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Division II  
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NO. 50409-0-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent,

v.

GAMESTOP, INC. and SOCOM, LLC,

Appellants.

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**REPLY BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

The trade-in exclusion in RCW 82.08.010(1)(a)(i) has three plainly stated requirements. First, the trade-in property received by the seller must be of “like kind” to the property being purchased. Second, the trade-in property must be part of the “total amount of consideration” given in exchange for the property being purchased. Third, the trade-in property must be “separately stated” from the property being purchased. These statutory requirements are further emphasized and explained in the Department’s administrative rule implementing the statute, WAC 458-20-247 (Rule 247). That Rule was adopted in 1984, contemporaneously with the enactment of the trade-in exclusion, and it has never been repudiated by the Legislature or criticized by any Court. The Board of Tax Appeals misapplied the requirements of the statute and Rule 247 when it broadly construed the trade-in exclusion in a manner that is inconsistent with established Washington law. The Board’s decision should be reversed.

## **II. ARGUMENT**

Washington’s sales tax laws allow purchasers of tangible personal property the ability to reduce the taxable “sales price” of purchased property by delivering to the seller “separately stated trade-in property of like kind.” RCW 82.08.010(1)(a)(i). By its very terms, the “trade-in exclusion” does not apply to all barter or trade transactions.

The Board of Tax Appeals misapplied the statutory requirements for the trade-in exclusion when it granted the administrative appeal filed by Appellants GameStop Inc. and its related affiliate, SOCOM LLC, who were contesting audit assessments issued by the Department of Revenue. First, it misapplied the law when it concluded that video game hardware and video game software are property of “like kind” within the meaning of the statute and Rule 247, even though WAC 458-20-247(5) expressly states that computer hardware and computer software are not property of a like kind. Second, it misapplied the law when it concluded that the trade-in exclusion applies to a purchase of merchandise through the redemption of a credit added to a customer’s stored value card in a prior transaction. Third, it misapplied the law when it concluded that the “separately stated” requirement is met when sales documents pertaining to the purchase of merchandise list the *amount* of a redeemed credit, not information about the property from which the credit was derived. For each of these reasons, the Board’s decision should be reversed. *See* RCW 34.05.570(3)(d) (agency action may be reversed when the agency has erroneously interpreted or applied the law).

**A. Gaming Hardware and Video Game Software are not Property of a Like Kind within the Meaning of RCW 82.08.010(1)(a)(i) and Rule 247**

The phrase “trade-in property of like kind” is defined in Rule 247 as tangible personal property of the same generic classification as the property being purchased. WAC 458-20-247(5). Whether tangible personal property is of the same generic classification depends on “the nature of the property and its function or use.” *Id.* The evidence introduced at the Board of Tax Appeals hearing established that video game software can perform none of the functions or uses of gaming hardware. *See* Tr. at 45-46 (testimony of GameStop Senior Vice President confirming that the video game “Call of Duty” can perform none of the functions or uses of a Sony PlayStation). GameStop and SOCOM (hereinafter the “GameStop affiliates”) offered no evidence to rebut this point. Even so, the Board of Tax Appeals concluded as a matter of law that “[v]ideo-game hardware and software are ‘gaming components’ and are ‘property of like kind’ within the meaning of RCW 82.08.010(1)(a)(i) and Rule 247.” AR 042 (COL 17).

The GameStop affiliates ask the Court to uphold the Board’s legal conclusion that gaming hardware and video game software are property of like kind. *Resp. Br.* at 7-11. Citing no evidence in the administrative record, but invoking the hypothetical “person on the street,” the affiliates

assert that gaming hardware and video game software naturally fit within the general classification of “gaming components.” *Id.* at 8. The argument is at odds with the evidence and with the language of Rule 247(5).

**1. There is no factual or legal support for the Board’s conclusion that gaming hardware and video game software are property of a like kind.**

The legal conclusion adopted by the Board of Tax Appeals and championed by the GameStop affiliates has two primary flaws. First, the Board and the GameStop affiliates ignore the standard employed under Rule 247(5) to determine whether tangible personal property fits within the same general classification. That standard is whether the trade-in property and the purchased property have a similar function or use. No evidence in the administrative record supports the legal conclusion that gaming hardware and video game software have a similar function or use. The evidence, in fact, is to the contrary. *Tr.* at 45-46. Characterizing gaming hardware and software as both falling within the general category of “gaming components” is pure semantics designed to avoid wrestling with the undisputed evidence in the administrative record.

The second flaw with the legal conclusion advocated by the Board and the GameStop affiliates is that Rule 247 expressly states that computer hardware and computer software are not property of a like kind. *See* WAC 458-20-247(5) (“The exclusion of the value of property traded in . . . does

not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, *computer hardware for computer software*, or farm machinery . . . for a car”) (emphasis added). As the Department explained in the early 1990s, the mere fact that computer hardware and software operate together as a “functional unit” does not make the hardware and software property of the same general class. *See* AR 129 (relevant section of Department published Determination No. 91-044, 10 WTD 395 (1990)). “Hardware is generally the mechanical and electronic parts of a computer; software . . . is generally the instructions that command the hardware.” *Id.* These items work in tandem, but have dissimilar functions and uses.

In this respect, computer hardware and software are like a sewing machine and fabric, an automobile and gasoline, or a record player and a music album. Simply because these items of tangible property work together, or are typically used in tandem, does not render them property of the same generic class. Moreover, the language of the statute expressly limits the trade-in exclusion to property of a like kind, not property that works together or property that is used in tandem. The Department fairly and logically construed the language of the statute when it concluded long ago that computer hardware and computer software are not within the same general class and do not qualify as property of a like kind.

The GameStop affiliates concede that video game consoles and controllers are computers, and concede that video games are software. Resp. Br. at 7-8. They argue, however, that the Court should construe the trade-in exclusion as applying to property that is “used together” as part of a “larger system.” Resp. Br. at 9. The affiliates reason that if “auto parts” and “audio-video equipment” are appropriate general classifications under Rule 247(5), so too are “gaming components.” *Id.* Auto parts, according to the affiliates, are “all used together in the same kind of larger system (automobiles), and audio/visual equipment is an appropriate general classification for another such universe.” *Id.*

Contrary to the reasoning offered by the GameStop affiliates, auto parts and audio-visual equipment qualify for the exclusion because they each fit within a general classification of property that performs similar functions, not because they are used together in a “larger system.” Under the approach advocated by the GameStop affiliates, where the standard is whether property is used together in a larger system, the trade-in of an automobile on the purchase of a new or used automobile would not qualify for the exclusion. Automobiles are not components of a larger systems. Nor is furniture, appliances, recreational vehicles, or audio-visual equipment. Amending Rule 247(5) to employ the approach advocated by the GameStop affiliates would certainly benefit their retail business

operations, but at the cost of other businesses that have historically qualified for the trade-in exclusion.

The GameStop affiliates may argue that their proposed “used together in a larger system” approach to determining whether property is of a like kind is intended to be an additional standard—not a replacement standard—to the “function and use” standard that has been part of Rule 247 for over thirty years. But the issue of whether Rule 247 should be expanded to include two (or more) standards for determining whether property is of a like kind is a policy decision that should be directed to the Department of Revenue or the Legislature. *See generally* RCW 82.32.300 (Legislature expressly granted the Department of Revenue the authority to administer and enforce the excise tax laws of the state and to issue administrative rules implementing the law). The Board of Tax Appeals certainly has no authority to expand Rule 247 beyond its plain language. And courts typically refrain from modifying or expansively construing administrative rules pertaining to the state’s tax laws. *See, e.g., In re Sehome Park Care Ctr.*, 127 Wn.2d 774, 779-81, 903 P.2d 443 (1995) (Supreme Court “decline[d] to disturb” a longstanding interpretive rule pertaining to a businesses and occupation tax exemption); *N. Cent. Wash. Respiratory Care Servs., Inc. v. Dep’t of Revenue*, 165 Wn. App. 616, 631,

268 P.3d 972 (2011) (Court adhered to the Department’s longstanding construction of a sales tax exemption statute).

Under the express language of Rule 247(5), computer hardware like the gaming consoles and controllers sold by the GameStop affiliates, and computer software like the video games sold by the affiliates, are not property of a like kind. The Board of Tax Appeals erred when it declined to respect and fairly apply that Rule.

**2. The Department is not exalting labels over substance.**

In addition to advocating for a new standard for determining whether property is of a like kind, the GameStop affiliates also take issue with the Department’s assertion that “labels do not control when determining if a tax exemption applies.” Resp. Br. at 10 (quoting Revenue’s opening brief at 20). The affiliates contend that it is the Department that “attempts to exalt labels instead of . . . the underlying nature of the property or its function or use.” *Id.* at 10-11 (internal quotation omitted). The argument is nonsense. The Department is not exalting labels over substance. Instead, the Department has looked to the substantive differences between the function and use of gaming hardware and video game software; substantive differences that are supported by the evidence.

During the hearing before the Board of Tax Appeals, a GameStop Senior Vice President agreed with the statement that modern gaming systems like the Sony PlayStation offers an array of entertainment options such as “DVD and music playback, movie streaming and interactions with other home entertainment products.” Tr. at 44-45. The Senior Vice President also agreed that video game software can perform none of the functions or uses of gaming hardware. Tr. at 45-46. That testimony pertained to substantive differences between gaming hardware and software. And the GameStop affiliates offered no evidence detailing any substantive similarities between gaming hardware and software. *See* Resp. Br. at 11 (citing no evidence in support of their assertion that gaming consoles and video game software serve the same function).

Rather than exalting labels over substance, the Department has presented evidence supporting its position that gaming hardware and video game software are not property of a like kind. If evidence matters, as it should, then there is no reasonable dispute that the Department correctly denied the trade-in exclusion with respect to transactions where a customer trades video game hardware as part of the consideration paid for the purchase of video game software (hardware for software) and with respect to transactions where a customer trades video game software as part of the consideration paid for the purchase of gaming consoles or other

gaming hardware (i.e., software for hardware). In those transactions, the property delivered to the seller and the property sold to the buyer have substantively different functions and uses and, therefore, are not of a like kind.

**3. The Board of Tax Appeals erred when it created and applied its new “interdependent components” analysis.**

Finally, the GameStop affiliates also argue that the Board of Tax Appeals did not create a new “interdependence” standard for determining whether property qualifies as like kind, as the Department asserts in its opening brief. Resp. Br. at 11-12; *see also* Revenue’s Op. Br. at 22-24. Yet the Board’s own decision held that gaming hardware and software qualify as property of like kind *because* “[g]aming hardware (consoles and controllers) and gaming software (video games) are interdependent components of an integrated system . . . and fall within the general classification of ‘gaming components.’” AR 041 (COL 14.2).

The Department (and the trial court) took issue with the Board’s interdependent components analysis, pointing out that much of the gaming hardware and software that the GameStop affiliates sell would not qualify as property of like kind under the Board’s approach. *See* Revenue’s Op. Br. at 24-27; VRP at 44. It may be true that the Board was not offering up a new standard to replace the “function and use” standard that has been

part of Rule 247 for over thirty years. Instead, the Board may have been carving out an exception to Rule 247's express language that computer hardware and computer software are not property of a like kind. But that nuance (creating a new standard versus creating an exception to Rule 247(5)) is of no consequence. The Board of Tax Appeals has no authority to add language to a Department administrative rule, or to modify the tax policy of this state. The Board acted outside its authority when it modified Rule 247 to permit "interdependent" computer hardware and software to qualify as property of a like kind.

This Court reviews issues of law de novo under the error of law standard. *Department of Revenue v. Nord Nw. Corp.*, 164 Wn. App. 215, 223, 264 P.3d 259 (2011). In order to conclude that the Board erred when it created and applied its "interdependent components" analysis, it is not necessary to characterize that analysis as a new standard improperly engrafted into Rule 247 or a newly formulated exception to the express language of that Rule. In either event, the Board of Tax Appeals erred as a matter of law when it failed to fairly construe and apply Rule 247(5), and this Court should set aside the Board's erroneous decision. *See Nord Nw.*, 164 Wn. App. at 234 (Board of Tax Appeals was reversed when it failed to fairly apply a Department administrative rule detailing the requirements a contractor must meet to qualify as a "speculative builder").

**B. The Trade-In Property Must be Delivered as Consideration for the Property Being Purchased, Not for a Stored Credit**

RCW 82.08.010(1)(a)(i) provides in relevant part that the term “selling price” means the total amount of consideration received by a seller in exchange for tangible personal property “except [for] separately stated trade-in property of like kind.” Absent the statutory exception, the value of trade-in property would be part of the selling price, resulting in more sales tax owed on the transaction. *Olympic Motors, Inc. v. McCroskey*, 15 Wn.2d 665, 671, 132 P.2d 355 (1942). To fit within the express language of the exclusion, the seller must accept the trade-in property as part of the *consideration* received for the purchased property.

Under Washington law, “a sale takes place in this state when the goods sold are delivered to the buyer in this state.” WAC 458-20-103; *see also Avnet, Inc. v. Dep’t of Revenue*, 187 Wn.2d 44, 51, 384 P.3d 551 (2016) (quoting WAC 458-20-103 with approval as defining “when a sale takes place”). This is true even if the seller receives a credit rather than a cash payment. *General Motors Corp. v. State*, 60 Wn.2d 862, 879, 376 P.2d 843 (1962). Consequently, the GameStop affiliates are purchasing property for resale when a customer hands over his or her used products in exchange for a credit loaded onto the customer’s stored value card. *See generally*, AR 342 (the GameStop trade-in program is designed in part to

allow the company to acquire an inventory of used video game products “which we resell to our more value-oriented customers”). That purchase-sale transaction is complete when the used products are delivered to the GameStop affiliates in exchange for valuable consideration.<sup>1</sup> A separate purchase-sale transaction occurs when the customer returns days, weeks, or years later and purchases GameStop merchandise using the stored credit as consideration. In that second transaction, there is no “trade” of tangible personal property for tangible personal property, and the trade-in exclusion cannot apply.

Rule 247 correctly implements this established law. The Rule explains that “[p]roperty traded in must be consideration delivered by the buyer to the seller.” WAC 458-20-247(4). Although this exchange of like-kind property “does not require simultaneous transfers of the property being traded in and the property being purchased,” it does require the delivery of the trade-in property and the purchase of the like-kind property to be “components of a single transaction.” *Id.* To meet this requirement, “[s]ales documents, executed not later than the date the trade-in property is

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<sup>1</sup> Sales tax does not apply to that transaction because the GameStop affiliates are purchasing the used property for resale in the regular course of business. *See* RCW 82.04.050(1)(a)(i) (excluding from the definition of a retail sale “[p]urchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by the [purchaser]”).

delivered to the seller, must identify the property purchased and the trade-in property . . . .” *Id.*

The GameStop affiliates attempt to side-step the plain language of the statute and Rule 247(4) by erecting a straw-man that misstates the Department’s position. They argue that trade-in property does not need to be delivered to the seller “contemporaneously” with the seller’s delivery of the purchased property to the buyer. Resp. Br. at 14. This is true. So long as the purchased property is known and can be reasonably identified at the time the trade-in property is delivered to the retailer, and the other elements required under the statute are met, the trade-in exclusion will apply. Rule 247(4) says exactly that. And the point is emphasized in the Rule’s examples. *See* WAC 458-20-247(4) (example b).

The Department has not asserted that the trade-in deductions claimed by the GameStop affiliates on their Washington excise tax returns should be disallowed because of the lack of a “contemporaneous” delivery of trade-in property and purchased property. Instead, the Department asserts that the delivery of property to the GameStop affiliates *in exchange for a credit* was a separate purchase-sale transaction from the later purchase of property through the redemption of the credit. Revenue’s Op. Br. at 28-30. The Department’s reading and application of the statute’s language is not “strained” as argued by the affiliates. Resp. Br. at 14.

Rather, the Rule's "single transaction" requirement gives effect to the statutory requirement that qualifying trade-in property must be part of the "total amount of consideration" for which tangible personal property is being sold. RCW 82.08.010(1)(a)(i). The delivery of the trade-in property "as consideration" for the purchased property is a key element under the statute. That language cannot fairly be read to allow "merchandise to be traded in *prior to the purchase* of other merchandise" as argued by GameStop and SOCOM. Resp. Br. at 15 (emphasis added).

Moreover, even if the statute could possibly be construed to apply when a customer exchanges used merchandise for a valuable credit "prior to the [subsequent] purchase of other merchandise," the Department's construction of the statute would be entitled to deference. *See, e.g., Smith v. Employment Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010) (courts give "substantial weight to the agency's interpretation of statutes it administers"). And the Board of Tax Appeals has no authority to repudiate the Department's reasonable construction of the statute or to establish its own preferred tax policy. *See generally* Chapter 82.03 RCW (Legislature has not granted the Board of Tax Appeals authority to establish tax policy). Consequently, the Board erred when it permitted the GameStop affiliates to claim the trade-in exclusion with respect to retail sales

occurring days, weeks, or years after a customer had sold his or her used merchandise to the affiliates in exchange for a credit.

The GameStop affiliates make three arguments in support of their claim that a trade-in can be consummated “prior to the purchase of other merchandise.” First, they argue that their preferred interpretation of the statute is supported by the examples provided in Rule 247(4). Resp. Br. at 15-17. Next, the affiliates argue that this Court should invalidate the Rule’s “single transaction” requirement. Resp. Br. at 17-19. And finally, the GameStop affiliates argue that the statute should be construed broadly as a matter of public policy to “encourage the reuse and recirculation of durable products, and democratize access to products through discounts for older used versions.” *Id.* at 19. None of these arguments has merit.

The examples in Rule 247(4) are of no help to the GameStop affiliates because they support and further animate the Rule’s distinction between a “simultaneous transfer” of property (which is not required in order for the trade-in exclusion to apply) and a single transaction (which *is* required). Examples (b) and (c) make this point. In example (b) of Rule 247(4), the customer, Sally Jones, trades in her used motor home for a new motor home. Although the RV dealer did not have the new motor home in stock, the parties nonetheless entered into a purchase-sale agreement whereby the RV dealer accepts Sally’s used motor home as part of the

consideration for the new motor home, which is ordered from the manufacturer and delivered eight months later. WAC 458-20-247(4) example (b). In this hypothetical, “Sally is entitled to the trade-in exclusion because [her used] motor home was delivered to the RV dealership as consideration paid toward her purchase of the new motor home.” Simultaneous transfer of the trade-in property for the purchased property was not required. What was required was the delivery of the trade-in property as part of the consideration given to the seller to complete the purchase-sale transaction.

By contrast, had the seller instead given Sally Jones a credit that could be used in a subsequent purchase-sale transaction, the trade-in exclusion would not apply. *See id.*, example (c) (exclusion did not apply where seller held proceeds from a trade-in of property in trust to be used in a subsequent purchase-sale transaction). The statute and Rule 247(4) demand that the trade-in property be accepted in exchange for the purchased property, not in exchange for money or a credit. Simply setting aside the proceeds derived from the trade-in of merchandise for use as consideration in a subsequent purchase is not sufficient.

Similarly, there is no legal or logical reason to invalidate Rule 247(4)’s “single transaction” requirement. As discussed above, the requirement is a necessary product of the language of the statute. The

statute speaks in terms of “consideration . . . received” by the seller in exchange for the property being purchased. If the consideration received by the seller in exchange for the purchased property is money, a credit, or anything else of value other than “separately stated trade-in property of like kind,” the exclusion plainly does not apply. This is an entirely reasonable reading of the statute’s language. Moreover, even if the statute was susceptible to other reasonable interpretations, the Department’s interpretation would be entitled to deference for the reasons discussed above and in the Department’s opening brief. *See supra* at 15; Revenue’s Op. Br. at 33-34. *See also Nord Nw.*, 164 Wn. App. at 229 (Court agreed with Department’s interpretation of an administrative rule promulgated and enforced by the Department).<sup>2</sup> As a result, there is no basis for this Court to step in and invalidate the Rule’s single transaction requirement.

Finally, GameStop’s tax policy argument should be flatly rejected. Expanding a sales tax exemption, deduction, or exclusion comes at a cost—less revenue to fund important state services. While the Legislature might agree with the GameStop affiliates that it makes policy sense to

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<sup>2</sup> Additionally, the Washington trade-in exclusion is materially different from the trade-in exclusion provided under Louisiana and Florida law. *See generally*, Revenue’s Op. Br. at 35-38 (discussing and providing citations to Louisiana and Florida statutes). Consequently, the fact that the final decision issued by the Washington Board of Tax Appeals in this case happens to “align with” decisions from Louisiana and Florida is not a sufficient reason to invalidate a long-standing Department rule interpreting and applying the specific language of the Washington statute.

expand the trade-in exclusion in order to “encourage the reuse and recirculation of durable products” or to “democratize access to products,” these arguments should be presented to the Legislature in the first instance. The Legislature can consider and balance the benefits to companies like GameStop against the countervailing cost to the state’s ability to fund government, and can make appropriate amendments to the trade-in exclusion designed to best achieve the desired goal. However, until the Legislature chooses to amend the statute, the Department of Revenue, the Board of Tax Appeals, and the courts should interpret and apply the statute in a manner that gives effect to its existing language.

The Department has for many years fairly and reasonably construed the trade-in exclusion as requiring the trade-in property to be delivered to the seller as part of a single purchase-sale transaction. That interpretation is not “artificially narrow” as argued by the GameStop affiliates. *See* Resp. Br. at 19. To the contrary, the Department’s interpretation of the trade-in exclusion is consistent with the statute, with the language of WAC 458-20-103 describing when a sale takes place in this state, and with the general rule that tax exemptions and deductions are construed and applied narrowly. *Avnet*, 187 Wn.2d at 49-50. The Board of Tax Appeal’s broad and unprincipled application of the exclusion to the facts of this appeal was improper and should be set aside.

**C. The GameStop Affiliates do not meet the “Separately Stated” Requirement of RCW 82.08.010(1)(a)(i)**

To qualify for the trade-in exclusion, the trade-in property delivered to the merchant and the property being purchased from the merchant must be separately stated. RCW 82.08.010(1)(a)(i). This additional requirement was added to the statute in 2004. Laws of 2004, ch. 153, § 406. To verify that this requirement is met, Department Rule 247(4) expressly provides that sales documents “executed not later than the date the trade-in property is delivered to the seller” must separately identify the property purchased and the property being traded in. WAC 458-20-247(4); *see also id.* at 247(8) (listing the information that must be specified in the sales agreement or invoice). The GameStop trade-in program does not satisfy this requirement with respect to those transactions where merchandise is purchased through the redemption of a stored credit. In those “merchandise for credit” transactions, the sales documents generated by the GameStop affiliates list only the amount of the redeemed credit. AR 236.<sup>3</sup> The sales documents provide no information about the property that generated the credit. Consequently, the “property” was not separately stated as required by the statute and by Rule 247(4).

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<sup>3</sup> The document at AR 236 is a representative invoice showing the purchase of video game software in exchange for \$11.31 cash and the redemption of a \$49.54 credit stored on the customer’s stored value card. For convenience, a copy of the invoice is attached as Appendix A. Customer identifying information has been redacted.

The Board of Tax Appeals misapplied the law when it concluded that the statute’s “separately stated” language requires only the separate statement of the “consideration” derived from the trade-in of property. AR 040 (COL 8). Had the Legislature intended to limit the exclusion to only separately stated consideration, or separately stated amounts associated with trade-in property, it could have used words to express that intent. Instead, it limited the exclusion to “separately stated *property* of like kind.” RCW 82.08.010(1)(a)(i) (emphasis added).

Additionally, as the Board of Tax Appeals notes in its final decision, there is already a general rule of state sales tax law that requires sales documents to separately state the taxable and non-taxable amounts of a transaction in order for the purchaser to receive the benefit of the non-taxable portion of the transaction. *See* AR 039 (COL 7.1) (citing the “Separate Statement Rule” discussed in the Hellerstein treatise on state taxation). Thus, the “separately stated” requirement added to RCW 82.08.010(1)(a)(i) in 2004 must have been intended to do more than merely codify an already established general rule of state sales tax law.

The GameStop affiliates offer no worthy support for the Board’s construction of the statute’s “separately stated” requirement. Instead, they point out that the requirement is met when a customer’s used property is traded-in on the immediate purchase of GameStop merchandise—an issue

that is not in dispute—and that the Department’s auditors likely could dig through the seller’s accounting records and match the “amount” of the credit with the property that generated the credit. Resp. Br. at 20-21. But neither of these observations explains how the Board could conceivably construe the phrase “separately stated property” to mean separately stated *consideration*.

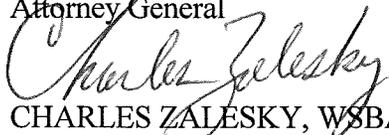
The undisputed evidence in the agency record establishes that the “separately stated” requirement of RCW 82.08.010(1)(a)(i) was not met with respect to merchandise sold by GameStop and SOCOM in exchange for the redemption of a stored credit. *See* Appendix A (representative invoice). The Board of Tax Appeals erred as a matter of law when it concluded otherwise. This Court should reject the Board’s erroneous conclusion of law. RCW 34.05.570(3)(d).

### III. CONCLUSION

For the reasons stated herein and in the Department’s opening brief, the final decision of the Board of Tax Appeals should be set aside.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2017.

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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 24 day of November, 2017, at Tumwater, WA.

  
\_\_\_\_\_  
Candy Zilinskas, Legal Assistant

# APPENDIX A

447



Transaction Details  
Sales, Return or Trade

Associate: NEH Date: Nov 19, 2010  
Store: 496 - Mill Plain T/C Time: 5:29 PM  
Manager: Blain, Alphonso Register: 1  
Trans #: 56  
422477938

PUR Number

Redeem 6006493508122925479 \$49.54

1	20 - Xbox 360 Software	200787 - Call of Duty Black Ops T25	1	\$59.99	\$0.00	\$59.99
R Return T Trade-in				Total Cost	\$59.99	
				Sales Tax	\$0.86	
				Edge Discount Amount	\$0.00	
				Associate Discount	\$0.00	
				PUR Discount	\$0.00	
				Receipt Total	\$60.85	
				Tender Types		
				Cash	\$11.31	
				Checks	\$0.00	
				Credit Card	\$0.00	
				Debit Card	\$0.00	
				Gift Cards Issued	\$0.00	
				Gift Cards Redeemed	\$0.00	
				Edge Card Issued	\$0.00	
				Edge Card Redeemed	\$49.54	
				PUR Card Issued	\$0.00	
				PUR Card Redeemed	\$0.00	
				Mail Certificate	\$0.00	
				Corporate Check	\$0.00	
				Purchase Orders	\$0.00	
				Other Amount	\$0.00	
				Total Tender	\$60.85	



**ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION**

**November 13, 2017 - 11:21 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50409-0  
**Appellate Court Case Title:** Department Of Revenue, Respondent v GamesStop, INC and Socom, LLC ET AL, Appellants  
**Superior Court Case Number:** 16-2-02159-7

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