTD 231 (1991).....	6
Department of Revenue Determination No. 99-009, 18 WTD 246 (1999).....	7, 15, 17
MICHAEL I. SALTZMAN, IRS PRACTICE AND PROCEDURE 11-74 (Revised 2d ed. 2007) .....	14

## **I. ASSIGNMENT OF ERROR**

The trial court erred by concluding that AOL cannot commence a suit for a refund of sales tax AOL paid with its January 2000 tax return because AOL has a pending tax assessment[s] that is/are neither yet due nor the subject of AOL's tax refund suit.

## **II. ISSUE PRESENTED**

What taxes must be paid before filing a tax refund suit under RCW 82.32.150, which requires that a taxpayer pay "all taxes" before instituting a suit contesting "such taxes."

## **III. STATEMENT OF THE CASE**

AOL LLC is the successor to America Online, Inc. (collectively referred to hereafter as "AOL"). CP 389-90. In January 2000 AOL was engaged in business primarily as an Internet service provider. CP 98. During January 2000 AOL purchased managed modem service from various network service providers for use in AOL's business. CP 98.

AOL filed an amended Combined Excise Tax return for the January 2000 reporting period and paid sales tax on its purchases of managed modem services for this period. CP 95-96. AOL filed suit in Thurston County Superior Court, seeking a refund of the \$331,377 it had paid with its January 2000 tax return. CP 4, 5, 8. AOL filed a Motion for Summary Judgment on one of the three grounds for relief alleged in its

Amended Complaint - that the managed modem services were not “billed to a person in this state” (they were all billed to AOL at its offices in Virginia) and, therefore, were not subject to Washington sales tax under RCW 82.04.065.<sup>1</sup> CP 94, 83-92. Contemporaneously, the Department of Revenue (the “Department”) filed a Motion to Dismiss asserting that RCW 82.32.150 required AOL to pay one (but not both) of two tax assessments that are the subject of a separate, pending administrative appeal (and thus were not yet due) before it could institute an action seeking a refund of taxes AOL had paid with its January 2000 tax return. CP 24-38.<sup>2</sup>

Without explaining how AOL had failed to pay “those taxes” (CP 29 – Department’s argument line 10) it was seeking a refund of, the trial Court granted the Department’s Motion to Dismiss, which dismissal forms the basis for this appeal. CP 436-37; RP 25-26.

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<sup>1</sup> AOL’s Amended Complaint also asserts that its purchases of managed modem service were not subject to Washington sales tax because (1) managed modem service is an “internet service” as defined by RCW 82.04.297 and (2) the Department is prohibited from imposing sales tax on managed modem service by the federal Internet Tax Freedom Act (P.L. 105-277) (47 U.S.C. § 151). CP 4-8.

<sup>2</sup> While the Department’s motion also asserted a second basis for dismissal, it agreed to allow AOL discovery related to that second basis and the parties stipulated that the Department’s other argument, as well as AOL’s Motion for Summary Judgment, would not be addressed until after discovery was conducted. CP 323-27.

#### IV. SUMMARY OF ARGUMENT

The trial Court's dismissal of AOL's complaint for a refund of taxes paid with its January 2000 return on the grounds that RCW 82.32.150 required the payment of one of two assessments that are the subject of a separate administrative appeal proceeding should be reversed. Under the plain language of RCW 82.32.150, AOL was only required to pay all the taxes due with the return all or part of which taxes is being contested ("such" taxes and interest or in the words of the Department, "those taxes"). RCW 82.32.150 does not require the payment of an assessment(s) as a condition of a tax refund suit. Engrafting that requirement under the statute would lead to absurd results.

Moreover, contrary to the Department's position that the trial Court lacked subject matter jurisdiction, the legislature cannot abrogate subject matter jurisdiction once jurisdiction is granted by the Constitution (Art. IV, § 6) . Although the legislature may set procedural requirements to be satisfied in order to maintain a suit in Superior Court, as long as the taxpayer complies with the spirit of the statutory requirements the suit may be maintained. Even if it is assumed *arguendo* that AOL has not satisfied the statutory procedural requirements, AOL has certainly satisfied the spirit of RCW 82.32.150.

## V. ARGUMENT

- A. **Under the plain language of RCW 82.32.150, AOL is only required to pay all of the taxes for the period it is contesting.**

RCW 82.32.150 provides that:

**All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state.**

(Emphasis added.)

This case presents an issue of first impression in Washington:

Which taxes does the statute require to be paid before contesting “such taxes” in court?

It is axiomatic that Courts do not interpret unambiguous statutes, but apply them in accordance with their plain language “regardless of contrary interpretation by an administrative agency.” *Agrilink Foods, Inc. v. State, Dept. of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226, 1228-29 (2005). A statute is ambiguous only if it is susceptible to two or more **reasonable** interpretations. *Id.* The plain meaning of a statute is taken from the particular sentence at issue, the context in which it is found, related provisions, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

There is only one reasonable interpretation of RCW 82.32.150 – the statute requires in this situation the payment of all the taxes due with the return all or part of which taxes is being contested. RCW 82.32.180 authorizes taxpayers to contest taxes in Superior Court in the procedural posture of a refund claim, which is what AOL did, so long as the taxpayer paid all taxes due as required under RCW 82.32.150.<sup>3</sup> There is no requirement of payment of an assessment as a condition for filing a suit for a refund of taxes paid with a tax return.

The only relief sought by AOL in this suit is a refund of the sales tax AOL paid with its January 2000 tax return. AOL paid “all taxes” due as shown on the return for the reporting period of January 2000.

CP 95-96. AOL is not seeking a refund of taxes in connection with either assessment, because no such taxes have been paid by AOL and the amount of taxes due for each assessment is still undetermined.

Sales taxes imposed under chapter 82.08 RCW are due and payable in one of two ways. The first is in connection with the filing of a tax return. RCW 82.32.045(1). The reporting period is statutorily defined as being monthly. *Id.*; CP 95-96. The second way is in connection with an assessment by the Department either if the taxpayer has not filed an

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<sup>3</sup> RCW 82.32.180 provides in pertinent part as follows: “any person . . . having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county.”

administrative appeal after issuance of an assessment or after the Department's issuance of a determination if the taxpayer has filed an administrative appeal. *See* RCW 82.32.050(1); RCW 82.32.160.<sup>4</sup>

Whereas the reporting period for returns is statutorily defined, RCW 82.32.045(1), there is no standard assessment period. *See* RCW 82.32.050. Assessments may be issued on a transaction, for a month, two months, one or more quarters, one or more years or any combination. *See e.g., Gig Harbor Athletic Club, Inc. v. State of Washington Department of Revenue*, Board of Tax Appeals No. 99-89 (2001) (assessments cover the periods July 1, 1993 through June 30, 1995); *Tele-View Systems, Inc. v. State of Washington Department of Revenue*, Board of Tax Appeals No. 96-11 (2000) (assessed for the periods January 1, 1990 through March 31, 1994); Department of Revenue Determination No. 91-188, 11 WTD 231 (1991) (the first assessment covers the periods February 1, 1985 through September 30, 1986 and the second covers the periods October 1, 1988 through December 31, 1989).

AOL was issued two assessments - one covering the periods January 1,

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<sup>4</sup> RCW 82.32.160 provides in pertinent part as follows: "Any person having been issued a notice of additional taxes, delinquent taxes, interest or penalties assessed by the department may within thirty days . . . petition the department in writing for a correction of the amount of the assessment. . . . After the conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner. If no such petition is filed within the thirty-day period the assessment covered by the notice shall become final."

1998 through December 31, 2001 and the other covering the periods January 1, 2002 through March 31, 2006. CP 14. AOL filed a petition for correction of the assessments, which is the administrative appeal, and the Department has yet to rule on the petition. CP 26, 10, 13 – 14. Thus, the assessments are not ripe for payment. Department of Revenue Determination No. 99-009, 18 WTD 246 (1999) (the timely filing of a petition under RCW 82.32.160 prevents an assessment from becoming final and the amount from becoming due).<sup>5</sup> The sole issue under RCW 82.32.150, therefore, is whether AOL paid all the taxes in connection with its January 2000 return.

**1. The Department's position in this case is contrary to both the statute and its own practice.**

The Department does not offer an alternative interpretation of the statute, let alone a reasonable one. Rather, the Department noted that it has issued two tax assessments against AOL (which collectively assert tax liabilities in excess of \$46 million) that AOL has administratively appealed. CP 26, 10, 13-14. The Department asserts, without explanation, that RCW 82.32.150 somehow conditions AOL's right to seek a refund of the \$331,377 AOL paid via its January 2000 tax return on paying \$19.1 million for one of the two assessments while both

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<sup>5</sup> <http://taxpedia.dor.wa.gov/isysquery/a4e5088a-afa7-4d8d-ad0e-2cd2d31e132f/10/doc/>.

assessments are the subject of a single pending administrative appeal.<sup>6</sup> CP 24-30, 32-33. Yet neither of the two assessments is the subject of this tax refund suit and each covers multiple reporting periods. In fact, the assessments are not even mentioned in AOL's Amended Complaint.<sup>7</sup> Rather, the assessments are the subject of the separate administrative appeal. Moreover, neither of the assessments was due to be paid at the time this refund action was instituted. The assessments could be corrected in the administrative process and an entirely different amount for the assessment could be determined by the Department pursuant to RCW 82.32.160. Thus, the amount to be paid pursuant to the assessments is still undetermined.

Not only is the Department's position contrary to the only reasonable interpretation of the statute, it is contrary to the Department's practice. In *Agrilink*, the taxpayer paid B&O tax on its tax returns at the service and other activities rate for six months and filed a lawsuit for a

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<sup>6</sup> The Department does not assert an exhaustion requirement because there is none under RCW 82.32.180. Also, we note that in *Qwest v. City of Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007), the Supreme Court recently held that a lawsuit like this is not premature even while an administrative appeal of an assessment is also pending.

<sup>7</sup> Further, a judgment pertains only to the facts, allegations and claims pleaded in the complaint. In tax matters each tax period is the origin of a new liability and a separate cause of action. The reporting period is monthly. RCW 82.32.045(1); CP 95-96. A judgment on the merits is not *res judicata* with respect to other periods. *Comm'n of Internal Revenue v. Sunnen*, 333 U.S. 591, 598, 68 S.Ct. 715, 92 L.Ed. 898 (1948); *Bellingham Community Hotel v. Whatcom County*, 12 Wn.2d 237, 239-40, 121 P.2d 335, 337 (1942). So, a challenge of the January 2000 taxes in the Amended Complaint defines the full scope of the litigation.

refund of part of the B&O tax paid for that six month period, asserting that tax was only due at the lower rate for processing perishable meat products. 153 Wn.2d at 395. Like AOL, *Agrilink* had also administratively appealed two assessments. While the Department vigorously contested *Agrilink's* refund suit all the way to the Supreme Court, it never asserted that the pending administrative appeal of those assessments precluded *Agrilink* from seeking a refund of taxes paid with its tax returns. Similarly, in *HomeStreet, Inc. v. State, Dept. of Revenue*, 139 Wn.App. 827, 836, 162 P.3d 458, 462 (2007), the taxpayers reported and paid the contested taxes for a one month period and sought a refund of only that one month period without objection from the Department. The record contains other examples where Washington taxpayers have sued for a refund of taxes in Superior Court while owing other taxes (that were not the subject of the Superior Court proceedings) without the Department asserting that those other taxes were required to be paid before the taxpayers could seek a refund of the taxes sought to be refunded. CP 375 (n.3), 328-52.

**2. The Department's position in this case would lead to absurd results.**

The Department's position if extended to its logical conclusion would lead to absurd results, requiring, for example, the payment of a federal income tax assessment (not imposed by or administered by the

state), the payment of Washington taxes not administered by the Department (e.g., insurance premiums taxes, unemployment contributions, land use impact fees, or local B&O taxes), the payment of different taxes administered by the Department (e.g., real estate excise) or the payment of sales tax for a completed period but for which no return and no payment is yet due (under RCW 82.32.045 monthly returns are due twenty days after the end of the month). To require payment of all taxes in the above situations would be absurd and the courts will avoid such readings. *Glaubach v. Regence Blue Shield*, 149 Wn.2d 827, 833, 74 P.3d 115, 118 (2003).

**3. The statute does not require payment of “assessments” to institute a suit for a refund of taxes paid.**

Nothing in RCW 82.32.150 specifies that an “assessment” of taxes must be paid as a condition of filing suit for refund of taxes paid with a return. All that the statute requires in this situation is the payment of “all taxes” due with the return all or part of which taxes is being contested. As discussed below, the payment of an assessment that is not the subject of a tax refund suit is not a condition that should be read into the statute.

The only basis that the Department argues for grafting the requirement of paying the assessment is two cases. They are not on point because both involved challenges to assessments that were due and

payable, and not a claim for refund of taxes paid with a return, as is the case here. In *Kirkland v. Dep't of Revenue*, 45 Wn.App. 720, 722, 727 P.2d 254 (1986), the Department had issued a tax warrant to collect on an unpaid, un-appealed assessment. The taxpayer filed suit to prevent collection, challenging the validity of the assessment. The Court held that “Kirkland failed to properly **challenge his tax assessment**” because he had not first paid the assessment he sought to challenge. *Id.* at 722 (emphasis added). Similarly in *Morrison-Knudsen Co. v. Department of Rev.*, 6 Wn.App. 306, 313, 493 P.2d 802, 808 (1972), the court held that “RCW 82.32.150 denies a taxpayer access to the courts **to protest a tax assessment** unless the assessment is paid.” (Emphasis added).

Consequently, neither *Kirkland* nor *Morrison-Knudsen* stand for the proposition asserted by the Department that “to bring a tax refund lawsuit **for any tax period** that is the subject of an assessment, the **entire assessment**, penalties and interest **must be paid in full.**”<sup>8</sup> CP 32 (emphasis added). We are aware of no case law in Washington addressing the issue presented to this Court - whether a taxpayer must pay an assessment covering forty-eight months to contest and seek a refund of

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<sup>8</sup> Again, the Department does not argue that “all” means “all” but instead tries to refine the interpretation to be consistent with its position in this case (that AOL is required to pay all of one assessment but none of the second assessment). However, this particular line drawing by the Department, which it fails to have ever explained, makes no sense under the statute.

taxes paid with a return for only one.

In *Agrilink*, the substantive issue was whether RCW 82.04.260(4) included a perishable finished product requirement. As in *Agrilink*, the Department is improperly attempting to add to a statute language that was not used by the legislature. 153 Wn.2d at 397 (“we note the complete absence of any express language establishing such a [perishable finished product] requirement”). RCW 82.32.150 does **not** require the payment of an “assessment” before instituting a tax refund suit; it only requires payment of “such taxes” as the taxpayer is “contesting.” The legislature’s express use of the word “assessment” in the following sentence of RCW 82.32.150 prohibiting actions to enjoin collection of tax assessments clearly demonstrates that the legislature knows how to use the word assessment when that is what it means.

California courts have reached the same conclusion. While California, like Washington, has long had a requirement of payment before filing a lawsuit seeking a refund of such taxes, in *Dept. of Cal., Veterans Foreign Wars of U.S. v. Kunz*, 125 Cal.App.2d 19, 269 P.2d 882 (1954), the Court allowed a taxpayer to maintain a suit for a refund of taxes paid for one reporting period, even though the taxpayer had been assessed liability for multiple periods.

Subsequently the California legislature enacted a statutory provision to expressly condition tax refund suits “upon payment of the amount of the **assessment.**” West’s Ann. Cal. Un. Ins. Code § 1178(d) (emphasis added). Thus, in a subsequent case the California Court held that a taxpayer was not allowed under the revised statute to seek a refund of the “tax and interest for only one reporting period - the first quarter of 1983” when there remained an unpaid assessment for “several reporting periods from 1983 through 1985.” *Masi v. Nagle*, 5 Cal.App.4th 608, 610, 7 Cal.Rptr. 423, 424 (1992). However, the court reached this decision only “because the relevant statutes require full payment of the multiple-reporting period **assessment** under the circumstances of this case.” 5 Cal.App.4th at 611, 7 Cal.Rptr.2d at 424 (emphasis added). In so holding *Masi* expressly distinguishes *Kunz*:

We note a 1954 case allowed a taxpayer to maintain suit for refund of employer contributions under the Unemployment Insurance Code upon payment of taxes due for one reporting period, even though the Department of Employment had assessed liability for multiple periods. (*Dept. etc. Veterans Foreign Wars v. Kunz* (1954) 125 Cal.App.2d 19, 269 P.2d 882.) **However, that case predated enactment of section 1178, subdivision (d), requiring payment of the “assessment” . . . .**

5 Cal.App.4th at 613, 7 Cal.Rptr.2d at 426 (emphasis added).

The same is true under the federal system. “If the tax is one that is imposed on (and may be divided among) individual transactions, such as

excise taxes [which Washington's sales tax is], the taxpayer is considered to make full payment if the taxpayer pays the tax for a single transaction in the applicable period(s)." MICHAEL I. SALTZMAN, IRS PRACTICE AND PROCEDURE 11-74 (Revised 2d ed. 2007) (citing amongst others, *Flora v. United States*, 362 U.S. 145, 80 S.Ct. 630, 4 L.Ed.2d 623 (1960)).

These authorities illustrate that where there is a pay first litigate later requirement, but no express statutory requirement that an "assessment" must be paid in order to contest the payment for a reporting period, there is no obligation to pay an assessment, even if the reporting period is within the periods of the assessment.

The first sentence of RCW 82.32.150 does not specify that the taxpayer must pay an assessment in order to challenge taxes in court. Indeed, the very next (and only other) sentence of RCW 82.32.150 after the first sentence limiting suits for taxes only once "such taxes have been paid," refers to a court action for an injunction or court order with regard to an "assessment." "Where the Legislature uses certain statutory language in one instance and different language in another, there is a difference in legislative intent." *Agrilink*, 153 Wn.2d at 397 (quoting *United Parcel Serv., Inc. v. Dep't of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984)). If the Washington legislature wished to require the payment of assessments, it could

have done so like the California legislature. Instead, the “plain meaning” of the statutory provision at issue is discerned from the language of the provision, the context, including the second sentence of 82.32.150, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wn.2d at 600, 115 P.3d at 283 (2005). The plain language does not require payment by a taxpayer of an assessment covering multiple periods when the taxpayer seeks a refund of only one period.

**4. Requiring payment of assessments that are not due before commencing a suit for a refund of taxes paid would create a conflict in the statutory scheme.**

Statutes are required to be read whenever possible to harmonize provisions. *State v. Lilyblad*, 163 Wn.2d 1, \_\_\_, 177 P.3d 686, 691 (2008). The Department’s position in this case would effectively interpret RCW 82.32.150 in a manner inconsistent with RCW 82.32.160.

Under RCW 82.32.160 the due date for a tax assessment that has been timely appealed to the Department is stayed pending determination of the administrative appeal. Department of Revenue Determination No. 99-009, 18 WTD 246 (1999). Consequently, the assessments, which AOL has administratively appealed, are not final and not yet due. In fact, under RCW 82.32.160, the Department may make “correction of the amount of the assessment.” The Department’s position, that one but not both of the two assessments that are subject to a pending administrative appeal must

be paid before instituting a suit for refund of taxes paid pursuant to a tax return, would accelerate the due date for the assessment contrary to RCW 82.32.160.

This was the issue in *City Nat. Corp. v. Franchise Tax Bd.*, 146 CalApp.4th 1040, 53 Cal.Rptr.3d 411 (2007). City National sought a refund of overpaid franchise tax for the tax years 1999 through 2002. The Franchise Tax Board had issued notices of proposed assessments to City National for \$50 million for tax years 1998 through 2003. However, City National administratively protested all of the notices. The Franchise Tax Board challenged City National's lawsuit on two grounds – failure to exhaust administrative remedies and failure to pay the full amount owed under the notices.

The court noted that there were two rules of law at issue. The first was that the California Constitution requires a taxpayer to pay a disputed tax before bringing an action in court and the second rule, derived from the *res judicata* doctrine, was “that all tax liability issues [for a tax period] be litigated in a single action.” 53 Cal.Rptr.3d at 414. (In the case of the California franchise tax, which is a net income tax, the reporting period is one year.) City National argued that it complied with the constitutional requirement “because it paid all of the taxes that are the subject of its refund action, and it is not required to pay the proposed assessment set

forth in the NPAs because they are not yet due.” *Id.* The Franchise Tax Board argued that “City National must pay in full all disputed tax assessments, including proposed assessments, before filing a tax refund action.” *Id.* The court agreed with City National. *Id.*

The Franchise Tax Board “correctly states that an action for refund may not be maintained until the full amount claimed due for a given reporting period is paid,’ and that ‘[a]ll taxes assessed in any given tax [period] must be paid in full before a tax refund action can be filed.’ The fault in FTB’s position is that the amounts set forth in the NPAs are **not** assessed taxes that are ‘claimed due.’” *Id.* (emphasis in original). City National had filed protests and thus, the proposed assessments were not final and there was no obligation to pay them. “It is common sense that a tax assessment, as a formal act with significant consequences, cannot occur before it is final.” *Id.* at 415 (quoting *In re King*, (9th Cir. 1992) 961 F.2d 1423, 1427). In Washington, an assessment that is administratively appealed is not final until “the conclusion of the review of the taxpayer’s petition.” Det. No. 99-009, 18 WTD 246 (1999). Thus, even if RCW 82.32.150 requires the payment of all tax amounts due it cannot require the payment of the assessments issued to AOL, which are not yet final and due.

This conclusion is consistent with the underlying purpose of statutes like RCW 82.32.150 which permits government to obtain the revenue necessary to its maintenance. *Roon v. King County*, 24 Wn.2d 519, 528, 166 P.2d 165, 169 (1946). The purpose expressed for such provisions, to allow revenue collection, “is not thwarted . . . where the State has by legislation, itself authorized, directed, and consented to the postponement of collection. . . .” *Franchise Tax Board v. Bonds*, 212 Cal.App.3d 1343, 1348-49, 261 Cal.Rptr. 236, 240 (1989) (speaking with regard to a statutory exception to the payment requirement for residency determinations).

**B. Since the Superior Court has subject matter jurisdiction on the basis of the Constitution (Art. IV, § 6), AOL need only satisfy the spirit of the statutory procedural requirements of RCW 82.32.150, which it has done.**

The Department moved to dismiss on the grounds of lack of subject matter jurisdiction. CP 26. However, jurisdiction is expressly and specifically granted with regard to tax matters by the Constitution, Art. IV, § 6, and RCW 2.08.010. “It is axiomatic that a judicial power vested in courts by the constitution may not be abrogated by statute. *James v. County of Kitsap*, 154 Wn.2d 574, 588, 115 P.3d 286, 293 (2005) (discussing Art. IV, § 6 with respect to a land use impact fee and *citing Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397

(1936)); *Dougherty v. Department of Labor & Indus.*, 150 Wn.2d 310, 316, 76 P.3d 1183, 1185 (2003) (“If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.” *Quoting Marley v. Dept’ of Labor and Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994)).

The Department’s argument is that AOL has not satisfied the procedural requirements of RCW 82.32.150. However, “where statutes prescribe procedures for the resolution of a particular type of dispute, state courts have required . . . satisfaction of the spirit of the procedural requirements before they will exercise jurisdiction over the matter.”<sup>9</sup> *James v. County of Kitsap*, 154 Wn.2d at 588. As discussed above, the purpose of RCW 82.32.150 is to make sure that the government has the revenue it needs in order to carry out its operations. In this case, since under RCW 82.32.160 the amount of the taxes set forth in the assessments is not yet due, and may never be due, the government would not be stymied in obtaining the revenue necessary for its maintenance by permitting a suit to go forward without payment of the amount of the

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<sup>9</sup> *See also, Appeal of Des Moines Sewer Dist., U.L.I.D. No. 29*, 97 Wn.2d 227, 228, 643, P.2d 436, 437 (1982) (the statute, which petitioners substantially complied with, read in light of the state constitution, merely governs procedures and does not affect the court’s subject matter jurisdiction); *see also, County of Los Angeles v. Southern California Edison Company*, 112 Cal.App.4th 1108, 1119 n. 5, 5 Cal.Rptr.3d 575, 583 (2003); *Milhous v. Franchise Tax Board*, 131 Cal.App.4th 1260, 1267-68, 32 Cal.Rptr.3d 640, 645-46 (2005).

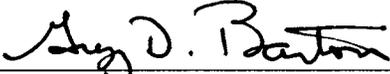
assessments until they are final so long as all of the taxes shown on the return as due for the period challenged have been paid. Here, where AOL has properly paid all the tax for the reporting period which it is contesting, AOL has satisfied the spirit or purpose of the statutory procedural requirement of paying before litigating. On the other hand, if the Superior Court's dismissal were upheld, AOL would have no court remedy to recover the taxes it has paid. RCW 82.32.180 clearly gives AOL the right to file an appeal in Superior Court without the necessity for filing a claim with the Department, provided the requirements of that section as well as RCW 82.32.150 have been satisfied. The requirements under RCW 82.32.150 should be interpreted in light of the spirit and purpose of RCW 82.32.150 and 82.32.180.

## VI. CONCLUSION

For the reasons discussed above, AOL respectfully requests that the Court of Appeals reverse the dismissal of its Amended Complaint.

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