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64819-5

NO. 64819-5-I
(Consolidated with 65810-7-I)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

HARLEY H. HOPPE & ASSOCIATES, INC.,

Appellant,

v.

KING COUNTY, a political subdivision of the State of Washington,
and SCOTT NOBLE, King County Assessor,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN CRAIGHEAD

AMENDED BRIEF OF KING COUNTY

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I. INTRODUCTION

This amended brief addresses issues raised in both *Harley H. Hoppe v. King County*, No. 64819-5-1 (*Hoppe I*) and the subsequently consolidated appeal, *Amy Hoppe v. King County*, No. 65810-7-1 (*Hoppe II*).

Harley H. Hoppe & Associates and Amy Hoppe (collectively "Hoppe") filed their respective actions *Hoppe I* and *Hoppe II* seeking to compel the King County Assessor ("Assessor") to disclose private company tax information contained in Washington State Department of Revenue tax ratio audits. In both cases, the Superior Court properly entered summary judgment in favor of the County dismissing the Hoppe's Public Records Act ("PRA") claim on grounds that requested disclosure of company tax audit material without taxpayer consent is prohibited by Washington's property tax statutes and is exempt under the PRA. Judgments entered in favor of the County in these cases should be affirmed on their merits.

The *Hoppe I* appeal should alternatively be dismissed as untimely. Hoppe has twice filed a notice of appeal seeking review of the summary judgment entered in this case. Hoppe's original notice of appeal misidentified the matters for which review was sought and was voluntarily withdrawn. Hoppe then filed a second appeal notice

in the same case. The second notice was filed after the Superior Court incorrectly granted Hoppe's motion to reenter judgment in favor of the County -- well after the applicable time limit for seeking review had run.

Summary judgment entered in *Hoppe II* should alternatively be affirmed on res judicata and collateral estoppel grounds. *Hoppe II* improperly seeks to relitigate the matters that were previously raised and fully adjudicated in *Hoppe I*. Efforts by Hoppe to renew its prior unsuccessful challenge is barred by doctrines of finality.

II. ASSIGNMENT OF ERROR

With respect to *Hoppe I*, the Superior Court erred in its January 21, 2010 order reentering judgment in favor of the County.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Whether the Superior Court erred by reentering judgment in favor of the County in *Hoppe I* when judgment had already been entered, and the associated appeal period had already run.

IV. STATEMENT OF THE CASE

Hoppe represents taxpayers in administrative property tax appeals before the King County Board of Equalization and State Board of Tax Appeals. The complaints in both *Hoppe I* and in *Hoppe II* allege that the County violated Chapter 42.56 RCW, the

PRA, by failing to disclose copies of a Washington State Department of Revenue ("DOR") personal property tax ratio audit of private company assets. CP 41-57 and 1453-57. The tax audits set forth detailed lists of audited company assets, described by specific item, acquisition year, original cost, and depreciated value. CP 91, 95-96, 1617-18, 1654, 1656.

Due to the confidential nature of requested tax audit information, both the DOR and audited taxpayers advised the County of their objection to the release of the tax information. CP 65-67, 91-92, 96, 147-60, 1171, 1616-17, 1626-27. The County thus notified Hoppe that taxpayer confidentiality statutes prohibited disclosure of requested tax audits and that disclosure was further exempt under RCW 42.56.230. CP 96, 197-98, 1616-17.

A. Background to *Hoppe I*

1. Hoppe request for tax audit

Prior to the public disclosure request at issue in *Hoppe I*, in 2008, Hoppe's legal counsel made several document requests to the County Assessor regarding a Paccar Company property tax appeal that had previously been settled. CP 93-96. After a series of document disclosures, requests for clarification, revised requests and meetings, these 2008 requests were fully satisfied. *Id.* There is

no assertion in this case that the County was anything other than fully responsive in addressing such early requests. RP 3.

The only public disclosure request at issue in *Hoppe I* is Hoppe's subsequent demand for DOR's tax ratio audit. CP 87-88. See also CP 44-57 (Amended Complaint). On February 29, 2008, Hoppe submitted a letter to the County Assessor demanding a copy of "the 2006 State Ratio Audit for Personal Property, with client name and account number(s) redacted." CP 95, 192-93.

The requested DOR tax audit details assets of a broad cross-section of numerous, private companies that were required to participate in an audit process conducted by the Department of Revenue. The tax audits describe each company's private assets by acquisition year, original cost, and depreciated value. CP 73, 91, 95, 1172. A detailed discussion of the state's tax ratio audit purpose and process is provided at pages 33 and 34 below.

The County promptly notified the DOR and audited taxpayers of Hoppe's request. CP 96. Audited taxpayers objected to the release of their tax audit, noting that such information was private and confidential, and that disclosure would risk placing them at a competitive disadvantage. CP 91-92, 96, 1171-72. The DOR similarly advised the County that disclosure of such tax audit

material was prohibited by RCW 84.08.210, and that the requested redaction of taxpayer name and file information would not sufficiently safeguard taxpayers' identity or proprietary business information. CP 65-79. 96, 195.

On March 7, 2008, the County notified Hoppe that, given the audited taxpayers' objections to disclosure of their confidential taxpayer information, the County was prohibited by specified tax confidentiality statutes from disseminating such material. CP 96, 197-98. The County further indicated that the material was exempt from disclosure under RCW 42.56.230. *Id.* That section exempts from public inspection and copying information required of any taxpayer in connection with the assessment or collection of any tax if disclosure would (a) be prohibited under RCW 82.08.210, 82.32.330, 84.40.020 or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer. RCW 42.56.230.

No further request or follow-up on the request was made by Hoppe until over three months later, when Hoppe filed suit. CP 97.

2. Superior Court Adjudication of *Hoppe I.*

a. Judgment in favor of King County

Hoppe filed its initial suit in King County Superior Court on

June 23, 2008, alleging that the County violated the PRA by not providing him with requested DOR tax audit materials. CP 9-31.

The County and Hoppe filed cross-motions for summary judgment pursuant to CR 56. CP 199-218, 294-318. On July 20, 2009, King County Superior Court Judge Susan Craighead issued a correspondence ruling which determined that Hoppe's claims were without merit. CP 1221-24. The Court accordingly denied Hoppe's request for summary judgment and formally entered summary judgment in favor of the County. CP 1216-18, 1219-20. The Court's July 29, 2009 Summary Judgment incorporated its correspondence ruling and

ORDERED ADJUDGED AND DECREED that King County's motion for summary judgment is GRANTED. For each of the reasons set forth in King County's motion, Hoppe's claims against the County be and hereby are dismissed with prejudice.

CP 1216-18.

b. Stipulated dismissal of counterclaim.

Independent of Hoppe's public records claim, the County had filed a counterclaim in *Hoppe I*, seeking to vacate a 1991 injunction pertaining to unrelated actions of a prior Assessor. CP 32-38. After the Superior Court denied the County's motion for summary judgment on the injunction counterclaim (CP 1305-06),

the County agreed not to pursue that matter. On November 23, 2009, a stipulated order was accordingly entered dismissing the counterclaim. CP 1324-25. At that point, no further claims or causes of action remained to be adjudicated in *Hoppe I*.

c. Initial notice of appeal in *Hoppe I*.

On December 2, 2009, within thirty days after final resolution of *Hoppe I*, Hoppe timely filed its initial Notice of Appeal. CP 1-8. The Notice, however, mistakenly sought "review by the Washington Court of Appeals, Division I, of the Stipulated Order of Dismissal, entered on November 23, 2009, and matters concluded thereby, in particular the Order on Summary Judgment dated November 13, 2009." *Id.* Significantly, the only orders designated in and attached to Hoppe's December 2nd Notice of Appeal related to the County's counterclaim that was dismissed by stipulation. Hoppe did not designate or attach the July 20, 2009 Summary Judgment that dismissed its public disclosure claim. *Id.*

On December 23, 2009, the Court of Appeals moved *sua sponte* to determine the reviewability of Hoppe's designated orders. CP 1377. In response, the County urged that the appeal be dismissed on grounds that the designated orders regarding dismissal of the County's stipulated counterclaim were not

reviewable. CP 1351-58. Rather than seeking to amend its initial notice, on January 6, 2010, Hoppe moved to voluntarily withdraw its appeal.¹ This Court granted Hoppe's request and dismissed the appeal on January 7, 2010. CP 1379.

d. Judgment reentry and refiling of appeal.

Hoppe then returned to Superior Court and urged the Court to reenter judgment in favor of the County on the already dismissed PRA claim in *Hoppe I*. CP 1326-42. The County opposed entry of the duplicative judgment order, pointing out that the Court's July 20, 2009 Summary Judgment ruling had already "Ordered, Adjudged and Decreed" that Hoppe's claim was dismissed with prejudice; that this summary judgment entry constituted a final dispositive judgment, and that there was no basis in the civil rules for reentering a judgment that had already been entered. CP 1343-79.

On January 21, 2010, the trial court granted Hoppe's request and reentered judgment in favor of the County. CP 1383-84.

Hoppe then filed its second notice of appeal in *Hoppe I* on January 27, 2010. CP 1385-86. On February 9, 2010, King County

¹ Before Hoppe opted to withdraw its appeal, the County made clear its position that the Summary Judgment previously entered was a final judgment as to Hoppe's PRA claim and that it would oppose a request to reenter judgment on that claim. CP 1349.

cross-appealed, challenging the Superior Court's decision to reenter judgment. CP 1390-94.

B. Background to *Hoppe II*

1. Hoppe request for tax audit.

The factual background to the PRA request in *Hoppe II* is for all intents and purposes the same as that in *Hoppe I*. Following judgment in *Hoppe I*, the King County Assessor received from Amy Hoppe, an employee of Harley H. Hoppe & Associates, a February 2, 2010 public records request for copies of the Washington State Department of Revenue's 2007 and 2008 State Ratio Audits for Personal Property. CP 1621.

On February 5, 2010, the Assessor notified the DOR of Hoppe's request. CP 1623. On February 9, 2010, the DOR again advised the County that such information was confidential, and that disclosure without the written consent of the taxpayer was prohibited by RCW 84.08.210. CP 1626-27. The DOR further indicated that redaction of taxpayer names and account numbers would not sufficiently safeguard the audited taxpayers' proprietary business information. *Id.*

As in *Hoppe I*, tax ratio audit materials sought by Hoppe contain itemized and audited values of specific equipment and

personal property holdings of a large number of companies doing business in Washington State. CP 1615 at ¶ 7. On February 8, 2010, the Assessor sent notice to the audited companies advising them of Hoppe's request and requesting written indication of whether they consented to the release of their audit information, with names and account numbers redacted. CP 1629.

Also on February 8, 2010, the Assessor sent a letter to Hoppe acknowledging receipt of the document request and seeking certain clarifications. CP 1636 - 37. One month later, on March 8, 2010, the Assessor received a response to its clarification request. CP 1642. On March 11, 2010, the Assessor contacted Hoppe by e-mail seeking further clarification. CP 1644. Hoppe responded to the additional clarification request on March 14, 2010. CP 1646.

On March 23, 2010, the Assessor notified Hoppe that ratio audit information from seven taxpayers that agreed to the release of their audit information was available for review and copying, along with requested copies of the 2007 and 2008 ratio stratification summary reports from the ratio audit. CP 1648. The letter further advised Hoppe that 48 of the audited companies opposed release of their audit materials. *Id.* Objecting taxpayers noted that such confidential materials could be extremely sensitive; that it was

possible to identify taxpayers even with redactions; and that disclosure would place companies at a competitive disadvantage as competitors would know what equipment they used, the purchase price and remaining useful life and ownership structure of company assets. CP 1617 at ¶ 16; 1654-55 at ¶ 3-5; 1656-57 at ¶¶ 2-5. See also CP 1579-80, 1586, 1589 and 1594-95. ²

Approximately one month later, on April 28, 2010, Harley Hoppe retrieved copies of the documents that were made available in response to Amy Hoppe's request. CP 1617 at ¶ 16.

2. Superior Court adjudication of *Hoppe II*

Hoppe filed its *Hoppe II* lawsuit on April 2, 2010.³ CP1453. Immediately thereafter, Hoppe both moved to transfer the case to

² The County's March 23rd letter to Hoppe further noted that 44 of the audited companies had not responded to County requests for permission to disclose their tax information, and that audit study material pertaining to these non-consenting companies was being withheld from disclosure in accordance with RCW 42.56.230. CP 1648. A follow up letter had been sent by the Assessor's Office on March 10, 2010 to those taxpayers that did not initially respond. CP 1632. On March 31, 2010, the Assessor notified Hoppe that additional audit material was available for review and copying. CP 1651.

³ Hoppe has candidly advised this Court that *Hoppe II* was filed against the risk that the Assessor's position regarding the untimeliness of *Hoppe I* would be sustained on appeal. Motion to Consolidate at p.3

Judge Susan Craighead, who had been assigned to *Hoppe I*,⁴ and noted a motion for summary judgment. CP 1471-72 and 1481-99. The County responded to Hoppe's summary judgment motion and cross-moved for summary judgment both on the merits and on res judicata and collateral estoppel grounds. CP1520-43 and 1658-60.

On July 20, 2010, Judge Craighead entered orders denying Hoppe's motion for summary judgment, CP 1677-82, and granting summary judgment in favor of the County. CP 1683-88.

3. *Hoppe II* appeal.

Hoppe filed a notice of appeal in *Hoppe II* on July 23, 2010. CP 1689-1704. On July 27, 2010, Hoppe moved this Court to consolidate the *Hoppe I* and *Hoppe II* appeals, noting that

the trial court rulings in both cases are from the same judge and substantively identical, the defendant is the same in each case (the King County Assessor), the lawyers are the same and the appellants are related (Amy Hoppe is an employee of her father's business).

Motion to Consolidate at p. 1. This Court granted Hoppe's consolidation request on August 17, 2010.

⁴ In granting Hoppe's motion to reassign *Hoppe II* to Judge Craighead, the Superior Court acknowledged that *Hoppe I* and *Hoppe II* were "nearly identical." CP 1477-78.

At the time of consolidation, briefing in *Hoppe I* had already been completed. Parties were advised by the Court that any further briefing involving the consolidated *Hoppe II* matter would require approval of the Court by motion. Hoppe did not move to file additional briefing in *Hoppe II*.⁵ King County moved for and was granted authorization to brief *Hoppe II*. September 3, 2010 Order (allowing County to file an amended brief and Hoppe to file amended reply).

V. ARGUMENT

A. Standard of Review

Court of Appeals summary judgment review is *de novo*. The Court considers the same evidence presented to the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

While an agency's exemption determination under the PRA is generally not entitled to deference on review, the withholding of state tax ratio audit material at issue in this case is grounded in part on an interpretation of tax statutes that preclude disclosure

⁵ Because no opening brief has been filed by appellant in *Hoppe II*, the County assumes that appellant is relying in both cases upon briefing and assignments of error identified in its *Hoppe I* opening brief.

independent of the PRA. The Washington State DOR is specially charged with interpreting and administering such tax statutes.

The department of revenue shall, with the advice of the attorney general, decide all questions that may arise in reference to the true construction or interpretation of this title, or any part thereof, with reference to the powers and duties of taxing district officers, and such decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.

RCW 84.08.080. See also RCW 84.08.120.

The DOR has advised the County that disclosure of requested tax ratio audit material is prohibited under Washington property tax law. CP 65-79. 96,195, 1626-27. Such Department interpretations regarding the protected status of requested tax ratio audits under applicable tax statutes and regarding associated ratio study publication requirements are entitled to substantial weight in this review. See *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 363, 841 P.2d 752 (1992) ("While 'the ultimate authority' for determining a statute's meaning remains with the court, considerable deference will be given to the interpretation made by the agency charged with enforcing a statute."). *Martinelli & Co., Inc. v. Washington State Dept. of Revenue*, 80 Wn.App. 930, 937, 912 P.2d 521, 524 (1996).

The PRA directs that "[t]his chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected." RCW 42.56.030. This rule of liberal construction does not, however, override statutory protections that prohibit disclosure of a document independent of the PRA. *Building Industry Association v. Department of Labor & Industries*, 123 Wn.App.656, 666, 98 P.3d 537 (2004) (traditional rules of construction applied to independent statutory language barring disclosure of ergonomic related reports). Where the legislature has exempted disclosure of a document independent of the PRA, a court has no authority to thwart that legislative mandate. *Id.*

B. Tax Ratio Audit Exempt from Public Disclosure.

The Public Records Act requires state and local agencies to disclose all public records upon request unless, as in this case, the record falls within a specific PDA exemption or other statutory exemption. *Bellevue John Does 1-11 v. Bellevue School District*, 164 Wn.2d 199, 189 P.3d 139, 144 (2008).

Information sought by Hoppe is exempt from disclosure. RCW 42.56.230 specifies that:

The following personal information is exempt from public disclosure and copying under this chapter: ... (3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would **(a)** be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or **(b)** violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

RCW 42.56.230. The requested tax ratio audit study falls squarely within specifically referenced taxpayer confidentiality protections of RCW 84.08.210, RCW 82.32.330 and RCW 84.40.340.⁶ Such material is likewise exempt because its disclosure would either place taxpayers at a competitive disadvantage or violate the taxpayer's right to privacy.

1. Release of documents is prohibited by taxpayer confidentiality statutes.

a. Disclosure is prohibited by RCW 84.08.210.

Disclosure of tax ratio audit study information is prohibited by RCW 84.08.210 ("Confidentiality and privilege of tax information--Exceptions--Penalty"). That section provides in pertinent part:

Tax information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose tax

⁶ In addition to the specially referenced taxpayer protections in RCW 84.08.210, RCW 42.56.070(1) more generally exempts documents from disclosure where, as in this case, there is an "other statute which exempts or prohibits disclosure of specific information or records," namely RCW 84.08.210, RCW 82.32.330 and RCW 84.40.340.

information A violation of this section constitutes a gross misdemeanor.

RCW 84.08.210(2) and (4). The section goes on to broadly specify that

For purposes of this section, "tax information" means confidential income data and proprietary business information obtained by the department in the course of carrying out the duties now or hereafter imposed upon it in this title that has been communicated in confidence in connection with the assessment of property and that has not been publicly disseminated by the taxpayer, the disclosure of which would be either highly offensive to a reasonable person and not a legitimate concern to the public or would result in an unfair competitive disadvantage to the taxpayer.

RCW 84.08.210(1) (emphasis added). Here, the tax ratio audit study plainly constitutes tax information. There is no dispute over the fact that it consists of non-disseminated, proprietary business information, communicated in confidence to the Department of Revenue, in connection with the assessment of property. CP 65-67, 73-76; 91-92, 95-96, 1171-72, 1212. Disclosure of such material would likewise either (1) place the taxpayer at risk of an unfair competitive disadvantage, *infra* at pp. 24 through 26 (discussing serious competitive disadvantages associated with disclosure); or (2) be highly offensive to a reasonable person and not of legitimate concern to the public, *infra* at pages 26 through 38 (discussing

offensiveness of disclosure and absence of "legitimate concern"). Disclosure of the private company tax audit material is therefore prohibited under RCW 84.08.210.

b. Disclosure is prohibited by RCW 84.40.340.

Disclosure of tax ratio audit study material is similarly prohibited by RCW 84.40.340. The section provides in pertinent part:

(1) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his or her trained and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

(2) Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: PROVIDED, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a civil or criminal judicial proceeding or an administrative proceeding in respect to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to

the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed by the assessor or the department of revenue without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision is a gross misdemeanor.

RCW 84.40.340 (emphasis added).

The requested tax ratio audit study material was developed on the basis of taxpayer supplied information for the purpose of determining the amount and valuation of audited properties in order to establish the state school tax assessment. CP 346, 1614-15. Disclosure of such tax information without consent of the taxpayer is expressly prohibited as a gross misdemeanor. RCW 84.40.340. Because audited taxpayers have clearly indicated that they do not consent to disclosure of their tax audited materials, *supra* at pp. 4 - 5 and 9 - 11, the County is legally prohibited from providing their tax information to Hoppe.

Any argument to the contrary by Hoppe should not be considered. The County's summary judgment briefing in both *Hoppe I* and *Hoppe II* consistently identified RCW 84.40.340 and argued that it is among the statutes prohibiting disclosure (*Hoppe I* CP 204-6, 332, 1201) (*Hoppe II* CP 1528-29, 1660, 1675). Hoppe

has, however, never addressed its applicability either in any of its briefing below (*Hoppe I* CP 306-07, 325, 1181-82) (*Hoppe II* CP 1488-89, 1665-66, 1671) or in its Opening Brief to this Court. Appellate court rules generally prohibit parties from raising arguments on appeal that were not raised below. RAP 2.5(a). *Rodriguez v. Loudeye Corp.*, 144 Wn.App. 709, 727, 189 P.3d 168, 177 (2008). *See also King v. Rice*, 146 Wn.App. 662, 673, 191 P.3d 946 (2008) (appellate argument and authority raised for first time in reply brief comes too late). Any argument raised by Hoppe at this late juncture that RCW 84.40.340 does not apply should be disregarded.

c. Disclosure is prohibited by RCW 82.32.330.

Disclosure of tax information sought by *Hoppe* is likewise barred by RCW 82.32.330(2).

Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

RCW 82.32.330(2). Tax information is broadly defined by this section to mean:

(i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or

tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

RCW 82.32.330(1)(c).⁷ Here, the tax ratio audit studies consist of precisely the sort of confidential tax information that RCW 82.32.330 requires be kept confidential, privileged and free from disclosure. The ratio audit material sets forth the nature, source, and amount of the audited taxpayer's private assets. CP 65-67, 73-

⁷ The RCW 82.32.410 exception referred to in this section has no application here. The section pertains to the DOR's issuance of precedential written determinations, and requires that such written determinations delete names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination.

76; 91-92, 95-96, 1171-72, 1212. Disclosure of the document is therefore prohibited. RCW 82.32.330(6).

Hoppe's conclusory assertion that protections generally afforded to taxpayers under this Title 82 (Excise Taxes) apply only to excise tax information is without merit. See RCW 82.98.020 ("Title headings ... as used in this title do not constitute any part of the law."). In fact, while RCW Title 82 includes many of the state's excise tax laws, it plainly extends well beyond the excise tax context. See *e.g.* Chapter 82.01 RCW (Department of revenue); Chapter 82.02 RCW (General provisions); Chapter 82.03 RCW (Board of tax appeals); Chapter 82.33 RCW (Economic and revenue forecasts); Chapter 82.33A RCW (Economic climate council). With respect to the specific taxpayer privacy provision at issue, protected "tax information" is broadly defined to include, without limitation, "the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets." RCW 82.32.330(1)(c). The provision is not restricted to excise tax information.

d. Criminal liability for improper disclosure.

Clear indication of the legislature's resolve to rigorously safeguard confidentiality of such taxpayer information is evident not

only in the number of statutory provisions that bar its disclosure, but also by the severe penalties that attach for violating applicable taxpayer privacy provisions.

Unlike many exemptions which merely authorize the withholding of documents, each of the foregoing tax confidentiality provisions mandates such withholding and imposes criminal sanctions for disclosure. See RCW 84.08.210(2) and (4); RCW 84.40.340(2); RCW 82.32.330(6). Absent consent by the taxpayer, the County thus has no lawful authority to release such documents.

If a statute classifies information as 'confidential' or otherwise prohibits disclosure, an agency has no discretion to release a record or the confidential portion of it. Op. Att'y Gen. 7 (1986). Some statutes provide civil and criminal penalties for the release of particular 'confidential' records. See RCW 82.32.330(5) (release of certain state tax information a misdemeanor).

WAC 44-14-06002(1).

2. Disclosure would result in unfair competitive disadvantage and violate taxpayer privacy.

In addition to the statutory tax confidentiality exemptions discussed above, disclosure of the audit material sought by Hoppe is prohibited on grounds that release of such information would either result in unfair competitive disadvantage to the taxpayer or violate the taxpayer's right to privacy. RCW 42.56.230(3)(b).

a. Disclosure would place audited companies at an unfair competitive disadvantage.

Disclosure of requested tax ratio audit study material is prohibited by RCW 42.56.230(3) on grounds that publicizing company tax audit material would place audited companies at an unfair competitive disadvantage. See *also* RCW 84.08.210 (*supra* at p. 17). It takes little imagination to foresee how competitors could use confidential tax asset listings to their advantage. For example, if confidentiality was not maintained, a competitor could see specific equipment listings that reveal aspects of the audited taxpayer's manufacturing process; could see how much the taxpayer paid for its equipment for use in its own purchase negotiations; could see aspects of the taxpayer's business model evident in purchase decisions of the company; could see how much useful life remains on the taxpayer's itemized equipment; and could see potential capability limitations or advantages of the taxpayer competitor that are evident from the nature of equipment that is or is not owned by the company. CP 91-92, 1171-72. Audited companies would not have parallel access to such inside information from competitors.

Apart from giving competitors potentially significant tactical insight into the taxpayer's business operations, public dissemination

of such information may well violate the audited taxpayer's nondisclosure agreements, trademark-related requirements and other restrictions. CP 91-92; CP 1657.

Hoppe incorrectly argues that redaction of company names and account numbers would obviate any competitive disadvantage that would otherwise result from disclosure. Such redaction is, however, neither practically effective in preserving taxpayer identities nor legally required under taxpayer-specific public disclosure provisions.

As the DOR and taxpayers point out, unique aspects of audited asset listings would enable competitors to determine taxpayer identity even without taxpayer names or account numbers. CP 66-67, 73, 92, 1580, 1656-57.

The need for special taxpayer confidentiality protection and the reality that redactions would not adequately protect taxpayer interests is acknowledged by the legislature. PRA provisions plainly specify that ordinarily applicable redaction requirements do not apply to confidential tax documents.

Certain personal and other records exempt. (1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital

governmental interests, can be deleted from the specific records sought.

RCW 42.56.210 (emphasis added). For reasons discussed above, the tax ratio audit material at issue in this case consists of information described in RCW 42.56.230(3)(a),⁸ and is therefore not subject to redaction under RCW 42.56.210(1).

b. Disclosure would violate taxpayer privacy.

Tax audit information is understood to be private and confidential, and audited companies such as Paccar and Boeing go to considerable lengths to maintain its confidentiality. CP 65-67, 73-76; 91-92, 95-96, 1171-72, 1212, 1655, 1657. Company asset information set forth in the audit study was provided to the DOR with the "critical understanding that it would remain confidential in accordance with state public disclosure exemptions and confidential taxpayer protections." CP 92, 210, 1626, 1654, 1656.

Hoppe erroneously contends that taxpayer privacy exemptions in RCW 42.56.230(3)(b) do not apply because there is

⁸ RCW 42.56.230(3)(a), which is cross-referenced in RCW 42.56.210, exempts: "(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340."

allegedly legitimate public concern in the individual company tax audit information insofar as it has a role in calculating state school taxes.⁹ In this public disclosure context, however, the term "legitimate" means "reasonable." *Bellevue School Dist*, 164 Wn.2d at 217. The fact that the public may have some degree of interest in a document is not sufficient to establish "legitimate" public concern. *Dawson v. Daly*, 120 Wn.2d 782, 799, 845 P.2d 995, 1005 (1993) (while public has some degree of interest in disclosure of prosecutor evaluations, in light of the potential harm disclosure could cause, legitimate public concern to justify disclosure is lacking). The interest must be reasonable in light of related interests in individual privacy and government administration efficiency. In this instance, they are not.

⁹ Hoppe makes an additional argument, not raised in either case below, that privacy protections do not apply to corporate taxpayers. The Court should disregard this new argument. RAP 2.5(a). The assertion is in any event without merit. Nothing in the PRA indicates any intent to exclude such a significant portion of the taxpaying population from privacy protections. To the contrary, in the context of parallel tax statute disclosure prohibitions, it is clear that the legislature intended that taxpayer privacy protections extend to business entities. See RCW 84.08.210 ("tax information" subject to privacy protections includes "proprietary business information"). Hoppe's reliance on *Bellevue School District* is misplaced. The case addresses whether an individual's personnel file constitutes personal information protected under privacy notions. It does not hold that privacy protections are inapplicable to corporate taxpayers.

i. Impact to taxpayer privacy and government operations cannot be overstated.

Public Records Act directives are to be construed in a manner that is "mindful of the right of individuals to privacy and of the desirability of the efficient administration of government." *Bellevue School Dist*, 164 Wn.2d at 224-225; See also RCW 42.17.010(11) (disclosure goals of act considered in conjunction with rights of privacy and desirability of efficient government). Here, significant individual taxpayer privacy rights and compelling tax administration interests in fostering full, cooperative disclosure from taxpayers far outweigh whatever interest Hoppe may have in obtaining the confidential audit information of private taxpayers.

There can be little doubt that the sort of information gathered from audited companies by the DOR implicates fundamental taxpayer privacy interests. See e.g. *DOR v. March*, 25 Wn.App. 314, 321, 610 P.2d 916, 920 (1979) (tax investigations by DOR "unquestionably involve some invasion of privacy"). Such privacy interests are well recognized in tax law contexts.

The government also has an interest, asserted on behalf of its taxpayers, to ensure each individual taxpayer's right to privacy. A tax return and related information contains many intimate details about the taxpayer's personal and financial life. An individual's tax return will contain, in addition to the nature and

source of income, information about the taxpayer's family, political affiliation, health data, and union membership. Likewise, a corporate tax return will contain detailed financial information which could potentially be abused by competitors. See, e.g., *Association of American Railroads*, 371 F.Supp. 114, 116 (D.D.C.1974) ("The policy of confidentiality for income tax data encourages the full disclosure of income by taxpayers in that the individual or corporate taxpayer is assured that his neighbor or competitor will not be apprised of the intimate details of his financial life."); see generally Benedict & Lupert, *Federal Income Tax Returns-The Tension Between Government Access and Confidentiality*, 64 Cornell L.Rev. 940, 943-47 (1979) (discussing the importance of maintaining the confidentiality of tax returns). Clearly, individual taxpayers desire to keep this information confidential.

U.S. v. Richey, 924 F.2d 857, 861 (9th Cir. 1991).

While these privacy interests are significant, our laws recognize the need for taxing authorities to gather such information in order to properly administer our taxing system. This governmental interest in maintaining a workable tax system is, of course, "compelling." See *Bradley v. United States*, 817 F.2d 1400, 1405 (9th Cir.1987). An appropriate legislative balance is therefore struck by allowing such private information to be gathered while mandating under stringent penalty that it be kept confidential.

Most of us have agreed ... that the social benefits to be gained in these instances require the information to be given and that the ends to be achieved are worth the price of diminished privacy. ...But this tacit

agreement is founded upon an assumption that information given for one purpose will not be used for another. We are prepared to tell the tax collector and the census taker what they need to know, but we are not prepared to have them make a public disclosure of what they have learned. The intrusion is tolerable only if public disclosure of the fruits of the intrusion is forbidden. This explains why many of the statutes which require us to tell something about ourselves to a government agency contain an express provision against disclosure of such information. It also explains why there are general provisions prohibiting disclosure of information of a personal nature gained in an official capacity.

Bloustein, *Privacy as an Aspect of Human Dignity, An Answer to Dean Prosser*, 39 N.Y.U. L. Rev. 962, 999 (1964). Quoted in *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 237, 654 P.2d 673, 680 (1982). This balance is reflected in the strict statutory protections against disclosure of confidential tax information that apply in this case.

Our personal property tax system could not properly function if confidentiality expectations were not adhered to. CP 66-67, 344-45, 1579-80, 1617-18. In Washington, the administration of property taxes is based on a self-reporting system in which individual taxpayers are expected to self-identify personal property that is subject to tax and to provide associated information bearing on its taxable value. CP 344-45, 1617-18. The effectiveness of this

system would be seriously undermined if taxpayer privacy was not preserved. *Id.* See also CP 66-67.

The American tax structure is unique in that it is based on a system of self-reporting. *United States v. Bisceglia*, 420 U.S. 141, 145, 95 S.Ct. 915, 918, 43 L.Ed.2d 88 (1975). "There is legal compulsion, to be sure, but basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability." *Id.* In enacting the statutory provisions guaranteeing confidentiality, including section 7213, Congress observed that "the question [has been raised] whether the public's reaction to this possible abuse of privacy would seriously impair the effectiveness of our country's very successful voluntary assessment system which is the mainstay of the Federal tax system." Sen.Rep. No. 94-938, Part I, reprinted in 1976 U.S.Code Cong. & Admin.News 3439, 3747.

U.S. v. Richey, 924 F.2d 857, 861 (9th Cir. 1991) (discussing maintenance of privacy in analogous self-reporting income tax context). See also CP 344-45, 1618.

Indeed, in certain circumstances, the interest of an audited company in maintaining the confidentiality of its private tax information may well implicate constitutionally protected rights and interests. See *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003-1004, 104 S.Ct. 2862, 2873 (1984) (data cognizable as a trade-secret property right under state law constitutes constitutionally protected property right).

"Requiring disclosure where the public interest in efficient government could be harmed significantly more than the public would be served by disclosure is not reasonable." *Bellevue School Dist*, 164 Wn.2d at 224-225. Viewed within this applicable framework, the private tax information of individual audited companies is plainly not of legitimate public concern.

ii. Hoppe's interest is far outweighed.

Hoppe's interest in disclosure is far outweighed by these essential governmental and taxpayer privacy interests.

aa. School tax verification does not justify.

Hoppe essentially argues that disclosure of private company tax audits should be required so that taxpayers can make sure that the state school levy is properly set. Disclosure of requested tax ratio audit information would not, however, enable any taxpayer to realistically determine whether the state school tax levy is appropriate.

Some background regarding the state's ratio audit is warranted in order to place Hoppe's state school levy argument in proper context. Article 7, section 1 of the Washington Constitution requires that property taxes be uniform within the applicable taxing district. Wash. Const. art. VII, § 1. The relevant taxing district for

purposes of the state's school tax levy is the entire state of Washington. In establishing the applicable state school tax rate, the DOR uniformly determines the total, statewide real and personal property values by looking initially to the assessed values already developed within each of the counties. In order to account for dissimilarities in the timing of and manner by which each of the 39 counties assessed its real and personal properties, the DOR adjusts and equalizes these county assessed values through its annual ratio study.¹⁰ The County's adjustment ratio for both real and personal property is determined by dividing each county's assessed values by the DOR-indicated market values. WAC 458-53-135(2) and WAC 458-53-160(4). The total taxable value in the respective property classifications (real and personal) is then considered and equalized to arrive at the ultimate state levy amount. RCW 84.52.065. CP 96, 1614-15.

¹⁰ The procedure utilized by the DOR to develop its tax ratio audit study is described in WAC Chapter 458-53. To determine market values of real property, with certain specified exclusions, the DOR compares assessed values with values set forth in actual real estate excise tax affidavits from the many thousands of actual sales. WAC 458-53-070. To determine market values for personal property, the DOR looks to market data from the three years prior to the current assessment year. WAC 458-53-140. The DOR compares average values within specified value ranges (strata) against representative personal property audits conducted by the DOR within such strata. WAC 458-53-140.

In proceedings before the Superior Court in *Hoppe I*, Hoppe advised the County that it was only interested in the ratio audit of Paccar Company.¹¹ CP 87-88. As an initial, practical matter, the Paccar ratio audit has virtually no statistical bearing on the statewide school levy amount. CP 95-96. The state school levy amount is established based on the adjusted, assessed value of all taxable real and personal property within the state -- including values of all other taxpayers in the State of Washington. CP 95-96, 1614-15.

Even review of the entire DOR's tax ratio audit study for King County would not enable Hoppe to determine whether a taxpayer's school tax amount was correctly set. As with other property taxes in Washington, an individual's state school tax is determined by its relative percentage of the total property value within the relevant taxing district. In order to determine whether an individual's relative percentage of total property value was properly determined, one would need to consider the baseline county assessments of all real and personal properties across the state and the adjustments to these assessed values that result from each of the 39 counties'

¹¹ The focus of requested *Hoppe I* audit material subsequently shifted to the entire ratio audit study.

ratio audit studies. CP 96, 1615. Without this body of detailed information, Hoppe could not meaningfully determine whether its state school tax was proper.

In any event, the fact that a company's tax audit could have some mathematical impact on amounts owed by other taxpayers is plainly not sufficient to override taxpayer confidentiality requirements. If impact alone was enough, there could be no taxpayer confidentiality because the assessed value of every taxpayer has some mathematical impact on every other district taxpayer's ultimate tax burden. This is so because, as noted above, Washington State utilizes a budget based property tax system in which the total amount of tax revenue is established, not by the absolute value of the property taxed, but by the amounts all taxing authorities have appropriately budgeted. Under this budget based system, the portion of the budgeted amount owed by an individual taxpayer is based on his or her relative percentage of the overall property value owned. This relative tax burden makes everyone's taxes marginally dependant on the values that are determined for

every other taxpayer within the taxing district.¹² As such, if Hoppe was correct in asserting that mere impact requires disclosure, details concerning a company's income, expenses, assets and business practices would also be subject to disclosure because such details are utilized to calculate values that impact the tax burdens of other property tax payers. Such an absurd result was clearly not intended. The fact that one taxpayer's assessed value may influence another's tax burden does not legally establish a sufficient interest to override the compelling interests in preserving confidentiality of tax information sought by Hoppe.

bb. Verification of equitable treatment does not justify.

Disclosure of the tax ratio audit would similarly not further Hoppe's initial justification for seeking review of private tax audits: to determine whether other companies received more favorable

¹² By way of simplistic illustration, if everyone's assessed property value increased (or decreased) by the same percentage, the taxes owed by property owners would be the same, irrespective of their value increase. If, however, taxpayer A's property value increased by a greater percentage (or decreased by a lesser percentage) than taxpayer B through Z values, taxpayers B through Z's relative percentage of the overall taxable property value and associated tax burden would go down, however insignificantly. And, to complete the illustration, if taxpayer A's values decreased by a greater percentage (or increased by a lesser percentage) than other taxpayers, taxpayer A would pay less, and taxpayers B through Z would pay more of the overall tax burden.

treatment by the Assessor. More particularly, Hoppe initially argued that the tax ratio audit is needed to determine why certain Paccar company equipment was depreciated under a schedule that ordinarily applied to "Agr. M&E Tractors." Hoppe's Opening Brief at 4 - 6. The Superior Court's *in camera* review of the Paccar tax audit confirmed the County's assertion, however, that the audit does not purport to explain this categorization. CP1395 -1452, 1365. The state's tax audit does not contain any analysis, narrative, description, guidance, criteria or standards for determining whether the assembly classification provided for certain Paccar assets is appropriate. CP 346.¹³

c. County disclosure not required by RCW 84.48.080.

Hoppe incorrectly argues that disclosure of private tax audit information is mandated by RCW 84.48.080, which requires the DOR to keep and publish a "full record of its proceedings" to equalize the assessment of railroads and other companies that are directly assessed by the state and the assessment of those properties that are assessed by counties. **First**, most fundamentally, the publication provision in this section applies to

¹³ The reason for using the particular depreciation category has been explained in detail by the Assessments Section Supervisor. CP 345-47.

the State Department of Revenue and does not purport to impose any publication or disclosure requirement on the County.¹⁴ **Second**, the record of DOR equalization proceedings that is to be published under RCW 84.48.080 is not intended to override confidential tax information protections that ordinarily apply to those taxpayers subjected to state tax ratio audit review. Direction for conducting county ratio studies and associated audits is provided in RCW 84.48.075. There is no indication in RCW 84.48.075 or in general publication language of RCW 84.48.080 that its general recordkeeping provisions are intended to override specific statutory tax confidentiality mandates.¹⁵ Similarly, neither the public disclosure act exemptions nor tax confidentiality statutes indicate

¹⁴ While Hoppe also sought from and was also denied a copy of the Ratio Audit by the DOR, CP 66, 73, Hoppe does not seek to compel disclosure of the audit from the DOR under RCW 84.48.080 or otherwise.

¹⁵ The Superior Court correctly held that RCW 84.48.080 does not mandate the disclosure of otherwise protected tax ratio audit information. Since this section was enacted, "the notion of privacy for individuals has developed significantly in this country and, not surprisingly, our Legislature has enacted other provisions assuring the confidentiality of tax information." CP 1221-24, 1686-88. While the DOR's approach of publishing all non-confidential material readily harmonizes the PRA's privacy protections with ratio study publication requirements, if there was a conflict between the provisions, as plaintiff appears to suggest, the PRA protections would control. See RCW 42.56.030 ("In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.").

that their criminally-enforced privacy directives are so limited. The fact that a company is selected for ratio audit review does not reasonably convert its private tax information into a matter of legitimate public interest under RCW 84.08.210(1) or RCW 42.56.230(3)(b). **Third**, without improperly disclosing the confidential tax information of individual taxpayers, the DOR does publish a full record of its equalization process. CP 344 -1166. Such information has been made available to Hoppe. Nothing further is required by RCW 84.48.080.

C. Court Erred by Reentering Judgment in Hoppe I - King County Cross-Appeal.

The Superior Court erred by reentering judgment on Hoppe's previously adjudicated claim in *Hoppe I*. County Cross-Appeal. The Court's July 20, 2009 Summary Judgment clearly constituted a final dispositive judgment. See *In re Estate of Black*, 153 Wn.2d 152, 170, 102 P.3d 796, 806 (2004) ("grant of summary judgment is a final judgment"). Indeed, in *Ron & E Enterprises, Inc. v. Carrara, LLC*, the Court considered a summary judgment order containing language that is virtually identical to that at issue here. The Court ruled that such an order constituted a final judgment for purposes of notice of appeal requirements. 137 Wn.App. 822, 826, 155 P.3d

161 (2007). As in this case, the summary judgment in *Carrara* "ORDERED, ADJUDGED, AND DECREED" that defendant's motion for summary judgment was granted, and that plaintiff's claims against defendant are dismissed with prejudice. *Id.* Cf. CP 1216-18 (Summary Judgment entered in *Hoppe I*). The Court of Appeals affirmed that "[t]his was a final, dispositive judgment." 137 Wn.App. at 826.

There was simply no basis in the Civil Rules for reentering judgment that has already been entered. This was not an instance where plaintiff has sought to reopen, alter or amend judgment pursuant to CR 59. Nor was this a case where additional judgment findings were necessary under CR 54(b) to allow for immediate review while additional claims are still pending. The sole purpose of Hoppe's request for reentry of judgment was to resurrect an expired appeal period in order to remedy defects in the prior Notice of Appeal. The Superior Court's decision to reenter judgment should be reversed.

D. *Hoppe I* Appeal is Untimely.

To the extent that the Superior Court erred in its reentry of judgment, *supra* at pp. 39 - 40, Hoppe's second notice of appeal in *Hoppe I* is untimely. A notice of appeal must be filed within thirty

days after the entry of trial court decision to be reviewed. RAP 5.2(a). Where, as here, the case involves a remaining claim (or counterclaim) not otherwise disposed of by the decision to be reviewed, the time for seeking non-discretionary appellate review is deferred until the remaining claim is adjudicated. RAP 2.2(d).

While Hoppe's initial appeal notice was filed within RAP 2.2 time limits, the subsequent notice was not. On July 29, 2009, the Summary Judgment at issue in this case was entered dismissing Hoppe's public disclosure claims with prejudice. CP 1216. On November 23, 2009, a stipulated order was entered finally dismissing the only remaining claim in the case. CP 1324-25. At that point, the case was subject to appeal as no further claims or causes of action remained to be adjudicated. Indeed, Hoppe fully understood that appellate review was then available as demonstrated by its filing of a December 2, 2009 Notice of Appeal. CP 1 - 8.

Rather than rectifying errors in the initial timely notice, Hoppe simply withdrew its appeal, returned to Superior Court for reentry of judgment in favor of the County, and refiled the second, untimely notice of appeal at issue in this case. For reasons set forth at pages 39 through 40 above, reentry of judgment had no

basis in the civil rules and did not properly give rise to a new appeal period.

Because Hoppe's Notice of Appeal was filed more than thirty days following the final adjudication of all claims before the Superior Court, the appeal is untimely and should be dismissed.

E. Res Judicata and Collateral Estoppel Bar *Hoppe II*.

Res judicata and collateral estoppel bar Hoppe's challenge in *Hoppe II*. Hoppe does not dispute the fact that the claim and issues in this case are the mirror image of those that were already considered and rejected in *Hoppe I*. Nor does Hoppe dispute the fact that her interests in this case and those of her employer in the prior adjudicated matter are entirely aligned. There is thus a requisite concurrence of parties to bar relitigation of the claims and issues in this case. Parties are the same for finality doctrine purposes where, as here, they are in privity. *In re Coday*, 156 Wn.2d 485, 500-01 (2006). Here, such privity is readily apparent. Hoppe is the daughter of Harley Hoppe and an employee of Harley H. Hoppe & Associates. Motion to Consolidate at pp. 1 and 2. Both parties are represented by the same legal counsel and present essentially the same legal briefing. Counsel for plaintiffs has certainly made no secret of the fact that the present litigation is

part of an overall litigation strategy to avoid notice of appeal defects raised by the County in the company's prior lawsuit. Hoppe's correspondence with the County indicated that the request was being pursued on behalf of more than herself. See e.g. Hagen Dec. at Ex. 9 ("we would like asset details ... our request is intended to include ...") (emphasis added). See also Hoppe Motion to Consolidate at pp. 1-2 (seeking consolidation based on common issues and parties). Indeed, requested documents made available to Hoppe in *Hoppe II* were retrieved, not by plaintiff, but by Harley Hoppe. CP 1617.

In Superior Court proceedings, Hoppe incorrectly argued that the privity principle set forth in *Coday* applies only to voter actions. CP 1666. While *Coday* involved successive voter actions, the well-established notion that parties in privity are subject to claim and issue preclusion is plainly not limited to that context. See e.g. *Feature Realty, Inc. v. Kirkpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wn.2d 214, 224-26, 164 P.3d 500 (2007) (party has privity with nonparty if the party adequately represented the nonparty's interests in the prior proceeding); *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 764, 887 P.2d 898 (1995) (privity established when a nonparty is in actual control of the litigation or

substantially participates in it). See also Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash.L.Rev. 806, 819-20 (1984) (identifying various categories of cases where privity has been deemed sufficient). Here, appellants are clearly acting in the same legal capacity and have the same legal interest. Res judicata and collateral estoppel accordingly bar relitigation of the previously adjudicated claims and issues.

VI. CONCLUSION

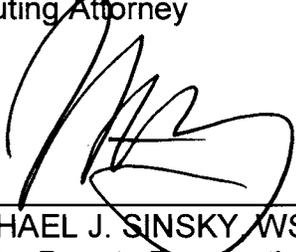
Absent consent of the taxpayer, disclosure of the tax audit material requested by Hoppe is prohibited and exempt from disclosure under the PRA. King County respectfully requests that this Court affirm the Superior Court's decisions to deny Hoppe's motions for summary judgment and to grant summary judgment in favor of King County.

King County alternatively requests that the Court: (1) reverse the Superior Court's decision to reenter judgment in favor of the County in *Hoppe I* and dismiss the *Hoppe I* appeal as untimely; and (2) affirm summary judgment entered in favor of King County in *Hoppe II* based on res judicata and collateral estoppel.

DATED this 29th day of September, 2010.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
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By: 
MICHAEL J. SINSKY WSBA #19073
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Attorneys for King County

NO. 64819-5-I
(Consolidated with 65810-7-I)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

HARLEY H. HOPPE &)
ASSOCIATES, INC., a)
Washington corporation,)
)
Appellant,)
)
vs.)
)
KING COUNTY, a political)
subdivision of the State of)
Washington; and SCOTT)
NOBLE, King County Assessor,)
)
Respondents.)
_____)

CERTIFICATE OF
SERVICE

2010 SEP 29 AM 11:56

FILED
COURT OF APPEALS
STATE OF WASHINGTON
[Signature]

I, Lebryna Tamaela, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a paralegal employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.

2. On September 29, 2010, I did cause to be delivered via
Legal Messenger a true copy of the AMENDED BRIEF
OF KING COUNTY and this CERTIFICATE OF
SERVICE to:

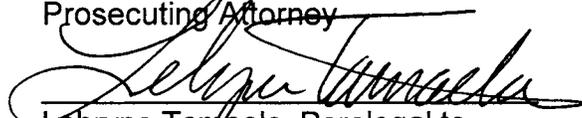
Jeffrey I. Tilden
Pamela J. DeVet
Gordon Tilden Thomas & Cordell LLP
1001 4th Avenue, Suite 4000
Seattle, WA 98154-1007

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

Dated this 29th day of September, 2010 at Seattle,

Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney


Lebryna Tamaela, Paralegal to
MICHAEL J. SINSKY, WSBA #19073
Senior Deputy Prosecuting Attorney
Attorneys for King County Respondents