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Washington State Supreme Court

No. 91489-3

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**SUPREME COURT  
STATE OF WASHINGTON**

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JESSICA MAE MATHESON, dba JESS'S WHOLESALE,

Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT OF REVENUE;

Respondent.

**Division II No. 45485-8-II**

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**AMENDED PETITION FOR REVIEW OF COURT OF APPEALS  
UNPUBLISHED OPINION DATED FEBRUARY 10, 2015**

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## **INTRODUCTION**

Petitioner Jessica Mae Matheson, dba Jess's Wholesale, Appellant below, through her attorney, Robert E. Kovacevich, requests this Court to grant review and reverse the holding of the unpublished Opinion dated February 10, 2015.

### **I.**

#### **IDENTITY OF PETITIONER**

Jessica Mae Matheson is an unmarried individual living in Idaho on the Coeur d'Alene Indian Reservation.<sup>1</sup>

### **II.**

#### **COURT OF APPEALS DECISIONS**

The review is sought on the Division II unpublished Opinion dated February 10, 2015, No. 45485-8 II. The Opinion, attached as Appendix A, was not reported in the Appellate Reports or the Pacific Reporter. It is informally reported at 2015 WL 563970 (Wash.App. Div. 2, 2015).

Petitioner sought publication of the unpublished Opinion. The Petitioner's Motion to Publish was timely. Petitioner's Petition for Review was timely but was overlength and included review of the Motion to Publish.

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<sup>1</sup> The first sentence of the Court of Appeals Opinion incorrectly states that Matheson resided on the Colville Indian Reservation.



By email letter dated March 30, 2015, Ronald R. Carpenter granted until April 15, 2015, to file an Amended Petition for Review. Petitioner abandoned the right to file a separate motion for discretionary review pursuant to RAP 13.5(a).

### III.

#### **WHY REVIEW SHOULD BE ACCEPTED PURSUANT TO RAP 13.4(b)(1), (2), (3), (4)**

**Unconstitutionality of RCW § 82.32.215.** The unpublished Opinion of the Court of Appeals, at page 7, notes that the issue of constitutionality was raised by Petitioner. At page 9, the Court held the statute was constitutional relying on *Chicago Bridge and Iron Co. v. State, Dept. of Revenue*, 98 Wn.2d 814, 829, 659 P.2d 463 (1983). The issue is a significant constitutional question and a first impression issue.

**CR 82.5 requires transfer to the Coeur d'Alene Tribal Court.** Another first impression constitutional issue is CR 82.5(a) requiring mandatory transfer to the Coeur d'Alene Tribal Court. The Court, at page 9 of the Opinion, states that "Matheson has cited no authority for the proposition that federal law grants exclusive jurisdiction and that Matheson voluntarily subjected herself to Washington jurisdiction." Exclusive collection jurisdiction is in the Coeur d'Alene Tribal Court. This is a federal

preemption constitutional issue. U.S. Const. art. 1, § 8, cl. 3.

**Matheson is exempt from State of Washington taxes.** At page 8, the Court of Appeals Opinion states: “but for this license, she would not have access to unstamped and untaxed cigarettes.” At page 3 of the Opinion, the Court holds that the assessment was made from Schedule C wholesaler reports. These are not tax returns. This conclusion is wrong because Matheson is not within the definition of “taxpayer” required for application of RCW § 82.32.215. U.S. Const. art. 1, § 8, cl. 3 gives exclusive control over reservation Indians to Congress.

**The application for a license does not confer Washington jurisdiction for revocation.** At page 8, the Court held that jurisdiction is obtained solely by Matheson’s application for a wholesaler’s license. This is a first impression issue. The Opinion never discusses the only case found on the issue. *Rylander v. Bandag Licensing Corp.*, 18 S.W.3d 296 (Tex. 2000), that denies state jurisdiction as a violation of the commerce clause. U.S. Const. art. 1, § 8, cl. 3.

**Long arm service of a Notice of Revocation is required.** The Opinion, in another first impression decision, held, at page 7, that mailing the letter of revocation to a business address was sufficient for long arm

jurisdiction even though Matheson's personal addresses were known to Respondent. Matheson was then known by Respondent to be living in Idaho. This is a due process constitutional first impression issue.

**The Anti Injunction Act does not apply; Federal preemption applies.** In a footnote at page 4 of the Court of Appeals Opinion, the Court notes that the federal court, in a non-precedential opinion 551 Fed.Appx. 292 (9<sup>th</sup> Cir. Dec. 26, 2013), denied federal court jurisdiction by applying the Anti Injunction Act, 28 U.S.C. § 1341. The case is now abrogated by *Direct Marketing Ass'n v. Brohl*, 135 S.Ct. 1124 (March 3, 2015), upholding the commerce clause and denying application of the Anti Injunction Act on wholesale reporting requirements. This Court can now revisit the preemption analysis.

**Presiding Officers at both hearings were DOR Employees. An inherent conflict was present.** At pages 4 and 5, the Opinion finds as a fact that both hearing officers were Department of Revenue employees. The Court held the presumption of impartiality prevails (page 11). The principle of appearance of impartiality requires reversal.

The decision of the Court of Appeals is in conflict with the Courts recent decision in *State v. Jim*, 173 Wash.2d 672, 273 P.3d 434 (Wash. 2012)

denying state jurisdiction of enrolled Indians for off-reservation activity.

The decision of the Court of Appeals is in conflict with its decision in *Peoples v. Puget Sound's Best ChickenA, Inc.*, \_\_\_P.3d\_\_\_, 2015 WL 437570 (Wash.App. Div. 2, 2015) upholding lack of jurisdiction to apply after enacted state laws to Federal enclaves. U.S. Const. art. 1, § 8, cl. 17.

The reason for banishment rests on lack of substantive jurisdiction. A substantial question of violating the U.S. Constitution Art. 1, § 8, cl. 3 and Wash. Const. art. 26, Second is involved as the Appeals Court holds that Matheson is liable for the state cigarette tax. The underlying nine million dollar decision was rendered without jurisdiction, an issue that can be raised at any time. The revocation was based solely on the judgment and must be reviewed.

#### IV.

#### ISSUES PRESENTED FOR REVIEW

1. Did the state of Washington ever have jurisdiction of Matheson, an exempt Indian traveling on a round-trip between states and also Indian reservations.

2. Washington law does not apply to Matheson as she cannot be a Washington state taxpayer. RCW § 82.32.215 requires revocation only of

a “taxpayer”.

3. Whether RCW § 82.32.215(1)(a), allowing the Department of Revenue to revoke a certificate of registration if the taxpayer does not pay a tax warrant, is an unconstitutional due process violation.

4. Does RCW § 82.32.215(1)(a) violate Wash. Const. art. 1, § 3, or the 5<sup>th</sup> and 14<sup>th</sup> amendment to the U.S. Constitution by violating Matheson’s constitutional right to conduct business?

5. Is RCW § 82.32.215(1)(a) an unconstitutional delegation of legislative power in violation of the U.S. Const. Art. 1, § 1, Art. 1, § 8, cl. 18?

6. Can an enrolled Indian transport cigarettes, destined for an Indian reservation into Washington, without prior notice as required by RCW § 82.24.250(7)(c)? Exempting military base transportation of unstamped cigarettes without notice (RCW § 82.24.250(7)(b)) is a violation of equal protection. *Alabama Department of Revenue v. CSX Transportation*, 135 S.Ct. 1136, 1143 (2015), *Associated Grocers v. State*, 114 Wash.2d 182, 787 P.2d 22 (Wash 1990).

7. Does the mandatory posting and publication clause in RCW § 82.32.215(2) violate disclosure laws and due process?

8. Does the state have taxing jurisdiction over a shipper who enters and leaves the state on the same day in completion of a round trip from an out-of-state Indian reservations facility? Does the interstate commerce “come back” rule apply?

9. Application for a state license was the only state activity of Matheson. Whether this activity alone confers nexus to revoke Matheson’s certificate to do business. *Rylander v. Bandag Licensing Corp.*, 18 S.W.3d 296 (Tex.App. 2000) applies.

10. Is RCW Ch. 82.24 a mandatory requirement on Matheson who did not collect any state cigarette tax when it is only an “economic choice” of an Indian wholesaler or retailer?

## V.

### STATEMENT OF THE CASE

Jessica Mae Matheson is a tribal Indian who has lived all her life either on the Puyallup Indian Reservation or the Coeur d’Alene Reservation. CP 4. She qualifies as a member of both tribes and is a Puyallup Tribal Indian. She is the sole owner of the unincorporated tobacco wholesale business named Jess’s Wholesale, located on the Coeur d’Alene Indian reservation in Idaho. CP 4, 30, Appendix A attached. She was assessed millions of dollars for

penalties for non compliance with the state cigarette tax law hauling unstamped cigarettes to her father and brother. RCW § 82.24.120(1). As a licensed wholesaler, Matheson could transport unstamped cigarettes. Even if a violation, at most, Matheson would only get a 30 day suspension. RCW § 82.32.550(3).

Matheson, on June 26, 2006 (Findings of Fact of Kimberly M. Anderson, reviewing officer, dated July 18 (CP 36)), in order to get a tobacco license, filled in a master application. Matheson introduced a letter to Auditor Lee Smith stating that Matheson had no agent for service. CP 36.

On August 4, 2011, Matheson filed an affidavit in Thurston County Superior Court, Docket No 11-2-00795-0, specifically stating that her residence address is 25029 S. Highway 95, Worley, Idaho 83876. CP 32. The Notice of Revocation that was mailed months later on February 21, 2012, was never mailed to this address. Matheson was never served personally with the Revocation. Doyle McMinn, the witness at the hearing who was the senior revenue agent for the Department of Revenue, admitted that Matheson was in Idaho but “he had not received clear information about where the taxpayer was staying in Idaho.” CP 29.

Matheson appealed Thurston County Judge Wm. Thomas McPhee’s

dismissal in Case No. 11-2-00795-0 on October 23, 2011, to the Division Two Court of Appeals, No. 42723-1 II. A motion on the merits was granted by Division Two Court Commissioner Aurora R. Bearnse on September 17, 2012, in another unreported decision. Matheson moved to reconsider the decision to the full Court. The motion was denied on November 28, 2012. Matheson petitioned for review of this Court, Court of Appeals, Division II No. 88244-4. It was denied on April 30, 2013. 177 Wash. 2d 104, 300 P.3d 415 (Table).

Matheson also sought an injunction against enforcement of the judgment in the United States District Court, *Matheson v. Smith*, 2012 WL 1802278, W.D. Wn. 2012. In an unpublished opinion, the Court denied relief for lack of jurisdiction based on the Federal Tax Injunction Act, 28 U.S.C. § 1341. The decision was upheld by the U.S. Ninth Circuit Court of Appeals on December 26, 2013, by unpublished opinion, *Matheson v. Smith*, 551 Fed.Appx. 292 (2013). Matheson, at pages 17-18 of this brief, contends that the federal opinion no longer applies.

## VI.

### ARGUMENT

#### **A. The entire proceeding violates due process and the commerce clause.**

This decision of the Court of Appeals is the only case on RCW §



82.32.215. The constitutionality of the statute has never been questioned. The statute was enacted in 1984. Due process and the commerce clause, U.S. Const. art. 1, § 8, cl. 3, as reviewed by *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904, 199 L.Ed.2d 91 (1992), prohibits state jurisdiction where the only act of Matheson in the state was to apply for a tobacco wholesaler's license that required a business license. *Rylander v. Bandag Licensing Corp.*, 18 S.W.3d 296 (Tex.App. 2000) should be adopted as the law on Washington business licensing.

*Myrick v. Board of Pierce County Commissioners*, 102 Wash.2d 698, 677 P.2d 140 (Wash. 1984) applied the U.S. Const. amendments 1, 4, 5 and 14 to invalidate a provision requiring sprinkler systems on a massage business, but not other businesses. The case struck down an automatic denial of a business license. "We therefore conclude that not only does the automatic denial of a license constitute a dual punishment for the same offense, but it also constitutes an unwarranted and unconstitutional invasion into the province of lawful commercial enterprise. *Id.* at 709. *Myrick* alone supports reversal of Matheson's case.

*Meyer v. Nebraska*, 262 U.S. 390, 398, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) concludes that the fourteenth amendment guarantees "the right of the

individual to contract, to engage in any of the common occupations of life.” See, e.g., *Wisconsin Dept. of Industry, Labor and Human Relations v. Gould, Inc.*, 475 U.S. 282, 287, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986); *A.L.A. Schechter Poultry Corporation v. U.S.*, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 (1935). Authorization of business regulation is overly broad and “an unconstitutional delegation of legislative power.” *Id.* at 542. It is a denial of equal protection. *Acme Finance Co. v. Huse*, 192 Wash. 96, 120, 73 P.2d 341 (Wash. 1937).

Further, the statute applies only to retail sales tax collected by the taxpayer. Matheson is not liable for sales tax. She never collected any sales tax.

**B. The reason for banishment is cigarette activity by an Indian who is not required to collect the state cigarette tax. She has a choice to collect or not collect.**

Substantive jurisdiction of the state over Matheson is an issue that can be raised in this appeal. *State v. Shale*, \_\_\_ Wash.2d \_\_\_, 2015 WL 1299359 \*7, fn. 3 (Wash. 2015).

*Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011) holds that the present state cigarette taxes, since the 1995 amendments, do not apply to Indian retailers. Indian

sellers “were not required” to collect Washington’s cigarette tax and are shielded from “state collection” of state tax. It is merely an “economic choice” of the Indian retailer. *Id.* at 1087, 1088. The Indian definition includes an Indian wholesaler. RCW § 82.24.010(6). Thus far, the Opinion in this case assumes Matheson retailed to non Indians.

The Opinion states at 1088:

A fair construction of these provisions leads us to the conclusion that if an Indian retailer ever found itself facing a State collection effort for the retailers non payment of tax, the retailer would be shielded from civil or criminal liability except in the instance where the Indian retailer has failed to transmit the tax paid by the consumer and collected by the retailer.

This holding must be compared to the Court of Appeals holding at page 8 “but for the license, she would not have access to unstamped and untaxed cigarettes.”

*Country Classic Dairies v. Montana*, 847 F.2d 593 (9<sup>th</sup> Cir) is conclusive. Wholesale products transported out of state, redelivered and sold at retail, in compliance with retail prices, is in interstate commerce. This is the “comeback” rule. The wholesaler is not bound by state law.

*Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976) held that the states “may require” the Indian

seller to collect state cigarette taxes. *Id.* at 464. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) followed *Moe*. *Id.* at 151. The reference to *Colville* in *State v. Shale*, \_\_\_\_\_ Wash.2d \_\_\_\_\_, 2015 WL 1299359 \*5 (Wash. 2015) does not mention *Yakama*. Both cases held that Indian to Indian sales were not taxable. Matheson only delivered to her Indian father and Indian brother on Indian reservations. *Moe*, *supra*, at 475; *Colville*, *supra*, at 151, fn. 26. However, *Colville* held that the Indian retailer was “required” to collect tax from the non Indian customer. The trend of not taxing Indians has returned, at least in the Ninth Circuit, to *Worcester v. Georgia*, 31 U.S. 515, 6 Pet. 515, 556-561 (1832) holding preemption of state law by federal law. The *Yakama* case, 658 F.3d at 1087-88, brings unification to the federal principle of reservation Indian exemption from state tax law. It eliminates the “requirement” to collect taxes.

*Yakama*, *supra*, at 1087, construing the present Washington cigarette tax, did not shift the legal incidence to the tribal retailer. *Moe* and *Colville* still apply on incidence of tax and minimum burden (*Yakama*, *supra*, at 1088). However, where Washington cigarette taxes are the issue RCW § 82.24.080 excludes “Indian tribes and their members from compliance with

the act. . .It is an economic choice left to the Indian retailer.” A non Indian purchaser is “the *first* taxable person.” *Yakama, supra*, at 1087. The persons who dispute the new economic choice rule argue that *Colville* still applies. It applies the minimum burden rule, but non Indian collection is no longer required; it is only an “economic choice.” Collection is now a decision relegated to the Indian and not the state.

Michael Minnis, “*Judicially-Suggested Harassment of Indian Tribes: The Potawatomis Revisit Moe and Colville*” 16 Am. Indian L. Rev. 289 (1991), in commenting on the *Moe* and *Colville* cases, states that the Supreme Court created an “untenable dichotomy,” *id.* at 290, and emasculating the Indian Commerce Clause, *id.* at 297. Robert N. Clinton, “*The Dormant Indian Commerce Clause*” 27 Conn.L.Rev. 1055, 1212 (1995) states that these cases were “wrongly decided,” *id.* at 1231, by the Supreme Court and that *Colville* was “poorly reasoned,” *id.* at 1209. The Indian Commerce Clause “automatically excluded state authority,” *id.* at 1215.

How can the *Colville* case be reconciled? Philip Lee Fetzer, “*Jurisdictional Decisions in Indian Law: The Importance of Extralegal Factors in Judicial Decision Making*” 9 Am. Indian L. Rev. 253 (1981) observes that in the state of Washington “The state is well known to be the

home of anti Indian groups” to be the reason that the *Colville* case cannot “square” with prior Supreme Court holdings. *Id.* at 267. The reference was to *Worcester v. Georgia*, 31 U.S. 515 (1832) and *Williams v. Lee*, 358 U.S. 217 (1959). If non Indians outnumbered the Indians, the Indians lost. *Id.* at 255. The study is small and debatable, but does give rise to suspicion.

This old story is refreshed in Matthew Deisen, “*State v. Jim: A New Era in Washington’s Treatment of the Tribes?*” 38 Am. Indian L. Rev. 101 (2013-2014). The law review states that this court’s decision in *State v. Jim*, 173 Wash.2d 672, 273 P.3d 434 (Wash. 2012) finding federal control of off reservation Indians transporting fish caught at the Maryhill fishing site, brought a shift in State-Indian jurisdiction. “In *State v. Jim*, the Washington Supreme Court broke from the historical ‘deadlist enemies’ model and ruled strongly in the tribe’s favor,” *id.* at 154. The reference was to “enmity between the people of Indian communities and non Indians who live on or near Indian country.” *Id.* at 118.

**C. Licensing Indian trade is unconstitutional.**

The Matheson decision conflicts with the Division II’s published decision in the same month. *Peoples v. Puget Sound’s Best ChickenA, Inc.*, \_\_\_ P.3d \_\_\_, 2015 WL 437570 \*4 (Div. 2, February 23, 2015) holds that

the U.S. Constitution Federal enclave clause, U.S. Const. art. 1, § 8, cl. 17, only applies state law in existence before transfer to federal jurisdiction. The state cigarette law was enacted in 1935, long after Indian reservations were transformed into federal enclaves in 1854-5. See *Midwater Trawlers Cooperative v. Department of Commerce*, 282 F.3d 710, 714 (9<sup>th</sup> Cir. 2002).

The language in the case of *Oneida Tribe of Indians v. Village of Hobart*, 732 F.3d 837, 839 (7<sup>th</sup> Cir. 2013) is important. It states:

It is awkward for parcels of land subject to one sovereign to be scattered throughout a territory subject to another. But, actually it's a familiar feature of American government. Federal facilities of all sorts, ranging from post offices to military bases are scattered throughout the United States, and are subject to as much regulation by states and local government as the federal government permits. A similar scatter is common in Indian country. . .

*State ex rel Wasden v. Native Wholesale Supply Co.*, 312 P.3d 1257, 1261 (Idaho 2013) also holds that state wholesale licenses are not required when deliveries are on reservation to Indian retailers.

18 U.S.C. § 2346(b)(1), the interstate Contraband Cigarette Tax Act, states: "No civil action may be commenced under this paragraph against an Indian tribe or an Indian in Indian country." The reference is to state action. *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Zeuske*, 145 F.Supp.2d 969 (D.C.W.D. Wis. 2000) holds that an Indian living on his

reservation in Wisconsin who was a cross country truck driver employed in Minnesota, did not owe income taxes to any state as he had no tax nexus in either state.

*Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976), ruled that personal property tax and “the vendor license fee sought to be applied to a reservation Indian conducting a cigarette business for the tribe on reservation land and the cigarette sales tax, as applied to on-reservation sales by Indians to Indians, conflict with Congressional statutes.” *Id.* at 480, 481. *Mahoney v. State Tax Commission*, 524 P.2d 187 (Idaho 1974) on similar facts over the same route and same cigarette tax issues survives as good law and applies. Matheson was not a Washington taxpayer, so RCW § 82.32.215 cannot apply.

**D. The Interstate or Indian Commerce Clause now prevails over the Anti Injunction Act.**

*Direct Marketing Ass'n v. Brohl*, 135 S.Ct. 1124 (March 3, 2015) holds that the reporting requirements imposed by state law by an entity that is only to collect the tax from a consumer violates the commerce clause.

*Brohl* states “the TIA is keyed to acts of assessment, levy and collection themselves, and enforcement of the notice and reporting requirements are none of these.” *Id.* at 1131. *Brohl* held that Colorado state



law, requiring an exempt retailer to report sales, did not violate the Anti Injunction Act. Matheson was assessed based on wholesalers reports and not income (B&O) tax returns for the reason that she is exempt from state income tax pursuant to *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973) and other cases. *Brohl* applies to Matheson.

The same statute and similar facts would now change the result of *Matheson v. Smith*, 551 Fed.Appx. 292 (2013). Washington's Constitution Art. 1, § 2 and Art. IV, § 28 now empower this Court to apply the commerce clause and CR 82.5 to transfer this case. The Court Rule requires mandatory removal.

The warrantless entry into a business office and continuous posting required by RCW § 82.32.215 violates fourth amendment protections. *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338, 358, 97 S.Ct. 619, 50 L.Ed.2d 530 (1977) forbids warrantless entry into offices. *Id.* at 353-359. The State Constitution Art. 1, § 7 requires freedom from warrantless government trespass see, e.g., *State v. Jackson*, 150 Wash.2d 251, 264, 76 P.3d 217 (Wash. 2003). The statute violates the disclosure laws and the common law right to privacy. Wash. Const. art. 1, § 7.

**E. The Administrative Law decisions are invalid.**

**The Administrative Law Judge had a Direct Interest as an Employee of The Department of Revenue, the Agency that brought the License Hearing. Therefore, the Fourteenth Amendment was Violated.**

The issue of the administrative hearing officer acting as an advocate was raised and denied. CP 41. It was signed Kimberly M. Anderson, Administrative Law Judge, Reviewing Officer, Appeals Division. This issue was also raised and held immaterial by the trial judge. WAC 458-20-10001(2)(d) states that the presiding officer must be an “assistant director of the department’s compliance division” and has the authority granted under RCW Ch. 34.05. The revocation was initiated by the Department of Revenue that employed the presiding officer. Since the review is of constitutional core issues in the case, this procedure is a clear separation of powers violation. *Stern v. Marshall*, 131 S.Ct. 2594, 2608, 180 L.Ed.2d 475 (2011). The U.S. Constitution, Article III, § 1 requires executive and judicial powers to be separate.

Whether civil or criminal, if the appearance of fairness is violated, a new trial is necessary. *Barnett v. Ashmore*, 5 Wash. 163, 164, 31 P. 466 (Wash. 1892) resulted in a new trial where a judge paid some of the claims of a sheriff and also had advised the sheriff who was a litigant. The court

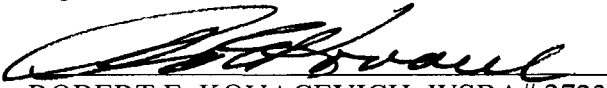
held that the judge was an “intense partisan” and not disinterested. The judgment was reversed. In *Tatham v. Rogers*, 170 Wash.App. 76, 105-7, 283 P.3d 583 (Div. 3, 2012) the court ordered a new trial where the trial judge was a former law partner with the attorney for the party and was the attorney’s designate in a power of attorney. The Opinion, *id.* at 90, cites *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), a case applying the rules that a fair tribunal is the basic requirement of due process, *id.* at 876. *Massey* also internally recognizes the leading case of *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749 (1927) requiring disqualification if matters of state policy would bias judgment. The pressure of state policy to achieve the state’s interest by a state employee is too great to overlook bias. The appearance of fairness doctrine on potential bias requires removal. Failure to recuse is reversible error. *Tatham, supra*, at 104.

## VII.

### CONCLUSION

Review should be accepted. The case must be reversed.

DATED this 8<sup>th</sup> day of April, 2015.

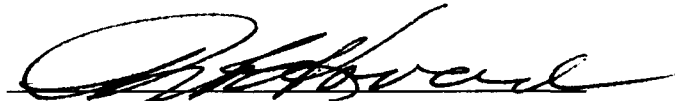
  
ROBERT E. KOVACEVICH, WSBA# 2723  
Attorney for Petitioner Jessica Mae Matheson

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the Amended Petition for Review of Court of Appeals Unpublished Opinion Dated February 10, 2015 was served on Counsel for Respondent by first class mail addressed as follows:

David M. Hankins, Senior Counsel  
Assistant Attorney General  
Revenue Division  
7141 Cleanwater Drive SW  
P.O. Box 40123  
Olympia, WA 98504-0123

DATED this 8<sup>th</sup> day of April, 2015.



ROBERT E. KOVACEVICH, WSBA# 2723  
Attorney for Petitioner Jessica Mae Matheson

## **APPENDIX A**

FILED  
COURT OF APPEALS  
DIVISION II

2015 FEB 10 AM 8:59

STATE OF WASHINGTON

BY   
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JESSICA MAE MATHESON,

Appellant,

v.

STATE OF WASHINGTON DEPARTMENT  
OF REVENUE,

Respondent.

No. 45485-8-II

UNPUBLISHED OPINION

MAXA, J. — Jessica Mae Matheson, a Native American residing on the Colville Indian Reservation in Idaho, appeals the superior court's order affirming the Department of Revenue's (Department) final decision revoking her Washington State certificate of registration to operate as a cigarette and tobacco wholesaler. The Department previously ruled that Matheson failed to report the purchase and account for the disposition of 703,400 packs of unstamped cigarettes that she purchased from Spokane wholesalers between 2006 and 2007, as required under her certificate of registration. As a result, the Department imposed taxes and penalties on her in excess of \$9 million. When Matheson did not pay a subsequent tax warrant, the Department revoked Matheson's certificate of registration as authorized in RCW 82.32.215. Matheson administratively appealed the revocation, and both the Department and the superior court affirmed.

Matheson argues that: (1) because she was not a "taxpayer," RCW 82.32.215 does not apply to her, (2) the Department failed to properly serve her with the revocation notice, (3) the

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Department lacked jurisdiction because she was an Idaho resident who had no minimum contacts with Washington, (4) Indian Tribal Court has exclusive jurisdiction over licensing matters involving her, (5) RCW 82.32.215 is unconstitutional when applied to her because she is not a resident of Washington, and (6) the Administrative Law Judge (ALJ) hearing the matter was biased. We reject these arguments, and affirm the Department's and the superior court's rulings upholding the Department's revocation of Matheson's certificate of registration.

## FACTS

### *Certificate of Registration*

In 2006, Matheson applied for and obtained a registration certificate from the state of Washington to conduct business as a cigarette and tobacco wholesaler under the name "Jess's Wholesale." Clerk's Papers (CP) at 36. This certificate, along with her license to operate as a cigarette wholesaler, allowed her to purchase unstamped and untaxed cigarettes.<sup>1</sup>

### *Unreported Purchase of Cigarettes*

Matheson, operating as Jess's Wholesale, used her cigarette wholesaler license to purchase 703,400 packs of unstamped and untaxed cigarettes from two Washington distributors between July 1, 2006 and June 30, 2007. Neither distributor was located on a reservation or in "Indian

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<sup>1</sup> To conduct business in Washington, a corporation or sole proprietor must register and obtain a registration certificate authorizing the business activity from the Department of Revenue. Former RCW 82.32.030 (1996). ("[I]f any person engages in any business or performs any act upon which a tax is imposed . . . he or she shall, under such rules as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate."). In Washington, persons desiring to do business in the state must complete a "Master Application" that includes the registration and all necessary licenses needed to conduct business in the state. Former RCW 19.02.070, .020 (1990).

Country.”<sup>2</sup> CP at 138. Under the terms of her wholesaler license and former WAC 458-20-186(702) (2004),<sup>3</sup> Matheson was required to report these purchases to the Department using a Schedule C tax form. She also was required to account for the disposition of the cigarettes and provide supporting documentation, including whether the cigarettes were sold to an entity that was exempt from the cigarette tax, such as the federal government, an out-of-state purchaser, or another wholesaler. Former WAC 458-20-186 (702).

*Tax and Penalty Assessment*

By January 2008, Matheson had not provided Schedule C reports documenting the disposition of the unstamped cigarettes. The Department assessed her \$1,424,385 in taxes and a \$10-per-pack penalty totaling \$7,034,000 under RCW 82.24.120, plus additional penalties and interest. She appealed to the Department’s internal appeals division, and the appeals division offered her another opportunity to provide the Schedule C reports. She failed to do so and the appeals division upheld the assessment.

Matheson appealed to the Board of Tax Appeals (Board). The Board upheld the Department’s decision, ruling that Jess’s Wholesale failed to comply with the Schedule C reporting requirement, thereby subjecting Matheson to the cigarette tax and penalties under chapter 82.24 RCW.

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<sup>2</sup> “Indian country” includes all lands within an Indian reservation, all dependent Indian communities, and all Indian allotments. 18 U.S.C. § 1151.

<sup>3</sup> WAC 458-20-186(702), which details the Department’s reporting requirements for cigarette wholesalers, has remained effectively the same since 2006, when Matheson first purchased the unstamped cigarettes.



Matheson petitioned for review in superior court and sought an injunction against the Department. The superior court dismissed Matheson's petition. Matheson appealed to this court. The Department filed a motion on the merits and on September 17, 2012, this court granted the motion, affirming the superior court.<sup>4</sup> We expressly rejected as meritless Matheson's arguments that the tax and penalty assessment was unconstitutional.

*Revocation of Certificate of Registration*

Because Matheson did not pay the tax and penalty assessment, on September 29, 2009, the Department issued a tax warrant for unpaid taxes and penalties totaling \$9,142,016.14. On January 11, 2010, the Department filed the tax warrant with Thurston County Superior Court pursuant to RCW 82.32.210-.212.

When Matheson still did not pay the tax assessment, on February 21, 2012, the Department mailed a notice of revocation hearing to Matheson and her attorney. The Department mailed the notice to Matheson at an address in Milton, which she provided as the business address of Jess's Wholesale.

The Department conducted an adjudicative hearing on March 21, 2012, with a regional compliance manager as the presiding officer. Matheson did not appear at the hearing, but her

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<sup>4</sup> Matheson also filed a complaint in the U.S. District Court for the Western District of Washington, against the State of Washington and its employees, asserting six claims for relief against the tax assessment, including an injunction against collection. *Matheson v. Smith*, Cause No. 3:11-CV-05496-RBL (W.D. Wash. 2012). On May 17, 2012, the federal district court dismissed Matheson's claims and denied her motion for preliminary injunction. She appealed to the U.S. Court of Appeals for the Ninth Circuit and in an unpublished decision filed on December 26, 2013, Cause No. 12-35479, the Ninth Circuit affirmed the federal district court and dismissed Matheson's claims. *Matheson v. Smith*, 551 F. App'x. 292 (9th Cir. Dec. 26, 2013).

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attorney did. At the revocation hearing, Matheson's attorney argued that the underlying assessments were invalid and that Matheson, as a Native American, was not required to pay Washington state taxes or obtain a certificate of registration in order to buy and sell cigarettes. He also objected to the service of the hearing notice. On March 26, 2012, the Department issued an initial order revoking Matheson's certificate of registration, precluding her from doing business in the state of Washington or its 29 Indian reservations.

Matheson appealed to the Department's appeals division. An ALJ reviewed the transcript and all of the evidence submitted, including additional information requested of the parties, and affirmed the revocation. Matheson then petitioned for judicial review of the Department's decision to the superior court, which affirmed the Department's order revoking her registration certificate.

Matheson appeals.

## ANALYSIS

### A. STANDARD OF REVIEW

Under Washington's Administrative Procedures Act (APA), chapter 34.05 RCW, the party asserting agency error has the burden of demonstrating the invalidity of the agency's action. RCW 34.05.570(1)(a). We sit in the same position as the superior court and apply the APA standards directly to the record before the agency. *Dep't of Revenue v. Bi-Mor, Inc.*, 171 Wn. App. 197, 201-02, 286 P.3d 417 (2012).

RCW 34.05.570(3) sets out nine grounds for invalidating an administrative order. Four grounds potentially are applicable here: (a) the order or the statute on which it is based violates the constitution, (b) the order is outside the agency's jurisdiction, (c) the agency has failed to follow the proscribed procedure, and (d) the agency erroneously interpreted or applied the law. RCW

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34.05.570(3). We review these grounds de novo. *Life Care Ctrs. of Am., Inc. v. Dep't of Soc. & Health Servs.*, 162 Wn. App. 370, 374, 254 P.3d 919 (2011).

B. APPLICABILITY OF RCW 82.32.215

Matheson argues that RCW 82.32.215, which provides for revocation of certificates of registration, is inapplicable to her because she is not a “taxpayer.” We disagree, and hold that the Department had statutory authority to revoke Matheson’s certificate of registration.

RCW 82.32.215(1) provides that the department may revoke a “taxpayer[’s]” certificate of registration if a tax warrant is not paid within 30 days after it has been filed with the superior court. Former RCW 82.32.215 (1998).<sup>5</sup> RCW 82.02.010 defines “taxpayer” to include “any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title.” Former RCW 82.02.010(3) (1967). Because Matheson was and is liable for taxes collected by the Department, there is no question that she falls within the definition of “taxpayer” as used in RCW 82.32.215.

Further, it is undisputed that after finding that Matheson owed the tax and penalties, the Department filed a tax warrant with Thurston County Superior Court on January 11, 2010. See RCW 82.32.210-.212. It also is undisputed that Matheson never paid the warrant. The Department clearly has satisfied the requirements for revocation under former RCW 82.32.215. Accordingly, we hold that the Department had authority to revoke Matheson’s certificate of registration.

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<sup>5</sup> Because RCW 82.32.215 was amended in 2013, and the State filed its tax warrant in 2010, we apply the statute in effect at the time of Matheson’s situation. But the current version of RCW 82.32.215 does not change our analysis.

C. COLLATERAL CHALLENGES TO REVOCATION ORDER

Matheson makes several collateral challenges to the revocation order. She argues (1) the Department failed to properly serve her with the revocation notice, (2) the Department lacked jurisdiction because she was an Idaho resident who had no minimum contacts with Washington, (3) Indian Tribal Court has exclusive jurisdiction over licensing matters involving her, (4) RCW 82.32.215 is unconstitutional when applied to her because she is not a resident of Washington, and (5) the ALJ hearing the matter was biased. We reject all these arguments.

1. Service of Notice

Matheson argues that the Department lacked jurisdiction because it failed to properly serve her with the notice of revocation hearing. She argues that the notice should have been mailed to her residence in Idaho and not to her business address in Milton. We disagree.

RCW 82.24.550(3) provides that “[a] license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board.” The Department’s rules provide for notice by mail,<sup>6</sup> as does the APA. RCW 34.05.010(19). Under RCW 82.32.130, if notice is mailed it must be “addressed to the address of the taxpayer as shown by the records of the department.”

Here, the Department served the hearing notice to Matheson by first-class mail to the Milton address that she listed in her registration and license application, which also matched the address on her performance bond in connection with her cigarette wholesaler’s license. Matheson notes that she filed an affidavit in superior court regarding her appeal of the tax assessment to the

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<sup>6</sup> Former WAC 458-20-10001(3)(a), 5 (2011).

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Board stating that her residence address was in Idaho. However, in that same affidavit she stated that her location for license contact on the Puyallup Indian Reservation was the Milton address.

We hold that the Department properly served Matheson with the hearing notice by mailing it to her business address as shown in the Department's records.

## 2. Personal Jurisdiction

Matheson argues that the Department lacked jurisdiction to revoke her certificate of registration. She argues that her application for a license in 2006 does not satisfy due process minimum contacts for long arm jurisdiction of an Idaho resident, and that because she is a Native American living on an Indian reservation, she is not subject to state licensing laws. The State responds that, when Matheson voluntarily applied for and obtained a wholesaler's license, she subjected herself to Washington jurisdiction. We agree with the State, and hold that the Department had personal jurisdiction over Matheson.

RCW 4.28.185(1)(a), Washington's long arm jurisdiction statute, extends personal jurisdiction over a person who has done some act or consummated some transaction in Washington that gave rise to the cause of the action. Here, Matheson availed herself of the benefits and protections of Washington's laws by applying for and obtaining a cigarette wholesaler license. This license allowed Matheson to purchase and transport unstamped, untaxed cigarettes throughout the State. RCW 82.24.040. But for the license, she would not have access to unstamped and untaxed cigarettes. And as a condition of this license, she was required to comply with Washington's cigarette laws and Department rules. *See* RCW 82.24.500, .540.

These facts show that Matheson submitted herself to the jurisdiction of the Department and the Liquor Control Board. Accordingly, Matheson has not sustained her burden of showing error.

3. Tribal Court Jurisdiction

Matheson argues that because she is a Native American, the case should have been transferred to tribal court pursuant to CR 82.5(a). We disagree.

CR 82.5(a) provides that an action filed in superior court must be dismissed or transferred to tribal court when federal law grants or reserves exclusive jurisdiction to a tribal court. But Matheson has cited no authority for the proposition that federal law grants exclusive jurisdiction to tribal courts of license revocation hearings involving Native Americans. And here Matheson voluntarily subjected herself to Washington jurisdiction by voluntarily applying for and obtaining a license.

We reject Matheson's argument that this case should have been transferred to tribal court.

4. Constitutionality of RCW 82.32.215

Matheson argues that because the Department revoked the license of a non-resident of Washington, RCW 82.32.215 is unconstitutional as applied in violation of substantive due process. She states that she "has the protection of freedom from state licensing under the supremacy clauses; the interstate commerce and Indian commerce and privileges and immunities clause to be free to do business anywhere in the United States." Br. of Appellant at 39. She also argues that under federal law, the State may not forbid her from continuing to do business if she does not pay her tax assessments. We disagree.

A due process challenge to the state's taxation concerns whether the state is taxing beyond its jurisdictional reach. *Chicago Bridge & Iron Co. v. Dep't of Revenue*, 98 Wn.2d 814, 820, 659 P.2d 463 (1983). Ordinarily we apply a two pronged test to state taxation of interstate business: "(1) There must be a minimal connection or nexus between the interstate taxing activities and the

taxing state; and (2) the income attributed to the state for tax purposes must be rationally related to values connected with the taxing State.” *Chicago Bridge*, 98 Wn.2d at 820 (internal quotations omitted). “Nexus is established if the corporation ‘avails itself of the substantial privilege of carrying on business within the State.’” *Chicago Bridge*, 98 Wn.2d at 820 (quoting *Mobil Oil Corp. v. Comm’r of Taxes*, 445 U.S. 425, 437, 100 S. Ct. 1223, 63 L. Ed. 2d 510 (1980)).

But Matheson fails to raise any argument under this test, so we need not address it. RAP 10.3(a)(6). Instead, Matheson challenges the fundamental premise that, as an Idaho resident and a Native American, she can be subject to Washington state taxation.

Native Americans who conduct business off-reservation are subject to generally applicable state law. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973); *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 173-74 (2nd Cir. 2005) (Congress’s power to regulate commerce with Indian tribes does not preclude Native Americans from state taxation and regulation when transacting business outside of Indian country). Beyond reservation boundaries, Native Americans “have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.” *Mescalero*, 411 U.S. at 148-49. Matheson does not argue that RCW 82.32.215 is discriminatory. And we hold that the taxation statute is generally applicable to all Washington cigarette wholesalers – it does not extend solely to foreign residents who purchase cigarettes wholesale in Washington.

We reject Matheson’s arguments that RCW 82.32.215 is unconstitutional and that federal law exempts her from state licensing and taxation.

5. Alleged Bias of ALJ

Matheson argues that the ALJ, as a Department employee, acted as a representative of the Department and had a direct interest in the matter. Therefore, she contends that the ALJ was biased in violation the Fourteenth Amendment to the U.S. Constitution. We disagree.

Prejudgment bias, partiality, or personal interest may disqualify an administrative adjudicator on due process grounds. *Nationscapital Mortg. Corp. v. Dep't of Fin. Insts.*, 133 Wn. App. 723, 765-66, 137 P.3d 78 (2006). However, we assume that an adjudicator is impartial, and the party claiming bias must make an affirmative showing that it exists. *Id.* at 766. The combination of investigative, prosecutorial, and adjudicative functions within an agency does not violate due process. *Id.*

Here, Matheson has not made a showing that the ALJ was biased. She provides no authority suggesting that the fact that the Department employed the ALJ, without more, means that the ALJ is biased. *Hardee v. Dep't of Soc. & Health Servs.*, 152 Wn. App. 48, 57, 215 P.3d 214 (2009) (rejecting a similar argument). And our Supreme Court has held that there is "no inherent unfairness in the mere combination of investigative and adjudicative functions." *Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 479, 663 P.2d 457 (1983); *see also Hardee*, 152 Wn. App. at 58.

We hold that there is no evidence that the ALJ was biased, and therefore that Matheson's due process argument fails.

D. CHALLENGE TO UNDERLYING TAX ASSESSMENT

Matheson repeatedly argues that the Department's underlying tax assessment was unlawful, raising a number of constitutional arguments. In fact, at times it is difficult to tell whether her arguments relate to the revocation of her certificate of registration or the legality of




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the assessment. We decline to address the arguments regarding the validity of the assessment because that was not at issue in the revocation hearing. In addition, this court upheld the assessment in her previous appeal of that assessment, and expressly rejected Matheson's constitutional and jurisdictional arguments as meritless. Therefore, res judicata prevents Matheson from challenging the assessment. *Nw. Wholesale, Inc. v. PAC Organic Fruit, LLC*, 183 Wn. App. 459, 492, 334 P.3d 63 (2014).


We affirm the Department's and the superior court's rulings upholding the Department's revocation of Matheson's certificate of registration.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
MAXA, J.

We concur:

  
\_\_\_\_\_  
WORSWICK, P.J.

  
\_\_\_\_\_  
MELNICK, J.

## **APPENDIX B**

18 U.S.C. § 2346  
Enforcement and regulations

(a) The Attorney General, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.

(b) A State, through its attorney general, a local government, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986 may not bring such an action against a State or local government. No civil action may be commenced under this paragraph against an Indian tribe or an Indian in Indian country (as defined in section 1151).

28 U.S.C. § 1341  
Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

U.S. Const. Art. I, § 1

Section 1. Legislative Power Vested in Congress

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. Art. I, § 8, cl. 3

Section 8, Clause 3. Regulation of Commerce

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S. Const. Art. I, § 8, cl. 17

Section 8, Clause 17. Seat of Government; Exclusive Jurisdiction Over Places Purchased

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

U.S. Const. Art. I, § 8, cl. 18

Section 8, Clause 18. Enactment of Laws for Execution of Governmental Powers

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

U.S. Const. Art. III, § 1

Section 1. Judicial Power, Tenure and Compensation

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

RCW 82.24.010(6)

(6) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

RCW 82.24.250 Transportation of unstamped cigarettes —  
Invoices and delivery tickets required — Stop and inspect.

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If unstamped cigarettes are consigned to or purchased by any person in this state, such purchaser or consignee must be a person who is authorized by this chapter to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his or her possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter to possess unstamped cigarettes in this state" means:

(a) A wholesaler, licensed under Washington state law;

(b) The United States or an agency thereof;

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department; and

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

Nothing in this subsection (7) shall be construed as modifying RCW 82.24.050 or 82.24.110.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(9) Nothing in this section shall be construed as limiting the right to travel upon all public highways under Article III of the treaty with the Yakamas of 1855.

#### RCW 82.32.215 Revocation of certificate of registration.

(1) The department may, by order, revoke the certificate of registration of a taxpayer for any of the following reasons:

(a) A warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court;

(b) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290(4)(b) (i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290(4)(b) (i) through (iii).

(ii) For the purposes of this subsection (1)(c), the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(2) If the department enters a final order revoking a taxpayer's certificate of registration, a copy of the order must, if practicable, be posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a final order revoking a taxpayer's certificate of registration in any public facility, such as a courthouse or post office, as may be allowed by the public entity that owns or occupies the facility. A final order posted at the taxpayer's place of business must remain posted until such time as the taxpayer is eligible to have its certificate of registration reinstated as provided in subsection (3) of this section or has abandoned the premises. A taxpayer will not be deemed to have abandoned the premises if the taxpayer or any person with an ownership interest in the taxpayer continues to operate a substantially similar type of business under a different legal entity at the same location.

(3) Any certificate revoked under subsection (1) of this section may not be reinstated, nor may a new certificate of registration be issued to the taxpayer, until:

(a) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer; or

(b) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290(4)(b) (i) through (iii), if the certificate of registration was revoked under the provisions of subsection (1)(c) of this section.

Wash. Const. art. 1, § 2  
§ 2. Supreme Law of the Land

The Constitution of the United States is the supreme law of the land.

Wash. Const. Art. 1, § 3  
§ 3. Personal Rights

No person shall be deprived of life, liberty, or property, without due process of law.

Wash. Const. Art. 1, § 7  
§ 7. Invasion of Private Affairs or Home Prohibited

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Wash. Const. Art. 4, § 28  
§ 28. Oath of Judges

Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

Wash. Const. Art. 26

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: Provided, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such



lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe.

Third. The debts and liabilities of the Territory of Washington and payment of the same are hereby assumed by this state.

Fourth. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control which shall be open to all the children of said state.