

NO. 91534-2

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SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SNOQUALMIE,

Respondent,

v.

THE STATE OF WASHINGTON DEPARTMENT OF REVENUE,

Appellant,

and,

KING COUNTY EXECUTIVE DOW CONSTANTINE; KING
COUNTY ASSESSOR LLOYD HARA; KING COUNTY;

Defendants.

BRIEF OF APPELLANT

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I. INTRODUCTION

This case concerns the constitutionality of a 2014 law creating a tribal tax preference. Tribal property used for “essential government services” is exempt from property tax. Under the 2014 law, the Legislature expanded the definition of “essential government services” to include economic development. For certain types of tribal property to receive the exemption based on economic development, the law requires the Indian tribe to make “payments in lieu of leasehold excise tax” (PILT) to the county where the property is located. The county in turn distributes the PILT payments to local jurisdictions.

This Court should reverse the trial court’s ruling that the PILT is an unconstitutional property tax without reaching the merits of this case. The City cannot meet the requirements for standing on its own or in a representational capacity for its taxpayers. If this Court reaches the merits, however, it should reverse the trial court’s decision because the PILT is not a tax at all, and therefore, not subject to article VII, section 1 of the Constitution. And even if the PILT is a tax, it is not a property tax subject to article VII, section 1, but rather an excise tax.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in concluding that the City has standing to bring this action and that this case is justiciable.

2. The trial court erred by declaring the 2014 law unconstitutional.

3. The trial court erred by granting the City's motion for partial summary judgment on its constitutional claims.

4. The trial court erred by denying the Department's motion for summary judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Does the City lack standing to challenge the constitutionality of the 2014 law, when the PILT currently benefits the City financially, the City's interests are not aligned with its taxpayers' interests, and no extraordinary circumstances are present that warrant a more liberal approach to standing? (Assignments of Error Nos. 1, 4)

B. Is the PILT a fee outside the scope of Article VII of the Washington Constitution, when the PILT is similar to payments in lieu of taxes that other governments make in relation to exempt property, is allocated to the local jurisdictions where the exempt tribal property is located, and is based upon an individual determination for each property? (Assignments of Error Nos. 2-4)

C. If not a fee, is the PILT an excise tax, rather than a property tax subject to the Constitution's uniformity requirements, when it is based upon a tribe's voluntary decision to use its property for economic

development and seek a property tax exemption, and is determined through a negotiation process or calculation by the Department?

(Assignments of Error Nos. 2-4)

D. Did the Legislature retain its constitutional taxation power when it permitted the PILT amount to be negotiated by counties and tribes or calculated by the Department? (Assignments of Error Nos. 2-4)

IV. STATEMENT OF THE CASE

A. The Essential Government Services Property Tax Exemption

The Washington Constitution exempts from property tax “[p]roperty of the United States and of the state, counties, school districts, and other municipal corporations.” Const. art. VII, § 1; *see also* RCW 84.36.010(1) (codifying government property exemption). The exemption applies to property owned by one of the listed government entities and is not limited to a specific use. Const. art. VII, § 1; RCW 84.36.010(1). While Indian tribes are not one of the listed government entities, they still have benefited from the exemption. This is because tribal property held in trust by the United States is considered property of the United States and is exempt from property taxes under both federal and state law. U.S. Const. art. 6, cl. 2; Const. art. VII, § 1; RCW 84.36.010(1).

Just like any other private property owner, an Indian tribe can also own property in fee simple. In 2004, the Legislature created a property

tax exemption for tribal property that applied beyond tribal trust lands. Laws of 2004, ch. 236, § 1 (amending RCW 84.36.010). The exemption applied to property owned by a federally recognized Indian tribe located in Washington. *Id.* at § 1(1). The Legislature’s exemption applied to tribal property used exclusively for “essential government services.” *Id.* The Legislature defined “essential government services” as “tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services.” *Id.* at § 1(2). Thus, since 2004, a tribe using property for “essential government services” has qualified for a property tax exemption regardless of whether the United States held the land in trust.

In 2014, the Legislature expanded the essential government services property tax exemption granted to tribal property. Laws of 2014, ch. 207 (“the Act”) (attached as Appendix A). With this expansion, the Legislature had several stated objectives. The Legislature meant for the new law to create jobs and improve the economic health of tribal communities. *Id.* at § 1. At the same time, the Legislature also intended the expanded exemption to subject tribes to the same conditions as other types of government entities. Laws of 2014, ch. 207 (describing the act as “subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe”).

To achieve these objectives, the Legislature broadened the definition of “essential government services” to include property used for “economic development.” Laws of 2014, ch. 207, § 5 (codified as RCW 84.36.010(3)(b)). Under the Act, “economic development” is defined as “commercial activities, including those that facilitate the creation or retention of businesses or jobs, or that improve the standard of living or economic health of tribal communities.” *Id.* (RCW 84.36.010(3)(c)). Thus, a tribe using its property for economic development can now qualify for the essential government services exemption from property taxes.

An Indian tribe seeking the essential government services exemption based on economic development must meet certain conditions. One of these conditions is that the Indian tribe must have owned the property at issue prior to March 1, 2014. *Id.* (RCW 84.36.010(2)). If a lessee of the tribal property performs the economic development activities, the Indian tribe also must demonstrate that a lease agreement exists for the exempt tax year. Laws of 2014, ch. 207, § 9 (RCW 84.36.012(2)(a)). And when the tribal property is leased, the lessee of the exempt property must pay leasehold excise tax. Laws of 2014, ch. 207, at §§ 2-4 (RCW 82.29A.010(1)(d); RCW 82.29A.020(1)(a)&(c); RCW 82.29A.050(3)). By imposing leasehold excise tax, the Legislature ensured that the economic development exemption treated tribal property the same as other

government-owned property where lessees pay the leasehold excise tax.
RCW 82.29A.010(1)(a)-(b); RCW 82.29A.030(1)(a).

For property owned by the tribe and not leased to others, the Legislature required that an Indian tribe make “payments in lieu of leasehold excise tax” (PILT) to qualify for the economic development exemption. Specifically, an Indian tribe must pay PILT if no leasehold interest exists in the property, the property is located outside of the tribe’s reservation, and the property is not otherwise exempt under federal law. Laws of 2014, ch. 207, §§ 8-9 (RCW 82.29A.055(1); RCW 84.36.012(2)(b)). With the PILT condition, the Legislature again ensured that Indian tribes were being treated the same as other government entities because federal, state, and local governments also make PILT-type payments on otherwise exempt property. *See, e.g.*, 31 U.S.C. § 6902(a)(1) (Department of Interior makes payment each year to local government where exempt federal land is located); RCW 77.12.203 (imposing payment in lieu of property taxes on game lands owned by Department of Fish and Wildlife); RCW 35.82.210 (housing authorities may agree to make payments in lieu of taxes on otherwise exempt property).

The Legislature described how to determine the PILT. According to the Act, “The amount of the [PILT] must be determined jointly and in good faith negotiation between the tribe that owns the property and the

county in which the property is located.” Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(2)). If the county and tribe cannot agree, the Department must calculate the PILT amount. *Id.* In any event, the PILT “may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.” *Id.*

Finally, the Act also established how to pay and distribute the PILT. Once the PILT is calculated, the tribe must pay it directly to the county where the property is located. *Id.* (RCW 82.29A.055(3)). The county then distributes the amounts collected “solely to the local taxing districts, including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied.” *Id.* The Act’s PILT provisions are the center of this dispute.

B. The Muckleshoot Indian Tribe’s Exemption Application

The Muckleshoot Indian Tribe was one of several tribes to submit an application to the Department for the essential government services exemption based on economic development. CP 389-90. The Muckleshoot Tribe sought the exemption for its Salish Lodge property located within the City of Snoqualmie and King County. CP 416-434. The Tribe, through its solely owned company Salish Lodge, LLC, owns the Salish Lodge and operates it as a hotel and spa. CP 430, 433.

The Tribe's exemption application included its PILT agreement with King County because no leasehold interest exists in the Salish Lodge property, it is not located within the Tribe's reservation, and it is not otherwise exempt pursuant to federal law. CP 416-34. Under this particular agreement, the Tribe must pay King County a PILT that equals twenty-five percent of the property taxes that the Tribe previously paid for the Salish Lodge property. CP 433. The PILT agreement is effective for only one tax year. CP 434. On November 21, 2014, the Department issued a determination granting a property tax exemption to the Salish Lodge property for the 2015 tax year. CP 587.

C. Procedural History

On October 24, 2014, prior to the Salish Lodge receiving a property tax exemption, the City of Snoqualmie filed this lawsuit seeking declaratory relief based on multiple claims that the Act violates the state constitution.¹ CP 1-17. First, the City alleged that the Legislature unlawfully surrendered its taxing power through the Act by permitting counties to negotiate the PILT amount with Indian tribes. CP 11 (referencing Article VII, section 1's command that the Legislature shall

¹ The City's Complaint also sought injunctive relief and alleged that the Department violated the Public Records Act, RCW 42.56. CP 13-17. Neither the City's request for an injunction, nor its public records claims are at issue in this case, but are the subject of a pending appeal at the Court of Appeals, which was recently stayed. *See City of Snoqualmie, v. King County, et. al*, Wash. Ct. of Appeals No. 73437-7-I (2015).

not surrender its taxing power). Second, the City asserted that the Act violates Article VII, section 2's one percent levy limit and Article VII, section 9's provision granting the Legislature the power to vest taxing authority in municipal corporations by allowing the Department to determine the PILT amount. CP 11-12. The City further claimed that the Legislature unlawfully delegated its taxing authority to the Department and counties to determine the PILT without sufficient administrative safeguards. CP 12. Lastly, the City alleged that the Act violates constitutional uniformity requirements for property taxes under Article VII, sections 1 and 9, because it allows the PILT amount to be negotiated, and because only tribal property owned prior to March 2014 may be exempt. CP 12.

In connection with these claims, the City alleged that the Act had caused or would cause in the future three different injuries to the City: (1) a shift of the Muckleshoot Indian Tribe's property tax obligation for the Salish Lodge to other City taxpayers for the 2015 tax year and future tax years; (2) an increase in the City's property tax levy towards its statutory maximum rate; and (3) a permanent loss of tax revenue based on the possibility the Muckleshoot Indian Tribe will apply and receive an exemption under the Act in the future for new construction. CP 5-7.

The Department and the City filed cross-motions for summary

judgment. CP 681-83. The Department argued that the City lacked standing, failed to present a justiciable controversy, and that the City's constitutional claims should be rejected as a matter of law because the PILT is not a tax. CP 333-56. The trial court ruled that the City had standing to bring this action on its own behalf and in a representative capacity for its taxpayers, and that the case was justiciable and ripe for a court to decide. CP 683. The trial court also declared the Act unconstitutional, concluding that it violated the uniformity clauses and surrendered the Legislature's taxing power. CP 683-84.

The court later certified its decision on the City's constitutional claims for appeal. CP 790-93; *see* CR 54(b). The Department now appeals the trial court's order. CP 921-23.

V. ARGUMENT

A. Standard Of Review.

The trial court decided the issues raised in this appeal on summary judgment. Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. CR 56. If the material facts are undisputed, the appellate court reviews the legal conclusions in the appeal *de novo*. *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 148, 3 P.3d 741 (2000).

B. The City Lacks Standing To Pursue Its Constitutional Claims.

This Court should not reach the merits of whether the Act's PILT is constitutional because the City lacks standing to bring its constitutional claims. The City does not have standing on its own when it has not sustained an injury in fact and does not have representational standing to bring this lawsuit on behalf of its taxpayers. Standing is a legal question that this Court reviews *de novo*. *In re Estate of Becker*, 177 Wn.2d 242, 246, 298 P.3d 720 (2013).

The City brought its action under the Uniform Declaratory Judgment Act (UDJA). CP 10-13, 31-55. To have its claims under the UDJA heard, the City must meet the following elements of justiciability:

- (1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (internal quotations marks omitted). Standing is encompassed within the third justiciability element. *Id.* at 414.

Here, the trial court erroneously held that the City has standing on its own and representational standing for its taxpayers. CP 683. Because the City lacks standing in any capacity to assert its constitutional claims,

the trial court should not have reached the merits of the City's case.

1. The City lacks standing on its own.

To have standing under the UDJA, a litigant must meet a two-part test. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (*Grant County II*). First, the litigant's asserted interest must be arguably within the zone of interests to be protected by the statute or constitutional guaranty in question. *Id.* Second, the litigant must have suffered from an injury-in-fact, economic or otherwise. *Id.* The City must meet both requirements to establish standing, yet fails to meet either one.

a. The City's interest is not within the zone of interests protected by the uniformity clauses.

The party bringing a declaratory judgment action must assert an interest within the zone of interests protected by the constitutional provision at issue. *Id.* To determine whether a party is within the zone of interests, this Court should refer to the constitutional provision's general purpose. *See Branson v. Port of Seattle*, 152 Wn.2d 862, 876 n.7, 101 P.3d 67 (2004) (looking to general purpose of statute to apply zone of interests test). Here, the City claims that the Act violates the uniformity clauses in Article VII, sections 1 and 9. CP 12. Section 1 provides in relevant part, "All taxes shall be uniform upon the same class of property

within the territorial limits of the authority levying the tax All real estate shall constitute one class.” Likewise, section 9 provides that the Legislature may vest municipal corporations, such as the City, with the authority to assess and collect taxes, but “such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.” Thus, the Constitution requires all real estate to be taxed uniformly at both the state and local level. Const. art. VII, §§ 1 & 9.

To achieve tax uniformity, there must be an equal tax rate and equal method for valuing the property to be taxed. *Belas v. Kiga*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998). The purpose of this uniformity requirement is to ensure that the tax burden is distributed uniformly amongst taxpayers. *Cosro, Inc. v. Liquor Control Bd.*, 107 Wn.2d 754, 761, 733 P.2d 539 (1987). Given this purpose, this Court has long held that only a taxpayer who actually suffers from an alleged uniformity violation may bring such a claim. *Vance Lumber Co. v. King County*, 184 Wash. 402, 404, 409-10, 51 P.2d 623 (1935) (county lacked standing to challenge a statute creating a rebate for delinquent taxes on uniformity grounds because only a taxpayer experiencing the harm could bring the claim). Thus, this Court has rejected attempts of local governments to bring property tax uniformity claims on behalf of its citizens. *Id.*

Since *Vance Lumber*, this Court’s jurisprudence on standing has

continued to evolve. In more recent decisions this Court has recognized that there may be circumstances where a local government, such as a county or city, has standing to raise certain constitutional claims. *See City of Seattle v. State*, 103 Wn.2d 663, 668-69, 694 P.2d 641 (1985) (concluding city fell within zone of interests for state and federal equal protection clauses because it had a direct interest in the fairness and constitutionality of the process for annexing territory). Despite this evolution, this Court has never overruled *Vance Lumber*, and the decision remains good law.

Just as in *Vance Lumber*, the City does not fall within the zone of interests protected by the uniformity requirements because it is not a taxpayer. The City has not asserted that it must pay more property taxes as a result of the Act. In fact, it is unlikely that a city would fall within the zone of interests protected by the uniformity requirements because cities are constitutionally exempt from paying property taxes. Art. VII, § 1 (municipal corporations are exempt from property taxes). Accordingly, the City simply does not fit within the zone of interests protected by the Constitution's uniformity clauses.

b. The City has failed to show an injury in fact from the Act.

The City must also demonstrate that the Act has caused it an

injury-in-fact for the City to have standing. *Grant County II*, 150 Wn.2d at 802. To do so, the City must allege a harm that is direct, personal, and substantial, rather than speculative or abstract. *Id.* Here, the City fails to establish any injury-in-fact stemming from the Act.

To the contrary, the Act has not harmed the City at all. For the 2015 tax year, the Muckleshoot Indian Tribe's Salish Lodge was the only property to receive an exemption under the Act within the City. CP 390. Rather than injure the City, the Tribe's PILT payment from the Salish Lodge exemption will provide the City with an economic benefit for the 2015 tax year. *See* CP 470-71 (explaining how PILT-type payments can provide an additional benefit to local taxing districts). This is because the City did not reach its levy limit for the 2015 tax year. A levy limit refers to the maximum property tax rate that the Legislature allows the City to impose upon properties within its boundaries. *See* RCW 84.52.043; RCW 84.55.010. Because the City's levy was not at its limit, the City did not lose any revenue for the 2015 tax year. CP 696. Instead, the City collected the same amount of property taxes pursuant to its levy as if it had included the Salish Lodge property in its assessment, plus the PILT payment from the Muckleshoot Indian Tribe. *See* CP 470-71. Thus, the Salish Lodge exemption fails to harm the City in any way.

Ignoring the financial benefit that it is receiving from the PILT, the

City instead claims that the Act injures it by bringing it closer to its levy limit. This is an abstract, rather than a concrete harm. *See Walker v. Munro*, 124 Wn.2d 402, 412, 879 P.2d 920 (1994) (claim that initiative affected budgetary decisions and fiscal plans did not constitute actual, concrete harm). The City has not described how merely increasing its levy rate has prevented it from performing a specific action or affected its ability to perform a certain government function. *See* CP 520. Without a more specific harm, bringing the City closer to its levy rate is simply insufficient to establish injury in fact.

The City also claims that the Act will cause it to lose revenue in the future. CP 6-7, 539. To support its allegations of future revenue loss, the City speculates that the Muckleshoot Indian Tribe will complete the development of additional property it owns and that the Tribe will apply for and receive an exemption under the Act for this property. CP 6-7. Based on this speculation, the City further assumes that King County will never assess the property. *See* CP 7 (referencing RCW 84.40.175, which indicates that a county assessor is not required to value property exempt under RCW 84.36.010). If King County does not assess the additional property, the City claims the potential property tax revenue from this additional property is permanently lost to the City. CP 7. None of these events have yet occurred. Such conjecture cannot establish that the Act is

causing the City harm. *See Yakima County Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 379-80, 858 P.2d 245 (1993) (fire district lacked standing because it could only show that it would be affected by a possible future event, i.e., annexation); *Walker*, 124 Wn.2d at 412-14 (petitioners lacked standing when initiative provisions at issue were not yet in effect and whether certain events would occur was speculative).

The City also claimed below that the Act places its officials in the position of possibly violating state law due to the City's uncertainty regarding the PILT's constitutionality. CP 520-21, 539. Essentially, the City attempts to stretch the facts here to rely on this Court's opinion in *Snohomish County Board of Equalization v. Department of Revenue*, 80 Wn.2d 262, 493 P.2d 1012 (1972). In that case, the Court held that a board of equalization and county assessor had standing to challenge the constitutionality of a law regarding the valuation process for property. *Id.* at 264-65. The board and assessor had standing because they faced statutory civil and criminal penalties if they did not uphold the Constitution when performing their official assessment duties. *Id.* at 264.

This case is unlike *Snohomish County Board of Equalization* because the Act does not affect the performance of the City officials' duties. City officials are not responsible for assessing the value of the tribal properties that might receive an exemption under the Act. *See RCW*

36.21.011, .015 (indicating county assessor may appoint assistants to carry out the listing and valuation of property). Nor are City officials responsible for determining whether tribal property may qualify for a property tax exemption under the Act. *See* RCW 84.36.815 (requiring property tax exemption application to be filed with Department). The City is merely a passive recipient of the PILT and not in the same position as a board of equalization or county assessor. Accordingly, the Act has not injured the City in any way that provides the City with standing.

2. The City does not have representational standing to raise constitutional claims on behalf of its taxpayers.

The trial court also improperly concluded that the City has representational standing to bring this action on behalf of its taxpayers. CP 683. The standing doctrine generally prohibits litigants who are not adversely affected by a public act or statute from asserting the legal rights of others. *Walker*, 124 Wn.2d at 419. An organization, however, may have standing in a representational capacity when (1) its members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) the organization's claims and requested relief do not require the participation of individuals in the lawsuit. *American Legion Post # 149 v. Dep't of Health*, 164 Wn.2d 570, 595, 192 P.3d 306 (2008).

The standards for representational standing are not likely to apply to a municipal corporation. Unlike other organization members, City taxpayers do not “join” the City. Instead, a taxpayer happens to live within the City’s jurisdiction. Unlike other organization members, City taxpayers also do not all share the same interests. The difference in interests that City taxpayers may have is obvious from this very case. Here, the City challenges a property tax exemption that one of its own taxpayers, the Muckleshoot Indian Tribe, applied for and received. CP 10-15, 587. Thus, the City cannot allege to represent the interests of all of its taxpayers when the claims it is asserting are directly adverse to at least one of those taxpayers. This demonstrates why representational standing should not apply in the context of a municipal corporation like the City. Its interests would favor certain members to the direct harm of others.

Even if representational standing applies, the City does not meet the doctrine’s requirements. The City cannot satisfy the requirement that the interests it seeks to protect are germane to its purpose. As a municipal corporation, the City’s purpose is to provide a local system of government for those residing in its jurisdiction. In this context, the City is specifically acting as a taxing authority, imposing a levy against its taxpayers. *See* RCW 84.52.043(1) (indicating levy limit for cities). Thus, while the City certainly has an interest in receiving sufficient property taxes to carry out

its operations as a local government, this does not mean the City has an interest in how it obtains this revenue. Instead, the City only focuses upon guaranteeing that it has sufficient funds for its budget each year. *See* RCW 84.52.020 (requiring City to submit budget to county for the purpose of levying taxes). Thus, the City's interests do not necessarily align with a taxpayer's interests of ensuring tax uniformity and preventing the Legislature from surrendering its taxing power.

The City also cannot have representational standing because the City's taxpayers are required to be in this lawsuit. First, nothing in the record indicates that it would be impossible or even difficult for an individual taxpayer to raise the claims at issue here. *Cf. Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555 P.2d 1343 (1976) (county public defender had representational standing to bring constitutional challenge on behalf of juvenile criminal defendants partly because of the difficulty juveniles would have in bringing their own action); *see also Barrows v. Jackson*, 346 U.S. 249, 257, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953) (permitting a third party to champion the fundamental rights of others when it is extraordinarily difficult or impossible for them to present their grievance). In fact, precedent shows that taxpayers can and have brought uniformity challenges themselves, demonstrating that the constitutional uniformity requirements protect taxpayers, not municipalities. *See, e.g., Covell v.*

City of Seattle, 127 Wn.2d 874, 877, 905 P.2d 324 (1995).

To allow representational standing here, where there are no circumstances preventing a taxpayer from bringing this action, would lead to a perversion of this Court's ruling in *Grant County II*. In that case, this Court concluded that fire districts lacked standing to challenge the constitutionality of the petition method for property annexation in part because the affected property owners were already parties to the suit. 150 Wn.2d at 803-04. That holding, however, does not mean that a municipality, such as the City, can always assert representational standing when the impacted individuals are not present in the suit, without considering the difficulty such individuals would have in raising the claims on their own. If this were the case, cities could essentially become private attorneys general for any alleged harm their residents may have.

Not only would it not be difficult for a taxpayer to bring a lawsuit challenging the Act, but an individual taxpayer must be present in this lawsuit to provide the type of relief the City has now requested from the trial court. After the trial court granted summary judgment in the City's favor, the City moved for an injunction requiring King County to issue tax refunds to each City taxpayer based on the Act being declared unconstitutional. CP 756. A tax refund suit, however, must be brought in a very specific manner set forth in statute. *See, e.g.*, RCW 84.69.030(1)(a)

(requiring a taxpayer to verify amount of property taxes paid). Allowing the City to bring this action and request tax refunds on behalf of all of its taxpayers would circumvent these statutory requirements. *See, e.g., Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53-54, 905 P.2d 338 (1995) (class action lawsuit prohibited in excise tax refund cases). Instead, the specific statutory requirements for a property tax refund necessarily require that each taxpayer bring his or her own individual claim for a refund. Thus, because the City cannot provide its taxpayers with the relief it is requesting, i.e., a tax refund, it does not meet the requirements for asserting claims on behalf of its taxpayers.

3. This Court should not disregard standing requirements to allow the City to bring this lawsuit.

This Court has stated that it will interpret standing requirements more liberally “when a controversy is of substantial public importance, immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture.” *Grant County II*, 150 Wn.2d at 803. Typically, this Court has applied this liberal interpretation only when there was a single plaintiff in the case and such an “approach was necessary to ensure that the important public issues raised did not escape review.” *Id.*

In even rarer circumstances, this Court has not required all the

elements of standing to be met. *See City of Seattle v. State*, 100 Wn.2d 232, 237, 668 P.2d 1266 (1983) (stating court will issue advisory opinions in extraordinary situations). This Court has applied this limited exception in declaratory judgment actions to resolve constitutional questions when the case presented an issue of great public interest, the parties adequately argued and briefed the issues, and it appeared that a decision would benefit the public and other branches of government. *Seattle Sch. Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 490, 585 P.2d 71 (1978).

The Department recognizes that this case raises important constitutional questions, the resolution of which will have a broad impact on the administration of property taxes. *See Statement of Grounds For Direct Review*. This recognition, however, does not mean that this Court should disregard standing requirements or apply them more liberally. The City has suffered no injury of its own, its interests are not the same as its citizen taxpayers, and a taxpayer could easily bring the claims in this case. The extraordinary circumstances required to set aside standing requirements are not present here. This Court should still require that the City have standing to bring this suit, and because the City does not meet the UDJA's standing requirements, this Court should dismiss this action without considering the City's claims on the merits.

C. Article VII's Tax Requirements Do Not Apply To The PILT.

Even if this Court concludes that the City has standing, it still should reverse the trial court's decision declaring the Act unconstitutional. Courts presume that statutes are constitutional. *Sch. Dists.' Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010). Accordingly, this Court should not “strike a duly enacted statute unless fully convinced, after a searching legal analysis that the statute violates the constitution.” *Id.* at 606 (quoting *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)). Article VII, section 1 of the Washington Constitution limits the Legislature's otherwise plenary authority to tax. *Belas*, 135 Wn.2d at 919-20. Two of these limitations are at issue in this case. First, the Constitution requires that “[a]ll taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.” Const. art. VII, § 1; *see also* art. VII, § 9. Second, “[t]he power of taxation shall never be suspended, surrendered or contracted away.” Const. art. VII, § 1. Both of these limitations, however, apply only to taxes. *Belas*, 135 Wn.2d at 919-20. Because the PILT at issue is not a tax, it is not subject to Article VII, and the trial court erred in concluding otherwise.

A tax is “an enforced contribution of money, assessed or charged by authority of sovereign government for the benefit of the state or the

legal taxing authorities [and] . . . is an exaction in the strictest sense of the word.” *Dean v. Lehman*, 143 Wn.2d 12, 26, 18 P.3d 523 (2001) (quoting *State ex. rel. City of Seattle v. Dep’t of Public Utils.*, 33 Wn.2d 896, 902, 207 P.2d 712 (1949)). “Not all demands for payment made by a governmental body are taxes.” *Id.* at 25 (quoting *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 809, 650 P.2d 193 (1982)). Instead, a government-imposed charge can qualify as a wide variety of fee types. *See, e.g., id.* at 29 (statute requiring deduction of funds received by inmates described as a recoupment provision for services provided, rather than a tax); *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 805, 23 P.3d 477 (2001) (“regulatory fees” include a broad array of charges, such as utility customer fees, user fees, and permit fees); *King County Fire Prot. Dists. No. 16, No. 36 & No. 40 v. Housing Auth. of King County*, 123 Wn.2d 819, 834, 872 P.2d 516 (1994) (benefit charges under fire district statute are akin to charges for services rendered, not taxes); *see also* Hugh D. Spitzer, *Taxes v. Fees: A Curious Confusion*, 38 *Gonz. L. Rev.* 335, 343-51 (2002/2003) (discussing variety of user fees including commodity charges and burden offset charges).

Based on these principles, this Court has established a three-factor test to determine whether a charge is more like a tax or a fee: (1) whether the primary purpose of the charge more closely resembles a tax or a fee;

(2) whether the charge is allocated exclusively for its authorized purpose; and (3) whether a direct relationship exists between the charge and the services received by the fee payer, or the burden produced by the fee payer. *Covell*, 127 Wn.2d at 879. Applying these factors demonstrates that the PILT is more like a fee than a tax.

1. Like a fee, the PILT's primary purpose is to offset a specific burden: services to tribal economic development properties.

The first factor requires this Court to consider whether the primary purpose of the charge is more like a tax or a fee. *Id.* at 879. The primary purpose of a tax is to raise funds for the general public welfare. *Id.* In contrast, the primary purpose of a fee is to raise funds to pay for regulation, a particular service provided, or the mitigation of a burden created. *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 371, 89 P.3d 217 (2004). In determining the primary purpose of a charge, a court should look beyond the specific statutory provision at issue and examine the Legislature's overall plan in enacting the law. *Samis Land Co.*, 143 Wn.2d at 808.

Here, the PILT is more like a fee than a tax because its primary purpose is to act as a condition an Indian tribe must meet to offset the burden caused to local jurisdictions when tribal economic development property receives an exemption under the Act. The specific language of

the Act imposing the PILT demonstrates that the PILT is a condition of a property tax exemption. To receive the exemption, a tribe must either reach an agreement on the PILT amount with the county, or request the Department to determine the PILT amount. Laws of 2014, ch. 207, §§ 8-9 (RCW 82.29A.055(2); RCW 84.36.012(2)(b)). Once the PILT is determined, the tribe must pay the PILT or its property will lose its exempt status. *Id.* at § 8 (RCW 82.29A.055(3)). Thus, the PILT is a condition the tribe must satisfy when seeking a tax exemption for certain economic development property.

By imposing the PILT as a condition to a property tax exemption, the Legislature intended to treat tribal property the same as other government-owned property. In fact, the Legislature specifically describes the law as “AN ACT Relating to subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.” Laws of 2014, ch. 207; *see Covell*, 127 Wn.2d at 887-88 (the title of a legislative act may be referred to as a source of legislative intent). Thus, the Legislature meant to subject Indian tribes to the same conditions as other governments, and the PILT is simply one of those conditions.

This purpose is readily apparent from the overall scheme of the Act. Prior to the Act, lessees of property owned by other government

entities were already subject to leasehold excise tax. *See* RCW 82.29A.010(1); RCW 82.29A.030. The Legislature imposed leasehold excise tax “to fairly compensate governmental units for services rendered to such lessees of publicly owned property.” RCW 82.29A.010(1)(c). When establishing the tribal economic development exemption, the Legislature recognized that lessees of tribal property should also be subject to leasehold excise tax. *See* Laws of 2014, ch. 207, §§ 2-4 (RCW 82.29A.010(1)(d); RCW 82.29A.020(1)(a)&(c); RCW 82.29A.050(3)). This is because lessees of tribal property also “receive substantial benefits from governmental services provided by units of government.” RCW 82.29A.010(1)(a). Thus, just like other government property, the Act applies leasehold excise tax to exempt tribal property. Laws of 2014, ch. 207, § 2 (RCW 82.29A.010(1)(d)).

In subjecting tribal property to the PILT when there is no lease of the property, the Legislature similarly treated the tribes like other government entities. Many government entities make payments in lieu of taxes to offset the burden of providing services to these otherwise exempt properties. For example, the federal government makes PILT-type payments to local governments where federal lands are located. 31 U.S.C. §§ 6901-6905. Certain state agencies also make PILT-type payments to counties where state lands are located, and the county then distributes

those payments to the applicable local jurisdictions. *See, e.g.*, RCW 77.12.203 (requiring Department of Fish and Wildlife to pay “an amount in lieu of real property taxes”). Finally, even local government entities make PILT-type payments in certain contexts. *See* RCW 35.82.210(1) (housing authority is exempt from property taxes, but may agree to make payments to local governments for services furnished as long as the amount does not exceed the property tax amount last levied). Accordingly, the PILT in the Act is no different than PILT-type payments other government entities make to local authorities.

The Legislature modeled the PILT here to achieve the same objective as the PILT-type payments described above. *See* H.B. Rep. on E.S.H.B. 1287, 63rd Leg., at 4-5 (Wash. 2014) (comparing PILT to payments federal government makes to counties for public services like water and sewer); S.B. Report on E.S.H.B. 1287, 63rd Leg., at 4 (Wash. 2014) (indicating that tribes should have the same application of property tax as state and local governments). These various PILTs are all meant to offset the burden caused to local governments by exempt, government-owned property. *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 258, 105 S. Ct. 695, 83 L. Ed. 2d. 635 (1985) (explaining that federal PILT-type payments are intended to compensate local governments for the exempt status of federal lands and the costs of

providing services to the lands). None of these payments are taxes meant to raise funds for the general public. *See, e.g., Greenlee County, Ariz. v. United States*, 487 F.3d 871, 879 (Fed. Cir. 2007) (describing federal PILT-type payments as a benefits program).

Interpreting the PILT's primary purpose otherwise would be completely contrary to the inherent nature of PILT-type payments. Thus, if the PILT is in fact a tax as the trial court concluded, this means that these other PILT-type payments are also likely taxes, even though the federal and state government are constitutionally exempt from taxes. *See* U.S. Const. art. VI, cl. 2; Const. art. VII, § 1. This unlikely consequence cautions against concluding that the PILT is a tax.

2. Like a fee, the PILT is allocated exclusively to offset the burden created by otherwise exempt tribal economic development properties.

Under the second *Covell* factor, this Court examines whether the charge collected is allocated exclusively for the charge's authorized purpose. *Covell*, 127 Wn.2d at 879. If so, the charge is more like a fee than a tax. *Id.* This factor does not necessarily require that the actual allocation of funds be direct or exact. Instead, this Court has recognized that the statute at issue can demonstrate the Legislature's intent for a charge to be used in a specific manner. *See Dean*, 143 Wn.2d at 30-31.

This Court's analysis in *Dean* demonstrates that an exclusive

allocation does not always mean a precise allocation. In *Dean*, this Court examined whether a statute requiring certain deductions from outside funds sent to prison inmates constituted a tax. 143 Wn.2d at 25-31. Under the first *Covell* factor, the Court concluded that the Legislature intended the statute not to impose a tax, but to act as a recoupment provision by recovering funds from inmates for the costs of incarceration. *Id.* at 28-29.

When considering the second *Covell* factor, the Court recognized that the collected funds under the statute were not directly allocated to pay for the costs of incarceration. *Id.* at 30-31. Instead, the Legislature had authorized the deductions to be used for various purposes related to the criminal justice system upon which the inmates had placed a burden. *Id.* at 31. Despite this lack of a direct allocation, the Court still concluded the deduction statute was more like a fee than a tax:

When the government is seeking reimbursement for services it has provided, the manner in which it directs those funds after their collection is of no significance. Indeed, the state here could have simply directed that the funds be placed in the general fund.

Id. at 31. Thus, the fact that the Legislature intended the deductions to pay for the costs of incarceration and allocated the funds based on the overall burdens inmates create for the state was sufficient to make the deductions more like fees under the second *Covell* factor. *Id.* at 30-31.

The Act here is very similar to the statute at issue in *Dean* because it provides for an allocation method that addresses the general burden the tribal economic development property creates upon local governments. The Act requires each tribe to pay the PILT to the county where the exempt tribal property is located and receiving services from local authorities. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(3)). The county “must distribute all such money collected solely to the local taxing districts, including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied.” *Id.* For leasehold excise taxes, the state typically distributes to the counties and cities the amount of leasehold excise tax collected on their behalf. RCW 82.29A.090. Each county then distributes these funds to the other local taxing districts in the same proportion as it would distribute funds from real property taxes. RCW 82.29A.100. Thus, by requiring counties to distribute PILT in the same manner as leasehold excise tax, the Act ensures that the PILT is allocated to the local jurisdictions where the exempt tribal property is located.

The fact that the Act does not expressly allocate the PILT to pay for services local governments provide to exempt tribal properties does not transform the PILT into a tax. Instead, the “overall scheme” of the Act demonstrates that the PILT is intended to offset the burden caused to local

governments by providing such services. *See Dean*, 143 Wn.2d at 30-31. Allocating the PILT to the county and taxing districts where the property is located, rather than to the state's general fund, demonstrates this purpose. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(3)).

3. Like a fee, the PILT bears a direct relationship to the burden created by the tribal economic development properties.

The third *Covell* factor examines whether a direct relationship exists between the fee and the services received by the fee payer or the burden caused by the fee payer. *Covell*, 127 Wn.2d at 879. If a direct relationship exists, the charge is more likely a fee. *Arborwood Idaho, LLC*, 151 Wn.2d at 373. A direct relationship may exist even if the charge is not individualized based on the actual benefit received or the actual burden produced. *Id.* Thus, the basis for the direct relationship need only be practical, not precise. *Samis Land Co.*, 143 Wn.2d at 811.

Here, the Act creates a direct relationship between the PILT and the burden created by the tribal economic development property. Under the Act, only the tribe that owns the exempt economic development property at issue pays the PILT to the county where the property is located and receiving services. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(3)). The Act requires the county to negotiate the PILT amount with the tribe for the economic development property at issue. *Id.* (RCW

82.29A.055(2)). This negotiation process helps ensure that the PILT is based upon the burden the specific tribal economic development property is producing for the local jurisdictions at issue. *See id.*

Unlike a tax, the PILT does not treat all tribal economic development properties the same regardless of the burden the property is actually causing to the local jurisdictions. *See Arborwood Idaho, LLC*, 151 Wn.2d at 373 (concluding that a flat-rate ambulance charge against all city households was an illegal tax because it bore no relationship at all to the actual use of ambulance services). Thus, by requiring the PILT to be determined through negotiations with the county where the property is located, the PILT may be tailored to address the burdens caused by each tribal economic development property at issue. Accordingly, under the third *Covell* factor, the PILT also is more like a fee than a tax.

The *Covell* factors all demonstrate the PILT is much more like a fee than a tax. Because the PILT is not a tax, it is not subject to Article VII's limitations on taxes. This Court should reverse the trial court's order holding that the PILT is a tax.

D. If The PILT Is A Tax At All, It Is An Excise Tax, Not A Property Tax.

The trial court not only concluded that the PILT is a tax, it also concluded that the PILT is a property tax. CP 683. This distinction is

significant because the Constitution's uniformity requirements apply only to property taxes, not excise taxes. *In re Estate of Hambleton*, 181 Wn.2d 802, 832, 335 P.3d 398 (2014). If the PILT is a tax at all, it is more akin to an excise tax than a property tax. The trial court erred.

1. The PILT is similar to an excise tax.

An excise tax is a tax on a "particular use or enjoyment of property or the shifting from one to another of any power or privilege incidental to the ownership or enjoyment of the property." *Hambleton*, 181 Wn.2d at 832 (internal quotations omitted). Accordingly, excise taxes typically share two characteristics: (1) they are imposed upon a voluntary act that provides the taxpayer the benefits from the activity that triggers the taxable event, and (2) they are based upon the taxpayer's enjoyment of the taxable privilege. *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 800, 123 P.3d 88 (2005).

Assuming that the PILT is a tax, it possesses characteristics very similar to those of excise taxes. An Indian tribe's PILT obligation arises when a tribe chooses to seek a tax exemption under the Act for certain property it has decided to use for economic development. Laws of 2014, ch. 207, §§ 8-9 (RCW 82.29A.055(1); RCW 84.36.012(2)(b)) Nothing requires a tribe to apply for the Act's property tax exemption. Similarly, nothing requires a tribe to use its property for the economic development

activities that trigger the tribe's eligibility for the exemption. *See Sheehan*, 155 Wn.2d at 800 (concluding motor vehicle tax is voluntary because there is no requirement that a resident own a vehicle or use public roadways). Thus, the PILT is voluntary, like an excise tax, not an involuntary property tax.

The method for determining the PILT is also consistent with the nature of an excise tax. The county may negotiate with the tribe to determine the PILT, or the Department may determine the PILT. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(2)). In either case, the PILT amount cannot exceed the amount of leasehold excise tax that would otherwise be owed if a leasehold interest existed in the property. *Id.* Thus, the PILT is tied to the leasehold excise tax, which is a "true excise tax." *Washington Public Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 652, 62 P.3d 462 (2003). This connection to the leasehold excise tax ensures that the PILT amount is ultimately related to the privilege the tribe is exercising: using its property for economic development to qualify for an exemption.

The fact that a PILT agreement may be based upon a percentage of the property taxes previously paid does not convert the PILT into a property tax. *See* CP 433 (Muckleshoot Indian Tribe must make PILT payment equal to twenty-five percent of its 2014 property tax bill). As this Court has expressly recognized, a valid excise tax may be based upon

the value or a portion of the value of the property at issue. *See Sheehan*, 155 Wn.2d at 801 (motor vehicle tax was a valid excise tax even though based upon the value of a vehicle); *see also* RCW 82.50.425(2) (excise tax on travel trailers and campers assessed upon statutory depreciation schedule); RCW 82.49.010(1) (imposing excise tax on water vessels as a percentage of watercraft's value). Thus, the PILT is very similar to an excise tax.

2. The PILT does not possess the characteristics of a property tax.

In contrast to an excise tax, a property tax is a tax on tangible or intangible things. *High Tide Seafoods v. State*, 106 Wn.2d 695, 699, 725 P.2d 411 (1986). A property tax is imposed “merely by reason of ownership,” is based upon the value of an annual assessment, and is characterized by an “element of absolute and unavoidable demand.” *Id.* at 699-700; *Quinault Indian Nation v. Grays Harbor County*, 310 F.3d 645, 652 (9th Cir. 2002). The PILT possesses none of these characteristics.

To start with, a tribe's obligation to pay PILT is not triggered by the mere ownership of the property at issue. *See High Tide Seafoods*, 106 Wn.2d at 700. If a tribe purchases property, it does not automatically owe PILT. A tribe must pay PILT only if it seeks the benefit of the Act's economic development exemption for certain property. Laws of 2014, ch.

207, §§ 8-9 (RCW 82.29A.055(1); RCW 84.36.012(2)(b)). Thus, it is the tribe's voluntary decision and use of property at issue that results in the PILT obligation, not simply owning the property. *Compare Harbour Vill. Apts. v. City of Mukilteo*, 139 Wn.2d 604, 607, 989 P.2d 542 (1999) (a charge on rental units was a property tax because it was imposed as a flat rate for owning rental property, regardless of whether the property was rented).

Second, the PILT is not based upon the value of an annual assessment. *Quinault Indian Nation*, 310 F.3d at 652. The Act does not contemplate county assessors valuing the tribal economic development property each year to determine the basis of the PILT. Instead, the Act requires the PILT to be calculated based upon good faith negotiation between a county and a tribe, or through a determination by the Department. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(2)). The PILT agreement for the Salish Lodge further confirms this. King County and the Muckleshoot Tribe did not agree to a PILT based upon an assessed value of the property for the 2015 tax year. Instead, the PILT is based upon a percentage of the Muckleshoot Indian Tribe's 2014 property tax bill for the Salish Lodge. CP 433.

A final reason the PILT does not possess the characteristics of a property tax is that the PILT lacks the element of absolute and

unavoidable demand that typically attaches to a property tax. *High Tide Seafoods*, 106 Wn.2d at 699. The Act does not demand that an Indian tribe seek a tax exemption for its property and pay PILT. Instead, a tribe may choose to utilize its property in any number of different ways, such as owning it but not using it for economic development, leasing it to another party that would be subject to leasehold excise tax, or requesting the United States to place it in trust, in which case no property tax or PILT would apply. *See* 25 U.S.C. § 465 (authorizing Secretary of Interior to acquire trust lands for Indian tribes); 25 C.F.R. § 151.9 (authorizing tribe to file written request to acquire land in trust status). Even if a tribe initially submits an application seeking a property tax exemption under the Act, it can always withdraw the application later. CP 587. In sum, even if the PILT is a tax, it is not a property tax or subject to constitutional uniformity requirements.

E. The Legislature Retained Its Taxing Power And Properly Delegated The Authority To Determine The PILT Amount.

As discussed above, because the PILT is not a tax at all, the Court need not address whether the Act violates Article VII, section 1's command that a Legislature may not surrender its taxing power. But even if the Court concludes that the PILT is a tax, it must still presume that the Act is constitutional. *Sch. Dists.' Alliance for Adequate Funding of*

Special Educ., 170 Wn.2d at 605. A court should not strike down a duly enacted statute “unless fully convinced, after a searching legal analysis that the statute violates the constitution.” *Id.* at 606. Here, a searching legal analysis demonstrates that the Act does not violate the constitutional restriction prohibiting a Legislature from surrendering its taxing power. Instead, the Act constitutes a proper delegation of the Legislature’s taxation authority to allow for negotiation between counties and tribes to determine the PILT, or to permit the Department to determine the PILT.

1. Nothing in the Act indicates the Legislature intended to surrender or suspend its constitutional taxation power.

Under Article VII, section 1, the Legislature’s “power of taxation shall never be suspended, surrendered or contracted away.”² As a matter of law, nothing in the Act violates this prohibition.

To determine whether the Legislature has “suspended,” “surrendered, or “contracted away” this right, this Court has interpreted these words according to their usual and ordinary meaning. *Gruen v. State Tax Comm’n*, 35 Wn.2d 1, 53, 211 P.2d 651 (1949), *overruled on other grounds by State ex rel. Wash. State Fin. Comm’n v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963). Thus, a surrender of the Legislature’s taxing

² The power to impose a tax should not be confused with the Legislature’s general power to exempt property from tax. Const. art. VII, § 1 (Legislature may establish property tax exemptions by general laws). The two legislative powers are distinct. *See Belas*, 135 Wn.2d at 929-35 (distinguishing between the power to levy and assess a tax and the power to exempt property from tax).

power means to “yield, render, or deliver up . . . to give up completely, resign, to relinquish.” *Id.* Similarly, the Legislature’s taxing power is suspended when it is “temporarily inactive or inoperative” or “held in abeyance.” *Id.* And finally, this Court has declared that the words “contracted away” are evident in their meaning. *Id.* The Legislature is permitted to grant the authority to assess and collect taxes to municipalities for local purposes without violating this provision. *See* Const. art. VII, § 9.

When applying these terms, a court should not presume that the Legislature has surrendered its taxing power. *Gruen*, 35 Wn.2d at 54; *see* 84 C.J.S. *Taxation* § 15 (2015). Instead, a court must presume that the Legislature has retained its taxing power “unless the intention to relinquish it is declared in clear and unambiguous terms, admitting of no other reasonable construction.” *Gruen*, 35 Wn.2d at 54 (internal quotation marks omitted). Here, the trial court’s decision does not discuss how these principles apply. It does not explain what language constituted an unconstitutional surrender, and it identifies no specific or clear and unambiguous terms of surrender. CP 684.

Given the strong presumption that the Legislature has retained its taxing power, it is not surprising that none of the few cases applying the non-surrender provision have concluded that the Legislature violated its

terms. *Gruen*, 35 Wn.2d at 52-54; see, e.g., *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 41-42, 377 P.2d 466 (1962) (statute relating to bonds that required the state to use funds from fuel taxes to cover the costs of the bond did not violate the non-surrender provision); *Gengler v. King County*, 12 Wn.2d 227, 231-34, 121 P.2d 346 (1942) (statute that made county lands acquired through foreclosure of tax liens subject to city assessment for local improvements, when such lands had previously been exempt, and provided two ways to collect the assessment, did not violate non-surrender clause); see also, e.g., *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 301, 174 P.3d 1142 (2007) (one legislature cannot abridge the power of a subsequent legislature).

For example, in *Gruen*, this Court examined whether a statute providing a bonus to war veterans through bonds paid from funds collected from cigarette taxes contracted away the Legislature's taxation power. 35 Wn.2d at 5-6, 52-54. Specifically, the law provided,

the state undertakes to continue to levy the taxes upon cigarettes . . . and to place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund and to make said Fund available to meet said payments when due until all of said bonds and the interest thereon shall have been paid.

Id. at 52. The plaintiff argued that the law contracted away to bondholders

the right to tax cigarettes because it obligated the state to continue to tax cigarettes until the state fully paid the bonds. *Id.* at 52-53.

After examining the statute, this Court observed that there were no terms stating, or even implying, that the Legislature had relinquished a tax, suspended a tax, or contracted away its taxing authority. *Id.* at 53. Instead, the statute's language demonstrated that the Legislature "in no uncertain terms" retained its right to tax. *Id.*

The same conclusion reached in *Gruen* applies here. Nothing in the Act's terms demonstrates that the Legislature surrendered, suspended, or contracted away its taxation power. To the contrary, the Legislature clearly indicated that an Indian tribe must pay PILT to receive a property tax exemption for tribal economic development property. *See* Laws of 2014, ch. 207, § 8 (RCW 82.29A.055) (expressly subjecting certain tribal property to PILT). Explicitly requiring a tribe to pay PILT does not completely give up the Legislature's taxation power or hold the Legislature's taxation power in abeyance.

Nor has the Legislature "contracted away" its taxing power by allowing a county to negotiate the PILT amount with a tribe, or permitting the Department to determine the PILT amount. Instead, the Legislature specifically mandated that tribes pay PILT to receive a tax exemption for certain property and merely delegated to counties or the Department the

authority to determine the exact PILT amount. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055). Each tax year, the tribe must reapply for an economic development exemption by demonstrating that a PILT agreement exists. *Id.* at § 9 (RCW 84.36.012(2)(b)). Finally, nothing prevents future legislatures from amending the PILT or terminating the exemption. Accordingly, this Court should reverse the trial court's holding that Section 8 of the Act violates the non-surrender provision.

2. The Legislature properly delegated the authority to determine the PILT amount.

Because the trial court concluded that the Act violates Article VII, section 1's non-surrender provision, it did not address the City's related claim that the Legislature improperly delegated the authority to determine PILT to counties and the Department. Before the trial court, the City appeared to base this claim on Article II, section 1, which establishes legislative power in the Legislature. *See* CP 52-53 (referencing cases interpreting Article II, section 1). The City's claim lacks merit.

Article II, section 1 of the Constitution vests legislative power in the Legislature. This includes the Legislature's inherent power to impose a tax and see that it is collected. *State ex. rel. Mason County Logging Co. v. Wiley*, 177 Wash. 65, 73, 31 P.2d 539 (1934). Generally, legislatures cannot constitutionally delegate taxation powers to individuals or private

corporations.³ 84 C.J.S. *Taxation* § 14 (2015). In Washington, the Legislature is permitted to delegate its power to impose taxes to representative government or elected officials, such as the County, for local purposes. Const. art. VII, § 9; see *Carkonen v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280 (1969) (provision is not self-executing). And as discussed below, nonrepresentative government or officials may also receive certain legislative authority.

The City relied on old cases when making its delegation argument below. See CP 52. This Court's treatment of delegation issues substantially changed several decades ago. See *Yakima County Clean Air Auth. v. Glascam Builders, Inc.*, 85 Wn.2d 255, 260, 534 P.2d 33 (1975) (recognizing change). Prior to 1972, this Court's test for proper delegation of legislative power was "excessively harsh and needlessly difficult to fulfill." *Barry & Barry, Inc. v. Dep't of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972) (referencing previous cases requiring exacting standards for delegation of legislative authority).⁴

In *Barry & Barry*, the Court emphatically announced that "the

³ The chief purpose of prohibiting delegating the power to tax to nonelected bodies is to prevent taxation without representation. See M. Senechal, *Revising Granite Falls: Why the Seattle Monorail Project Requires Re-Examination of Washington's Prohibition on Taxation Without Representation*, 29 Seattle U. L. Rev. 63, 72 (2005).

⁴ See, e.g., *U.S. Steel Corp. v. State*, 65 Wn.2d 385, 397 P.2d 440 (1964) (invalidating legislation authorizing the Tax Commission to assess late payment penalty without prescribing standards).

strict requirement of exact legislative standards for the exercise of administrative authority has ceased to serve any valid purpose.” *Id.* at 159. In addition to lacking purpose, those strict requirements “conflict[ed] with the public interest in administrative efficiency in a complex modern policy.” *Id.* The Court recognized that the best way for a legislative body to effectuate a policy may often be to “assign to an administrative agency the task of working out such policy on a case-by-case basis.” *Id.* at 160. Accordingly, the Court held that delegation of legislative power is constitutional when it can be shown: “(1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and (2) that [p]rocedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power.” *Id.* at 159; *see also Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 761, 131 P.3d 892 (2006) (delegation of taxing power to nonrepresentative entity is allowed where the Legislature “clearly defines the purpose of the delegation and creates procedural safeguards to control arbitrary administrative action.”) (internal citations and quotes omitted); 84 C.J.S. *Taxation* § 14 (delegation not unlawful where legislature has fixed maximum limit of tax, and definitely fixed the rates or amount to be collected or particular method for computing the tax).

Thus, delegations of taxation authority to nonrepresentative bodies of government, like the Department of Revenue, are permissible. As a matter of law, the Act meets the standards for a lawful delegation.

a. The Act sufficiently defines what is to be done and what entity is to accomplish it.

The first requirement for lawful delegation is easily met. The Act defines in general terms what is to be accomplished and who is to accomplish it. It identifies what properties are subject to PILT: (a) tribal properties used exclusively for economic development, as defined in RCW 84.36.010; (b) with no taxable leasehold interest in the property; (c) located outside of the tribe's reservation; and (d) not otherwise exempt from taxation by federal law. Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(1)(a)-(d)). The Act further describes who is to determine the PILT: the tribe owning the property and the county in which the property is located determine the PILT jointly and in good faith negotiation, or the Department determines the PILT. *Id.* (RCW 82.29A.055(2)). And the Act provides even further guidance of how to pay and distribute the PILT. *Id.* (RCW 82.29A.055(3)).

b. The Act contains adequate procedural safeguards.

The Act also meets the adequate procedural safeguards requirement of *Barry & Barry*. First, the negotiation provision is a

delegation to publicly accountable elected officials or representative bodies. This is permitted under Article VII, section 9, and also is a factor for considering adequate procedural safeguards. *See Earle M. Jorgensen Co. v. City of Seattle*, 99 Wn.2d 861, 868-71, 665 P.2d 1328 (1983). In this case, the delegation to counties, who are representative bodies, ensures accountability for the PILT amount set by negotiation with a tribe. Here, the county is ultimately accountable to its citizens.

The City may argue, as it did below, that other government units have an interest in ensuring a fair PILT amount. But the Legislature set safeguards for how the PILT payments are distributed amongst the various jurisdictions. The distribution of PILT funds is tied to existing standards for the local leasehold excise tax distribution. *See* Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(3)). Accordingly, neither a county, a tribe, nor the Department may change the distribution scheme of PILT payments to arbitrarily favor certain local jurisdictions.

A second procedural safeguard is the requirement that the Department determine the amount when a county and tribe cannot reach an agreement.⁵ There is no question the Legislature may empower an administrative body concerned with the taxing process to establish

⁵ While the Department has issued some guidance in how it would calculate PILT if required to do so, this issue was not ripe for review because the Department was not asked to make any PILT determinations for the 2015 tax year.

reasonable rules to carry out assessment and collection duties within designated limitations. *See e.g., Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 440, 120 P.3d 46 (2005); *King County Water Dist. No. 54 v. King County Boundary Review Bd.*, 87 Wn.2d 536, 545, 554 P.2d 1060 (1976). The connection and placement of the PILT provision within the leasehold excise tax chapter of the RCW demonstrates that when the Legislature intended PILT to be “in lieu of leasehold excise tax,” it meant for PILT to be connected to the leasehold excise tax computation and incorporate it as a guideline for administrative conduct. Laws of 2014, ch. 207, § 8 (inserting a new section in RCW 82.29A to address PILT and cross-referencing leasehold excise tax calculation); *see also* RCW 82.29A.010(1)(c) (purpose of leasehold excise tax is to fairly compensate governmental units for substantial benefits provided).

This connection provides ample guidance to the Department to determine the PILT based on what the leasehold excise tax would be if the property at issue was rented for economic development purposes. Several statutes and implementing administrative rules govern the leasehold excise tax, including ones requiring the Department to determine the tax owed based on fair market value of a lease without the benefit of contract terms. *See* RCW 82.29A.020(2)(g); WAC 458-29A-200.

Finally, the Act sets a maximum amount of the PILT regardless of

whether the rate is set by the Department or through negotiation between a county and a tribe. Specifically: “[t]he amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.” Laws of 2014, ch. 207, § 8 (RCW 82.29A.055(2)). If PILT can be characterized as a tax on a tribe, then the Legislature set a standard within which the imposition cannot exceed a specific amount.

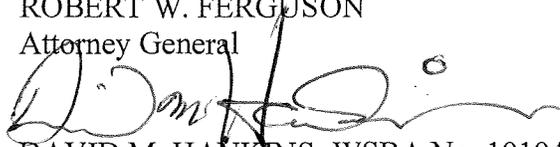
Because the Act meets the *Barry & Barry* standards, the Legislature’s delegation of authority was valid and proper.

VI. CONCLUSION

For the foregoing reasons, the City lacks standing to bring this action, and its constitutional claims should be rejected. If the Court finds that the City has standing, it should uphold the Act because the PILT is not a tax and, even if a tax, it is not a property tax. This Court should reverse the trial court and grant summary judgment to the Department.

RESPECTFULLY SUBMITTED this 22nd day of June, 2015.

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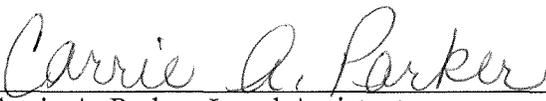
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I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 22nd day of June, 2015, at Tumwater, WA.


Carrie A. Parker, Legal Assistant

APPENDIX A

2014
SESSION LAWS
OF THE
STATE OF WASHINGTON

2014 REGULAR SESSION
SIXTY-THIRD LEGISLATURE
Convened January 13, 2014. Adjourned March 13, 2014.



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(3) Every money transmitter licensee and its authorized delegates shall refund to the customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

(a) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;

(c) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or

(d) The licensee is otherwise barred by law from making a refund.

Passed by the Senate February 18, 2014.

Passed by the House March 6, 2014.

Approved by the Governor April 2, 2014.

Filed in Office of Secretary of State April 4, 2014.

CHAPTER 207

[Engrossed Substitute House Bill 1287]

PROPERTY TAXES—TRIBAL PROPERTY

AN ACT Relating to subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe; amending RCW 82.29A.010, 82.29A.020, 82.29A.050, 84.36.010, 84.36.451, and 84.40.230; adding a new section to chapter 82.29A RCW; adding a new section to chapter 84.36 RCW; adding a new section to chapter 52.30 RCW; adding a new section to chapter 43.136 RCW; creating new sections; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This section is the tax preference performance statement for the tax preference contained in section 5 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to create jobs and improve the economic health of tribal communities as indicated in RCW 82.32.808(2) (c) and (f).

(2) It is the legislature's specific public policy objective to create jobs and improve the economic health of tribal communities. It is the legislature's intent to exempt property used by federally recognized Indian tribes for economic development purposes, in order to achieve these policy objectives.

(3) The joint legislative audit and review committee must perform an economic impact report to the legislature as required in section 10 of this act to provide the information necessary to measure the effectiveness of this act.

Sec. 2. RCW 82.29A.010 and 2010 c 281 s 2 are each amended to read as follows:

(1)(a) The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax

obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

(b) The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

(c) The legislature finds that lessees of publicly owned property or community centers are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property or community centers. For the purposes of this subsection, "community center" has the same meaning as provided in RCW 84.36.010.

(d) The legislature also finds that eliminating the property tax on property owned exclusively by federally recognized Indian tribes within the state requires that the leasehold excise tax also be applied to leasehold interests on tribally owned property.

(2) The legislature further finds that experience gained by lessors, lessees, and the department of revenue since enactment of the leasehold excise tax under this chapter has shed light on areas in the leasehold excise statutes that need explanation and clarification. The purpose of chapter 220, Laws of 1999 is to make those changes.

Sec. 3. RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1)(a) "Leasehold interest" means an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. However, no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government may constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" includes the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites.

(b) The term "leasehold interest" does not include:

(i) Road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration(~~("Leasehold interest" does not include)); or~~

(ii) The preferential use of publicly owned cargo cranes and docks and associated areas used in the loading and discharging of cargo located at a port district marine facility. "Preferential use" means that publicly owned real or personal property is used by a private party under a written agreement with the

public owner, but the public owner or any third party maintains a right to use the property when not being used by the private party.

(c) "Publicly owned real or personal property" includes real or personal property owned by a federally recognized Indian tribe in the state and exempt from tax under RCW 84.36.010.

(2)(a) "Taxable rent" means contract rent as defined in (c) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. However, after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in (g) of this subsection. All other leasehold interests are subject to the determination of taxable rent under the terms of (g) of this subsection.

(b) For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent includes only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and does not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(c) "Contract rent" means the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest is part of contract rent.

(d) "Contract rent" does not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements are taxable

to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

(e) Any prepaid contract rent is considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent must be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, must be prorated from the date of prepayment.

(f) With respect to a "product lease", the value is that value determined at the time of sale under terms of the lease.

(g) If it is determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration must be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration must be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter means a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" means a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

Sec. 4. RCW 82.29A.050 and 1992 c 206 s 6 are each amended to read as follows:

(1) The leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 ~~((shall))~~ must be paid by the lessee to the lessor and the lessor ~~((shall))~~ must collect such tax and remit the same to the department ~~((of revenue))~~. The tax ~~((shall))~~ must be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. The tax payment ~~((shall))~~ must be accompanied by such information as the department ~~((of revenue))~~ may require. In the case of prepaid contract rent the payment may be prorated in accordance with instructions of the department ~~((of revenue))~~ and the prorated portion of the tax ~~((shall be))~~ is due, one-half not later than May 31st and the other half not later than November 30th each year.

(2) The lessor receiving taxes payable under the provisions of this chapter ~~((shall))~~ must remit the same together with a return provided by the department, to the department of revenue on or before the last day of the month following the month in which the tax is collected. The department may relieve any taxpayer or class of taxpayers from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event ~~((shall))~~ may returns be filed for a period greater than one year. The lessor ~~((shall be))~~ is fully liable for collection and remittance of the tax. The amount of tax until paid by the lessee to the lessor ~~((shall))~~ constitutes a debt from the lessee to the lessor. The tax required by this chapter ~~((shall))~~ must be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter. Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax ~~((-- PROVIDED, That))~~. However, taxes due where contract rent has not been paid ~~((shall))~~ must be reported by the lessor to the department and the lessee alone ~~((shall be))~~ is liable for payment of the tax to the department.

(3) Each person having a leasehold interest subject to the tax provided for in this chapter arising out of a lease of federally owned or federal trust lands ~~((shall))~~, or property owned by a federally recognized Indian tribe in the state and exempt from tax under RCW 84.36.010, must report and remit the tax due directly to the department of revenue in the same manner and at the same time as the lessor would be required to report and remit the tax if such lessor were a state public entity.

Sec. 5. RCW 84.36.010 and 2010 c 281 s 1 are each amended to read as follows:

(1) All property belonging exclusively to the United States, the state, or any county or municipal corporation; all property belonging exclusively to any federally recognized Indian tribe, if (a) the tribe is located in the state, ((if that)) and (b) the property is used exclusively for essential government services; all state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW; all property under a financing contract pursuant to chapter 39.94 RCW or recorded agreement granting immediate possession and use to the public bodies listed in this section or under an order of immediate possession and use pursuant to RCW 8.04.090; and, for a period of forty years

from acquisition, all property of a community center; is exempt from taxation. All property belonging exclusively to a foreign national government is exempt from taxation if that property is used exclusively as an office or residence for a consul or other official representative of the foreign national government, and if the consul or other official representative is a citizen of that foreign nation.

(2) Property owned by a federally recognized Indian tribe, which is used for economic development purposes, may only qualify for the exemption from taxes in this section if the property was owned by the tribe prior to March 1, 2014.

(3) For the purposes of this section the following definitions apply unless the context clearly requires otherwise.

(a) "Community center" means property, including a building or buildings, determined to be surplus to the needs of a district by a local school board, and purchased or acquired by a nonprofit organization for the purposes of converting them into community facilities for the delivery of nonresidential coordinated services for community members. The community center may make space available to businesses, individuals, or other parties through the loan or rental of space in or on the property.

(b) "Essential government services" means services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, ~~((and))~~ utility services, and economic development.

(c) "Economic development" means commercial activities, including those that facilitate the creation or retention of businesses or jobs, or that improve the standard of living or economic health of tribal communities.

Sec. 6. RCW 84.36.451 and 2001 c 26 s 2 are each amended to read as follows:

(1) The following property ~~((shall be))~~ is exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

(a) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington, or a federally recognized Indian tribe for property exempt under RCW 84.36.010; or

(b) A public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites; and

(c) ~~((Including))~~ Any leasehold interest arising from the property identified in (a) and (b) of this subsection as defined in RCW 82.29A.020.

(2) The exemption under this section ~~((shall))~~ does not apply to:

(a) Any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW; or

(b) Any such leasehold interest consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes.

(3) The exemption under this section ~~((shall))~~ may not be construed to modify the provisions of RCW 84.40.230.

Sec. 7. RCW 84.40.230 and 1994 c 124 s 25 are each amended to read as follows:

When any real property is sold on contract by the United States of America, the state, ~~((or))~~ any county or municipality, or any federally recognized Indian tribe, and the contract expresses or implies that the vendee is entitled to the possession, use, benefits and profits thereof and therefrom so long as the vendee complies with the terms of the contract, it ~~((shall be))~~ is deemed that the vendor retains title merely as security for the fulfillment of the contract, and the property ~~((shall))~~ must be assessed and taxed in the same manner as other similar property in private ownership is taxed, and the tax roll ~~((shall))~~ must contain, opposite the description of the property so assessed the following notation: "Subject to title remaining in the vendor" or other notation of similar significance. No foreclosure for delinquent taxes nor any deed issued pursuant thereto ~~((shall))~~ may extinguish or otherwise affect the title of the vendor. In any case under former law where the contract and not the property was taxed no deed of the property described in such contract ~~((shall))~~ may ever be executed and delivered by the state or any county or municipality until all taxes assessed against such contract and local assessments assessed against the land described thereon are fully paid.

NEW SECTION. Sec. 8. A new section is added to chapter 82.29A RCW to read as follows:

(1) Property owned exclusively by a federally recognized Indian tribe that is exempt from property tax under RCW 84.36.010 is subject to payment in lieu of leasehold excise taxes, if:

(a) The tax exempt property is used exclusively for economic development, as defined in RCW 84.36.010;

(b) There is no taxable leasehold interest in the tax exempt property;

(c) The property is located outside of the tribe's reservation; and

(d) The property is not otherwise exempt from taxation by federal law.

(2) The amount of the payment in lieu of leasehold excise taxes must be determined jointly and in good faith negotiation between the tribe that owns the property and the county in which the property is located. However, the amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property. If the tribe and the county cannot agree to terms on the amount of payment in lieu of taxes, the department may determine the rate, provided that the amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.

(3) Payment must be made by the tribe to the county. The county treasurer must distribute all such money collected solely to the local taxing districts, including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied.

NEW SECTION. Sec. 9. A new section is added to chapter 84.36 RCW to read as follows:

(1) To qualify in any year for exempt status for real or personal property used exclusively for essential government services under RCW 84.36.010, a federally recognized Indian tribe must file an initial application with the department of revenue on or before October 1st of the prior year. All applications must be filed on forms prescribed by the department and signed by an authorized agent of the federally recognized tribe.

(2) If the use for essential government services is based in whole or in part on economic development, the application must also include:

(a) If the economic development activities are those of a lessee, a declaration from both the federally recognized tribe and the lessee confirming a lease agreement exists for the exempt tax year.

(b) If the property is subject to the payment in lieu of leasehold excise tax as described in section 8 of this act, a declaration from both the federally recognized tribe and the county in which the property is located confirming that an agreement exists for the exempt tax year regarding the amount for the payment in lieu of leasehold excise tax.

(3) A federally recognized Indian tribe which files an application under the requirements of subsection (2) of this section, must file an annual renewal application, on forms prescribed by the department of revenue, on or before October 1st of each year. The application must contain a declaration certifying the continuing exempt status of the real or personal property, and that the lease agreement or agreement for payment in lieu of leasehold excise tax continue in good standing, or that a new lease or agreement exists.

NEW SECTION. Sec. 10. A new section is added to chapter 52.30 RCW to read as follows:

(1) When exempt tribal property is located within the boundaries of a fire protection district or a regional fire protection service authority, the fire protection district or authority is authorized to contract with the tribe for compensation for providing fire protection services in an amount and under such terms as are mutually agreed upon by the fire protection district or authority and the tribe.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Exempt tribal property" means property that is owned exclusively by a federally recognized Indian tribe and that is exempt from taxation under RCW 84.36.010.

(b) "Regional fire protection service authority" or "authority" has the same meaning as provided in RCW 52.26.020.

NEW SECTION. Sec. 11. A new section is added to chapter 43.136 RCW to read as follows:

By December 1, 2020, and in compliance with RCW 43.01.036, the joint legislative audit and review committee must provide an economic impact report to the legislature evaluating the impacts of changes made in this act regarding the leasehold tax and property tax treatment of property owned by a federally recognized Indian tribe. The economic impact report must indicate: The number of parcels and uses of land involved; the economic impacts to tribal governments; state and local government revenue reductions, increases, and shifts from all tax sources affected; impacts on public infrastructure and public services; impacts on business investment and business competition; a description of the types of business activities affected; impacts on the number of jobs created or lost; and any other data the joint legislative audit and review committee deems necessary in determining the economic impacts of this act.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act is null and void.

NEW SECTION. Sec. 13. This act applies to taxes levied for collection in 2015 and thereafter.

NEW SECTION. Sec. 14. This act expires January 1, 2022.

Passed by the House March 11, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor April 3, 2014.

Filed in Office of Secretary of State April 4, 2014.

CHAPTER 208

[Substitute House Bill 2612]

OPPORTUNITY SCHOLARSHIP PROGRAM

AN ACT Relating to the opportunity scholarship program; amending RCW 28B.145.010, 28B.145.020, 28B.145.030, 28B.145.050, 28B.145.060, and 28B.145.070; and adding a new section to chapter 28B.145 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.145.010 and 2013 c 39 s 13 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the ~~((higher education coordinating board or its successor))~~ opportunity scholarship board.

(2) "Council" means the student achievement council.

(3) "Eligible education programs" means high employer demand and other programs of study as determined by the ~~((opportunity scholarship))~~ board.

~~((3))~~ (4) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses as determined by the program administrator in consultation with the ~~((board))~~ council and the state board for community and technical colleges.

~~((4))~~ (5) "Eligible student" means a resident student who received his or her high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington and who:

(a)(i) Has been accepted at a four-year institution of higher education into an eligible education program leading to a baccalaureate degree; or

(ii) Will attend a two-year institution of higher education and intends to transfer to an eligible education program at a four-year institution of higher education;

(b) Declares an intention to obtain a baccalaureate degree; and

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for an opportunity scholarship.

~~((5))~~ (6) "High employer demand program of study" has the same meaning as provided in RCW 28B.50.030.