

NO. 93356-1

SUPREME COURT OF THE STATE OF WASHINGTON

UNITED AIRLINES, INC., a Delaware Corporation

Petitioner,

v.

KING COUNTY, a governmental entity, and WASHINGTON STATE
DEPARTMENT OF REVENUE,

Respondents.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Charles Zalesky, WSBA No. 37777
Andrew Krawczyk, WSBA No. 42982
Assistant Attorneys General
Revenue and Finance Division
P.O. Box 40123
Olympia, WA 98504-0123
(360) 753-5528
OID NO. 91027

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I. INTRODUCTION

United Airlines seeks a property tax refund based on a dispute over the value of its interest in leased property, but it does so under an administrative refund statute that does not allow refunds on that basis. *See* RCW 84.69.020 (county officials generally may not refund property tax based on “any error in determining the valuation of property”). United could have sought a refund under another statute for unlawful or excessive taxes, but it did not comply with the statutory requirements of paying the disputed tax under protest or filing suit within the required time limit. *See* chapter 84.68, RCW (permitting an action in superior court to recover property taxes paid under written protest). The Court of Appeals correctly recognized, as did the Superior Court and the King County Assessor before it, that “[a]n administrative refund of taxes under chapter 84.69 RCW is not available as an avenue for challenging an alleged error in determining the valuation of property.” *United Airlines v. King County*, No. 73606-0-I, 2016 WL 3190515, at * 1 (Wash. Ct. App. 2016).

The Court of Appeals correctly applied the provisions of the administrative property tax refund statute, which does not permit county officials to decide valuation disputes. Moreover, the decision does not conflict with any decision of this Court or any other court, and it presents no issue of constitutional law or of any substantial public importance.

United's petition merely reargues its contention that the Department of Revenue erred when it valued United's leased property by using a valuation method that United dislikes. But United's desire for a new forum to argue the merits of its refund claim is not a recognized reason for granting review under RAP 13.4(b).

Alternatively, if review is granted, the Court should address the Department's secondary ground for upholding the superior court. The Court of Appeals affirmed the superior court on the basis that United's refund claim involved a dispute over the value of property. This ruling alleviated the need for the Court to address a procedural defect in United's refund claim—namely that the claim was not “verified by the person who paid the tax” as required by RCW 84.69.030(1)(a). Compliance with this verification requirement is mandatory and provides an alternative basis to uphold the superior court.

II. IDENTITY OF RESPONDENTS

Respondents are King County and the State Department of Revenue.

III. COUNTERSTATEMENT OF THE ISSUES

If the Court were to grant review, the issues on review would be:

1. Did the superior court correctly affirm the King County Assessor's denial of United's refund claim because the claim involved a

valuation dispute that is not the type of dispute that can be addressed under the administrative property tax refund statute?

2. Alternatively, did the superior court correctly affirm the King County Assessor's denial of United's refund claim because the claim was not verified by the person who paid the tax as required by statute?

IV. COUNTERSTATEMENT OF THE CASE

A. **United Is Subject To Property Tax On The Value Of Its Possessory Interest In Government-Owned Property.**

United is an "airplane company" subject to property tax on the assessed value of its operating property. *See* RCW 84.12.200(3) (defining "airplane company"); RCW 84.12.270 (providing that the Department of Revenue shall annually assess the operating property of utilities and transportation companies).¹ The Department valued United's operating property for each of the 2009, 2010, and 2011 assessment years using generally accepted appraisal methods. Included as part of United's taxable operating property was United's interest in property it leased from the Port of Seattle and used in its business operations at Sea-Tac International Airport. CP 113-14. That leased property included office space, a VIP lounge, ticket counters, baggage check areas, and boarding gates. CP 114; CP 592.

¹ The term "operating property" means all property owned or used by a centrally assessed utility or transportation company in the conduct of its business operations. RCW 84.12.200(8).

Under Washington law, property owned by the United States, the State, counties, school districts, and other municipal corporations is exempt from property tax. Const. art. VII, § 1; RCW 84.36.010(1). This exemption does not apply to persons who lease or are granted the right to use government-owned property. *Clark-Kunzl Co. v. Williams*, 78 Wn.2d 59, 64, 469 P.2d 874 (1970). Instead, the non-exempt lessee is taxed on the value of its possessory interest. *Id.* There is no dispute in this case that United is subject to property tax on the value of its interest in property it leased from the Port of Seattle.²

B. The Department Valued United's Interest In Port-Owned Property Using Recognized Valuation Methods.

When a centrally assessed taxpayer leases or is granted a right to use government-owned property, that interest (generically referred to as a “possessory interest”) is valued at fair market value. RCW 84.40.030. The Department has issued guidelines outlining three permissible methods for valuing possessory interests. CP 040-083. Those guidelines explain that possessory interests may be valued using an “imputed return approach,” a “residual approach,” or a “sales data approach.” CP 053.

² United uses inaccurate terminology when it refers to the tax at issue as “possessory interest taxes.” Petition at pp. 1, 4, 18. The tax at issue is *property tax* assessed and collected by King County on the value of United’s interest in property it leased from the Port of Seattle.

For the 2006 through 2011 assessment years, the Department valued possessory interests using the “residual approach.” CP 033-034. Starting with the 2012 assessment year, the Department changed to a variation of the “imputed return approach.” CP 035. There are several key differences between the residual approach used for the 2006 through 2011 assessment years and the imputed return approach used for the 2012 assessment year. CP 035. The most notable difference is that the imputed return approach is a simplified “one step” approach that does not require the assessor to consider the government-owner’s reversionary interest. *Id.* Additionally, the imputed return approach used for the 2012 assessment year employed a different method for estimating the value of possessory interests (a “yield capitalization” method rather than a “direct capitalization” method), and applied a presumption that the non-government lessee would retain its beneficial interest in the property only through the end of the express term of the lease. CP 035.

For some taxpayers, including United, the simpler imputed return approach used for 2012 resulted in a lower value estimate and a lower tax assessment. This lower value was primarily due to the fact that the Department, in applying the approach, presumed that the non-exempt lessee would retain its beneficial interest in the property only through the end of the express term of the lease. As a result of this presumption, the

estimated value of the interest is lower during the last two or three years of the lease term even though other facts may have indicated that the lease would be renewed.

While United and other airlines benefited from the Department's 2012 decision to change the method used to value possessory interests, the change was prospective only. CP 36. This was consistent with the Department's normal practice. *Id.* The Department likely would not have agreed to a retroactive change to its appraisal methods without carefully considering the impact on all stakeholders that it serves, including the counties and taxing districts that receive and rely on property taxes to fund important governmental programs. *Id.*

C. United Filed An Administrative Refund Claim And Appealed The Denial Of That Refund Claim.

Once the Department determines the taxable value of United's operating property, that value is apportioned to the various counties in which United operates, including King County. RCW 84.12.360. For each of the 2009 through 2011 assessment years at issue, the King County Assessor billed United for the property tax owed on the portion of its Washington taxable value allocated to King County. United paid the tax without protest. VRP 18, ln. 24. As a result, United was not permitted to seek a refund of the taxes it paid for the 2009 through 2011 assessment

years under the “payment under protest” tax refund chapter. *See* RCW 84.68.020 (permitting an action in superior court to recover property taxes paid under written protest). Its only avenue for claiming a refund was the administrative refund provisions set out in chapter 84.69 RCW . That administrative refund chapter does not require payment of the disputed taxes under written protest, but it does narrowly constrain the reasons for which a taxpayer may seek a refund. RCW 84.69.020, .170.

In December 2013, a tax consulting firm hired by United filed an administrative refund claim with the King County Treasurer seeking a refund of a portion of the taxes United paid to King County for the 2009 through 2011 assessment years. CP 120. The refund claim was based on what United’s tax consultant characterized as “[t]he assessment of property exempted by law from taxation,” and it requested a refund of \$1,571,818 plus interest. *Id.* United’s tax consultant claimed that the refund amount was a mere mathematical computation that required no “re-valuation” of United’s interest in the property it leased from the Port of Seattle. CP 124. The claim was not verified, and it was signed only by the tax consultant hired by United. CP 120.

The administrative refund claim was sent to the King County Assessor's Office for review.³ The Assessor denied the claim, explaining that it involved a dispute over "the valuation of operating property as determined by the Department of Revenue," which is not the type of claim that can be addressed under the administrative refund chapter. CP 148; *see also* RCW 84.69.020 (listing the circumstances where the county is authorized to refund property taxes and specifying that "[n]o refunds . . . shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section").⁴

United filed a complaint in superior court to recover the taxes the Assessor refused to refund. CP 1029; *see* RCW 84.69.120 (permitting an action on a rejected administrative refund claim). Shortly thereafter the Department of Revenue intervened. CP 979.⁵ After discovery was completed, the parties filed cross-motions for summary judgment. CP 001 (Department's motion); CP 205 (United's cross-motion). The superior court granted the Department's motion and denied United's cross-motion. CP 839. United appealed. CP 845.

³ King County has delegated responsibility for reviewing and approving administrative property tax refund claims to the county assessor. *See* King County Code 4.64.020.

⁴ None of the exceptions specified in RCW 84.69.020 apply here.

⁵ The Attorney General's Office appeared on behalf of both King County and the Department. CP 976.

The Court of Appeals affirmed. The Court explained that “[a]n administrative refund of taxes under chapter 84.69 RCW is not available as an avenue for challenging an alleged error in determining the valuation of property.” *United Airlines*, 2016 WL 3190515, at *1. Rather, to properly challenge an alleged error in valuing property, “a taxpayer must pay the tax under written protest and then file suit under RCW 84.68.020,” a step that United admittedly did not take. *Id.* The Court rejected United’s efforts to use the administrative refund process as a means of challenging the appraisal methods used to value United’s interest in leased property and held that “the trial court properly dismissed the action on summary judgment.” *Id.*

V. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny review because the Court of Appeals opinion involves nothing more than a straightforward application of the statutory restrictions on the particular avenue for seeking a refund of property taxes used by United. That statute prohibits refunds based on a dispute over valuation of property. There is no conflict among opinions from Washington courts, and no reason for this Court’s review.

Persons seeking a refund of property taxes may bring an action in superior court under RCW 84.68.020, or may seek administrative review by county officials under RCW 84.69.030. The procedural requirements

under these two refund chapters differ in material respects, as do the nature of the allowed claims. In order to bring an action in superior court to recover unlawful or excessive property tax assessments, the taxpayer must have paid the disputed tax under written protest. RCW 84.68.020. In addition, the action must be initiated by filing a complaint on or before June 30 of the year following the year the disputed taxes were payable. RCW 84.68.060.

United did not pay its 2009 through 2011 property taxes under written protest, nor did it file a complaint in superior court within the time permitted under RCW 84.68.060. As a result, the “payment under protest” refund chapter did not apply. Instead, United sought a refund under the administrative refund chapter, RCW 84.69. That chapter allows for an administrative refund claim to be filed with the county treasurer without the need to pay the tax under written protest. RCW 84.69.170. However, counties are authorized to refund taxes only in specified circumstances, and they may *not* refund any taxes based on “any error in determining *the valuation of property*,” except in specific circumstances that are not applicable here. RCW 84.69.020 (emphasis added). In addition, the claim for refund must be verified by the person who paid the tax, must be filed within three years from the due date of the tax payment sought to be refunded, and must state the ground upon which the refund is claimed.

RCW 84.69.030(1). The person claiming the refund must first exhaust their administrative remedies with the county before seeking a refund in court. RCW 84.69.130. And judicial review is limited to only those grounds asserted in the administrative claim for refund. *Id.*

The Court of Appeals correctly applied the statutory requirements in RCW 84.69.020 and .030 when concluding that United was not entitled to a refund of property taxes under the administrative refund chapter. That chapter does not permit a county official to refund taxes based on a disagreement over the value of property. Valuation disputes, as the Court of Appeals correctly held, must be brought under the “payment under protest” refund chapter, Chapter 84.68 RCW.

A. United Has Not Established That Its Petition Meets Any Of The Requirements For Review Specified In RAP 13.4(b).

United does not assert that the Court of Appeals decision conflicts with any other Court of Appeals decision or that the case involves a significant question of constitutional law or an issue of substantial public interest. *See* RAP 13.4(b)(2) (3)-(4). Its only claim that arguably could support discretionary review under RAP 13.4(b) is its assertion that the Court of Appeals “refused to apply” this Court’s holdings in *Pier 67, Inc. v. King County* and *Duwamish Warehouse v. Hoppe*. Petition at 9 (citing *Pier 67, Inc. v. King County*, 78 Wn.2d 48, 469 P.2d 902 (1970), and

Duwamish Warehouse v. Hoppe, 102 Wn.2d 249, 684 P.2d 703 (1984)).

United's argument is without merit, and nothing in the Court of Appeals decision otherwise warrants this Court's review.

1. The Court of Appeals considered *Pier 67* and *Duwamish Warehouse* and correctly concluded that neither case controls here.

The Court of Appeals addressed and rejected United's contention that *Pier 67* and *Duwamish Warehouse* were somehow controlling in this appeal. *United Airlines*, 2016 WL 3190515, at *3-4. Both of those decisions involved "a challenge to valuation" of leased property by taxpayers that had paid the disputed taxes under written protest and sought relief under the "paid under protest" refund chapter. *Id.* at *4.

Consequently, neither case presented the specific issue raised in this appeal—whether the administrative refund chapter permits the county to refund taxes based on a valuation dispute. The Court of Appeals did not "refuse to apply" *Pier 67* and *Duwamish Warehouse*; it cogently explained that the valuation discussion in those cases "is not on point in this case" because county officials are barred by statute from refunding property tax based on valuation disputes. *Id.* at *3. "An error in valuation can be redressed only if the taxpayer pays the tax under protest and brings suit under chapter 84.68 RCW." *Id.* at *4.

In addition, neither *Pier 67* nor *Duwamish* held that assessors are required to apply a specific appraisal method when valuing a lessee's interest in government-owned property, or that the valuation process is a purely mechanical endeavor that can be accomplished by county officials without utilizing appraisal judgment. In fact, both *Pier 67* and *Duwamish* undercut United's assertion that the refund at issue can be computed without revaluing its interest in the property it leased from the Port.

In *Pier 67*, this Court explained the general parameters pertaining to the valuation of a possessory interest in government-owned property. The value of the taxable possessory interest is the amount a willing buyer would pay a willing seller for the lessee's rights in the property without any reduction on account of the rent payments or other debts owed by the lessee. *Pier 67, Inc.*, 78 Wn.2d at 57-58. Valuing those rights requires the exercise of appraisal judgment, and "the assessor has a number of appraisal methods at his disposal" in measuring fair market value. *Id.* No single method is mandatory. *Id.* Factors the assessor should consider include the probable remaining life of the lease and any option to renew the lease. *Id.* But these factors are not exclusive. *Id.* at 58. Rather, the assessor "must consider all relevant circumstances pertinent and helpful in making his assessment within the ambit of the applicable statutes." *Id.*

As *Pier 67* demonstrates, valuing a lessee's interest in government-owned property is not a mechanical or ministerial endeavor. Rather, the appraiser must exercise judgment. This process leaves "ample room for the necessary exercise of discretion on the part of the assessor." *Folsom v. County of Spokane*, 111 Wn.2d 256, 271, 759 P.2d 1196 (1988).

Duwamish Warehouse is consistent with *Pier 67*. The dispute in *Duwamish* involved the valuation of a warehouse built by Duwamish Warehouse Company on land it leased from the Port of Seattle. *Duwamish Warehouse*, 102 Wn.2d at 250. The lease agreement provided that ownership and possession of the warehouse was to revert to the Port at the conclusion of the 26-year lease term. *Id.* The sole issue was whether the Port's reversionary interest in the warehouse (i.e., its right to the future ownership of that warehouse) was a factor the assessor was required to consider in determining the value of the lessee's taxable interest in the warehouse during the lease term. *Id.* at 251. This Court concluded that the Port's reversionary interest must be considered. *Id.* at 256. The Court did not hold, however, that the assessor was required to employ a specific valuation method, or that determining the value of a reversionary interest is an easy, mechanical computation that requires no appraisal judgment. United's implied claim that *Duwamish Warehouse* somehow entitles it to the property tax refund it is seeking is nonsense.

The Court of Appeals correctly recognized that both *Pier 67* and *Duwamish Warehouse* involved valuation disputes that cannot be redressed under the plain language of the administrative property tax refund chapter. *United Airlines*, 2016 WL 3190515, at *3-4. Rather, to properly challenge an alleged error in valuing property, United was required to pay the disputed tax under written protest and then file suit under the “paid under protest” refund chapter, a step the company admittedly did not take. VRP 18, ln. 24. *Pier 67* and *Duwamish* do not hold otherwise. Consequently, there is no conflict.

2. United’s disagreement with the Department’s valuation methods does not warrant further review.

United contends that the Department of Revenue failed to properly consider the Port of Seattle’s reversionary interest when valuing United’s interest in the property it leased from the Port. Petition at 11. Even if United’s contention was true—which it is not—its refund claim was properly rejected because RCW 84.69.020 specifically prohibits a refund based on a dispute over the value of property. The Court of Appeals correctly applied the plain language of the statute to the facts of this case, and further review is not warranted.

In valuing United’s interest in the Port-owned property for the 2009 through 2011 tax periods, the Department employed the “residual

method,” which is one of three recognized methods for valuing possessory interests. CP 053. That valuation method involves two steps. In the first step, the value of the lessee’s beneficial rights in the leased property is computed using a “direct capitalization” model that capitalized the net lease payments for a single year into an estimate of value. CP 174. In the second step, the present value of the government-owner’s reversionary interest is considered and subtracted if any of that value was captured in step one. CP 175.

When estimating the present value of the government-owner’s reversionary interest, the Department considers both the stated term of the lease agreement and the established course of dealing between the non-exempt lessee and the government lessor. *Id.* When the facts suggest that the lease will continue to be renewed into the foreseeable future, the government-owner’s reversionary interest is considered to be of no material value. *Id.*

With respect to United, the Department concluded that United’s lease with the Port would continue to be renewed into the foreseeable future and, as a result, the Port’s reversionary interest was estimated to be of no material value. United has leased property from the Port since the mid-1940s when Sea-Tac International Airport was constructed. CP 112. Some of the leases have been of relatively short duration, but they have

always been renewed. From this roughly 60-year course of dealing, it was reasonable for the Department to conclude that United would continue to lease operating property from the Port well after the conclusion of the express lease term. Moreover, consistent with the holding in *Pier 67*, the course of dealing between the lessee and the tax exempt government owner of the property is relevant in determining the “probable remaining life” of the lessee’s interest in the leased property. *Pier 67*, 78 Wn.2d at 58. If the law were otherwise, a lessee such as United could easily manipulate its property tax liability by entering into a series of short-term lease agreements.

The Department considered the Port’s reversionary interest, concluding that it had no material impact on the value of United’s interest in the leased property. That conclusion was entirely rational in light of United’s longstanding practice of leasing Port property, and the lack of evidence suggesting that United would discontinue the practice anytime in the foreseeable future. There was no error.

Moreover, even if the Department had erred in valuing United’s possessory interest in Port-owned property, that error could be corrected only by revaluing that interest through the exercise of appraisal skill and judgment. There is no mechanical or ministerial substitute authorized under Washington law for valuing property. To the contrary, this Court

has consistently recognized that the valuation of property for tax purposes involves considerable appraisal judgment and discretion. *E.g., Folsom*, 111 Wn.2d at 271; *Sahalee Country Club, Inc. v. Board of Tax Appeals*, 108 Wn.2d 26, 36, 735 P.2d 1320 (1987). No “‘rule of thumb’ can be formulated to fit every situation.” *Pier 67*, 78 Wn.2d at 58. Instead, the assessor has discretion to select the appropriate appraisal methods, and the assessor’s value estimate will be upheld absent clear, cogent, and convincing evidence that the property was overvalued. RCW 84.40.0301.

The King County Assessor correctly understood that United’s administrative refund claim involved a valuation dispute and correctly denied the claim on that basis. CP 148. The superior court and Court of Appeals have reviewed and affirmed the Assessor’s decision. There is no need for further review.

B. If The Court Accepts Review, It Should Address United’s Failure To Verify Its Administrative Refund Claim.

If this Court does accept review of the decision of the Court of Appeals, it should also address United’s failure to verify its administrative refund claim as required by RCW 84.69.030(1)(a). This issue was fully briefed by the Department but was not decided by the Court of Appeals. Pursuant to RAP 13.4(d), the Department seeks review of this alternative reason for affirming the trial court and the King County Assessor.

The Legislature has strictly limited administrative refund claims to those complying with stated procedural requirements. RCW 84.69.030; RCW 84.69.130. One of the specified requirements is that the claim must be “[v]erified by the person who paid the tax, [or by] the person’s guardian, executor or administrator.” RCW 84.69.030(1)(a). United did not comply with this requirement. *See* CP 120 (refund claim not verified and was not even signed by an officer or employee of United).

Requiring the person that paid the tax to verify an administrative refund claim under RCW 84.69.030(1)(a) is important because the county official reviewing the claim must rely on the veracity of the information provided and decide the matter without a hearing or trial to determine disputed issues of fact. The requirement is not burdensome and has been part of the administrative refund chapter since its inception. *See* Laws of 1957, ch. 120, § 3. United simply failed to comply.

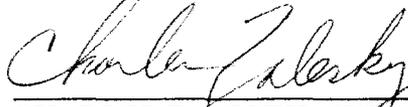
An action for judicial review under RCW 84.69.120 must be dismissed when the taxpayer has not complied with the statutory procedures for obtaining relief. *Coluccio v. King County*, 82 Wn. App. 45, 51-52, 917 P.2d 145 (1996). United’s failure to comply with the verification requirement of RCW 84.69.030(1)(a) provides an alternative basis to uphold the trial court and deny United’s refund claim.

VI. CONCLUSION

The Court of Appeals decision applied the plain language of the property tax administrative refund statute to the undisputed facts in the record. The decision raises no issue of constitutional law or of substantial public importance, and does not conflict with any decision from any court. This Court should deny review.

RESPECTFULLY SUBMITTED this 2nd day of August, 2016.

ROBERT W. FERGUSON
Attorney General



CHARLES ZALESKY, WSBA No. 37777
ANDREW KRAWCZYK, WSBA No. 42982
Assistant Attorneys General
Attorneys for Respondents King County and
Department of Revenue

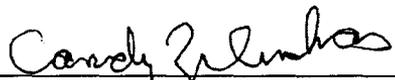
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per agreement, on the following:

Christopher L. Thayer
Pivotal Law Group
One Union Square, Suite 1730
600 University St., Seattle, WA 98101
Cthayer@pivotallawgroup.com
Tpeterson@pivotallawgroup.com

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

DATED this 2nd day of August, 2016, at Tumwater, WA.



Candy Zilinskas, Legal Assistant

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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