No. 45485-8-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

JESSICA MAE MATHESON,

Petitioner/Appellant,

v.

STATE OF WASHINGTON DEPARTMENT OF REVENUE;

Respondent/Appellee.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Petitioner, Appellant herein, Jessica Mae Matheson (hereafter "Matheson"), replies to Respondent's Brief (hereafter "the State") as follows:

The applicable statute in this case is RCW § 82.32.215 enacted in 1983. To date, no reported case has reviewed the statute. It is limited to "a taxpayer." As a substantive matter of law, Matheson, a licensed wholesaler, is never a taxpayer as the incidence of cigarette tax is on the consumer. A "warrant" mentioned in the statute is only allowed if the taxpayer requirement is met. As a lifetime tribal Indian, she can never be a Washington taxpayer. Both capacities allow her to possess unstamped cigarettes anywhere in the State.

Procedurally, any collection activity must be transferred to the Coeur d'Alene Tribal Court as required by CR 82.5. Service can only be by personal service. A license application alone, even if personal service was made, does not give jurisdiction. All presence in Washington was in interstate or Indian commerce. Neither amounts to minimum contacts allowing personal jurisdiction. No subject matter or personal jurisdiction exists in this case.

Objection to Respondent's Statement in its Introduction

The State at page one of its brief argues at the second sentence of its Introduction that "This certificate, along with her license to operate as a cigarette wholesaler, allows her to purchase unstamped cigarettes." The State makes a similar statement at page 3 and at footnote 3 arguing that only a licensed Washington wholesaler can possess cigarettes in the state; that Matheson had to give notice of transportation and that she could not qualify as an Indian tribal organization. This statement is wrong. RCW § 82.24.010(b) defines Indian tribal organization to include "an Indian wholesaler. . .who is an enrolled tribal member conducting business . . .within Indian country." Under current law, no tribal Indian delivering to an Indian reservation needs a wholesaler license. *Wasden v. Native Wholesale Supply,* 312 P.3d 1257, 1261 (Idaho 2013) holds: "A wholesaler permit is only required for those acting as a wholesaler of cigarettes that are subject to Idaho taxes". An Indian can haul into and out of this state. *Paul v. State Department of Revenue,* 110 Wash.App. 387, 390, 40 P.3d 1203 (Div. 1, 2002). *Mahoney v. State Tax Commission,* 524 P.2d 187, 191 (Idaho 1974), involving the same route as Matheson traveled, holds that a tribal Indian can haul cigarettes into and out of non reservation state boundaries off

reservation. Matheson was also in interstate commerce. These issues were argued at pages 51-58; 10-14 and throughout Matheson's opening brief. The State's brief never mentions *Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire,* 658 F.3d 1078 (9th Cir. 2011) a path marking case thoroughly reviewing the state cigarette tax statutes and holding that the state cigarette tax, Chapter 82.24, does not apply to tribal Indians. *Gregoire* holds that the 1995 amendments no longer require tribal Indian compliance. Other relevant citations are ignored. The footnote also admits that cigarettes can be brought into the state but argues that within 72 hours they must be stamped. All the cigarettes here were delivered to exempt Indian retailers long before 72 hours elapsed. CP 6, p. 322; 311. The argument fails to include RCW § 82.24.040(5) and (3) allowing unlimited time if the cigarettes are going out of state onto a federal instrumentality. Indian lands on which cigarette businesses are located are "federal instrumentalities." *Matheson v. Kinnear,* 393 F.Supp. 1025, 1031 (D.C. Wash. 1975). The State also argues at page 4, footnote 3 that Matheson is not an "Indian tribal organization" citing RCW § 82.24.050(6) and had to give notice. This is wrong for the reason that she was also a wholesaler who does not have to give notice. RCW § 82.24.250(1)(a). The State blithely and callously states at 22, admitting

Matheson is a tribal Indian, arguing that it "has no legal bearing in this case." It is decisive. Whether on or off the reservation, she is an Indian with federal protection and treaty rights. This statement immediately focuses on an attempt by the State to torpedo current law. *Gregoire,* 658 F.3d at 1078 states "if an Indian retailer ever found itself facing a state tax collection for the retailer's non payment of tax, the retailer would be shielded from civil and criminal liability, except where the Indian retailer has failed to transmit the tax paid by the consumer and collected by the retailer." The 2011 *Gregoire* case thoroughly reviews the state cigarette tax law, Ch. 82.24 and also states "Indeed, numerous provisions in the Act are written with the purpose of excluding Indian tribes and their members from compliance with the Act." *Id* at 1087 (underlining added). "While it would be prudent for any Indian retailer to pass on and then collect the tax from consumers, the Act does not *require* it; rather that it is an economic choice left to the Indian retailers." *Ibid* at 1087.

The Court also noted that Indian tribes are exempted from the cigarette tax under the "catch all provision which include the tribes" citing RCW § 82.24.900. *Ibid* at 1087. The State's brief also failed to mention *Moe v. Confederated Salish and Kootenai Tribes,* 425 U.S. 463, 480, 96 S.Ct.

1634, 48 L.Ed.2d 96 (1976) striking down "The vendor license fee sought to be applied to on-reservation Indians."

The Indian Commerce Clause and Federal Statutes apply to Tribal Indians on or off their reservations.

The issue of jurisdiction of the State over both the subject matter and the person can be raised at any time during the proceeding. The issue of burden of proof is intertwined with the power of the Court to hear and determine this case. The State contends at pages 15, 16, 22, 24-5 and 29 of its brief that the Board of Tax Appeals concluded that the activity was not on any Indian reservation and is res judicata. Matheson moved to Idaho during the litigation. The question is collection of the judgment and business license. These issues require a review of different facts and law. A claim is precluded by res judicata in tax cases only if the claim is identical. This issue was extensively reviewed in Matheson's opening brief at pages 20-25. If it is different, res judicata does not apply. *Rufener v. Scott,* 46 Wash.2d 240, 245, 280 P.2d 253 (Wash. 1955). The State cites *In re Estate of Black,* 153 Wash.2d 152, 170, 102 P.3d 796 (2004) in support of its argument. The fact of the Idaho residence was not at issue and is an integral part of this case, but was not a fact of the prior case nor was non payment of the lien for taxes or the business license. These facts were not litigated in the tax determination

suit. See *C.I.R. v. Sunnen,* 333 U.S. 591, 598-99, 68 S.Ct. 715, 92 L.Ed. 898 (1948). The burden is on the State to prove that the issue was the sole issue and that the Board of Tax Appeals was a court.

The Review did not give the Appearance of Impartiality.

The Board of Tax Appeals is an agency of state government, RCW § 82.03.010, is appointed by the governor and only two can be of the same political party. RCW § 82.03.020. A judge cannot be influenced by politics. CJC 2.4(B). Review is limited if the tax is not paid. RCW § 82.03.130(1). The judiciary in Washington is limited to the courts and must be elected by public vote. Wash. Const. art. IV, § 3.

At page 26 of its brief, the State argues that in an administrative hearing "a party must come forth with evidence of actual or potential bias." This is not the law. The statement is contradicted by the case cited by the State. "Quasi-judicial hearings, such as the permit hearings at issue in this case, must be conducted so as to give the appearance of fairness and impartiality." *Organization to Preserve Agr. Lands v. Adams County,* 128 Wash.2d 869, 889, 913 P.2d 793 (1996). *Caperton v. A.T. Massey,* 556 U.S. 868, 877, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) reviewed in *Tatham v. Rogers,* 170 Wash.App. 76, 283 P.3d 583 (Div. 3, 2012) (page 46 of

Matheson's opening brief) upholds the appearance doctrine. *Stern v. Marshall,* 131 S.Ct. 2594, 2620, 180 L.Ed.2d 475 (2011) holds that elected, not appointed, judges should decide core issues. This case should have originated with elected judges.

Federal Jurisdiction prevents action by a state against a tribal Indian.

Whether a federal law applies to prevent jurisdiction is a statutory issue reviewed de novo. *In re Beach,* 159 Wash.App. 686, 690, 246 P.3d 845 (Div. 3, 2011). Congress has the power to create any interest in lands for Indians both "within or without" existing "reservations." The lands "shall be exempt from state and local taxation." 25 U.S.C. § 465. Transportation of cigarettes in Indian commerce is also exempt from state action. 18 U.S.C. § 2346(b)(1). If a state seeks to bring an action against a resident of another state, it can only bring the action in federal court. The federal judiciary power extends "to controversies between a state and citizens of another state." U.S. Const. art. III, § 2. CR 82.5(a) recognizes this principle.

United States v. Holliday, 70 U.S. 407, 415, 18 L.Ed. 182, 3 Wall. 407 (1865) decided this issue 150 years ago. The question was the same as here, whether a tribal Indian, "*after he came within the limits of the State*, away from the Indian country, or any Indian reservation, he became subject

to the laws of the state." *Id* at 412. The case involved the crime committed by an Indian buying liquor within the state but off the reservation, *id* at 415. The Court held that this was commerce with an Indian and federal law applied stating on 417-8:

> 'If Congress has power to regulate it, that power must be exercised wherever the subject exists.' It follows from these propositions, which seem to be incontrovertible, that if commerce, or traffic, or intercourse, is carried on with an Indian tribe, or with a member of such tribe, it is subject to be regulated by Congress, although within the limits of a State. The locality of the traffic can have nothing to do with the power. The right to exercise it in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or of the member of the tribe with whom it is carried on. (Underlining added.)

U.S. v. Nice, 241 U.S. 591, 36 S.Ct. 696, 60 L.Ed. 1192 (1916) also holds that federal law applies to an Indian purchasing liquor off the reservation. "The power of Congress to regulate or prohibit traffic in intoxicating liquor with tribal Indians within a state, whether upon or off an Indian reservation is well settled." *Id* at 597.

The exclusion applies anywhere whether on or off the reservation. *Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation,* 425 U.S. 463, 480, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976) also held that "the cigarette sales tax, as applied to on-reservation sales by Indians

to Indians" is invalid. *Id* at 480. *Ward v. New York*, 291 F.Supp 2d 188, 207 (W.D.N.Y. 2003) excepted Indian to Indian sales from the state cigarette tax law holding that a state "cannot regulate the manner in which tribe members on the reservation acquire cigarettes." The case (*id* at 207) contains the well recognized supremacy clause of the U.S. Const. art VI, cl. 2 and applies implied preemption. The case upholds the principle that if the purpose of Congress is to retain jurisdiction, as it does in Indian commerce, U.S. Const. art I, § 8, cl. 3 state laws are preempted, *id* at 199. The state cigarette statute, RCW § 82.24.900, mirrors federal preemption stating "The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States." *Ward* is especially notable as it did not involve a trial, but a facial challenge obtaining a temporary restraining order on the basis of federal preemption. Later sections of this reply will cover the Idaho residency due process argument. Respondent's argument, however, fails ultimately as none of the activities of Matheson were violative of her wholesaler or business license even if the State had jurisdiction.

The federal statutes on cigarette interstate transportation exempt tribal Indians.

The federal contraband cigarette tax act, 18 U.S.C. § 2346(b)(1),

prohibits state action "against an Indian tribe or an Indian in Indian country." H.R.Conf.Rep. No. 95-1778, 95th Cong., 2d Sess 1, 9, reprinted in 1978 U.S. Code and Cong. Admin. News 5535, 5538 states: "The phrase 'applicable State cigarette taxes' makes it clear that this legislation is not intended to affect transportation or sale by Indians or Indian tribes acting in accordance with legally established rights." The State argues, at page 23, that if an Indian goes off her reservation, the state cigarette tax law applies. RCW § 82.24.900 is not limited to an Indian reservation. It recognizes federal supremacy. This issue is rebutted at pages 14, 15 and 51-58 of Matheson's opening brief.

Matheson raised these issues in assignments of error one, four, six, eight, ten, thirteen, fifteen, nineteen and twenty-one, twenty-four and twenty-six and added the cases and laws to her opening brief. The facts supporting the assignments are in the agency record; CP 6, pages 17, 308, 311, 317 and 323 supply all the needed facts. Matheson is a tribal Indian living on an Indian reservation. She never sold to anyone except her Indian father and brother, CP6, p. 323, both of which are licensed tobacco on reservation

retailers. The State's brief admits that Matheson is a Puyallup Indian, p.5.[1] She also qualifies, like her father and uncle, as a Coeur d'Alene Indian CP 6, p 311. *Matheson v. Kinnear,* 393 F.Supp. 1025, 1026 (D.C. Wash. 1975). The citations to the record need only to identify the wholesale license CP 6, App 111; her home address in Idaho and that she is a tribal Indian CP 6, App 308. The State at page 9 of its counter statement of facts, notes that the license application gave a Milton address as her father's Puyallup Indian business. It fails to note that the factual findings of the administrative appeal found that Matheson, since at least 2010, lived at 25059 S. Highway 95, Worley, ID 83876 and that the Milton address was a mail drop. CP 6, p. 9.

There is no burden of proof if the Board has no jurisdiction to hear the case.

The State contends at page 10 of its brief that Matheson had the burden of proof. Jurisdiction is a question of law reviewed de novo. *In re Beach,* 159 Wash.App. 686, 690, 246 P.3d 845 (Div. 3, 2011).

The question in this case is how to collect the judgment when a tribal Indian is judgment debtor. The case must be commenced or registered in the

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[1] The State refers to the record as AR, administrative record. It is at Clerk's Papers index document 6. Both designations are to the same record. The citation to the record to CP 6 includes the entire record of 345 pages filed in the trial court on November 16, 2012 sent to this Court, and not only the 3 pages stated in the Clerk's papers.

jurisdiction where the judgment debtor resides. *Williams v. Lee,* 358 U.S. 217, 223, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959) applies tribal infringement to deny collection of debt against a reservation Indian. Matheson's opening brief at page 42, cites *Babbitt Ford Inc. v. Navajo Indian Tribe,* 710 F.2d 587, 594 (9th Cir. 1983) and other cases forbidding off reservation sale collection without compliance with tribal law. *Cohen's Handbook of Federal Indian Law* § 7.07 (2)[c] pages 670-1 (Nell Jessup Newton ed. 2012) states:

> Whatever the general off-reservation merits of the "debt-follow-the-debtor" rule, when wages are earned on-reservation, the rule should be preempted by the federal interests apparent in *McClanahan v. Arizona State Tax Commission.* Wages earned on-reservation should be reachable only by tribal garnishment process if the process exists and if tribal law does not exempt wages from garnishment. . .
>
> In other words, deference to tribal sovereignty requires on-reservation enforcement of both state and federal judgments be made through the tribal court system, just as tribal court judgments are properly enforced off-reservation through the state or federal court systems.

The Constitution has been violated.
It is a question of law reviewed de novo.

At pages 10 and 17 of its brief, the State argues that this court is limited to a clearly erroneous standard. The statute cited by the State refutes its argument. RCW § 34.05.570(3)(b) allows reversal if the order is outside

"the statutory authority or jurisdiction." RCW § 34.05.570(3)(a) allows relief if "The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied." *Confederated Tribes v. Gregoire,* 658 F.3d 1078, 1087 (9th Cir. 2011) excludes tribal Indians whether on or off a reservation from the cigarette tax act and applies constitutional exceptions. RCW § 82.24.900. There is no factual error in this case as the seminal question is whether any sale was made to a taxable person and whether Matheson is a tribal Indian. There is no evidence of taxable sales or dispute that Matheson is a tribal Indian and qualifies as such as a Puyallup and Coeur d'Alene Indian CP 6, pp. 308, 311, 322.

All legal conclusions are reviewed de novo. *Waste Management of Seattle v. Utilities and Transportation Com'n,* 123 Wash.2d 621, 627, 869 P.2d 1034 (Wash. 1994). *Burger King v. Rudzewicz,* 471 U.S. 462, 471, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) states "The Due Process clause protects an individual's liberty interest in not being subject to the binding judgments of a forum which as established no meaningful 'contact, ties or relations'." citing *International Shoe v. Washington,* 326 U.S. at 319.

No proof or argument was even set forth that Matheson made taxable sales. CP 6, p. 246. The State admitted that testimony was admitted of

exempt sales CP 6, p.110, CP 6, p. 322, 308. In *U.S. v. Janis*, 428 U.S. 433, 438, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976) a state agent seized gambling records. The court noted that there was "no evidence" *(id* at 441) of tax liability. Since there was a "naked" assessment without (sic) any foundation whatsoever" and "not subject to the usual rule with respect to the burden of proof in tax case." *Ibid* at 441. In absence of evidence, the burden of proof is on the government to prove a tax deficiency. The Court distinguished a tax refund suit from a tax collection suit. If tax collection, there must be a limit on burden of proof. That limit is reversed if there is no "rational foundation" for the collection, *id* at 440-2. "Since as a practical matter, it is never easy to prove a negative." *Elkins v. U.S.*, 364 U.S. 206, 218, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960). This issue was reviewed at pages 35-6 of Matheson's opening brief. This is an illustration of the dark humor "when did you stop beating your wife?" Law is supposed to follow logic. *Weimerskirch v. C.I.R.*, 596 F.2d 358, 360 (9th Cir. 1979) rejected the tax deficiency even though *Weimerskirch* did not testify. The deficiency "runs afoul of every notion of fairness in our system of law" *id* at 362. "Even the most innocent of persons would have difficulty in disproving such a serous charge as selling heroin, when the party making the charge was not required to present any evidence"

id at 361. *Carson v. U.S.*, 560 F.2d 693, 696 (5th Cir. 1977) rejected the deficiency holding that the tax collection could not stand "without some evidence tending to support an inference" *id* at 697. Here, the State knew Jessica Matheson was an Indian living on a reservation where she qualified as a member. Therefore, all state and federal law holds that she was non taxable. The inference is of non taxability.

Matheson's enrollment card stated that she lived in Idaho CP 6, p. 115. Doyle McMinn, the employee of the State, admitted that he knew that "the taxpayer was in Idaho." CP 6, p. 325. The address of 25029 Highway 95, Worley, Idaho 83876 was listed under oath in Matheson's affidavit, CP 6, p. 18. The maildrop was on the reservation, CP 6, p. 18. Matheson did not advertise, never sold anything in Washington and never even parked her truck anywhere but on the Idaho reservation. The only stop in the state was to pick up product. Repackaging outside a reservation, even by a non Indian buyer from a reservation Indian, does not give jurisdiction to the State for the reason that all the parts of the transportation are in interstate commerce. *Pioneer Packing v. Winslow,* 159 Wash. 655, 663, 294 P. 557 (Wash. 1930). *Pioneer Packing, id* at 663, applied this rule to products shipped from the Quinault reservation to New York. *Wofford v. Dept. of Revenue,* 28

Wash.App. 68, 70, 622 P.2d 1278 (Div. II, 1980) followed the cigarette tax case of *Moe v. Confederated Tribes of the Flathead Reservation,* 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976) and *Washington v. Confederated Tribes of Colville Indian Reservation,* 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) on use of tax on Indian vehicles used both on and off the reservation. *Colville, id* at 163-4, states:

> While Washington may well be free to levy a tax on the use outside the reservation of Indian-owned vehicles, it may not under that rubric accomplish what Moe held was prohibited. Had Washington tailored its tax to the amount of actual off-reservation use, or otherwise varied something more than mere nomenclature, this might be a different case. But it has not done so, and we decline to treat the case as if it had.

The *Wofford* case, *supra* at 69, rejected the state sales tax and prohibited any reliance on *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973) stating:

> In so holding, the court rejected the State's argument made in reliance on Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), which acknowledged a state's authority to tax tribal activities conducted outside the reservation. The Department of Revenue embraces the same position in this case that it took in Colville. The Supreme Court's rejection of that position necessarily dictates that it be rejected in this court.

Mescalero is the same case relied on by the State (page 22 of the State's brief) for authority on the same issue, i.e. Indians coming off the

reservation are subject to state taxes.

The *Colville* case decided that the state could impose a minimum burden on a tribal Indian to collect the state cigarette tax even though the incidence of tax was on the non Indian consumer using the "validity require" language, *supra* at 159. The state of Washington cigarette tax in the intervening 34 years was amended to exempt reservation Indians. *Colville* decided a cigarette issue that is now moot due to later enactments of the state cigarette tax code. *Confederated Tribes and Bands of the Yakama Reservation v. Gregoire,* 658 F.3d at 1087 "the Act does not require it." However, the law has not changed on the motor vehicle issue.

Matheson has never lived outside of her reservation nor entered into any business with a situs off reservation. She cannot be taxed by the State for round trips from the reservation and back. She is not a state taxpayer no matter where she drives the Idaho van as she has no situs in Washington. She is not a Washington taxpayer.

Applying for a license does not waive any rights.

Matheson never waived any rights by applying for a tobacco wholesaler license. The State at page 12 of its brief states that a person must register under R.C.W. 82.32.030. "[I]f any person engages in a business

activity, the statute also requires a license if a licensee 'performs any act upon which tax is imposed'." Matheson only picked up loads from a wholesaler in an exempt transaction. RCW §§ 82.24.040(4); 82.24.250(7). Transportation in and out for delivery and pick up is not doing business. *Miller Bros. v. Maryland,* 347 U.S. 340, 347, 74 S.Ct. 535, 98 L.Ed. 744 (1976); *Mahoney v. State Tax Commission,* 524 P.2d 187, 191 (Idaho 1974). RCW § 19.02.070 only requires a person who gets a tobacco license to also get a business license. It does not require that business must be commenced. Matheson's opening brief at page 60 cites *Rylander v. Bandag Licensing Corp.,* 18 S.W.3d 296 (Tex. 2000) holding that license application did not give state jurisdiction. The State ignored the case. The State argues at pages 17-21 that substantial service compliance occurred. The issue of service requires strict due process compliance. RCW § 4.28.080(15) mandates personal service and actual compliance. Matheson never executed an agent for service agreement as the license statutes did not require it. Courts cannot legislate. At page 25, footnote 4, the State argues that violations of the Consumer Protection Act allow jurisdiction. The case, *State v. AU Optronics Corp.,* 2014 WL 1779256 *4 (Wash.App. 2014), relies on the stream of commerce into Washington state. The State did not comment on the citation

of *Daimler AG v. Bauman,* 134 S.Ct. 746, 761, 187 L.Ed.2d 624 (2014) cited at page 33 of Matheson's opening brief. *Daimler, id* at 751, rejects specific jurisdiction if the stream of products was not the issue. *AU Optronics* does not cite *Daimler* and is also within the appeal time. Regardless, Matheson was not sued under consumer protection and never sold anything anywhere delivering only to her father and brother CP 6, p. 323. The case does not apply.

The Constitutional Rights against excessive fines is violated.

The State's brief at 28 also argues that the issue of excessive fines (Matheson opening brief Page 50-1) cannot be argued by Matheson. Wash. Const. art 1, § 14; U.S. Const. amend. 8. *U.S. v. Bajakajian,* 524 U.S. 321, 336, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998) holds that the comparison must be *de novo* and if "disproportional to the gravity of the defendant's offense, it is unconstitutional" *id* at 337, and the courts must determine the gravity. The State confuses fact with law. A legal issue on constitutionality is not foreclosed.

Due process requires personal service at Matheson's residence.

At page 17 of its brief, the State argues "substantial compliance with the long arm statute. RCW § 82.32.215(2) requires a final order to be posted

in the "main" entrance to the "taxpayer's place of business." The order can be lifted if the "taxpayer has made promises for payment." The 2013 version applied only to retail sales tax. The State admits that it could have entered the reservation to serve Matheson, footnote 12 page 19, but it did not. The State did not transfer the case to the tribal court. If so, the tribal police could serve the warrant. At page 1 of Matheson's opening brief, the case of *Daimler AG v. Bauman,* 134 S.Ct. 746, 187 L.Ed.2d 624 (2014) is cited but is not mentioned by the State. It held that the 14th Amendment of due process applies to long arm jurisdiction. The court held that "*Daimler's* slim contacts with the state hardly render it at home there" *id* at 760. The *International Shoe v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) case has been departed from so that now the "relationship among the defendant, the forum and the litigation" is the test. *Id* at 758. Matheson never had any relationship with the forum.

The statute, RCW § 4.12.025, requires that an action be brought where the defendant resides. RCW § 4.28.080(15) requires personal service at the person's usual abode. Matheson did not have to give her address to the State, but she did and the address was in Idaho. The Coeur d'Alene Tribal Code allows registration of foreign judgments. Coeur d'Alene Tribal Code

4-21.01 states "Civil judgments and writs of the Coeur d'Alene Tribal Court or foreign civil judgments and writs recognized with the full faith of the Tribal Court are enforced by special marshals appointed by the Tribal Council or by law enforcement officers."

A judgment creditor petitions the tribal court for enforcement. Coeur d'Alene Tribal Code 4-25.03. Therefore, CR 82.5 coupled with the tribal code allows seamless filing and collection.

States collect their taxes by court suits in other states. See *Franchise Tax Board of California v. Hyatt,* 538 U.S. 488, 123 S.Ct. 1683, 155 L.Ed.2d 702 (2003).

The State has no exemption from any laws regarding the long arm statute or registration of foreign judgments. Here, the State wanted to bar Matheson from forever doing business in the state of Washington. The state law did not require an unincorporated business seeking a tobacco license to file an agent for service in the state. Corporations and also out of state probates must furnish in state agents for service. RCW § 23B.05.010(2) and RCW § 11.36.010(6) (non resident must appoint a resident for service). *Expressio unius est exclusio alterius* applies. All these statutes are on the books for a reason; that is to satisfy due process of law. The State is not

exempt.

Matheson did not have to comply with the State licensing laws.

At page 13 of its brief, the State contends that Matheson failed to comply with the obligations of a cigarette wholesaler referring to the administrative record. Matheson filed reports. The State wanted to know about out of state sales. However, she didn't have to file any reports of sales bound for Indian reservations. Failure to file reports does not make Matheson a taxpayer. In *State v. Atcitty,* 215 P.3d 90, 94 (N.M. 2009), the state of New Mexico noted that it's Constitution Art XXI, Sec. 2 and enabling act, which has the same language as Washington's Constitution Art XXI, Sec. 2, "disclaims jurisdiction over Indians" *id* at 94. The case held that a tribal Indian had no duty to file under the state's supreme court offender registration as the duty was preempted by federal law. Applied here, 18 U.S.C.A. 2346(b)(1), dealing with interstate transportation of cigarettes, prohibits the state from bringing suit on interstate transportation of cigarettes "against any Indian tribe or an Indian in Indian country." Public Law 280 did not convey the right to tax. *Bryan v. Itasca County,* 426 U.S. 373, 379, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976) states: "[T]he state court held 'Public Law 280 is a clear grant of the power to tax.' We disagree. That conclusions [is]

foreclosed by the legislative history of Pub. L. 280 and the application of canons of construction applicable to congressional statutes claimed to terminate Indian immunities." Field preemption applies to overlapping coverage between state and federal regulations. Federal law prevails over extra territorial regulations violating interstate or foreign commerce. *U.S. v. Locke,* 529 U.S. 89, 108, 120 S.Ct. 1135, 146 L.Ed.2d 69 (2000). These rules are applied to cigarette shipments across state lines. *Rowe v. New Hampshire Motor Transport Assn.,* 552 U.S. 364, 371, 128 S.Ct. 989, 169 L.Ed.2d 933 (2008). The State, including its argument at page 21 of its brief, is attempting to eliminate any reliance on the fact that Jessica Matheson is an enrolled Indian living on an Indian reservation in Idaho and needs no license (Clerk's papers 6, p. 308).

Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 481 n.17, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976); *McClanahan v. State Tax Commission*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed 2d 129 (1973) and *Coeur d'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674, 681 (9th Cir. 2004) all agree that the application of state tax to constitutionally exempt entities is a federal law question. "The question of where the legal incidence of a tax lies is decided by federal law." *Id* at 681.

The Washington Constitution Art. 1, § 3 confers due process rights. The seminal case of *Quill Corp. v. North Dakota* , 504 U.S. 298, 304, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) requires "physical presence within a state as a prerequisite to the legitimate exercise of state power." Minimum contacts and nexus requiring due process are violated. The U.S. Const. art. III, § 2 extends judicial power "to controversies between a state and citizens of another state. The State Constitution Art. 1, § 2 acknowledges federal constitutional supremacy.

The State is trying to revoke Matheson's license to do business, not its cigarette license. Ironically, even if the statutes revoking Matheson's wholesale license did apply, RCW § 82.24.550(3) requires that notice must be given and a first offender only a suspension of "not more than twelve months" is the maximum penalty. Obviously, the state doing business statute, RCW § 82.32.215, only applies to tax. The wholesale license revocation is irrelevant.

CONCLUSION

The layers of forced procedure; illogical and incorrectly applied presumptions and the tremendous litigating power of the State are the only reasons the case has progressed without transfer to the Coeur d'Alene Tribal

Court. The State urges the Court to ignore constitutional and comprehensive Indian law cases dating from 1865 through 2011. Stare decisis does not allow this freedom. It's time that a responsible review reverses this abominable desecration of a female Indian. The court rules should be upheld to transfer this case where it belongs or dismiss it entirely.

DATED this 6th day of June, 2014.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the Reply Brief of Petitioner/Appellant was served on Counsel for Respondent/Appellee by email and by first class mail addressed as follows:

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