

50437-5-II

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Oct 17, 2016 11:30 AM  
CLERK'S OFFICE

RECEIVED VIA PORTAL

92 992-1

bjh

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

---

RAINIER XPRESS,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

---

TRIPLE C COLLECTIVE, LLC,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

---

GREEN COLLAR CLUB,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

---

**APPELLANTS' OPENING BRIEF**

---

Darrell L. Cochran, WSBA #22851  
Christopher E. Love, WSBA # 42832  
Jay Berneburg, WSBA #27165  
Counsel for Appellants

PFAU COCHRAN VERTETIS  
AMALA, PLLC  
911 Pacific Avenue, Suite 200  
Tacoma, Washington 98402  
(253) 777-079

 ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR ..... 3

*Assignments of Error* ..... 3

        No. 1: The trial court erred in entering its March 11, 2016 Order Granting Department of Revenue’s Motion for Summary Judgment..... 3

*Issues Pertaining to Assignments of Error* ..... 3

        No. 1: Did the trial court err in entering its order granting summary judgment in favor of the Department where there were genuine issues of material fact regarding whether Appellants Green Collar Club and Triple C Collective engaged in taxable “sales” of medical marijuana? (*Assignment of Error No. 1*)..... 3

        No. 2: Whether the trial court erred in entering its order granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants where such sales were exempt from retail sales tax under former RCW 82.02.0281’s exemption for sales of prescription drugs? (*Assignment of Error No. 1*)..... 3

        No. 3: Whether a medical marijuana authorization provided to a patient by a licensed and authorized medical practitioner is a “prescription” as defined by former RCW 82.02.0281(4)(a)? (*Assignment of Error No. 1*)..... 3

        No. 4: Whether the trial court erred in in entering its order granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants where sales of medical marijuana were exempt from retail sales tax under RCW 82.02.0281’s exemption for sales of naturopathic medicines? (*Assignment of Error No. 1*)..... 4

III. STATEMENT OF CASE ..... 4

    A. This Consolidated Tax Refund Action ..... 4

IV.	ARGUMENT.....	8
A.	Neither Appellant Green Collar Club Nor Triple C Collective Sold Medical Marijuana.....	8
1.	Summary Judgment Standards.....	8
2.	Neither Appellant Green Collar Club Nor Triple C Collective Engaged in Taxable Sales of Medical Marijuana .....	10
B.	Former RCW 82.08.0281’s Retail Sales Tax Exemption for Sales of Prescription Drugs Applied to Medical Marijuana Sales.....	12
1.	Statutory Interpretation Standards .....	12
2.	The Department’s Interpretation of Former RCW 82.08.0281(1) Contravenes Both the Statute’s Plain and Unambiguous Language and the Rules of Statutory Interpretation.....	14
3.	Former RCW 82.08.0281 Unambiguously Includes Marijuana Products Sold to Qualifying Medical Patients as “Prescription Drugs” Exempt from Retail Sales Tax .....	20
4.	The <i>Duncan</i> Court Improperly Considered Legislative History That Nonetheless Does Not Support the Department’s Interpretation .....	24
C.	RCW 82.08.0283 Applies to Sales of Cannabis Products for Medical Use .....	25
V.	CONCLUSION.....	26

## TABLE OF AUTHORITIES

### CASES

<i>Atherton Condo. Apartment-Owners Ass'n Bd. Of Dirs. V. Blume Dev. Co.,</i> 115 Wn.2d 506, 799 P.2d 250 (1990).....	9
<i>Bravo v. Dolsen Cos.,</i> 125 Wn.2d 745, 888 P.2d 147 (1995).....	13
<i>C.J.C. v. Corporation of Catholic Bishop of Yakima,</i> 138 Wn.2d 699, 985 P.2d 262 (1999).....	25
<i>Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r,</i> 178 Wn.2d 120, 309 P.3d 372 (2013).....	13
<i>Cowiche Canyon Conservancy v. Bosley,</i> 118 Wn.2d 801, 828 P.2d 549 (1992).....	20
<i>Dep't of Ecology v Campbell &amp; Gwinn, LLC,</i> 146 Wn.2d 1, 43 P.3d 4 (2002).....	12, 13, 24
<i>Duncan v. Dep't of Rev.,</i> 2016 WL 4413279 (Wa. Ct. App. Div. 3 Aug. 18, 2016) .....	16, 17, 19, 21, 22, 24
<i>Estate of Haselwood v. Bremerton Ice Arena, Inc.,</i> 166 Wn.2d 489, 210 P.3d 308 (2009).....	13
<i>Federal Way Sch. Dist. No. 210 v. State,</i> 167 Wn.2d 514, 219 P.3d 941 (2009).....	9
<i>Fraternal Order of Eagles, Tenino Aerie No. 564 v Grand Aerie of Fraternal Order of Eagles,</i> 148 Wn.2d 224, 59 P.3d 655 (2002).....	16
<i>G-P Gypsum Corp. v. Dep't of Revenue,</i> 169 Wn.2d 304, 237 P.3d 256 (2010).....	13
<i>Hill v. Dep't of Labor &amp; Indus.,</i> 161 Wn. App. 286, 253 P.3d 430 (2011).....	12
<i>Hunter v Univ of Wash.,</i> 101 Wn. App. 283, 2 P.3d 1022 (2000).....	13
<i>In re Forfeiture of One 1970 Chevrolet Chevelle,</i> 166 Wn.2d 834, 215 P.3d 166 (2009).....	12

<i>Jacobsen v. State</i> , 89 Wn.2d 104, 569 P.2d 1152 (1977).....	9
<i>Jametsky v. Olsen</i> , 179 Wn.2d 756, 317 P.3d 1003 (2014).....	17
<i>King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 142 Wn.2d 543, 14 P.3d 133 (2000).....	13
<i>LRS Electric Controls, Inc. v. Hamre Const., Inc.</i> , 153 Wn.2d 731, 107 P.3d 721 (2005).....	13
<i>Ranger Ins. Co v. Pierce County</i> , 164 Wn.2d 545, 192 P.3d 886 (2008).....	9
<i>Restaurant Development, Inc. v. Cananwill, Inc.</i> , 150 Wn.2d 674, 80 P.3d 598 (2003).....	16
<i>Rice v. Offshore Sys., Inc.</i> , 167 Wn. App. 77, 272 P.3d 865 (2012).....	9
<i>Rutt v King County</i> , 125 Wn.2d 697, 887 P.2d 886 (1995).....	9
<i>Seeley v. State</i> , 132 Wn.2d 776, 940 P.2d 604 (1997).....	17
<i>Seven Gables Corp v. MGM/UA Entm't Co.</i> , 106 Wn.2d 1, 721 P.2d 1 (1986).....	9
<i>State ex rel. Citizens Against Tolls (CAT) v. Murphy</i> , 151 Wn.2d 226, 88 P.3d 375 (2004).....	12
<i>State v. Hahn</i> , 83 Wn. App 825, 924 P.2d 392 (1996).....	14
<i>State v. J.P.</i> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	13
<i>State v. Reis</i> , 183 Wn.2d 197, 351 P.3d 127 (2015).....	17
<i>Tingey v Haisch</i> , 159 Wn.2d 652, 152 P.3d 1020 (2007).....	22
<i>Young v. Key Pharm., Inc</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	8
<u>STATUTES</u>	
21 U.S.C. § 301.....	15

Chapter 69.51A RCW .....	4, 20, 21, 23, 25
Initiative 692 .....	15
RCW 18.64.500 .....	21
RCW 69.51A.010.....	20, 23, 25
RCW 69.51A.030.....	20, 21, 23, 26
RCW 69.51A.085 (2011).....	1, 4
RCW 69.51A.110.....	21
RCW 69.51A.200.....	21
RCW 82.04.050 .....	11
RCW 82.08.020 .....	11, 14, 25
RCW 82.08.0281 (2004).....	2, 7, 12, 14, 15, 17, 18, 20, 21, 22, 23, 24
RCW 82.08.0283 .....	2, 7, 25, 26
RCW 82.08.940 .....	23
Washington Uniform Controlled Substances Act.....	15, 17, 18

OTHER AUTHORITIES

Final S.B. Rep. on S.B. 6515, 58th Leg., Reg. Sess. (Wash. 2004) ...	24
Laws of 2003, ch. 168, § 403.....	18

RULES

CR 56 .....	8
-------------	---

FOREIGN STATUTES

N.C.G.S.A. § 105-164.3(29).....	19
R.C. § 5739.01(GGG).....	19
W. VA. Code § 11-15B-2(b)(41).....	19

## I. INTRODUCTION

This appeal arises from the trial court's summary judgment dismissal (and denial of summary judgment in favor) of Appellants Green Collar Club's, Triple C Collective's, and Rainier Xpress's requests for refunds of retail sales tax paid to the State. Appellants requested these refunds after Respondent Department of Revenue insisted that they owed these taxes for sales of medical marijuana (hereinafter "marijuana" or "cannabis"). However, because Appellants Green Collar Club and Triple C Collective (1) did not engage in taxable "sales" and, in any event, because sales of medical marijuana were exempt from retail sales tax under exemptions for (2) prescription drugs and (3) naturopathic medicines, the trial court erred in granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants.

First, assessment of retail sales tax requires that a taxpayer is engaged in transactions for tangible personal property or the provision of statutorily-enumerated services within the statutory definition of "retail sales." However, neither Appellant Green Collar Club nor Triple C Collective engaged the alleged "sales" in this case, the provision of medical marijuana products between and amongst members of collective gardens established pursuant to former RCW 69.51A.085 (2011). Instead, those Appellants were management companies providing various services to the collective gardens they managed, none of which constituted services subject to sales tax. And, before the trial court, the Department expressly waived

any argument that it was attempting to tax Appellants for the services they provided. Accordingly, the Department wrongfully assessed sales tax against Appellants Green Collar Club and Triple C Collective, entitling them to summary judgment. In the alternative, and at a minimum, genuine issues of material fact precluded summary judgment in favor of the Department.

Second even if Appellants Green Collar Club and Triple C Collective were engaged in taxable "sales" of medical marijuana products, they and Appellant Rainier Xpress still were entitled to summary judgment. Former RCW 82.08.0281 (2004) provided a tax exemption for sales of prescription drugs that clearly encompassed sales of medical marijuana. Such sales were made, as required by Washington law, pursuant to a medical practitioner's written authorization materially identical in form and function to a "prescription" as defined by the tax exemption. Likewise, medical marijuana itself clearly fell within the term "drug" as defined by the exemption. Accordingly, both the Department and the trial court violated Washington's well-established principles of statutory interpretation by reaching outside the closed, complete circuit of these plain, unambiguous, statutorily-defined terms in order to reach a different interpretation. Reversal is required.

Finally, RCW 82.08.0283(b) also created the tax exemption for medicines of botanical origin used in treatment by licensed naturopaths. Here, it is indisputable that marijuana is of botanical origin and that licensed naturopaths could and did legally authorize its use in their course of

treatment for patients. Accordingly, Appellants, not the Department, were entitled to summary judgment under this exemption as well.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

No. 1: The trial court erred in entering its March 11, 2016 Order Granting Department of Revenue's Motion for Summary Judgment.

### *Issues Pertaining to Assignments of Error*

No. 1: Did the trial court err in entering its order granting summary judgment in favor of the Department where there were genuine issues of material fact regarding whether Appellants Green Collar Club and Triple C Collective engaged in taxable "sales" of medical marijuana? (*Assignment of Error No. 1*).

No. 2: Whether the trial court erred in entering its order granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants where such sales were exempt from retail sales tax under former RCW 82.02.0281's exemption for sales of prescription drugs? (*Assignment of Error No. 1*).

No. 3: Whether a medical marijuana authorization provided to a patient by a licensed and authorized medical practitioner is a "prescription" as defined by former RCW 82.02.0281(4)(a)?

*(Assignment of Error No. 1).*

No. 4: Whether the trial court erred in entering its order granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants where sales of medical marijuana were exempt from retail sales tax under RCW 82.02.0281's exemption for sales of naturopathic medicines?

*(Assignment of Error No. 1).*

### III. STATEMENT OF CASE

#### A. This Consolidated Tax Refund Action

Appellants are three business entities involved in the provision of cannabis products to qualifying medical patients pursuant to chapter 69.51A RCW.<sup>1</sup> Specifically, Appellants Green Collar Club and Triple C Collective are management companies that do not sell marijuana products to qualifying medical patients, instead providing management services to patients that had established collective gardens pursuant to former RCW 69.51A.085 (2011)<sup>2</sup> regarding membership management; staffing the gardens' offices;

---

<sup>1</sup> Clerks Papers (CP) at 75-90; 280-295; 350. While this case was pending, the legislature enacted comprehensive amendments to Washington's medical marijuana statutory scheme. This appeal concerns Washington's medical marijuana laws law as they existed prior to the 2015 amendments or where they remain materially identical. Accordingly, all references to statutes within chapter 69.51A RCW refer to the statutes as they existed before the 2015 amendments.

<sup>2</sup> Former RCW 69.51A.085 provided:

(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

financial management; recordkeeping; and compliance with state law, including ensuring that all garden members possess valid authorizations for the medical use of marijuana and that only authorized garden members access the gardens' marijuana and marijuana products.<sup>3</sup> Appellant Triple C Collective similarly "manage[d] the [collective garden] volunteers" who provided medical cannabis to other garden members.<sup>4</sup> The collective gardens then reimbursed the management companies for these services from the gardens' collective funds comprised of the contributions made by the gardens' members.<sup>5</sup>

In turn, the members of the collective gardens themselves "share[d] responsibility and work[ed] together to acquire and supply the resources required to produce and process [marijuana] for medical use."<sup>6</sup> These garden members were ultimately responsible for "grow[ing], tend[ing], [harvest[ing], and distribut[ing]" medical marijuana products to other

---

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in \*section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden, equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants

<sup>3</sup> CP at 77-78; 282-283; 352-353; 355-356; 449-450; 438-440; 442-443; 466.

<sup>4</sup> CP at 466.

<sup>5</sup> CP at 318, 326, 335, 343, 353, 356.

<sup>6</sup> CP at 317, 334.

members and contributing resources necessary to keep a supply of marijuana available for members.<sup>7</sup> Under this contribution-based model, members could make non-monetary contributions (such as marijuana; marijuana products; a physical location for the garden itself; or equipment, supplies, or labor necessary to plant, grow, and harvest marijuana and maintain the garden) or monetary contributions to the garden's fund in exchange for marijuana.<sup>8</sup> Regarding the provision of medical cannabis to patients, it was the collective gardens' members, not the management companies, that "deliver[ed] cannabis and cannabis products" to other garden members "for medical use."<sup>9</sup>

In contrast, Appellant Rainier Xpress sold cannabis products to patients.<sup>10</sup> The collective gardens managed by Appellants Green Collar Club and Triple C Collective and Appellant Rainier Xpress provided cannabis products only to qualifying patients who possessed a written authorization from a Washington-licensed Advanced Registered Nurse Practitioner (ARNP), Physician (MD), Physician Assistant (PA), Naturopath (ND), or Doctor of Osteopathic Medicine (DO).<sup>11</sup> Most of these written authorizations had titles perfectly capturing their function and purpose under Washington law: "Documentation of Health Care Professional's Authorization to Engage in the Medical Use of Cannabis in

---

<sup>7</sup> CP at 283, 319, 452, 468.

<sup>8</sup> CP at 317-318, 334-335.

<sup>9</sup> CP at 317; 324-325; 334; 341-342.

<sup>10</sup> CP at 129; 480-481.

<sup>11</sup> CP at 492-494; 504-506; 516-518; 524-525, 527-528, 530-531.

Washington State.”<sup>12</sup> In most instances, the authorizations further acknowledged their function and purpose under the law: “authorizing [qualifying patients] to engage in the medical use of cannabis.”<sup>13</sup> Finally, some written authorizations specified an amount of medical marijuana and/or marijuana plants authorized for the patient.<sup>14</sup>

Neither the collective gardens managed by Appellants nor Appellants themselves collected sales tax from qualifying patients; after the Department represented that state law required them to do so, however, they voluntarily paid the taxes from their own proceeds.<sup>15</sup> After paying the sales taxes in full for the relevant refund periods, Appellants applied for full refunds, specifically: \$163,196.05 paid by Green Collar Club for the period between April 2011 and June 2014; \$31,310.10 paid by Triple C Collective for the period between July 2011 and July 2012; and \$53,885.60 paid by Rainier Xpress for the period between February 1, 2012 and September 30, 2012.<sup>16</sup> Appellants asserted that they were entitled to full refunds because medical marijuana was (1) a prescription drug exempt from sales tax under former RCW 82.08.0281 and (2) a medicine of botanical origin prescribed, administered, dispensed, or used in treatment by naturopaths and tax exempt under RCW 82.08.0283.<sup>17</sup> The Department rejected the refund requests,

---

<sup>12</sup> CP at 849; 851.

<sup>13</sup> CP at 849, 851, 853.

<sup>14</sup> CP at 849; 851; 853

<sup>15</sup> CP at 302; 358-387; 389-403; 405-422

<sup>16</sup> CP at 129, 358-387; 389-403; 156, 250.

<sup>17</sup> *See, e.g.*, CP at 13-20.

stating:

RCW 82.08.0281 provides an exemption from retail sales tax for certain drugs, but only when prescribed as authorized by the laws of this state. Cannabis is a Schedule I controlled substance and cannot be prescribed under either federal or state law in Washington State.<sup>18</sup>

Appellants then timely filed appeals from the Department's decisions with the trial court. On April 24, 2015, the trial court entered an order consolidating Appellants' cases.<sup>19</sup> On February 12, 2016, the parties filed cross-motions for summary judgment.<sup>20</sup> On March 11, 2016, the trial court entered an order granting summary judgment in favor of the Department and denying summary judgment in favor of Appellants.<sup>21</sup> Appellants then timely filed Notices of Appeal directed to this Court.<sup>22</sup>

#### IV. ARGUMENT

##### A. **Neither Appellant Green Collar Club Nor Triple C Collective Sold Medical Marijuana**

###### 1. Summary Judgment Standards

Summary judgment is appropriate only when “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” CR 56(c). The burden is on the moving party to show an absence of evidence supporting the nonmoving party's case. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). After

---

<sup>18</sup> CP at 358-387; 428: 430.

<sup>19</sup> CP at 307.

<sup>20</sup> CP at 354, 553.

<sup>21</sup> CP at 963.

<sup>22</sup> CP at 966, 1011, 1105.

the moving party meets this burden, the nonmoving party must set forth specific facts rebutting the moving party's contentions and demonstrating that a genuine issue of material fact exists. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). "Circumstantial, indirect, and inferential evidence will suffice to discharge the plaintiff's burden" under summary judgment. *Rice v. Offshore Sys., Inc.*, 167 Wn. App. 77, 89, 272 P.3d 865 (2012). The trial court views the facts and any reasonable inferences from those facts in the light most favorable to the nonmoving party. *Federal Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 523, 219 P.3d 941 (2009). "The moving party is held to a strict standard. Any doubts as to the existence of a genuine issue of material fact is resolved against the moving party." *Atherton Condo. Apartment-Owners Ass'n Bd. Of Dirs. V. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

A "material" fact is one upon which the outcome of the litigation depends. *Jacobsen v State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). A "genuine" issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Only when reasonable minds could reach only one conclusion from the evidence may questions of fact be determined as a matter of law. *Rutt v. King County*, 125 Wn.2d 697, 703-04, 887 P.2d 886 (1995).

Here, there was no genuine issue regarding the material fact that Appellants Green Collar Club and Triple C Collective were management companies who provided only management services to collective gardens

distributing marijuana and, thus, did not themselves engage in taxable retail “sales” of marijuana. In the alternative, and at a minimum, a genuine issue of material fact existed regarding whether those two Appellants actually engaged in taxable retail “sales” of marijuana. Accordingly, the trial court erred in granting summary judgment in favor of the Department.

2. Neither Appellant Green Collar Club Nor Triple C Collective Engaged in Taxable Sales of Medical Marijuana

Before the trial court, the Department contended that Appellants Green Collar Club and Triple C Collective were subject to retail sales tax during the relevant tax periods because they “s[old] marijuana, which is tangible personal property subject to the retail sales tax.”<sup>23</sup> The trial court agreed, reasoning:

People who got marijuana . . . at the two locations that were allegedly only providing a service . . . paid a membership fee, and then they made a contribution.

. . . .

It is my opinion that that is clearly a retail sale. One would not have been able to walk out with the marijuana by saying I don’t think I’m going to make the contribution today. I’m not very charitable today. I’m a member and so give me what belongs to me. There was bargained-for exchange as far as this court’s concerned.<sup>24</sup>

However, both the Department and the trial court ignored the distinction between these two Appellants and the collective gardens managed by them. Appellants Green Collar Club and Triple C Collective were management companies providing services to the collective gardens they managed, and,

---

<sup>23</sup> CP at 559.

<sup>24</sup> Verbatim Report of Proceedings (VRP) at 19-20.

thus, were not engaged in activities that constituted taxable sales for purposes of retail sales tax.

Relevant to this case, and as argued by the Department, chapter RCW 82.08 imposes a state tax on “each retail sale” of “[t]angible personal property,” RCW 82.08.020(1)(a). Such “sales” are distinct from “[s]ervices,” which may be subject to retail sales tax if “included within the RCW 82.04.050 definition of retail sale.” RCW 82.08.020(1)(c). Here, Appellants Green Collar Club and Triple C Collective did not provide tangible personal property to the collective gardens they managed through a sale or otherwise. Rather, they provided services to the collective gardens in the form of assisting with membership management; staffing the gardens’ offices; financial management; recordkeeping; and compliance with state law, including ensuring that all garden members possess valid authorizations for the medical use of marijuana and that only authorized garden members access the gardens’ cannabis and cannabis products. Accordingly, if anything, these two Appellants provided only services.

However, before the trial court, the District expressly waived any argument that it was seeking to collect taxes on “services.”<sup>25</sup> Even if it had not, *none* of these services fell within the list of “services” enumerated under RCW 82.04.050.<sup>26</sup> Accordingly, it was beyond dispute that

---

<sup>25</sup> VRP at 15

<sup>26</sup> The legislature has amended RCW 82.04.050 in 2010, 2011, 2013, and 2015. There are no material differences between the current and former version of the statute for purposes of this analysis. Accordingly, Plaintiff’s cite to the current version of the statute.

Appellants Green Collar Club and Triple C Collective did not engage in sales of tangible personal property subjecting them to retail sales tax. Accordingly, the trial court erred in denying summary judgment in favor of those Appellants. In the alternative, and at a minimum, genuine issues of material fact existed regarding whether either Appellant engaged in taxable retail sales of tangible personal property. Thus, the trial court erred in granting summary judgment in favor of the Department, requiring reversal.

**B. Former RCW 82.08.0281's Retail Sales Tax Exemption for Sales of Prescription Drugs Applied to Medical Marijuana Sales**

In the alternative, all three Appellants were entitled to summary judgment because, under well-recognized principles of statutory interpretation, former RCW 82.08.0281's retail tax exemption for prescription drugs unambiguously applied to medical marijuana sales.

1. Statutory Interpretation Standards

Where no material facts are in dispute and the dispositive issue is a question of law, such as statutory interpretation, summary judgment is appropriate. *Hill v Dep't of Labor & Indus.*, 161 Wn. App. 286, 292, 253 P.3d 430 (2011). The Court's fundamental objective in statutory interpretation is to give effect to the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If a statute's meaning is plain on its face, then this court gives effect to that plain meaning as an expression of legislative intent. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004). In determining the plain language of a statute, the Court considers "the ordinary meaning

of words, basic rules of grammar, and the statutory context.” *In re Forfeiture of One 1970 Chevrolet Chevelle*, 166 Wn.2d 834, 838, 215 P.3d 166 (2009). “The Court gives effect to all statutory language, considering statutory provisions in relation to each other and harmonizing them to ensure proper construction. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000). “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (internal quotation marks omitted) (quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). The Court gives no deference to an agency’s “interpretation of pure questions of law,” such as the meaning of a statutory term. *Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r*, 178 Wn.2d 120, 133, 309 P.3d 372 (2013) (citing *Hunter v. Univ. of Wash.*, 101 Wn. App. 283, 292, 2 P.3d 1022 (2000)).

After these considerations, where statutory language is “plain, free from ambiguity and devoid of uncertainty, there is no room for construction because the legislative intention derives solely from the language of the statute.” *LRS Electric Controls, Inc. v. Hamre Const., Inc.*, 153 Wn.2d 731, 738, 107 P.3d 721 (2005) (internal quotation marks omitted) (quoting *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995)). If a statute is susceptible to more than one reasonable interpretation after this inquiry, then the statute is ambiguous and this court may resort to additional canons of statutory construction or legislative history. *Campbell & Gwinn*,

146 Wn.2d at 12. However, “a statute is not ambiguous merely because different interpretations are *conceivable*.” *Estate of Haselwood v Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009) (emphasis added) (quoting *State v. Hahn*, 83 Wn. App 825, 831, 924 P.2d 392 (1996)). Here, neither the Department’s nor the trial court’s interpretation of former RCW 82.08.0281 were reasonable in the face of the statute’s plain language and the principles of statutory interpretation, especially in the face of Appellants’ reasonable interpretation that closely hewed to these controlling principles.

2. The Department’s Interpretation of Former RCW 82.08.0281(1) Contravenes Both the Statute’s Plain and Unambiguous Language and the Rules of Statutory Interpretation

Former RCW 82.08.0281(1), the retail sales tax exemption for prescription drugs, provides: “The tax levied by RCW 82.08.020 does not apply to sales of *drugs* for human use dispensed or to be dispensed to patients, pursuant to a *prescription*.” (Emphasis added). In turn, former RCW 82.08.0281(4) provided:

(4) The definitions in this subsection apply throughout this section.

(a) “Prescription” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by *a duly licensed practitioner authorized by the laws of this state to prescribe*.

(b) “Drug” means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any

supplement to any of them; *or*  
(ii) *Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or*  
(iii) *Intended to affect the structure or any function of the body.*

Emphases added. Before the trial court, the Department contended that (1) former RCW 82.08.0281(4)(a)'s definition of "prescription" "requires not only that the health care provider be licensed to prescribe generally, but [sic] that the provider have the legal authority to prescribe the particular substance being prescribed,"<sup>27</sup> and (2) referred to 21 U.S.C. § 301 *et seq.*, the federal Food, Drug, and Cosmetic Act; chapter 69.50 RCW, the Washington Uniform Controlled Substances Act; and Initiative 692—initially establishing the medical use of cannabis in Washington—in support of this interpretation. However, both the Department's interpretation and its means of supporting it contravene former RCW 82.08.0281's plain language and violate the rules of statutory interpretation.

First, the Department's interpretation of the statute requires former RCW 82.08.0281(4)(a)'s definition of "prescription" to mean "duly licensed practitioner authorized by the laws of this state to prescribe [the drug]." But former RCW 82.08.0281(b) already defines what a "drug" is for purposes of the retail sales tax exemption. That definition of "drug" contains no limitation regarding whether the "substance" or "compound" may be legally prescribed. Accordingly, the Department's interpretation would contravene or render superfluous the statute's definition of "drug."

---

<sup>27</sup> CP at 563-564

both of which are impermissible.

Additionally, the Department's interpretation of the statutory definition of "prescription" necessarily inserts the phrase "the drug" immediately following the phrase "to prescribe." But the Court "must not add words where the legislature has chosen not to include them." *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Moreover, the Department reads "to prescribe" as a transitive verb or other verb form requiring or implying a direct object, allowing it to read in "the drug." As Division Three of the Court of Appeals recently recognized, however, the verb "to prescribe" can be transitive or intransitive. *Duncan v. Dep't of Rev.*, 2016 WL 4413279, at \* 4 (Wa. Ct. App. Div. 3 Aug. 18, 2016). And, indeed, reading "to prescribe" as a transitive verb completely contravenes basic rules of grammar. Everything in the statute following the verb "means" is a subject complement describing the subject "prescription." Within that subject complement, "authorized by the laws of this state to prescribe" is an adjective clause beginning with the participle "authorized." That adjective clause modifies the closest noun, "physician."<sup>28</sup> In turn, the infinitive "to prescribe" is used as an adverb to modify "authorized." In other words, "to prescribe" is *not* used in the statute as a transitive verb requiring or implying a direct object. Accordingly, under no reasonable grammatical reading can the Department

---

<sup>28</sup> "Courts construe relative and qualifying words and phrases, both grammatically and legally, to refer to the last antecedent if a contrary intention does not appear in the statute." *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 240, 59 P.3d 655 (2002).

read the words “the drug” into the end of the statute.

Furthermore, because the terms “prescription” and “drug” are defined by the statute, the Court “need not look outside the statute to determine their meaning.” *State v. Reis*, 183 Wn.2d 197, 208, 351 P.3d 127 (2015). Indeed, when interpreting the definition of “prescription” in *Duncan*, Division Three expressly acknowledged this principle, although it immediately cast it aside, reasoning without explanation that it would not read the statute “in a vacuum” and would look to “related statutes” in order to avoid “absurd results” and ultimately concluding that the statute must be interpreted to mean “a practitioner authorized to prescribe the drug he or she prescribes.” *Duncan*, 2016 WL 4413279, at \* 4-5. Contrary to this reasoning, however, the statute’s plain language contains no reference to chapter 69.50 RCW, Washington’s Uniform Controlled Substances Act; any state or federal prohibitions on prescribing marijuana or cannabis products; or any other statutes or regulations defining or referencing “prescriptions,” marijuana, or cannabis products. Accordingly, both the Department’s and *Duncan*’s interpretation improperly bootstraps in sources extrinsic to the statute’s plain language defining “prescription” and should be rejected.

Moreover, another principle of statutory construction is that the legislature is presumed to enact laws with full knowledge of existing laws. *Jametsky v. Olsen*, 179 Wn.2d 756, 766, 317 P.3d 1003 (2014). Here, Congress enacted federal legislation listing marijuana as a schedule I controlled substance in 1970; in 1971, the state legislature enacted the

Uniform Controlled Substances Act also listing marijuana as a schedule I controlled substance. *Seeley v. State*, 132 Wn.2d 776, 784, 940 P.2d 604 (1997). In 2003, the legislature amended RCW 82.08.0281 to include the definitions of “prescription” and “drug” at issue in this case. Laws of 2003, ch. 168, § 403. When doing so, it could have enacted a definition of “prescription” referring to the substance being prescribed instead of the prescription’s author; a definition of “prescription” or “drug” excluding substances listed under certain schedules established by federal law or the Washington Uniform Controlled Substances Act; or a definition of definition of “drug” that was limited to officially-recognized substances, as opposed to containing catch-all provisions. Instead, it enacted separate definitions of “prescription” and “drug” that did none of those things, and this Court must presume that it refrained from doing so with full knowledge of federal and state law classifications of marijuana and other controlled substances. Accordingly, the legislature did what it did and meant precisely what it said, and this Court must reject the Department’s invitation to rewrite the statute to do and say what it did not.

Finally, as the Department admitted below, former RCW 82.08.0281’s definition of “prescription” was enacted pursuant to Washington’s adoption of the multistate Streamlined Sales and Use Tax Agreement in 2003.<sup>29</sup> According to the Department’s own public statements, such legislation was passed in order to “come into conformance

---

<sup>29</sup> CP at 589, 717-718.

with the requirements of the Agreement.” Department of Revenue, “Streamlined Sales and Use Tax Agreement,” <http://dor.wa.gov/content/findtaxesandrates/retailsalestax/destinationbased/departmentsstreamlinefaq.aspx>.

Notably, Appellants could not locate a *single state* enacting the Agreement that defines “prescription” in the manner urged by the Department and accepted by Division Three in *Duncan*.<sup>30</sup> To the contrary, some adopting states define “prescription” in the same or similar manner urged by Appellants. W. VA. Code § 11-15B-2(b)(41) (“‘Prescription’ means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioners authorized by the laws of this state to issue prescriptions.”)<sup>31</sup>; N.C.G.S.A. § 105-164.3(29) (“An order, formula, or recipe issued . . . by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.”)<sup>32</sup>; R.C. § 5739.01(GGG) (“‘Prescription’ means an order, formula, or recipe issued . . . by a duly licensed practitioner authorized by the laws of this state to issue a prescription.”)<sup>33</sup>. Accordingly, given the common understanding of the term “prescription” by the state legislatures who have adopted the Agreement, neither the Department’s nor the *Duncan* court’s interpretation of the term is reasonable.

---

<sup>30</sup> CP at 900, 920, 949, 957.

<sup>31</sup> CP at 900.

<sup>32</sup> CP at 920.

<sup>33</sup> CP at 949.

3. Former RCW 82.08.0281 Unambiguously Includes Marijuana Products Sold to Qualifying Medical Patients as “Prescription Drugs” Exempt from Retail Sales Tax

In contrast to the trial court’s and the Department’s unreasonable interpretation, the principles of statutory interpretation make clear that former RCW 82.08.0281 is unambiguous and includes sales of marijuana for medical purposes within the definition of a (1) “prescription” (2) “drug.”

First, a health care professional’s written authorization of the medical use of marijuana is an order, formula, or recipe within former RCW 82.08.0281(4)(a)’s definition of “prescription.” Because the statute does not define the terms “order, formula, or recipe,” these terms should be given their “plain and ordinary meaning.” *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813, 828 P.2d 549 (1992).

Those principles make clear that former RCW 82.08.0281 is unambiguous and includes written authorizations for the medical use of marijuana medical purposes within the definition of a prescription. Under chapter 69.51A RCW, Washington’s medical marijuana laws, a licensed “health care professional” must diagnose a person with a terminal or debilitating condition, advise that person about the risks and benefits of the medical uses of cannabis, and advise the person that they may benefit from the medical use of marijuana in order for that person to be a “qualifying patient.” RCW 69.51A.010(2), (4); RCW 69.51A.030(2)(a)(i)-(iv). Once the health care professional makes those determinations, the professional issues a “signed and dated statement . . . written on tamper-resistant paper, which states that, in the health care professional’s professional opinion, the

patient may benefit from the medical use of marijuana.” Additionally, as demonstrated by the record, these authorizations contain many of the characteristics of prescriptions: they are dated and signed on the same day by the medical practitioner; they provide the name and registration number of the practitioner; they provide the patient’s name and date of birth; and they bear the drug’s name and the quantity authorized for a specific time period.<sup>34</sup>

Furthermore, Chapter 69.51A RCW repeatedly and expressly states the function of this “valid documentation”: “authorizing the medical use of marijuana.” RCW 69.51A.030(2)(a); *see also* RCW 69.51A.110 (“A qualifying patient’s medical use of cannabis *as authorized by a health care professional . . . .*”) (emphasis added); RCW 69.51A.200(2)(h), (2)(j) (requiring Washington state institute for public policy to evaluate whether there are health care professionals making a “disproportionately high amount of “authorizations” and whether professionals making “authorizations” reside in Washington or elsewhere).

Accordingly, a health care professional’s signed and dated authorization of the medical use of marijuana is a “prescription” as defined by former RCW 82.08.0281(4)(a). A written authorization for the medical use of marijuana is identical to any other prescription in both form and function. Just as a physician’s written prescription on tamper-resistant paper<sup>35</sup> is plainly and ordinarily understood as an “order” authorizing the

---

<sup>34</sup> CP at 525, 528, 531.

<sup>35</sup> RCW 18.64.500 requires “every prescription written in this state by a licensed

receipt, possession, and use of other controlled substances for medical purposes, a written authorization does the same for marijuana.<sup>36</sup>

Second, before the trial court the Department mischaracterized RCW 82.08.0281(4)(b)'s definition of "drug" as restricting tax-exempt drugs to "officially recognized drugs intended for diagnosis and cure," thus evidencing the legislature's intent to exclude medical marijuana, which is on the schedule I controlled substances list. But the Department's characterization of the statute improperly combined two separate definitions of "drug" contained within RCW 82.08.0281(4)(b)(i) and (4)(b)(ii). These definitions of "drug" are listed with the disjunctive "or," not the conjunctive "and" as required by the Department's characterization and, thus, stand separate from each other. Indeed, the Legislature's act of separately defining "drug" to mean either officially recognized substances *or* substances "[i]ntended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" demonstrates that the Legislature did *not* intend to limit tax-exempt drugs to officially recognized substances. This

---

practitioner" to be written on a "tamper-resistant prescription pad or paper."

<sup>36</sup> In *Duncan*, Division Three, citing *Tingey v Haisch*, 159 Wn.2d 652, 658, 152 P.3d 1020 (2007), chose to use "technical definition[s]" from medical dictionaries to interpret "order, formula, or recipe" because that court "was dealing with a particular field: the practice of medicine." 2016 WL 4413279, at \* 6. However, in *Tingey*, this Court chose to employ a technical definition of the statutory term "account receivable" because the legislature modified the term with the "phrase "incurred in the ordinary course of business." thus "suggest[ing] that the legislature intended to use the term in a technical business sense." 159 Wn.2d at 658.

However, as discussed above, Washington enacted its definition of "prescription" as part of the multistate Streamlined Sales and Use Tax Agreement. Accordingly, both this term and the terms within its definition derive from *model tax legislation*, not the medical profession. Thus, respectfully, the *Duncan* court improperly relied on medical dictionaries to reach its conclusions.

conclusion is underscored further by the fact that the legislature also included a catch-all definition of “drug” as a substance “intended to affect the structure or any function of the body.” RCW 82.08.0281(4)(b)(iii).<sup>37</sup> Accordingly, the Department’s characterization of former RCW 82.08.0281(4)(b) was entirely erroneous.

Furthermore, medical cannabis is a “drug” within the meaning of former RCW 82.08.0281(4)(b)(ii) and (4)(b)(iii). Chapter 69.51A RCW authorizes the medical use of marijuana specifically when a health care professional determines that a patient has a qualifying “terminal or debilitating medical condition” and that the patient may benefit from the medical use of cannabis in treating that condition. RCW 69.51A.030(2)(a)(ii); *see also* RCW 69.51A.010(6)(a)-(g) (defining

---

<sup>37</sup> The legislature’s clear intent to separately define “prescription” as emphasizing the author of such orders or formulas, i.e., “a duly licensed practitioner authorized by the laws of this state to prescribe”—with no reference to or emphasis on the particular drug being prescribed—and “drug” as a broad, catch-all term to include every possible substance meeting the definition is reinforced by former RCW 82.08.0281(4)(c)’s inclusion of a further definition for “over-the-counter drug.” This definition for “over-the-counter drug” is utilized in RCW 82.08.940, exempting from retail sales tax such drugs “dispensed or to be dispensed to patients, *pursuant to a prescription.*” Emphasis added. This tax exemption explains why patients are not charged sales tax for drugs with over-the-counter availability, like aspirin, when they are prescribed by a physician or other duly-licensed person with prescription-writing authority.

If, as the Department contends, the definition of “prescription” must be read as authorized by the laws of this state to prescribe [the drug],” then that would obviate the need both for a separate definition of “over-the-counter drug” and a separate tax exemption for over-the-counter drugs dispensed pursuant to a prescription. Under the Department’s interpretation, so long as a physician was authorized to prescribe a drug, it would be exempt from retail sales tax under former RCW 82.08.0281 as a “prescription” “drug” regardless of its over-the-counter or controlled status. Simply put, the Department’s interpretation of “prescription” impermissibly would render superfluous former RCW 82.08.0281(4)(c) and RCW 82.08.940.

Clearly, then, chapter 82.08 RCW’s plain language contemplates two categories of drugs, (1) “over-the-counter” drugs and (2) all other “drugs” whose tax exempt status turns on whether they were dispensed by a written “prescription” as defined by the status of the author of such prescription, not through a circuitous reference back to the drug being prescribed.

“terminal or debilitating conditions” that justify the medical use of marijuana for treatment). Accordingly, marijuana or cannabis products sold for medical use unquestionably are “a compound, substance, or preparation, and any component of a compound, substance, or preparation” “[i]ntended for use in the . . . mitigation, treatment, or prevention of disease.” Also or in the alternative, they are, at a minimum, a “substance” “[i]ntended to affect the structure or any function of the body.” RCW 82.08.0281(4)(b)(iii). Accordingly, the trial court erred in denying summary judgment in favor of Appellants and granting summary judgment in favor of the Department.

4. The *Duncan* Court Improperly Considered Legislative History That Nonetheless Does Not Support the Department’s Interpretation

Finally, in *Duncan*, Division Three found former RCW 82.08.0281 was unambiguous. *Duncan*, 2016 WL 4413279, at \* 5. However, it nonetheless continued on to consider the statute’s legislative history. *Id.* But consideration of the statute’s legislative history was foreclosed due to its lack of ambiguity. *Campbell & Gwinn*, 146 Wn.2d at 12.

However, even if this Court concluded the statute was ambiguous, the legislative history considered by the *Duncan* court supports neither its nor the Department’s interpretation. The *Duncan* court considered the final bill report for the bill enacted as former RCW 82.08.0281 stating that “[a] prescription . . . must be prescribed by a person whose license authorizes him or her to prescribe the item or drugs.” Final S.B. Rep. on S.B. 6515 at 2, 58th Leg., Reg. Sess. (Wash. 2004). But the bill report’s statement

squarably contradicts the plain language of the definition of “prescription” actually enacted by the legislature. Washington courts reject legislative history such as bill reports that contradict the adopted statutory language. *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 713 n. 6, 985 P.2d 262 (1999). Accordingly, this particular legislative history does not support either the *Duncan* court’s or the Department’s interpretation of the statute.

**C. RCW 82.08.0283 Applies to Sales of Cannabis Products for Medical Use**

Finally, the retail sales tax exemption for botanical medicines applied to any “sales” of cannabis products for medical use in this case.

RCW 82.08.0283 provides:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of:

....

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW

Thus, RCW 82.08.0283(1)(b)’s plain language unambiguously includes cannabis products sold for medical use within its tax exemption. RCW 69.51A.010(2) specifically designated “naturopath[s] licensed under chapter 18.36A RCW” as “health care professionals” under chapter 69.51A RCW. In turn, chapter 69.51A RCW requires naturopaths or other health care professionals to diagnose a patient with a “terminal or debilitating condition. RCW 69.51A.010(6), .030(2). The hallmark of the several

examples of “terminal or debilitating conditions” enumerated by the legislature is that their symptoms are “unrelieved by standard treatments *or medications*.” RCW 69.51A.010(b)-(f) (emphasis added). In other words, the naturopath determines that the patient may benefit from the use of marijuana, a non-standard medication, in lieu of other “standard . . . medications.” Once the naturopath fulfills that requirement and the other requirements of chapter 69.51A RCW, the naturopath can then issue a written authorization on tamper-resistant paper “authorizing the medical use of marijuana.” RCW 69.51A.030(2)(a).

It is undisputed that cannabis is of “botanical origin.” Likewise, chapter 69.51A allows licensed naturopaths licensed to authorize the use of medical cannabis by qualifying patients as part of their course of treatment. Accordingly, medical cannabis is a “medicine of . . . botanical origin . . . used in the treatment of an individual” by licensed naturopaths. Accordingly, sales of medical cannabis are exempt from sales tax under RCW 82.08.0283, and the trial court erred in granting summary judgment in favor of the Department and denying in favor of Appellants, requiring reversal.

## V. CONCLUSION

For the foregoing reasons, Appellants respectfully ask this court to reverse the trial court’s order denying summary judgment in favor of Appellants and granting summary judgment in favor of the Department.

//////

///////

///////

RESPECTFULLY SUBMITTED this 17th day of October 2016.

PFAU COCHRAN VERTETIS AMALA, PLLC

By:   
Darrell L. Cochran, WSBA No. 22851  
Christopher E. Love, WSBA No. 42832  
Attorneys for Appellant

LAW OFFICE OF JAY BERNEBURG

By: /s/Jay Berneburg  
Jay Berneburg, WSBA No. 27165  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

Laura Neal, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on October 17, 2016, I served via the Court's Electronic Filing System, a true and correct copy of the above document, directed to:

David Hankins, WSBA 19194  
Joshua Weissman, WSBA 42648  
Washington Attorney General  
Revenue Division  
7141 Cleanwater Drive SW  
PO Box 40123  
Olympia, WA 98504  
(360) 753-5528

DATED this 17th day of October 2016.

  
\_\_\_\_\_  
Laura Neal  
Legal Assistant to Darrell Cochran

**PFAU COCHRAN VERTETIS AMALA**

**October 17, 2016 - 11:30 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 92992-1  
**Appellate Court Case Title:** Rainier Xpress, et al. v. State of Washington, Department of Revenue

**The following documents have been uploaded:**

- 929921\_20161017112800SC635395\_9298\_Briefs.pdf  
This File Contains:  
Briefs - Petitioner's Opening Brief (PRP)  
*The Original File Name was Green Collar Opening Brief.pdf*

**A copy of the uploaded files will be sent to:**

- jay@notguilty.com.bz
- joshuaw@atg.wa.gov
- david.hankins@atg.wa.gov
- kevin@pervalaw.com
- revolyef@atg.wa.gov
- darrell@pervalaw.com
- chris@pervalaw.com
- laura@pervalaw.com

**Comments:**

---

Sender Name: Laura Neal - Email: laura@pervalaw.com

**Filing on Behalf of:** Darrell L. Cochran - Email: darrell@pervalaw.com (Alternate Email: )

**Address:**

911 Pacific Ave. Ste. 200  
Tacoma, WA, 98402  
Phone: (253) 777-0799

**Note: The Filing Id is 20161017112800SC635395**