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NO. 79661-1

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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TESORO REFINING AND MARKETING COMPANY,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE

Respondent.

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**ANSWER TO MEMORANDUM OF AMICUS CURIAE  
ASSOCIATION OF WASHINGTON BUSINESS  
IN SUPPORT OF PETITION FOR REVIEW**

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construction in numerous cases.<sup>2</sup> However, the rule for construction of ambiguous tax statutes has nothing to do with this case. The Court of Appeals recognized that the statutes at issue are unambiguous, and therefore correctly refrained from engaging in statutory construction.

There is no ambiguity in the tax statutes at issue in this case, or in the relevant statutory definitions. Under RCW 82.21.030, the legislature imposed a tax “on the privilege of possession of hazardous substances in this state.” In determining whether this tax statute applied to Tesoro, the Court of Appeals looked to the statutory definition of “possession,” found in RCW 82.21.020(3):

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. **"Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.**

(Emphasis added.) The Court of Appeals applied the plain language of the statute, and held that the definition of control is written in the disjunctive. Under the statutory definition, control exists when there is power to sell **or** use, or when there is power to authorize the sale **or** use by another.

As AWB concedes, “the default interpretation of ‘or’ is disjunctive.”<sup>3</sup> AWB does not point to any ambiguity in RCW 82.21.

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<sup>2</sup> *E.g., Agrilink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 397, 103 P.3d 1226 (2005); *First Am. Title Ins. Co. v. Dep’t of Revenue*, 144 Wn.2d 300, 303, 27 P.3d 604 (2001).

<sup>3</sup> Brief of AWB at 5.

interpretation of the law is entitled to no deference unless the law is ambiguous. On the contrary, “rules that are inconsistent with the statutes they implement are invalid.”<sup>7</sup>

In the face of this overwhelming precedent, the only case AWB cites in support of its ambiguity argument is *City of Puyallup v. Pacific Northwest Bell Telephone Co.*, 98 Wn.2d 443, 656 P.2d 1035 (1983).<sup>8</sup> It is unclear why AWB cites this case. In *Pacific Northwest Bell*, the Court found that a Puyallup city ordinance conflicted with two other Puyallup city ordinances addressing the same topic, and was therefore ambiguous. The case did not address any other governmental body’s interpretation of the statute, or any regulations applying the ordinance.

Unlike the *Pacific Northwest Bell* case, there is no conflict in the hazardous substance tax statutes. The Court of Appeals and the superior court did not find any ambiguity in RCW 82.21.020 or RCW 82.21.030, and correctly applied the plain language of the law. The rule of statutory construction AWB requests the Court to consider applies only when a tax statute is ambiguous, and statutory construction is necessary. Since this case does not present an issue regarding construction of an ambiguous tax statute, the rule of construction is simply not raised in this case.

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<sup>7</sup> *Bostain v. Food Express, Inc.*, \_\_\_ Wn.2d \_\_\_, 153 P.3d 846, 853 (Mar. 2007); *Dep’t of Labor & Indus. v. Granger*, \_\_\_ Wn.2d \_\_\_, 153 P.3d 839, 844 (Mar. 2007).

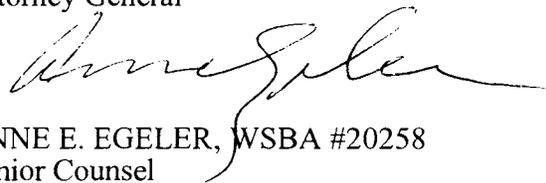
<sup>8</sup> Brief of AWB at 8.

### III. CONCLUSION

The Court of Appeals followed the decisions of this Court, and properly refrained from engaging in judicial construction of the plain language of RCW 82.21. There is no conflict in the law regarding the rules of statutory construction, or the statutory burden on the taxpayer. Therefore, the request for review should be denied.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2007.

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