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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 305244-III

IN THE COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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IGI RESOURCES, INC,

Respondent

v.

CITY OF PASCO

Appellant.

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**REPLY BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

**I. INTRODUCTION.....1**

**II. REPLY TO IGI COUNTERSTATEMENT OF ISSUES ....1**

**III. REPLY TO COUNTERSTATEMENT OF THE CASE .....1**

**IV. ARGUMENT.....2**

    A. IGI's Payments to Pasco Were Voluntarily Made .....2

        1. IGI's Payments were voluntary under the terms  
           of Pasco's tax code .....2

        2. Payments are involuntary as a matter of law  
           only where summary and self-executing  
           penalties violate due process.....2

        3. A prepayment requirement and reasonable  
           interest and late fees do not make payment  
           involuntary. ....5

    B. IGI's Attempt to Set Up Artificial Conflict Between  
       "State Law" Claim and City Ordinances Must Fail .....8

    C. A Written Protest is a Lawful Prerequisite to Initiate a  
       Claim for Refund of a Tax Overpayment .....10

        1. The protest requirement is enforceable.....10

        2. The protest requirement is enforceable when  
           applied to excise taxes .....11

    D. Exhaustion of Administrative Remedies is a  
       Prerequisite to Litigation.....12

        1. IGI's interpretation of *Qwest* is inconsistent with  
           the established principles of the administrative  
           exhaustion doctrine .....12

|            |   |    |
|------------|---|----|
| 2.         | <i>Qwest</i> is readily distinguishable from the present case .....                                   | 15 |
| E.         | Award of Prejudgment Interest was Improper.....   | 17 |
| 1.         | Sovereign immunity precludes the assessment of prejudgment interest against Pasco.....                | 17 |
| 2.         | An award of the legal judgment rate of interest is inappropriate in light of Washington statute ..... | 19 |
| 3.         | The award of prejudgment interest is contrary to the public policy.....                               | 19 |
| <b>VI.</b> | <b>CONCLUSION</b> .....   | 20 |
|            | <b>CERTIFICATE OF SERVICE</b> .....   | 21 |

## TABLE OF AUTHORITIES

### Cases

|   |         |
|---|---------|
| <i>American Steel &amp; Wire Company of New Jersey v. State</i> ,<br>49 Wn.2d 419, 302 P.2d 207 (1956)..... | 3, 6, 9 |
| <i>Booker Auction Co. v. Dep't of Revenue</i> ,<br>158 Wn.App. 84, 241 P.3d (2010).....                     | 6       |
| <i>Byram v. Thurston County</i> ,<br>141 Wash.2d, 251 P.103 (1926).....                                     | 8-9, 11 |
| <i>Campbell vs. Saunders</i> ,<br>86 Wn.2d 572, 546 P.2d 922 (1976).....                                    | 17-18   |
| <i>Carpenter v. Shaw</i> ,<br>280 U.S. 363, 74 L. Ed. 478, S. Ct. 121 (1930).....                           | 4, 6    |
| <i>Carrillo v. City of Ocean Shores</i> ,<br>122 Wn.App. 592, 94 P.3d 961 (2004).....                       | 8, 10   |
| <i>Columbia Steel Co. v. State</i> ,<br>34 Wn.2d 700, 209 P.2d 482 (1949).....                              | 12, 17  |
| <i>Doric Company v. King County</i> ,<br>59 Wn.2d 741, 370 P.2d 254 (1962).....                             | 17      |
| <i>Estate of Friedman v. Pierce Cy.</i> ,<br>112 Wash. 2d 68, 768 P.2d 462 (1989).....                      | 13      |
| <i>Great Northern Ry. v. Stevens County</i> ,<br>108 Wash.238, 183 P. 65 (1919).....                        | 4, 12   |
| <i>Hansen Baking Co. v. City of Seattle</i> ,<br>48 Wn.2d 737, 296 P.2d 670 (1956).....                     | 10, 12  |
| <i>Henderson Homes v. Bothell</i> ,<br>124 Wn.2d 240, 877 P.2d 176 (1994).....                              | 8- 9    |

|  |            |
|--|------------|
| <i>Hillis Homes, Inc. v. Snohomish County</i> ,<br>97 Wn.2d 804, 650 P.2d 193 (1982).....  | 4, 10      |
| <i>Kelso v. City of Tacoma</i> ,<br>63 Wn.2d 913, 390 P.2d 2 (1964).....   | 17-18      |
| <i>Longview Fibre Company v. Cowlitz County</i> ,<br>114 Wn. 2d 691, 790 P.2d 149 (1990).....  | 2, 10      |
| <i>Muntwyler v. United States</i> ,<br>703 F.2d 1030 (7th Cir. 1983) .....   | 5          |
| <i>Peste v. Mason County</i> ,<br>133 Wn.App. 456, 136 P.3d 140 (2006) .....   | 13         |
| <i>Presbytery of Seattle v. King County</i> ,<br>114 Wn.2d 320, 787 P.2d 907 (1990).....   | 13         |
| <i>Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle</i> ,<br>70 Wn.2d 222, 422 P.2d 779 (1967).....                                      | 4, 8-9, 11 |
| <i>Qwest Corp. v. City of Bellevue</i> ,<br>161 Wn.2d 353, 166 P.3d 667 (2007).....  | 12, 14-17  |
| <i>Robinson v. Seattle</i> ,<br>119 Wn.2d 34, 830 P.2d 318 (1992).....   | 12         |
| <i>Swartout v. City of Spokane</i> ,<br>21 Wn.App. 665, 586 P.2d 135 (1978).....   | 4, 11      |
| <i>Thun v. City of Bonney Lake</i> ,<br>164 Wn.App. 755, 265 P.3d 207 (2011).....  | 13         |
| <i>Ward v. Love County</i> ,<br>253 U.S. 17, 64 L. Ed. 751, 40 S. Ct. 419 (1920).....  | 4          |
| <i>Williamson County Reg'l Planning Comm'n v. Hamilton Bank<br/>of Johnson City</i> ,<br>473 U.S. 172, 105 S. Ct. 3108, 87 L.Ed.2d 126 (1985)..... | 13         |

|  |   |
|--|---|
| <i>W.R. Grace &amp; Co. v. Dept' of Revenue,</i><br>137 Wn.2d 580, 973 P.2d 1011 (1999)..... | 6 |
|--|---|

**Statutes**

|                      |    |
|----------------------|----|
| RCW 35.102.020 ..... | 19 |
| RCW 82.32.060 .....  | 19 |
| RCW 82.32.090 .....  | 7  |
| RCW 82.32.150 .....  | 7  |
| RCW 82.32A.030.....  | 20 |
| RCW 84.68.020 .....  | 10 |

**Other Authorities**

|                                     |         |
|-------------------------------------|---------|
| Pasco Municipal Code 1.17.010 ..... | 3       |
| Pasco Municipal Code 1.17.020 ..... | 1       |
| Pasco Municipal Code 1.17.030 ..... | 1, 9-11 |
| Pasco Municipal Code 5.32.090 ..... | 7       |
| Pasco Municipal Code 5.32.095 ..... | 7       |
| RAP 10.3(a)(5).....                 | 1       |

## **I. INTRODUCTION**

Appellant City of Pasco (hereinafter referred to as “Pasco”) respectfully replies to the Brief of Respondent IGI Resources, Inc. (hereinafter referred to as “IGI”).

## **II. REPLY TO IGI COUNTERSTATEMENT OF ISSUES**

IGI here attempts to collapse the case into two issues: 1) must IGI exhaust its administrative remedies, or may it proceed under a cause of action for monies had and received; and 2) Is IGI entitled to prejudgment interest? *Brief of Respondent* at 1.

IGI avoids the first two issues stated by Pasco: 1) is IGI exempt from complying with the one year non-claim ordinance provision in PMC 1.17.020; and 2) is IGI exempt from complying with the written protest requirement to obtain a tax refund, as required by PMC 1.17.030? *Brief of Appellant* at 2. IGI offers no explanation for this change. Pasco urges the Court to consider all four issues presented.

## **III. REPLY TO COUNTERSTATEMENT OF THE CASE**

Pasco believes its Statement of the Case is more consistent with RAP 10.3(a)(5), and offers the following additional points:

Supplementing IGI’s facts in reply, Pasco further notes that IGI filed tax returns and paid taxes for natural gas delivered to the “Pasco gate” from January 2008 to April 2009. CP 86. This constitutes the

bulk of payments for which IGI brought suit in 2011, well after the one-year non-claim limitation in the Pasco City Municipal Code (PMC). CP 96.

#### IV. ARGUMENT

##### A. IGI's Payments to Pasco Were Voluntarily Made.

A key problem with IGI's effort to avoid Pasco procedures is the rule in Washington that taxes paid without protest are considered voluntarily paid and nonrefundable. *Longview Fibre Company v. Cowlitz County*, 114 Wn.2d 691, 695, 790 P.2d 149 (1990). IGI does not and cannot cite any exception to this rule that applies in the context of the issue raised here: IGI's attempt to sidestep lawful procedural requirements to seek a refund. Instead, IGI contends that the taxes were not voluntarily paid and encourages this Court to adopt a definition of "involuntary" that will make practically all excise tax payments in Washington involuntary as a matter of law. IGI should not be permitted to confuse a general premise that taxes are mandatory in the sense of being legal obligations which must be paid with the assertion that this case involved an involuntary or coerced payment for purposes of escaping procedural requirements to seek a tax refund.

1. IGI's payments were voluntary under the terms of Pasco's tax code.

The Pasco City Municipal Code (“PMC”) provides a definition of “voluntary payment” consistent with the above-cited voluntary payment rule.<sup>1</sup> The lower court upheld Pasco’s authority to adopt such measures [Appendix 1 to Pasco opening brief, quoted at *Brief of Appellant* at 4-5]. Under the PMC, IGI’s payments were voluntary and thus refundable only in accordance with the procedure afforded by the PMC.

2. Payments are involuntary as a matter of law only where summary and self-executing penalties violate due process.

Even if the Pasco tax code did not define voluntary payments, IGI’s payments would be considered voluntary under Washington State law. IGI incorrectly asserts that, as a matter of Constitutional law, its payments were involuntary. *Respondent’s Brief* at 7 n.6. A tax is not involuntarily paid under duress unless it can be said, as a matter of law, that the provisions for the enforcement and collection of the tax were “self-executing and summary.” *American Steel & Wire Company of New Jersey v. State*, 49 Wn.2d 419, 422, 302 P.2d 207 (1956).

The cases cited by IGI show that payment is involuntary in two situations. The first is where the “summary nature” of the penalties for nonpayment immediately and permanently deprive the taxpayer of a

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<sup>1</sup> “‘Voluntary payment’ means a payment made to the City of Pasco without written protest setting forth the reasons the payment is made in protest.” PMC 1.17.010(1).

fundamental right without due process. See *Great Northern Ry. v. Stevens County*, 108 Wash.238, 183 P. 65 (1919) (after the tax became due, the taxpayer immediately was subject to imprisonment, interruption of business, large fines unrelated to amount of tax, and the lien, levy, and sale of personal and real property); *Ward v. Love County*, 253 U.S. 17, 64 L. Ed. 751, 40 S. Ct. 419 (1920) (taxpayers were forced to choose either between payment of tax or dispossession and sale of their property plus an 18% penalty with no opportunity for an appeal or hearing); *Carpenter v. Shaw*, 280 U.S. 363, 74 L. Ed. 478, 50 S. Ct. 121 (1930) (statute that permitted suit to challenge the tax only if the tax had been paid *on time* was found to violate procedural due process); *Swartout v. City of Spokane*, 21 Wn.App. 665, 586 P.2d 135 (1978) (“Furthermore, the ordinance imposes heavy civil and criminal penalties in the event of nonpayment. In light of these penalties, Mr. Swartout's payments cannot be considered voluntary.”).

The second type of involuntary payment exists where the government withholds a right or benefit to which the taxpayer is entitled. See *Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wn.2d 222, 422 P.2d 779 (1967) (the city refused to consider a road vacation petition until the fee was paid); *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 811, 650 P.2d 193 (1982)

(the county refused to issue permits or accept filings in respect to the taxpayer's property until the tax was paid).

Further, the Federal courts have provided the following distinction between voluntary and involuntary payments:

The distinction between a voluntary and involuntary payment in *Amos* and all the other cases is not made on the basis of the presence of administrative action alone, but rather the presence of court action or administrative action resulting in an actual *seizure* of property or money as in a levy. No authorities support the proposition that a payment is involuntary whenever an agency takes even the slightest action to collect taxes, such as filing a claim or, as appears to be a logical extension of the Government's position, telephoning or writing the taxpayer to inform him of taxes due.

*Muntwyler v. United States*, 703 F.2d 1030, 1033 (7th Cir.1983), *citing* *Amos v. Commissioner*, 47 T.C. 65, 69 (1966).

Pasco took no action to collect the taxes at all. None of the elements that render a tax involuntary are present in the Pasco tax code. There is nothing in the Pasco municipal code forcing a taxpayer to file sloppy tax returns and overpay its taxes.

3. A prepayment requirement and reasonable interest and late fees do not make payment involuntary.

IGI argues that taxes remitted pursuant to a tax code requiring payment prior to contest and imposing penalties for nonpayment are involuntarily paid as a matter of constitutional law. *Brief of Respondent* at 7 n.6. It is well established that a prepayment

requirement does not violate a taxpayer's constitutional rights. *W.R. Grace & Co. v. Dep't of Revenue*, 137 Wn.2d 580, 593, 973 P.2d 1011, 1017 (1999). Under such a requirement, a taxpayer filing an action to contest an excise tax must first pay the tax in full. *Booker Auction Co. v. Dep't of Revenue*, 158 Wn.App. 84, 241 P.3d 439 (2010).

*American Steel*, which upheld a prepayment requirement, illustrates the difference between a prepayment requirement and a "summary and self-executing" penalty. The Washington Supreme Court distinguished that statute from the one in *Carpenter* as follows:

In the *Carpenter* case, the court struck down an Oklahoma statute which allowed a suit to recover a tax alleged to be illegally assessed only if the tax had been paid "at the time and in the manner provided by law." In other words, **the taxpayer was without remedy unless the tax had been paid when due.** We find no such limitation or deprivation of right under the statute before us.

*American Steel* at 425 (emphasis added). A prepayment requirement does not make payment involuntary until combined with further provisions denying the taxpayer his procedural due process rights.<sup>2</sup> *Id.*

Interest or late fees also do not make a prepayment involuntary.

The mere expectation that the government will proceed to enforce a

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<sup>2</sup> IGI, claiming that Pasco's citation to *American Steel* in its appellant brief is misleading, stated that *American Steel* was distinguished from *Carpenter* on the basis that the statute in *Carpenter* allowed a suit to challenge the tax only if the tax had been paid. *Respondent's Brief* 7 n.6. This is incorrect. *American Steel* actually upheld a statute with a prepayment requirement.

tax if not paid does not render payment involuntary. *Id.* at 423. Pasco's tax enforcement procedures do not subject the taxpayer to unconstitutionally coercive penalties, nor are they summary and self-executing. The Pasco tax ordinance only imposes a late fee of between two and six percent, depending on the lateness of the payment, plus eight percent per annum interest. PMC 5.32.090. The taxpayer is also provided the option of challenging any such late fees and/or interest payments. PMC 5.32.095. These late fees are substantially less severe than the five to twenty-five percent penalties imposed by the State of Washington for late payment of excise taxes under RCW 82.32.090.

It should be also noted that the State of Washington has an identical prepayment requirement in RCW 82.32.150. IGI's position would make the payment of practically every excise tax in Washington involuntary as a matter of law.

None of the elements that render a tax involuntary are present in the Pasco tax code. The Pasco tax code imposes mild late fees and permits an appeal of any tax and any related late fee and interest. Pasco made absolutely no claim or assessment against IGI for the taxes. IGI was under no duress, and it, therefore, paid the taxes voluntarily. It cannot later seek a refund contrary to the terms of Pasco's tax code. Every single case cited by IGI in support of its

position should be distinguished from the present case on the basis of voluntariness.

**B. IGI's Attempt to Set Up Artificial Conflict Between "State Law" Claim and City Ordinances Must Fail**

Here, IGI argues that because the Superior Court has original jurisdiction, this emasculates all City ordinance procedural requirements. IGI relies on *Byram v. Thurston County*, 141 Wash.2d, 251 P.103 (1926); *Carrillo v. City of Ocean Shores*, 122 Wn.App. 592, 94 P.3d 961 (2004), *Puget Sound Alumni*; and *Henderson Homes v. Bothell*, 124 Wn.2d 240, 877 P.2d 176 (1994). Searching these cases, Pasco finds no such legal rule.

*Carrillo* did not involve taxes in the sense of excise or property taxes, but utility charges for sewer service that was never provided to unoccupied property.<sup>3</sup> There are no local procedural time limitations at issue in *Carrillo*.<sup>4</sup>

In *Puget Sound Alumni*, a city tried to force payment of illegal fees not authorized by city code from property owners as a condition for processing a street vacation petition. In that case, the city simply

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<sup>3</sup> *Carrillo* found the utility fees to be "taxes" in the sense that they were not justified as regulatory fees, those two categories being the dichotomy identified in the seminal case of *Covell v. Seattle* 127 Wn.2d 824 (1995).

<sup>4</sup> *Carrillo* does discuss the 3 year statute of limitations for a claim based on monies had and received in passing, but, as explained in Pasco's briefing, (*Brief of Appellant* at 8-11) this case is not about state statutes of limitations.

stipulated to the three year statute of limitations for implied contracts. *Id.* at 231.

In *Henderson Homes*, the city refused to grant plat approvals unless the developer first paid impact fees. The Court explained that the State statutory time limitation invoked by the city simply did not apply to the type of impact fee in dispute. *Id.* at 247.

None of the cases cited by IGI permit a taxpayer to evade local procedural requirements when appealing to State courts. In fact, the *Puget Sound Alumni* and *Byram* Courts actually recognized that a city may impose procedural time limitations on actions against the city. In those actions in equity, time limitations of 30 and 60 days, respectively, would have been enforceable had the city codes not confined their application to actions for damages. *Puget Sound Alumni* at 230; *Byram* at 38-39. Nothing in Pasco's tax code precludes the application of the procedural requirements to equitable actions; the written protest must be made "prior to **any judicial action**[.]" PCMC 1.17.030 (emphasis added).<sup>5</sup>

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<sup>5</sup>The Court has also upheld a State one-year limitation similar to Pasco's. "[F]or a refund, the statute is clear, as we have heretofore pointed out, that it must be commenced within one year after the payment of the tax. Although it is undisputed that the collection of the tax upon respondent's interstate transactions was unconstitutional, it does not follow, as a matter of logic or law, that the statutory one-year limitation for the recovery of taxes is also unconstitutional." *American Steel* at 424.

C. **A Written Protest is a Lawful Prerequisite to Initiate a Claim for Refund of a Tax Overpayment.**

1. The protest requirement is enforceable.

IGI inexplicably claims that because Pasco does not require a written protest at the time of payment, “Pasco’s protest requirement is just a procedural step in its administrative process.” *Respondent’s Brief* at 14. This is contrary to the plain language of the city code that the taxpayer “shall, prior to any judicial action, present [ . . . ] a written protest stating the basis upon which such correction, adjustment, or refund is requested.” PMC 1.17.030.

Washington statutory and case law is clear that the City may require written protest at the time of payment. *See* RCW 84.68.020 (requiring property taxes be paid under protest in order to bring a claim later); *Longview Fibre Co.* at 693-94 (RCW 84.68.020 required an entity to pay each installment of taxes under protest to be entitled to a refund). Even the cases cited by IGI recognize the City’s right to require protest. *See Carrillo* at 611 (“Payment under protest of a tax is not required for a refund of an illegal tax, unless required by statute.”); *Hillis Homes* at 811; *Hansen Baking Co. v. City of Seattle*, 48 Wn.2d 737, 745, 296 P.2d 670 (1956) (“In the absence of a legislative requirement that a written protest be filed, none is necessary in order

to preserve the taxpayers position in connection with the payment of a state excise tax."); *Byram* ("No particular form of protest is required by statute. When the statute prescribes no specific conditions in making protests, it would seem that the courts can require none."); *Swartout* (finding the challenged city ordinance, imposing tax on social card games, does not require any protest); *Puget Sound Alumni* at 230 ("This is not a case where payment under protest is a prerequisite for recovery as in a taxpayer's suit.").

Nothing in Pasco's tax code precludes the application of the protest requirement to equitable actions; the written protest must be made "prior to **any judicial action**["] PMC 1.17.030 (emphasis added). That Pasco chooses to soften the protest requirement and allow protest even after payment in no way diminishes its enforceability.

2. The protest requirement is enforceable when applied to excise taxes.

IGI places great weight upon the fact that "no case has ever required an excise tax to be paid under protest as a condition of it being able to be recovered." *Respondent's Brief* at 15, n. 16. However, the Washington Supreme recognized that a city may require written protest as a precondition to challenging an excise tax in court:

In the absence of a legislative requirement that a written protest be filed, none is necessary in order to preserve the taxpayer's position in connection with the payment of a state excise tax. *Great Northern; Columbia Steel Co. v. State*, 34 Wn.2d 700, 707, 209 P.2d 482 (1949). We believe the **same rule is applicable to a city excise tax**. Neither the ordinance here under review nor any general state statute requires a written protest as a condition precedent to the obtaining of a refund of excise taxes erroneously assessed.

*Hansen Baking Co.* at 745 (emphasis added). This language certainly recognizes that a city may impose a written protest requirement and that such a requirement is enforceable.

**D. Exhaustion of Administrative Remedies is a Prerequisite to Litigation.**

1. IGI's interpretation of *Qwest* is inconsistent with the established principles of the administrative exhaustion doctrine.

IGI's interpretation of *Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007), would preclude administrative exhaustion requirements on all cases involving disputes over tax payments. This is inconsistent with the established body of case law regarding the administrative exhaustion doctrine.

When determining if the doctrine applies, the courts are careful to differentiate between the two types of challenges to the law in dispute: facial challenges and "as applied" challenges. *Robinson v. Seattle*, 119 Wn.2d 34, 50, 830 P.2d 318 (1992). If the law is facially

invalid, the doctrine does not apply. *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 333, 787 P.2d 907 (1990). If the law is only being challenged as applied to the particular facts of the case, then the challenging party must first exhaust all administrative remedies. *Id.*

An “as applied” challenge is excused from the administrative exhaustion requirement only if it would clearly be futile to further pursue administrative relief. *Id.* A prerequisite of this futility exception is the “final decision” requirement: the plaintiff must give the administrative authority an opportunity to arrive at a final, definitive position regarding how it will apply the laws or regulations at issue. *Thun v. City of Bonney Lake*, 164 Wn.App. 755, 265 P.3d 207 (2011) quoting *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985); *Peste v. Mason County*, 133 Wn.App. 456, 473, 136 P.3d 140 (2006). Without this final decision, a court cannot adjudicate the matter because it cannot know how the challenged law will be applied in that particular situation. See *Estate of Friedman v. Pierce Cy.*, 112 Wash. 2d 68, 79, 768 P.2d 462 (1989). Thus, “as applied” challenges have been dismissed where the challenger completely failed to use administrative remedies. *Thun, supra*, *Presbytery, supra*.

In the present case, the trial court could not even know *if* the tax ordinance would be applied to IGI because Pasco was never afforded the opportunity to determine whether its tax ordinance applied to IGI's payments. Herein lies a vital distinction between the present case and every case cited by IGI to support its position, including *Qwest*: Pasco never made any claim or assessment for the taxes in question, and there is therefore no possible way the court can know if the tax code would be improperly applied to IGI.

The ruling in *Qwest* is consistent with the established principles of administrative exhaustion. *Qwest* involved an "as applied" challenge, and the court only found that administrative exhaustion was not required after it found that the further administrative proceedings requested by the city would be futile. Prior to addressing administrative exhaustion, the Supreme Court first found that the case involved a question of law and not a question of fact. *Qwest* at 361. Thus, the city, which claimed that it needed to do further factual inquiry, could make no possible finding of fact that would allow it to legally tax the transfer charges that it sought to investigate. *Id.* In other words, the court found that any further administrative procedures proposed by the city would be futile. There is no reason to

accept IGI's interpretation of *Qwest* in conflict with the established principles of administrative exhaustion.

IGI also asserts that, under *Qwest*, administrative exhaustion is not required in excise tax cases because they involve questions of statutory interpretation. *Brief of Respondent* at 10. Again, this is far too broad an interpretation of the case. The Court only states that "questions of statutory interpretation need not be referred to administrative agencies." *Qwest* at 371. As already noted, the Court had already found that the question at issue was purely one of law, not of fact. Nothing in *Qwest* provides an exception to the administrative exhaustion requirement in the present case where factual analysis is required and the administrative agency was not given an opportunity to address the facts of the case.

2. *Qwest* is readily distinguishable from the present case.

IGI claims that *Qwest* cannot be distinguished because the Superior Court had to interpret Pasco's code. *Brief of Respondent* at 11. However, unlike the present case, the trial court in *Qwest* did not have to rely on any factual determinations in order to make its ruling. The city had already determined and affirmatively asserted that it may tax certain telephone access charges. The court only had to determine that taxation of those charges was preempted by state and federal tax

law “without conducting any factual analysis[.]” *Qwest* at 359. The case was purely one of statutory interpretation. In contrast, Pasco never claimed to have authority to tax the sale of natural gas through the Burbank Heights city gate, nor did it claim that its taxing ordinance applied to those sales. Pasco never claimed that the gate was within its city limits, and this is the factual issue upon which the appropriateness of the tax turned.<sup>6</sup> The present case turned on a fact that Pasco never had the opportunity to address prior to being forced into court, and, unlike *Qwest*, no statutory interpretation was necessary.

In addition, IGI continues to ignore the fact that Pasco took absolutely no action to collect the taxes and that IGI’s payment was completely voluntary. In *Qwest*, the city conducted an audit review and then issued an assessment against Qwest for back taxes, penalties, and interest. *Id.* at 357. Qwest never paid those taxes, but rather challenged the legality of the City’s imposition of the tax. *Id.* In contrast, Pasco never made any claim whatsoever against IGI; rather, IGI voluntarily filed and paid the taxes in question. IGI then brought

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<sup>6</sup> Even after the trial court engaged in statutory interpretation of the Pasco City Municipal Code, its final determination depended upon factual analysis: “So I don’t think that the code provisions would apply to the moneys received from the plaintiff in this case by the City of Pasco since it was not for services provided by the city or its employees or an excise tax based on the supply of commodities in this case, natural gas, *within the city limits of the City of Pasco.*” *Brief of Appellant*, Appendix 1 (emphasis added).

suit against Pasco without ever giving Pasco any notice or opportunity to address the tax payments. Because Pasco never had the opportunity to adopt a position that would inform the court how the tax code would actually be applied to IGI, this case is not analogous to *Qwest* for the purpose of applying the administrative exhaustion doctrine.

**E. Award of Prejudgment Interest was Improper**

1. Sovereign immunity precludes the assessment of prejudgment interest against Pasco.

IGI, citing *Columbia Steel Co.*, incorrectly asserts that subdivisions of the state, including cities, do not enjoy sovereign immunity in tax refund cases. *Brief of Respondent* at 18. The Washington Supreme Court has held that because *Columbia Steel* deals “with the disallowance of interest against either the state or an agency of the state”, it does not apply to cases in which interest is sought from local governments. *Doric Company v. King County*, 59 Wn.2d 741, 742, 370 P.2d 254 (1962).

IGI also cites *Kelso v. Tacoma*, 63 Wn.2d 913, 390 P.2d 2 (1964) to claim that sovereign immunity does not apply to the present case. *Respondent's Brief* at 18. However, the Washington Supreme Court established in *Campbell v. Saunders*, 86 Wn.2d 572, 546 P.2d 922 (1976) that cities are indeed protected by sovereign immunity and

that *Kelso* stands for the rule that “the protection provided municipalities under the principle of sovereign immunity is derived from the state.” *Id.* at 575. The Court then explained how sovereign immunity applies to interest on judgments: “[A] city is liable for interest on judgments rendered against it only if a statute expressly or by reasonable construction so provides.” *Id.* at 577. This exception existed in *Campbell* because there was (1) a State statute permitting a city to create a fund specifically for the payment of “any judgment including interest and costs on account of personal injuries suffered”; and (2) a corresponding city ordinance that created such a fund and “require[d] the payment of interest.” *Id.* at 578. Only under these conditions had “the City consented to and created a right to payment of interest on tort judgments” that the Court could enforce. *Id.* at 577. Recent case law shows that *Campbell* and its interpretation of *Kelso* are still the controlling law for the present case. See *Brief of Appellant* at 26-31.

Nothing in the Pasco Municipal Code authorizes interest payments on tax reimbursements or judgments on tax payments. Nothing in the RCW authorizes interest payments on utility taxes of

the type in dispute here.<sup>7</sup> Therefore, sovereign immunity precludes a judgment for interest in this case.

2. An award of the legal judgment rate of interest is inappropriate in light of Washington statute.

Even if there were statutory authority to charge Pasco interest, the award of interest at the judgment rate is clearly excessive in light of Washington's statutory interest rate for the refund of general excise taxes. RCW 82.32.060 governs refunds of excess tax payments and "Any judgment for which a recovery is granted by any court of competent jurisdiction." The interest rate applied to excise tax refunds is the federal short term rate plus two percentage points, a rate well below the legal judgment rate. RCW 82.32.060(4)(b).

3. The award of prejudgment interest is contrary to public policy.

IGI also claims that an award of interest is proper because the taxes were paid involuntarily. IGI fails to recognize the absurd result that would follow from its position: any individual could incorrectly pay unowed taxes, wait until just before the statute of limitations has run, and then sue the government for the amount of the overpayment

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<sup>7</sup> IGI claims that state law provides for prejudgment interest, but it cites no authority for this position. *Respondent's Brief* at 9 n.8. In fact, the RCW does not address refunds and corresponding interest for natural gas taxes. The RCW general provisions relating to refunds and interest on excise tax payments do not apply to municipal taxes on the provision of natural gas. RCW 35.102.020.

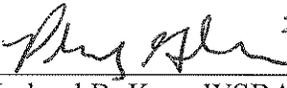
plus the judgment rate of interest. Such an “investment” would yield much higher returns than those generally available in the financial markets. It is unreasonable to interpret the law so as to create such a perverse incentive to taxpayers. Such an interpretation is also incompatible with the statutory duties of every taxpayer to “Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue” and to “File accurate returns and pay taxes in a timely manner[.]” RCW 82.32A.030. A local tax authority cannot audit every tax return the moment it is filed and would not have any means to defend itself against such catastrophic results.

## VI. CONCLUSION

For the above reasons, Pasco respectfully requests reversal of the lower court ruling and dismissal of the IGI refund claim.

DATED this 21<sup>st</sup> day of September, 2012.

Respectfully submitted,  
KERR LAW GROUP

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for:  
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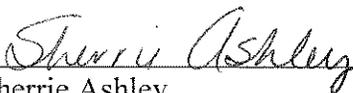
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of September 2012, I caused to be served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the following:

|                                    |                          |
|------------------------------------|--------------------------|
| <u>          </u> INTER-CITY       | FRANKLIN G. DINCES       |
| <u>XXXX</u> U.S. MAIL              | THE DINCES LAW FIRM      |
| <u>          </u> OVERNIGHT MAIL   | 5314 28TH STREET NW      |
| <u>          </u> FAX TRANSMISSION | GIG HARBOR WA 99335-7608 |

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Court of Appeals, Division III  
500 North Cedar Street  
Spokane WA 99201

  
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Sherrie Ashley