

Supreme Court Case No. 87964-8
Court of Appeals Case Nos. 41509-7-II

SUPREME COURT OF THE STATE OF WASHINGTON

Cost Management Services, Inc.

Respondent,

v.

City of Lakewood,

Appellant.

ANSWER TO PETITION FOR REVIEW

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I. Introduction

In the City of Lakewood's petition for review ("petition"), the City demonstrates that it is a prisoner of its own perspective. Its unwarranted and rejected belief that its May 13, 2009 Notice and Order to Cost Management Services ("CMS") was a denial of CMS' municipal refund claim infects the City's recitation of the facts and characterization of issues. As the result is the petition misstates facts and mischaracterizes issues, the petition should be denied. The petition should also be denied because the decision sought to be reviewed is wholly consistent with the controlling decision of this Court, no unresolved constitutional issue is involved, and no issue of substantial public interest is involved.

II. Statement of Issues Decided Below

No. 1: Cost Management Services, Inc. ("CMS") remitted amounts to the City of Lakewood ("Lakewood") in excess of any amounts CMS was legally required to remit. Clerk Paper's ("CP") 714-15 (Finding of Fact ("FF") 21 and Conclusion of Law ("CL") 28). Must CMS exhaust Lakewood's administrative remedies to obtain a refund of such amounts or may it seek a refund under a state law cause of action for money had and received?

No. 2: CMS filed a refund claim with Lakewood dated November 6, 2008. Exhibit ("Ex.") 1. Lakewood failed to respond to this refund claim. Is

a taxpayer who properly files a refund claim under city ordinances entitled to a writ of mandamus when the city fails to act on the claim?

III. Counterstatement of the Case

Statement of Facts

CMS does no taxable business in Lakewood although it has customers in Lakewood. CP 713-14 (FF 12 - 14). All of CMS' revenues were derived from services it performs at its Mercer Island offices. *Id.*

By mistake, CMS paid some tax to Lakewood. CP 714 (FF 21). At one time, CMS thought it was paying a use tax owed by its customers.¹ It actually mistakenly paid the city utility tax imposed by LMC 3.52.050(D).² That tax is imposed on selling, brokering or furnishing gas in Lakewood. The tax is imposed on the business performing the requisite activity in Lakewood, not on the business' customer. Once CMS discovered its error, it filed a refund claim with Lakewood. When Lakewood failed to respond to CMS' refund claim, CMS initiated suit.

Statement of Proceedings

CMS' suit in Pierce County Superior Court Cause No. 09-2-10518-4 asserted two causes of action, a state law claim for money had and received and a municipal law claim for refund of taxes. CP 1-3. Judge Worswick, then a Pierce County Superior Court Judge, denied Lakewood's motion to

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dismiss brought on its allegation that CMS failed to exhaust administrative remedies. CP 250-51. Judge Lee denied summary judgment to CMS without opinion. CP 459-60. Judge Martin subsequently granted partial summary judgment finding certain undisputed facts and dismissing CMS' municipal law claim³ in response to Lakewood's argument regarding the statute of limitations.⁴ RP (Sept. 3, 2010) at 17-20. CP 522-23 (Order).

During the argument regarding the statute of limitations, there was discussion regarding CMS' ability to file for a writ of mandamus to require Lakewood to act on CMS' municipal law claim (which again CMS pleaded for purposes of extending the statute of limitations). RP (Sept. 3, 2010) at 18-19. The Court expressed that its ruling would not bar an application for a writ, and shortly after the Court's ruling on the statute of limitations, CMS sought a writ in a new action (Pierce County Superior Court Cause No. 10-2-13684-9) which was consolidated into Pierce County Cause No. 09-2-10518-

³ CMS had raised a municipal law claim in an effort to have the statute of limitations calculated from a date prior to the filing of this action. *See*, CP 393-94 (Rebuttal Memorandum). The Superior Court rejected that argument because the municipal law claim was not brought as an appeal. RP (Sept. 3, 2010) 18-19. Thus, the Court calculated the statute of limitations from the date this lawsuit was filed. RP 19. Given that ruling, the municipal law claim was meaningless to CMS in this suit, and the Court dismissed the claim.

⁴ Lakewood attempted to portray this ruling regarding the statute of limitations as a decision of the Superior Court requiring exhaustion of administrative remedies. Br. of Appellants at 12. Lakewood was wrong. The Court made clear that it was not ruling based on exhaustion of administrative remedies and that the prior ruling regarding exhaustion of administrative remedies not being required remained the Court's ruling. The municipal law claim was dismissed because if CMS was going to attempt to extend the statute of limitations through the municipal law claim, the claim would have to be before the Court on appeal. As Lakewood did not act on the municipal law claim, that claim could not be before the Court on appeal. Therefore, the position of CMS that the municipal law claim extended the statute of limitations back to three years prior to CMS filing its refund claim with Lakewood was not ripe and the municipal law claim was dismissed. *See*, RP (Nov. 5, 2010) 5, 8, 20 and RP (Sept. 3, 2010) 18-19.

4. The Court granted the writ on November 5, 2010, based on the fact that Lakewood had failed to act on the refund claim. CP 628-630. The writ required the City to take action on the CMS refund claim by November 19, 2010. *Id.* The City complied with the writ.

A bench trial was subsequently held to resolve the remaining issues.⁵ The Superior Court issued a written ruling. CP 708-11 (letter opinion entered Dec. 20, 2010). The ruling concluded, based on the evidence, that CMS did not own, sell, furnish or broker gas in Lakewood. CP 711 (letter opinion entered Dec. 20, 2010).

On January 31, 2011, Lakewood appealed the final judgment in Pierce County Cause No. 09-2-10518-4. Previously, Lakewood had appealed the Court's granting of the writ. That appeal was given COA No. 41509-7-II, and in a ruling signed by Commissioner Skerlec, the Court of Appeals stayed that appeal until resolution of any matters remaining in Pierce County Cause No. 09-2-10518-4. That appeal was given COA No. 41744-8-II. On February 11, 2011, in a ruling signed by Commissioner Skerlec, the Court of Appeals lifted the stay previously entered in COA No. 41509-7-II, consolidated COA 41744-8-II into COA 41509-7-II and ordered that all future pleadings should reference COA No. 41509-7-II but that the perfection

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notice dated February 3, 2011 in COA 41744-8-II should be used to perfect this appeal.

After an extensive discussion of the facts, the Court of Appeals concluded that “Lakewood incorrectly argues that CMS’ failure to exhaust administrative remedies bars CMS from obtaining relief in superior court.” *Cost Management Services v. Lakewood*, Dckt. No. 41509-7-II at 8 (June 1, 2012) (hereinafter cited as Slip Op.). The Court of Appeals reasoned that:

(a) The May 13, 2009 “Notice and Order did not constitute a denial of CMS’ refund claim but was, instead, a demand for payment of taxes. The Notice and Order (1) seeks payment of taxes due after October 2008, when CMS stopped paying the tax; (2) does not reference CMS’ November 2008 refund claim, nor does it deny the claim; and (3) simply orders CMS to apply for a Lakewood business license and pay past due taxes.” (Slip Op. at 10, footnote omitted) and

(b) “CMS is not appealing from the May 13 Notice and Order demanding payment of current and future taxes but instead was seeking a tax refund for taxes wrongly paid (for prior periods).” “Under the Washington Constitution, article IV, section 6, as well as RCW 2.06.010, the superior court could take original jurisdiction over actions in equity. CMS’s state action was ‘for money had and received’. A claim for money had and received is an equitable claim.” Slip. Op. at 11.

The Court of Appeals similarly rejected Lakewood's arguments that the writ of mandamus was incorrectly issued. Contrary to Lakewood's arguments, the Court of Appeals concluded that Lakewood had not acted on CMS's refund claim for the reasons noted above, that CMS' had no administrative remedies to pursue absent Lakewood taking any direct express action on CMS' refund claim and that CMS did not belatedly seek the writ. Slip. Op. at 21-22.

IV. Summary of Argument

The May 13, 2009 Notice and Order was not a response to CMS' municipal refund claim. Lakewood's petition fails to accept or recognize this fact. That failure largely explains Lakewood's petition for review.

The Court of Appeals decision that exhaustion of administrative remedies is not required is wholly consistent with *Qwest Corp. v. Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007), the controlling decision of this Court. Exhaustion is not required when the Superior Court has original jurisdiction or when a case raises questions of statutory interpretation. The Superior Court had original jurisdiction over the claim raised by CMS, and CMS' claim required Lakewood's code to be interpreted.

Lakewood failed to respond to CMS' refund claim. Thus, mandamus was proper.

V. Argument

A. The May 13, 2009 Notice and Order Was Not An Action on The Refund Claim. It is Irrelevant to the Instant Case.

The May 13 Notice (Ex. 3) was not action on CMS' refund claim. It is merely a demand for payment for an unspecified amount of taxes for periods other than, and subsequent to, those for which CMS claimed refund. By its terms, the May Notice seeks payment of taxes which were allegedly due and owing after October 2008, after CMS stopped paying taxes to Lakewood. The May Notice orders CMS to apply for a Lakewood business license and to pay past due and owing taxes. CMS' refund claim seeks refund of taxes paid by September 2008. Ex. 1. The May Notice does not reference CMS' refund claim or the period for which the claim was made. It does not deny the claim.⁶

Despite this fact, the petition erroneously claims that the May 13, Notice and Order was a response to CMS' refund claim. Petition for Review at 2.⁷ Throughout the petition, the failure to recognize that the Notice and Order – as a matter of fact – does not deal with the refund claim leads to confusion and mischaracterization.

⁶ CMS complied with the May 13 Notice. All it ordered CMS to do was apply for and obtain a Lakewood business license and pay all past due and owing utility tax payments. CMS promptly filed an application for the license and it owed no past due utility taxes. Therefore, all such taxes were paid. There was no reason for CMS to appeal the Notice.

⁷ Perhaps unconsciously, the petition confuses a Notice that taxes for a subsequent period could be due with a denial of a refund of taxes paid for prior periods. *See*, petition at 8, and 18-19. The petition also seems ignorant of the fact that the period for which the writ was issued is earlier than the periods involved in the refund litigation. *See*, petition at 14. This action awarded refund of taxes paid after June 24, 2006. The writ action only seeks taxes paid between November 6, 2005 and that date.

For example, in the first issue the petition presents for review, Lakewood claims, contrary to the finding of the trial court and the conclusion of the Court of Appeals, that CMS did not appeal a determination rendering it liable for the tax. But, Lakewood fails to disclose that the so called determination was the May Notice expressly dealing with a different time period and explicitly only demanding payment of unspecified past due and owing taxes. As CMS owed no past due taxes in the periods explicitly covered by the Notice or otherwise, the Notice did not make any determination that CMS owed any taxes. Thus, the issue offered by the petition is couched in confusing terms that mischaracterizes the facts.

In the second issue the petition presents for review, Lakewood baselessly claims that CMS forfeited some relief when it failed to pursue administrative remedies. As the Court of Appeals held, CMS had no administrative remedy to pursue absent Lakewood taking any direct express action on CMS' refund claim. Again, the issue offered by the petition is couched in misleading terms. CMS forfeited no relief.

Given the confusion arising from Lakewood's statement of facts and issues presented for review, the petition for review should be denied.

B. Mandamus Was Proper. CMS Deserved Some Response To Its Municipal Refund Claim.

1. Basis for the Writ.

On November 6, 2008, CMS filed a refund claim with the Finance Department of Lakewood. Ex. 1. By letter dated December 8, 2008, CMS

increased its refund claim filed with Lakewood. Ex. 2. Prior to the issuance of the writ of mandamus, Lakewood⁸ took no action regarding the refund claim. Lakewood had a duty to act on the refund claim so that Lakewood code's administrative process could be concluded. *See generally*, LMC 3.52.150, .180 and .190. *See also*, LMC 1.36. CMS demanded Lakewood act on CMS' refund claim so that the administrative process with the respect to the municipal law refund claim could be concluded. CP 734 (Verified Petition for Writ). Lakewood refused to act on the refund claim claiming that its Notice and Order/Demand for Payment sent to CMS on May 13, 2009, Ex. 3, demanding payment of an unspecified amount of taxes for periods unrelated to CMS' refund claim constituted action on CMS' November 6, 2008 refund claim. CP 744.⁹

2. CMS Lacked An Adequate Remedy At Law To Require Lakewood to Act On CMS' Refund Claim.

CMS properly filed a refund claim with Lakewood. Lakewood refused to act on the claim. CMS had no adequate remedy at law to require Lakewood to take action on the refund claim so that the administrative process could be completed. Absent Lakewood taking any direct express action on CMS'

⁸ The writ was issued to both Lakewood and Choi Halladay, the individual employed by Lakewood to administer LMC 3.52. In text, we refer solely to Lakewood, but that reference is intended to include Choi Halladay as well.

⁹ CP 744 is a letter from Lakewood dated September 30, 2010. The letter is evidence that Lakewood refused to grant or deny the refund claim. Promptly upon receiving notice from Lakewood that it was not going to take action on the refund claim and within two years of filing the claim, CMS sought the writ.

refund claim, all CMS could do to further the process is petition for a writ. Thus, the writ of mandamus was appropriately issued.

C. Exhaustion of Administrative Remedies Is Not Required To Recover City Excise Taxes.

Lakewood does not, cannot and will not cite a single excise tax case for the proposition that exhaustion of administrative remedies is required to recover excise taxes. That is because exhaustion of administrative remedies has never been required in any excise tax case in Washington. Not only is there no excise tax case requiring exhaustion of administrative remedies, there is a recent decision of this Court explaining why and *holding* the opposite. *Qwest Corp. v. Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007) (a case concerning, as here, city utility taxes).

The Supreme Court gave two reasons why exhaustion is not required in excise tax cases: (i) the Court's original jurisdiction in tax cases under both the Constitution and RCW 2.08.010 and (ii) excise tax cases involve issues of statutory construction and "questions of statutory interpretation need not be referred to administrative agencies". *Qwest Corp. v. Bellevue*, 161 Wn.2d 353, 371, 166 P.3d 667 (2007).

The scope of the Superior Court's original jurisdiction is established by Washington Constitution Art. IV, Sec. 6. *See also*, RCW 2.08.010. The Superior Court has original jurisdiction in cases in equity, *id.*, and CMS' state

law cause of action for money had and received is an equitable claim.¹⁰ The Superior Court has original jurisdiction in all cases where the demand is for more than \$3,000, *id.*, and CMS' claim is for more than \$3,000. The Superior Court has original jurisdiction over all cases in which jurisdiction has not been vested exclusively in some other court, *id.*, and no other tribunal even has jurisdiction over the CMS' state law claim for money had and received.¹¹ The Superior Court has original jurisdiction in all cases involving the legality of a tax, *id.*, and this case involves the legality of a tax. CMS is only entitled to a refund if the tax it paid cannot be legally imposed on CMS in the amount CMS paid. CMS argued and the Superior Court agreed that the tax could not be legally imposed on CMS. It is beyond debate that the Superior Court had original jurisdiction of this case.

The decision sought to be reviewed expressly cited the state constitution in holding that the Superior Court properly maintained original jurisdiction of

¹⁰ See generally, *Coast Trading v. Parmac, Inc.*, 21 Wn. App. 896, 587 P.2d 1071 (1978) ("The count for 'money had and received' is an ancient common law remedy with equitable overtones; it is based upon quasi contract or contract implied in law.") and see, *Puget Sound Alumni Kappa Sig. v. Seattle*, 70 Wn.2d 222, 223, 422 P.2d 799 (1967) ("Such action is not a claim for damages, but rests on equitable principles." ... "Such action is based upon quasi-contract, or as it is sometimes termed, constructive contract, or contract implied in law.") *Accord, Byram v. Thurston Cty.*, 141 Wash. 28, 251 P. 103 (1926).

¹¹ Lakewood's argument that CMS must exhaust administrative remedies must also fail because there were no relevant administrative remedies to exhaust. Lakewood's argument seems directed to the municipal law claim that was dismissed, not to the state law claim for money had and received on which relief was granted. Lakewood's administrative process is not designed to handle the state law claim, and CMS, not Lakewood, may choose the cause of action on which to seek recovery of the money it mistakenly paid Lakewood. The fact that the city administrative procedures are inapplicable here also does not make them a nullity. Some taxpayers could elect to seek recovery of overpaid taxes using such procedures.

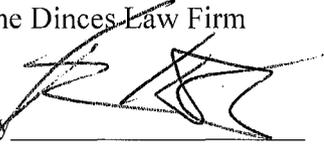
this action, Slip Op. at 11-12. The reasoning of the decision is fully consistent with *Qwest* which is the controlling decision of this Court.

VI. Conclusion

For the reasons stated above, the Petition for Review should be denied.

Respectfully submitted, this 9th day of October, 2012.

The Dinces Law Firm

By 

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Certificate of Service

I, Franklin G. Dinces, do hereby certify that on this the 9th day of October 2012, I placed in the United States mail, postage prepaid, a copy of Answer to Petition for Review, addressed to:

Heidi Ann Wachter, and Matthew S. Kaser
City of Lakewood
6000 Main Street
Lakewood, WA 98499-5027



Franklin G. Dinces

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V. Argument

A. The May 13, 2009 Notice and Order Was Not An Action on The Refund Claim. It is Irrelevant to the Instant Case.

The May 13 Notice (Ex. 3) was not action on CMS' refund claim. It is merely a demand for payment for an unspecified amount of taxes for periods other than, and subsequent to, those for which CMS claimed refund. By its terms, the May Notice seeks payment of taxes which were allegedly due and owing after October 2008, after CMS stopped paying taxes to Lakewood. The May Notice orders CMS to apply for a Lakewood business license and to pay past due and owing taxes. CMS' refund claim seeks refund of taxes paid by September 2008. Ex. 1. The May Notice does not reference CMS' refund claim or the period for which the claim was made. It does not deny the claim.⁶

Despite this fact, the petition erroneously claims that the May 13, Notice and Order was a response to CMS' refund claim. Petition for Review at 2.⁷ Throughout the petition, the failure to recognize that the Notice and Order – as a matter of fact – does not deal with the refund claim leads to confusion and mischaracterization.

⁶ CMS complied with the May 13 Notice. All it ordered CMS to do was apply for and obtain a Lakewood business license and pay all past due and owing utility tax payments. CMS promptly filed an application for the license and it owed no past due utility taxes. Therefore, all such taxes were paid. There was no reason for CMS to appeal the Notice.

⁷ Perhaps unconsciously, the petition confuses a Notice that taxes for a subsequent period could be due with a denial of a refund of taxes paid for prior periods. *See*, petition at 8, and 18-19. The petition also seems ignorant of the fact that the period for which the writ was issued is earlier than the periods involved in the refund litigation. *See*, petition at 14. This action awarded refund of taxes paid after June 24, 2006. The writ action only seeks taxes paid between November 6, 2005 and that date.

For example, in the first issue the petition presents for review, Lakewood claims, contrary to the finding of the trial court and the conclusion of the Court of Appeals, that CMS did not appeal a determination rendering it liable for the tax. But, Lakewood fails to disclose that the so called determination was the May Notice expressly dealing with a different time period and explicitly only demanding payment of unspecified past due and owing taxes. As CMS owed no past due taxes in the periods explicitly covered by the Notice or otherwise, the Notice did not make any determination that CMS owed any taxes. Thus, the issue offered by the petition is couched in confusing terms that mischaracterizes the facts.

In the second issue the petition presents for review, Lakewood baselessly claims that CMS forfeited some relief when it failed to pursue administrative remedies. As the Court of Appeals held, CMS had no administrative remedy to pursue absent Lakewood taking any direct express action on CMS' refund claim. Again, the issue offered by the petition is couched in misleading terms. CMS forfeited no relief.

Given the confusion arising from Lakewood's statement of facts and issues presented for review, the petition for review should be denied.

B. Mandamus Was Proper. CMS Deserved Some Response To Its Municipal Refund Claim.

1. Basis for the Writ.

On November 6, 2008, CMS filed a refund claim with the Finance Department of Lakewood. Ex. 1. By letter dated December 8, 2008, CMS

increased its refund claim filed with Lakewood. Ex. 2. Prior to the issuance of the writ of mandamus, Lakewood⁸ took no action regarding the refund claim. Lakewood had a duty to act on the refund claim so that Lakewood code's administrative process could be concluded. *See generally*, LMC 3.52.150, .180 and .190. *See also*, LMC 1.36. CMS demanded Lakewood act on CMS' refund claim so that the administrative process with the respect to the municipal law refund claim could be concluded. CP 734 (Verified Petition for Writ). Lakewood refused to act on the refund claim claiming that its Notice and Order/Demand for Payment sent to CMS on May 13, 2009, Ex. 3, demanding payment of an unspecified amount of taxes for periods unrelated to CMS' refund claim constituted action on CMS' November 6, 2008 refund claim. CP 744.⁹

2. CMS Lacked An Adequate Remedy At Law To Require Lakewood to Act On CMS' Refund Claim.

CMS properly filed a refund claim with Lakewood. Lakewood refused to act on the claim. CMS had no adequate remedy at law to require Lakewood to take action on the refund claim so that the administrative process could be completed. Absent Lakewood taking any direct express action on CMS'

⁸ The writ was issued to both Lakewood and Choi Halladay, the individual employed by Lakewood to administer LMC 3.52. In text, we refer solely to Lakewood, but that reference is intended to include Choi Halladay as well.

⁹ CP 744 is a letter from Lakewood dated September 30, 2010. The letter is evidence that Lakewood refused to grant or deny the refund claim. Promptly upon receiving notice from Lakewood that it was not going to take action on the refund claim and within two years of filing the claim, CMS sought the writ.

refund claim, all CMS could do to further the process is petition for a writ. Thus, the writ of mandamus was appropriately issued.

C. Exhaustion of Administrative Remedies Is Not Required To Recover City Excise Taxes.

Lakewood does not, cannot and will not cite a single excise tax case for the proposition that exhaustion of administrative remedies is required to recover excise taxes. That is because exhaustion of administrative remedies has never been required in any excise tax case in Washington. Not only is there no excise tax case requiring exhaustion of administrative remedies, there is a recent decision of this Court explaining why and *holding* the opposite. *Qwest Corp. v. Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007) (a case concerning, as here, city utility taxes).

The Supreme Court gave two reasons why exhaustion is not required in excise tax cases: (i) the Court's original jurisdiction in tax cases under both the Constitution and RCW 2.08.010 and (ii) excise tax cases involve issues of statutory construction and "questions of statutory interpretation need not be referred to administrative agencies". *Qwest Corp. v. Bellevue*, 161 Wn.2d 353, 371, 166 P.3d 667 (2007).

The scope of the Superior Court's original jurisdiction is established by Washington Constitution Art. IV, Sec. 6. *See also*, RCW 2.08.010. The Superior Court has original jurisdiction in cases in equity, *id.*, and CMS' state

law cause of action for money had and received is an equitable claim.¹⁰ The Superior Court has original jurisdiction in all cases where the demand is for more than \$3,000, *id.*, and CMS' claim is for more than \$3,000. The Superior Court has original jurisdiction over all cases in which jurisdiction has not been vested exclusively in some other court, *id.*, and no other tribunal even has jurisdiction over the CMS' state law claim for money had and received.¹¹ The Superior Court has original jurisdiction in all cases involving the legality of a tax, *id.*, and this case involves the legality of a tax. CMS is only entitled to a refund if the tax it paid cannot be legally imposed on CMS in the amount CMS paid. CMS argued and the Superior Court agreed that the tax could not be legally imposed on CMS. It is beyond debate that the Superior Court had original jurisdiction of this case.

The decision sought to be reviewed expressly cited the state constitution in holding that the Superior Court properly maintained original jurisdiction of

¹⁰ See generally, *Coast Trading v. Parmac, Inc.*, 21 Wn. App. 896, 587 P.2d 1071 (1978) ("The count for 'money had and received' is an ancient common law remedy with equitable overtones; it is based upon quasi contract or contract implied in law.") and see, *Puget Sound Alumni Kappa Sig. v. Seattle*, 70 Wn.2d 222, 223, 422 P.2d 799 (1967) ("Such action is not a claim for damages, but rests on equitable principles." ... "Such action is based upon quasi-contract, or as it is sometimes termed, constructive contract, or contract implied in law.") *Accord, Byram v. Thurston Cty.*, 141 Wash. 28, 251 P. 103 (1926).

¹¹ Lakewood's argument that CMS must exhaust administrative remedies must also fail because there were no relevant administrative remedies to exhaust. Lakewood's argument seems directed to the municipal law claim that was dismissed, not to the state law claim for money had and received on which relief was granted. Lakewood's administrative process is not designed to handle the state law claim, and CMS, not Lakewood, may choose the cause of action on which to seek recovery of the money it mistakenly paid Lakewood. The fact that the city administrative procedures are inapplicable here also does not make them a nullity. Some taxpayers could elect to seek recovery of overpaid taxes using such procedures.

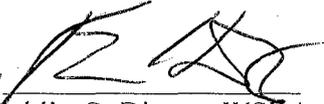
this action, Slip Op. at 11-12. The reasoning of the decision is fully consistent with *Qwest* which is the controlling decision of this Court.

VI. Conclusion

For the reasons stated above, the Petition for Review should be denied.

Respectfully submitted, this 9th day of October, 2012.

The Dinces Law Firm

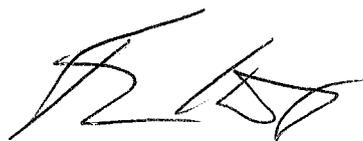
By 

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Certificate of Service

I, Franklin G. Dinces, do hereby certify that on this the 9th day of October 2012, I placed in the United States mail, postage prepaid, a copy of Answer to Petition for Review, addressed to:

Heidi Ann Wachter, and Matthew S. Kaser
City of Lakewood
6000 Main Street
Lakewood, WA 98499-5027



Franklin G. Dinces