

67523-1

67523-1

NO. 67523-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM LAU,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE MONICA BENTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The cities of Federal Way and Burien require bars that sell pull-tab games to pay a tax on gross receipts from the games. Lau was the manager of three bars operating in Federal Way and Burien. The bars were owned by limited liability companies, the sole member of which was Lau's family trust. Lau intentionally underreported the bars' gross gambling receipts to the cities of Federal Way and Burien. Can Lau, an individual, be held criminally liable for his false reporting of the bars' gross gambling receipts, where the result was to conceal their true tax liability from the cities?

2. Intentionally depriving another of an ownership interest in property is sufficient to support a conviction for theft. If the person from whom property is taken has a right of possession that is superior to that of the defendant, that person is deemed the "owner" as against the defendant. Does the tax revenue that Lau intentionally falsified and concealed from the cities constitute the "property of another" for purposes of Washington's theft statute?

3. Washington's constitution prohibits imprisonment for debt. The constitution does not prohibit the punishment of persons who commit theft. Does the constitution permit Lau to be convicted of theft when he intentionally falsified gross gambling receipts on tax

returns, thereby fraudulently obtaining control over property belonging to Federal Way and Burien?

4. Lau's trial counsel argued that "gross receipts" did not include the monetary value of pull-tab tickets that were not sold but were instead lost, stolen, or mistakenly counted, and that his "adjustments" to gross receipts to account for such factors demonstrated his lack of intent to deprive. Trial counsel did not cite to a civil case interpreting the term "gross receipts" in a manner that supported his argument, but contradicted what the Gambling Commission required. Lau did not testify, and there was no evidence that his underreporting of gross receipts was to "adjust" for lost, stolen, or mistakenly counted pull-tabs. Has Lau failed to show that his counsel was ineffective for failing to cite to the civil case, failing to request a jury instruction on the definition of gross receipts, and failing to object to the State's characterization of the term?

5. Jury instructions are sufficient if they are supported by substantial evidence, permit each party to argue its theory of the case, and properly inform the jury of the applicable law. Here, there was no evidence that Lau was altering gross receipts in accordance with the definition that he argued should apply. The issue in the case was Lau's intent, and the jury instructions allowed him to argue that the

State failed to prove that he intended to deprive. Did the trial court err by not defining "gross receipts" for the jury?

6. Theft by deception requires that the defendant use deception to obtain the property from the victim. Lau obtained property from the cities when he falsified gross gambling receipts on the bars' tax returns, thus obtaining control by deceptive means over the cities' right to payment. Was there sufficient evidence of theft by deception?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

In 2010, William Lau was charged by second amended information in King County Superior Court with one count of first degree theft and one count of second degree theft. CP 80-81. The charging document alleged that as to count one, between July 1, 2005 and January 31, 2010, Lau:

with intent to deprive another of property, to wit: U.S. Currency, having a value in excess of \$5,000, did obtain control over such property belonging to the City of Federal Way, by color and aid of deception, and did exert unauthorized control over such property.

CP 80. As to count two, the State alleged that between January 1, 2006 and January 31, 2010, Lau:

with intent to deprive another of property, to wit: U.S. Currency, did obtain control over such property belonging to the City of Burien, by color and aid of deception, and did exert unauthorized control over such property; that the value of such property did exceed \$750.

CP 81. Following a jury trial, Lau was found guilty as charged. CP 82-83. Lau was sentenced in July 2011 to a standard range sentence of two months of confinement for first degree theft and sixty days of confinement for second degree theft. CP 134; 6RP 17.¹ The court converted thirty days of the confinement to community service hours. Id. Lau appealed. CP 142-43.

2. SUBSTANTIVE FACTS

a. The Crime.

In 2000, William Lau and his wife created a living trust called "The Lau Family Living Trust," for which they are the sole trustees. 4RP 364; Ex. 49 (Ex. 49 is a copy of the Lau Family Trust). The Laus formed a limited liability company called TLF Holdings, LLC, for which the Lau Family Trust was the sole member/owner. Ex. 53 (Ex. 53 is the Operating Agreement for TLF Holdings). Lau was the manager of TLF Holdings, which owned BZ's Sports Bar and Grill ("BZ's"), located

¹ The Verbatim Report of Proceedings consists of 6 volumes and will be referred to as follows: 6/1/11 (1RP), 6/2/11 (2RP), 6/6/11 (3RP), 6/7/11 (4RP), 6/8/11 (5RP), and 7/18/11 and 7/21/11 (6RP).

in Burien, Washington. 4RP 364; Ex. 55 (Ex. 55 consists of documents relating to the purchase of BZ's by TLF Holdings).

In 2002, Tall Timbers Enterprise, LLC, purchased the Tall Timbers Bar and Grill ("Tall Timbers"), located in Federal Way, Washington. Ex. 56 (Ex. 56 consists of documents relating to the purchase of Tall Timbers by Tall Timbers Enterprise). Lau was the manager of Tall Timbers Enterprise, and the Lau Family Trust was the sole member/owner of the LLC. Ex. 54 (Ex. 54 is the Operating Agreement for Tall Timbers Enterprise). Tall Timbers Enterprise also owned Good Time Ernie's ("Ernie's"), a bar located in Burien. 3RP 123; 4RP 364.

Special Agent Jess Lohse with the Washington State Gambling Commission (the "Commission") understood Lau to be the owner of Tall Timbers, Ernie's, and BZ's. 3RP 177. Lau had represented himself to Lohse as the owner of the three bars. Id. Lau's employees also understood Lau to own the bars. 3RP 181, 273.

In short, Lau operated three bars which were owned by companies that he formed--companies whose sole member/owner was his family trust. See Ex. 57 (Ex. 57 is witness Stephanie Sherwood's summary of the ownership structure of the three bars, and is attached to this brief as Appendix A).

All three bars sold pull-tabs. 3RP 123. Pull-tabs are a form of gambling that is regulated by the Commission. 3RP 114-15. A "game" consists of a number of "tabs" that are usually kept in a glass bowl. 3RP 127. A larger game board (called a "flare") that displays symbols and prizes is either attached to, or displayed near the bowl. 3RP 117, 149. A player pays a set fee for a tab, which he then opens, revealing symbols on the tab. 3RP 117, 119. If the symbols on the tab match the symbols on the flare, the player wins the associated prize as shown on the flare. 3RP 119.

Operators of pull-tab games are required to track all revenue from pull-tab games; they do this by completing what is called a Monthly Income Summary ("MIS"). 3RP 116, 120. See also Ex. 27 (Ex. 27 is a blank MIS sheet and is attached to this brief as Appendix B). Also recorded on the MIS sheet are the prizes that are paid out in the game. 3RP 120, 124. MIS sheets are required to be maintained at the operator's place of business. 3RP 128.

When a game is pulled from play, the operator "counts" the remaining tabs in the bowl. 3RP 126. This can be done in one of two ways: physically count all the remaining tabs or weigh the remaining tabs on a special scale. 3RP 125. If the operator chooses to weigh the remaining tabs, he or she counts out a small sample of tabs and weighs that sample on the scale. Id. The scale is then programmed

to recognize that the reflected weight represents the number of tabs in the sample; the operator then places all the remaining tabs on the scale, which gives a final tab count. Id.

The operator must record on the MIS the original number of tabs ("size of game") as well as the number remaining when the game is removed from play ("number of unplayed chances"). 3RP 126; Ex. 27 (Appendix B). The number of unplayed chances is determined by either weighing or counting the remaining tabs as stated above. 3RP 127, 142.

The operator must also record on the MIS sheet the "number of chances played." 3RP 126. The operator arrives at the number of chances played by subtracting the remaining tab count (unplayed chances) from the original size of the game. 3RP 127, 142. To arrive at "gross gambling receipts," an operator must multiply the number of tabs played by the cost of the tabs. 3RP 126, 142-43. See also Ex. 27, pg. 2 (Appendix B).

Also required to be recorded on the MIS sheet is the "actual cash count" associated with each game (operators must keep track of the cash brought in by each individual game). 3RP 127-28. Thus, in theory, the "actual cash count" column should match the "net gambling receipts" column (gross gambling receipts minus cash prizes paid out). 3RP 128; see also Ex. 27 (Appendix B). There is another column on

the MIS sheet for "cash over or short," where the operator records the difference between the actual cash count and net receipts. Id.

Reasons for a cash overage or shortage include a miscount of the remaining tabs and theft. Id.

Operators are also required to complete Quarterly Activity Reports ("QAR"), recording all pull-tab revenue (gross gambling receipts) received over the course of a three-month period. 3RP 129; Ex. 16 (Ex. 16 is the 2009 QARs for BZ's, and is attached to this brief as Appendix C). The QAR also reflects the prizes that the pull-tab games paid out over the quarter, as well as the amount of cash over or short. Id. Licensing fees paid by the operator to the Commission are calculated based on the gross gambling receipts as reported on the QAR. Id. Unlike MIS sheets, QARs are kept by the Commission, not at the operator's place of business. Id.

At all times relevant to this case, the cities of both Burien and Federal Way taxed the gross receipts of commercial pull-tab operators at a rate of five percent. 3RP 256-57, 269. Operators were required to report their gross receipts to the cities on a Gambling Tax Return ("GTR"). 3RP 256-57, 267; see Ex. 42 (Ex. 42 consists of BZ's GTRs for the first three quarters of 2009 and is attached to this brief as Appendix D).

In January of 2010, Agent Lohse conducted a routine compliance inspection of BZ's. 3RP 133-34. Lohse followed up that inspection in March by reviewing the MIS sheets for the last three months of 2009 and comparing them to the QAR for that same quarter. 3RP 134. When comparing the forms, Lohse noticed that the gross gambling receipts documented on the QAR for the last quarter of 2009 totaled over \$9,000 less than what was reported on the MIS sheet "subtotals." 3RP 135-36; 4RP 332-33. Instead of relying on the "subtotals," Lohse went through the MIS sheets, totaling all of the figures himself. 3RP 135-36; 4RP 332-33. Lohse compared the actual gross gambling receipts (using his own totals from the MIS sheets) to BZ's tax return for the same quarter, and saw that gross gambling receipts had been underreported to the city by approximately \$15,000 for the last quarter of 2009. 3RP 136; 4RP 333.

Lohse also noticed that the figure for "prizes paid," as recorded on BZ's QAR was also underreported and did not match the figures on the MIS sheets. 3RP 135-36, 160; 4RP 332-33. It would raise a red flag if gross receipts were intentionally underreported while prizes paid out were not, as the two figures should generally be proportionate to one another. 3RP 160-61.

Agent Lohse ultimately went back through all of the records available to him for each of the three bars: Tall Timbers' records dated

between 2005 and 2009, while BZ's and Ernie's records were available for the years 2006 to 2009. 4RP 330-59, 371-441. Lohse summarized his findings in a series of tables. Ex. 43-48, 58-64 (Attached to this brief as Appendix E). Essentially what Lohse discovered was that not only was Lau underreporting the bars' gross gambling receipts on the QARs, but he was reducing that figure even more when he filed the GTRs with the cities. Id.

Between 2006 and 2009, Lau underreported BZ's gross gambling receipts by \$85,038. Ex. 43, 58-60 (Appendix E). The total loss to the City of Burien was five percent of that figure, or \$4251.90. 3RP 269. With respect to Ernie's, between 2006 and 2009, Lau underreported gross gambling receipts by \$14,920.25, for a further loss to Burien in the amount of \$746. Ex. 61-64 (Appendix E). The total loss to Burien was just under \$5,000.

Between 2005 and 2009, Lau underreported the gross gambling receipts of Tall Timbers by a total amount of \$235,479.50. Ex. 44-48 (Appendix E). The loss to the City of Federal Way was \$11,773.98. 3RP 257.

Throughout his investigation, Lohse specifically noted that Lau had consistently underreported gross gambling receipts in the hundreds of whole dollars amounts, while "cash over or short" reports

were in much smaller, non-whole dollar figures. Ex. 43 (Appendix E); 4RP 336.

b. The Defense.

Lau did not testify, nor did he call witnesses on his behalf. 4RP 459. Throughout cross-examination of the State's witnesses, Lau focused on an argument that the method of calculating gross gambling receipts did not control for certain factors, such as tickets being stolen by customers or employees, errors made in counting or weighing the remaining tabs, or tabs that went missing or were purchased with checks that later bounced. 3RP 152-57, 201-03, 212-13. Lau argued that because of these factors, there was insufficient evidence that he had the intent to deprive the cities of tax revenue. 5RP 506-16. Lau pointed to ambiguous testimony from the two city accounting managers in his argument that "gross receipts" as defined by the cities' taxing laws did not include lost, stolen or miscounted pull-tabs. 4RP 451; 5RP 508, 510. Although no one testified as to the reason for Lau's underreporting of gross gambling receipts, Lau essentially argued that his "adjustments" to the figures were made to account for these outside factors. 5RP 506-16.

The State pointed out that the Commission's rule as to how gross gambling receipts were to be calculated was clear, and that the

city witnesses had testified consistently that deductions were not allowed. 4RP 452-53; 5RP 518. The State argued that employee/customer theft and miscounting of remaining tabs was a business expense. 5RP 519-21. Moreover, as the State noted, there was no evidence that Lau's intent was to "adjust" for those factors anyway. 5RP 522. The State correctly pointed out that the largest quarterly cash shortage as reflected on the MIS sheets was approximately \$2,400, which occurred in the first quarter of 2009 at BZ's. 5RP 523. The prosecutor noted that BZ's gross gambling receipts were underreported by \$9,600 during that same quarter. Id. The conclusion was obvious. Even if Lau's intent was to "adjust" for his business expenses, he was not accurately doing so.

The jury convicted Lau as charged after 57 minutes of deliberation. CP 66, 82-83.

C. ARGUMENT

1. THE STATE PROPERLY CHARGED AND CONVICTED LAU OF THEFT FOR HIS ACTS OF INTENTIONALLY UNDERREPORTING GROSS GAMBLING RECEIPTS AND FALSIFYING TAX RETURNS.

The first three arguments that Lau makes are each premised on the same misinterpretation of the State's case--they assume that the State prosecuted Lau for his failure to pay gambling taxes. In

reality, the State prosecuted Lau for his acts of theft, committed by intentionally falsifying the bars' tax returns, with the intent to deprive the cities of their money.

a. Definitions Of Theft.

A person commits the crime of theft if he wrongfully obtains or exerts unauthorized control over the property of another, with the intent to deprive the other of the property. RCW 9A.56.020(1)(a).

A person exerts unauthorized control when:

Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto.

RCW 9A.56.010(22)(b).

A person also commits theft if he obtains control over the property of another "by color or aid of deception," with the intent to deprive the other of the property. RCW 9A.56.020(1)(b). Obtaining property through color or aid of deception "means that the deception operated to bring about the obtaining of the property or services."

RCW 9A.56.010(4). Deception can occur when the actor knowingly

"creates or confirms another's false impression which the actor knows to be false," or "[p]revents another from acquiring information material to the disposition of the property involved." RCW 9A.56.010(5)(a),(c).

b. Lau Is Criminally Liable For Intentionally Underreporting The Bars' Gross Receipts.

Lau first argues that because the limited liability companies² who owned the three bars were the entities responsible for paying gambling taxes, he personally could not be convicted of theft for "not paying some of the tax" owed. See Brf. of Appellant at 24-26. But the State did not prosecute Lau for failing to pay taxes; it prosecuted him for his intentional concealment of the bars' true tax liability and his unauthorized exertion of control over city property.

Lau's conduct meets either prong of theft outlined above. First, he exerted unauthorized control over the property of another with the intent to deprive. He appropriated a portion of the bar's gambling receipts, which belonged to the cities, to the use of someone else (the LLC). It matters not whether Lau put the money into his own pocket,

² Lau refers to the bars being owned by "limited liability corporations" and "corporations." Brf. of Appellant at 24-26. A "limited liability company" is not a corporation; rather it is a business formed by one or more members who share directly in the profits and losses of the company. See RCW 25.15.005(4),(6),(8) and RCW 25.15.200. Both TLF Holdings and Tall Timbers Enterprise elected to be taxed as sole proprietorships, not as corporations. Ex. 53, 54.

or into the coffers of the LLCs.³ See State v. Lee, 128 Wn.2d 151, 163, 904 P.2d 1143 (1995) (theft statute does not require that the defendant benefit; it is the loss to the victim, rather than gain to the defendant, that determines the existence and value of a deprivation).

Lau also committed theft by deception. At the moment that he intentionally falsified gross receipts on the bars' tax returns, he obtained money that lawfully belonged to the cities, by creating in them the false impression that the bars owed less tax than they actually did. See State v. Monk, 42 Wn. App. 320, 711 P.2d 365 (1985) (act of defendant in effectively obtaining control over city's right to payment for utility bill by "hiding" her account constituted theft by deception). Again, it does not matter whether Lau or the bars ultimately profited. Lee, 128 Wn.2d at 163.

Moreover, even if the bars were owned by corporations, as Lau argues, he was still properly charged with and convicted of theft. RCW 9A.08.030(3) states that, "A person is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf." A corporate employee/officer/agent commits theft when, with

³ Even so, the LLCs' revenue was essentially Lau's personal revenue. Ex. 57 (Appendix A).

intent to deprive, he allows corporate assets to be appropriated to the use of any person other than the true owner--regardless of whether the corporate funds are converted to the agent's own use, or to the use of anyone else other than the true owner. State v. Mahaffay, 192 Wash. 76, 78, 72 P.2d 1028 (1937); see also State v. Thomas, 123 Wash. 299, 303, 212 P. 253 (1923) ("where the crime charged involves guilty knowledge or criminal intent, it is essential to the criminal liability of an officer of the corporation that he actually and personally do the acts which constitute the offense, or that they be done by his direction or permission.").

Lau's conduct violated the plain language of Washington's theft statutes. The fact that the LLCs who owned the bars were legally responsible for paying gambling taxes is irrelevant. Lau, acting in his capacity as manager of both the LLCs and the bars, intentionally underreported gross gambling receipts from the sale of pull-tabs. He did so over the course of five years, to the tune of several hundred thousand dollars. See Ex. 43-48, 58-64 (Appendix E). Lau is criminally liable for his intentional theft regardless of who owned the bars.

c. The Gambling Taxes That Lau Intentionally Concealed Belonged To The Cities.

Lau argues that he did not steal the "property of another" because the unpaid gambling tax at issue was merely a debt owed to the cities. Again, his argument misapprehends the nature of the State's case; Lau was charged with theft based on his filing of fraudulent tax returns and depriving the cities of their money, not because he simply failed to pay a tax bill. His scheme resulted in both his obtaining money through deceptive means, and his exerting unauthorized control over property in which the cities possessed a superior property interest.

Here, the cities had an ownership right in five percent of the bars' gross gambling receipts. 3RP 257, 269. See also RCW 9.46.110(1); Burien City Code ("BCC") § 3.25.010(1); Former Federal Way City Code ("FWCC") § 14-143.⁴ When Lau intentionally created in the cities a false impression of what that five percent figure was, he obtained money that rightfully belonged to the cities through deception. He essentially took control of the cities' right to payment of the tax bill, and was thus properly convicted of theft. See Monk, 42 Wn. App. at 320 (theft by deception proper when utility employee

⁴ Currently codified as Federal Way Revised Code ("FWRC") § 3.40.030 (current tax rate for pull-tab bar operators is three percent).

deprived city of right to payment by "hiding" her account); Porcelli v. United States, 303 F.3d 452, 456 (2nd Cr. 2002) (defendant obtained money by means of false or fraudulent pretenses when he gained money for his corporations by falsely understating sales, thus reducing the corporations' tax bills).

Lau also exerted unauthorized control over a portion of the bars' gambling receipts and the cities' right to payment of taxes. The statutory definition of "owner" informs the meaning of "property of another" as used in the theft statutes. State v. Joy, 121 Wn.2d 333, 341, 851 P.2d 654 (1993) (citing State v. Pike, 118 Wn.2d 585, 826 P.2d 152 (1991)). "Owner" is "a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services." RCW 9A.56.010(11).

Although theft requires that what is stolen be the "property of another," it is not necessary for title to rest solely with the person from whom the property is taken. Joy, 121 Wn.2d at 340-41. If the person from whom property is taken has a possessory right to the property that is superior to that of the defendant, that person is the "owner" of property, even if the defendant has legal title. Pike, 118 Wn.2d at 590; State v. Grimes 111 Wn. App. 544, 553, 46 P.3d 801, review denied, 148 Wn.2d 1002 (2002). See also State v. Mora, 110 Wn. App. 850,

857, 43 P.3d 38, review denied, 147 Wn.2d 1021 (2002) ("superior possessory interest means that the defendant may not lawfully exert control over the property without the permission of that other person").

Lau characterizes the cities' interest as mere "claims to collect a debt." Brf. of Appellant at 29. He cites to Pike to support his argument. While Pike recognizes that the mere failure to pay a contractual obligation does not alone create criminal liability, the nature of the charges in Pike and its underlying facts are readily distinguishable from this case. There, the defendant retrieved his own car from the mechanic without paying his bill. Pike, 118 Wn.2d at 588. The court found that because the mechanic had not properly perfected a lien, it did not hold a superior possessory interest in the car itself. Id. at 595-96. The State alleged no fraud, and charged Pike only with a theft of the car by taking. Id. As the court noted, the outcome might have been different had there been fraud on the defendant's part. Id.

The facts of this case are markedly different. Lau filed fraudulent tax returns, thereby exerting unauthorized control over the cities' possessory interest in that portion of the gross receipts to which it was entitled by law. RCW 9.46.110(4) states:

Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for in RCW 84.60.010. The lien **shall attach on the date the tax becomes due** and shall relate back and have priority against real

and personal property to the same extent as ad valorem taxes.

(emphasis added). At the time gambling taxes became due, the cities perfected an automatic lien against real and personal property belonging to the bars in the amount of five percent of all unreported gross receipts. Lau exerted unauthorized control over that property by hiding from the cities the bars' true tax liability and preventing the city from enforcing its superior possessory interest.

Lau cites to the cities' ability to file a civil claim to collect delinquent taxes as proof that the unpaid taxes are merely a debt. He also points to the absence of a specific duty to pay gambling taxes from the gross receipts themselves. Neither of those facts alters the nature of the cities' superior possessory interest in the unpaid taxes. Lau's acts of fraud and deception concealed from the cities the knowledge necessary to enforce their interests in the property. He exerted control over the cities' right to enforce their liens by his deceptive acts. "The difference between theft and failure to pay a debt is criminal intent." State v. Mermis, 105 Wn. App. 738, 748, 20 P.3d 1044 (2001).

Lau also cites to two cases from other jurisdictions to support his argument that the cities had no possessory interest in any of the bars' gross gambling receipts. In State v. Marcotte, 418 A.2d 1118

(Me. 1980), the defendant was charged with "Theft by Misapplication of Property," which explicitly required "the existence of either a statutory obligation to make the specified statutory payment from the property obtained" or "a statutory obligation to reserve an equivalent amount of the defendant's own property." Marcotte, 418 A.2d 1118, 1120 (1980). No similar requirements exist in Washington's general theft statute. Additionally, although the court in Marcotte determined that the State could not proceed under an alternate theory of "Theft by Unauthorized Taking," it did so only because "the conduct alleged in the indictment" did not support it. Id. at 1122. Here, as outlined above, the evidence sufficiently demonstrated that Lau committed theft by both obtaining property through deception and exerting unauthorized control over property in which the cities had a superior possessory interest.

Lau also cites to State v. Nappo, where the New York Court of Appeals reasoned that unpaid tax on imported motor fuel was not the property of the State prior to its remittance. 729 N.E.2d 698, 700 (N.Y. 2000). The court distinguished the facts (defendants never filed any tax returns or paid any taxes for the fuel that they imported) from a situation where taxes are actually collected, yet unremitted to the State. Id. at 567. Regardless of New York's interpretation of its own statutes, this Court should not follow New York's reasoning in a case

where a taxpayer collects gambling revenue in Washington, a portion of which is owed to the city, and then engages in a long-term scheme to underreport that revenue, concealing an obligation to pay substantial gambling taxes and effectively exerting control over the cities' cause of action for unpaid taxes. Lau deprived the cities of an existing property right.

d. Lau's Conviction Does Not Contravene Washington's Ban On Imprisonment For Debt.

In the absence of a specific statute or contractual fraud, one cannot be imprisoned for the mere failure to pay a debt. Pike, 118 Wn.2d at 595; Const. art. I, § 17. However, one who acts fraudulently may be imprisoned, as he is being punished for the fraud, not the failure to pay. Pike, 118 Wn.2d at 595 (citing State v. Higgins, 67 Wn.2d 147, 153, 406 P.2d 784 (1965) and State v. Enloe, 47 Wn. App. 165, 169, 734 P.2d 520 (1987)).

Lau asserts that his conviction is contravened by Washington's prohibition on imprisonment for debt. But the State did not imprison Lau for a debt. His conviction was based on his intentional acts of deception and fraud by underreporting gross gambling receipts, and depriving the cities of their property. There is no constitutional violation.

2. LAU RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

Lau argues that his trial counsel was ineffective for failing to cite to a civil case, TLR v. Town of La Center, 68 Wn. App. 29, 841 P.2d 1276 (1992), in support of his claim that "gross receipts" did not include the value of lost, stolen or miscounted pull-tabs. He also claims that his counsel was deficient for failing to object to the State's explanation of "gross receipts," and for failing to request a jury instruction on the definition of that term.

His claims must be rejected. First, the record does not show that his trial counsel was unfamiliar with TLR. Moreover, Lau does not persuasively argue that TLR's definition of "gross receipts," determined in a civil case with uncontested facts, would have had any relevance to the criminal charges here. Thus, counsel's failure to cite to it, or to request a jury instruction based on it, did not constitute deficient performance. Moreover, there was no evidence presented that Lau was actually calculating gross receipts in accordance with TLR's definition. As such, he has not demonstrated that the outcome would probably be different had his counsel cited the case, objected, or asked for a jury instruction.

A defendant in a criminal case has a constitutional right to effective assistance of counsel. Strickland v. Washington, 466 U.S.

668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The benchmark for judging a claim of ineffective assistance of counsel is whether counsel's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id.

The burden of establishing ineffective assistance of counsel falls on Lau. Strickland, at 687. To prevail on an ineffective assistance of counsel claim, Lau must show that (1) his attorney's conduct fell below an objective standard of reasonableness and (2) this deficiency resulted in prejudice. Id. at 687-88; State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). Prejudice exists where "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). If Lau fails to demonstrate either prong, the inquiry ends. Id.

Courts presume that counsel has provided effective representation and are "highly deferential" when scrutinizing counsel's performance. Strickland, 466 U.S. at 689; State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "It is all too tempting for a defendant to second-guess counsel's assistance after conviction . . . and it is all too easy for a court, examining counsel's defense after it

has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689.

On review, the relevant inquiry is "whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. There is a "wide range" of reasonable performance and a "strong presumption" of competence. Id. at 689. Courts recognize that there are countless ways to provide effective representation, and that even the best criminal defense attorneys might take different approaches to defending the same client. Id. at 689. Counsel is not required to conduct an exhaustive investigation; the standard is one of reasonableness. In re Pers. Restraint of Benn, 134 Wn.2d 868, 900, 952 P.2d 116 (1998).

Pointing to ambiguous testimony from the cities' accounting representatives, Lau argued to the court during his motion to dismiss that "gross receipts" did not include revenue for pull-tabs that might have been lost, stolen, or miscounted. 4RP 450-52. Lau then made the same argument to the jury, contending that because of this theoretical difference between the tabs actually sold and the "number of chances played," the State had failed to prove that he acted with the intent to deprive. 5RP 506-16.

On appeal, Lau now argues his attorney was deficient for "failing to be familiar" with TLR. Brf. of Appellant at 40. Reasonable

performance includes researching the relevant law. Strickland, 466 U.S. at 690-91. However, Lau has not shown that his trial counsel was unfamiliar with TLR. The most that can be gleaned from the record is that his attorney did not cite to the case during his motion to dismiss after the State's case-in-chief. See 4RP 450-52. When reviewing an ineffective assistance of counsel claim, this Court is limited to the facts contained within the record. State v. Grier, 171 Wn.2d 17, 29, 246 P.3d 1260 (2011) (citing McFarland, 127 Wn.2d at 335).

Even if counsel had cited to the case, Lau would not have been entitled to dismissal, or to a jury instruction on his definition of gross receipts. TLR is a twenty-year-old civil case. Pull-tab operators brought a declaratory judgment action against the Town of LaCenter, arguing that its tax on gross receipts of pull-tabs could not include monies that would have been received from the sale of lost or stolen tabs. TLR, 68 Wn. App. at 31-32. The parties stipulated to a set of facts, which the trial court reviewed and concluded were not in dispute. Id. at 32. The court held that "gross receipts," as defined by RCW 9.46.110 and LaCenter's taxing ordinance, referred to money that was actually received by the operators. Id. at 33-34.

Here, the evidence produced at trial was that the Commission required "gross gambling receipts"⁵ to be recorded on a Monthly Income Sheet and a Quarterly Activity Report. Ex. 16 (Appendix C); Ex. 27 (Appendix B). "Gross gambling receipts" are calculated by subtracting the remaining tabs from the original number of tabs in the game. Ex. 27 (Appendix B); 3RP 130. Both Burien and Federal Way required Lau to submit his QAR (which reflected "gross gambling receipts") along with his Gambling Tax Return. See Ex. 34; Ex. 42 (Appendix D). The GTRs did not allow for any deductions from "gross receipts." 3RP 257; Ex. 34, 42 (Appendix D: under "deductions" column for pull-tabs, states "none.").

It is far from certain that a 1992 opinion in a civil lawsuit, based on an unknown set of stipulated facts, would have entitled Lau to a definition contrary to that testified to by the witnesses and argued by the State. At most, TLR might have provided Lau with a basis to file a tax appeal or pursue civil avenues of relief, if he believed that the cities were unfairly taxing him. It would not have provided him the authority to alter gross receipts to account for these speculative factors, and

⁵ "Gross gambling receipts" are the "amount due to any operator of a gambling activity . . . for purchasing chances to play a punch board or pull-tab series," and must reflect the value "before any deductions for prizes or other expenses." WAC 230-06-150(1)(a), (3).

then to hide his actions from the Commission and the cities for approximately five years.

Because TLR did not provide Lau with the right to alter the gross receipts figure if he did not agree with its definition, his counsel was not deficient for not bringing the case to the court's attention, for not objecting to the State's contrary definition, and for not requesting a jury instruction based upon its holding.

Moreover, Lau can show no prejudice. He must establish a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. Strickland, 466 U.S. at 694; Hendrickson, 129 Wn.2d at 78. He cannot make such a showing.

The paperwork that all pull-tab operators are required to complete states that "gross gambling receipts" equals the "number of chances played" multiplied by the cost of the tab. See Ex. 27 (Appendix B). Because the only practical way to calculate "number of chances played" is to subtract the remaining tabs from the original count, the figure is subject to inaccuracies produced by lost or miscounted tabs. See 3RP 243-48. Lau attempted to argue that this speculative difference between the tabs that were actually sold and

the "number of chances played" demonstrated that he had no intent to deprive the cities of their gambling tax revenue.⁶

At any rate, there was absolutely no evidence that Lau's intentional underreporting of gross receipts was an attempt to "adjust" for this difference. Rather, all of the evidence demonstrated that Lau was vastly underreporting gross receipts as well as prizes paid out, in a manner that in no way correlated to his cash shortages. Lau's highest quarterly cash shortage was recorded in the first quarter of 2009 at BZ's, and was approximately \$2,400. Ex. 16 (Appendix C). However, BZ's gross receipts were underreported by \$9,600 during that same quarter. Ex. 43 (Appendix E). Lau's actions were clearly not an effort to adjust for factors affecting the accuracy of the "number of chances played." Therefore, citing TLR in support of his motion to dismiss would not have made it "reasonably probable" that the court would have granted the motion. Nor would a request to instruct the

⁶ However, the MIS sheets themselves specifically contradict Lau's argument: This difference could be due to miscounts, stolen or lost punches or tabs, or inadvertent mixing of cash between different boards or sets. Substantial amounts (either over or short) . . . are an indication of problems with dispensing machines, manufacturer errors, and/or accounting controls and should be investigated. **NOTE: This amount has no effect on "Gross Gambling Receipts" and must not be used to adjust gross receipts.** It is an expense of operating the activity and must be reported on your quarterly activity report.

Ex. 27, pg. 2 (emphasis in original) (Appendix B).

jury on the definition of gross receipts, or an objection to the State's characterization of that term, have changed the outcome of the trial.

In fact, the evidence demonstrated that a pull-tab operator whose games were consistently coming up short by anything higher than a small percentage would take reasonable steps to correct the problem. 3RP 250-51. Such measures might include weighing the tabs more often in order to narrow down the losses to a particular shift or a particular person, calibrating the scale, and increased employee training. 3RP 251. Lau's "adjustments" went on for years, to the tune of several hundred thousand dollars. Ex. 43-48, 58-64 (Appendix E). He did not testify, and there was no evidence contradicting the State's case. The outcome of the trial would not have been different, and Lau has not shown prejudice even if his counsel's performance was deficient.

3. THE COURT WAS NOT REQUIRED TO INSTRUCT THE JURY ON THE DEFINITION OF "GROSS RECEIPTS."

Lau claims that the absence of an instruction defining "gross receipts" was error because it was a term that the trial court was required to define. However, Lau did not request such an instruction, and he agreed with the instructions provided to the jury. Because the issue is not one of manifest error affecting a constitutional right, he is

precluded from raising it on appeal. Moreover, the court did not err by not providing the definition of "gross receipts."

a. Lau Has Waived His Right To Present This Claim.

An appellate court will not consider a claim that is raised for the first time on appeal unless it concerns a "manifest error affecting a constitutional right." RAP 2.5(a). This rule encourages "the efficient use of judicial resources" and allows the trial court the opportunity to correct an error "to avoid an appeal and consequent new trial." State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988).

CrR 6.15(c) requires the court to afford counsel the opportunity to object to the court's instructions, and requires timely and well-stated objections by counsel to the instructions given, as well as exceptions by counsel to refused instructions. The purpose of the court rule is to provide the trial court with the opportunity to correct any errors before instructing the jury. Seattle v. Rainwater, 86 Wn.2d 567, 571, 546 P.2d 450 (1976). For these reasons, our state's highest court has stated, "No error can be predicated on the failure of the trial court to give an instruction where no request for such an instruction was ever made." State v. Kroll, 87 Wn.2d 829, 843, 558 P.2d 173 (1976).

Moreover, "as long as the instructions properly inform the jury of the elements of the charged crime, any error in further defining terms used in the elements is not of constitutional magnitude." State v. Stearns, 119 Wn.2d 247, 249-50, 830 P.2d 355 (1992) (citations omitted). The failure to define a technical term in the instructions is not an error of constitutional magnitude. State v. Lord, 117 Wn.2d 829, 880, 822 P.2d 177 (1991) (citing Scott, 110 Wn.2d at 689-90).

Lau did not object to the court's instructions below, nor did he propose any of his own. 5RP 465. He attempts to circumvent the above well-settled principles by arguing that the court infringed on his constitutional right to have the trial court "declare the law." Even if this Court were to accept Lau's argument that the trial court was required to define "gross receipts,"⁷ he has not shown that any error was manifest.

Lau bears the burden of showing that a manifest error affecting a constitutional right has occurred. State v. McDonald, 138 Wn.2d 680, 691, 981 P.2d 443 (1999). To meet this burden, he must "show how, in the context of the trial, the alleged error actually affected his rights; it is this showing of *actual prejudice* that makes the error 'manifest,' allowing appellate review." Id. (emphasis in original)

⁷ The State does not concede this point.

(quoting McFarland, 127 Wn.2d at 333). In this context, "manifest" means "unmistakable, evident or indisputable, as distinct from obscure, hidden or concealed." State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992).

Lau cannot meet his burden. Even if the court should have defined "gross receipts" for the jury, there was no prejudice to Lau. There was no evidence whatsoever that his intentional underreporting of gross gambling receipts was done to "adjust" for lost revenue due to miscounted, misplaced or stolen pull-tabs. In fact, the undisputed evidence demonstrated that his underreporting was vastly out of proportion to his cash shortages. Even if the jury was instructed on, and fully accepted his definition of "gross receipts," the outcome would have been no different. Lau has not shown that any error was manifest, and this Court should not consider his claim.

b. The Court Was Not Required To Define Gross Receipts For The Jury.

Lau argues that the trial court allowed Agent Lohse to "usurp" the court's function of declaring the law. Even assuming, for purposes of this argument, that the definition of "gross receipts" provided in TLR is accurate, and that bar owners cannot be taxed on revenue that they do not actually receive, Lau would still not be entitled to a jury

instruction defining the term. Lau argued to the jury that, based on his definition of "gross receipts," the State failed to prove that he had the intent to deprive. 5RP 506-16. But there was no evidence before the jury that Lau had ever heard of TLR or its definition. The only evidence presented was that he was specifically told by the Commission that he was required to calculate gross receipts by subtracting "number of chances played" from original tab count in the game. Ex. 27 (Appendix B); 3RP 125. Lau was trained by a Commission agent, and his employees clearly understood that they were not allowed to take deductions for miscounted or stolen pull-tabs. 3RP 131, 222-24. Thus, the definition of "gross receipts" as defined in TLR was completely irrelevant to Lau's intent, especially given that there was no evidence he was even aware of it. The court was not required to instruct on the definition of gross receipts.

In fact, there was no clear evidence presented that the cities' definition of "gross receipts" was in accordance with TLR's definition, as their tax returns stated that no deductions were allowed, and taxpayers were required to submit their "gross gambling receipts" as defined by the Commission⁸ along with their tax returns. See Ex. 16 (Appendix C); Ex. 34; Ex. 42 (Appendix D). No one appears to have

⁸ See WAC 230-06-150(1)(a), (3); Ex. 27, pg. 2 (Appendix B).

ever challenged Burien's or Federal Way's pull-tab gambling taxation ordinances.

Regardless of the definition of "gross receipts," the issue in this theft trial was Lau's intent. He was not entitled to disobey his tax reporting requirements and to hide his taxable income. Even if he was aware of TLR, at most it would have provided the bars with a civil cause of action to clarify what revenue they were required to pay tax on--it would not entitle Lau to "adjust" the records himself.

Jury instructions are sufficient if they are supported by substantial evidence, permit each party to argue its theory of the case, and properly inform the jury of the applicable law. State v. Clausing, 147 Wn.2d 620, 625, 56 P.3d 550 (2002). Here, the instructions permitted Lau to argue his theory of the case to the jury (that there was no intent to commit theft) and they properly informed the jury of the applicable law (that theft must be intentional). The court did not allow the witnesses to "usurp" its role of declaring the law.

Lau cites to the unique facts presented in Clausing as support for his argument. In that case, the defendant's medical license was revoked by the State. Clausing, 147 Wn.2d at 623. He thereafter hired two licensed physicians to staff his clinic and ordered legend drugs using their DEA numbers; at trial he claimed to have used those drugs to "refill" prescriptions that he had written prior to his license

revocation. Id. He was later charged with unlawfully delivering a legend drug, which is committed when a person delivers such drug "except upon the order or prescription of a physician." Id. at 624.

Clausing claimed at trial that the person to whom he had delivered the legend drugs had a valid prescription. Id. A State's witness testified that a physician's prescriptions are no longer valid after his license is revoked. Id. at 628. On appeal, the court held that not only was that testimony not supported by the law, but that it completely denied the defendant the ability to argue his defense (that the prescription under which he dispensed the drugs was valid). Id. at 628-29.

In contrast here, it is not clear that TLR's definition of gross receipts is a correct statement of the law in this case, and even so, any definition of gross receipts went only to the issue of Lau's intent to deprive. He was able to argue his theory of the case, and the jury was properly instructed that the State was required to prove beyond a reasonable doubt that Lau acted with intent to deprive. CP 97, 102-03, 106-07. The court did not err by not providing an instruction for the term "gross receipts."

4. THE EVIDENCE AT TRIAL WAS SUFFICIENT TO ESTABLISH THAT LAU COMMITTED THEFT BY DECEPTION.

Lau claims that there was insufficient evidence presented to support a charge of theft "by color and aid of deception." Thus he argues that his conviction must be overturned, because one or more jurors "may have based their guilty verdicts solely upon [theft by deception]." Brf. of Appellant at 45. Lau's argument must be rejected because there was ample evidence by which the jury could find him guilty of theft by deception.

Evidence is sufficient if, when viewed in the light most favorable to the State, any reasonable trier of fact could find guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). When a criminal defendant challenges the sufficiency of the evidence, he admits the truth of the State's evidence, and all reasonable inferences are drawn in favor of the State. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A theft occurs when a person obtains control over the property of another by color or aid of deception, with the intent to deprive the other of the property. RCW 9A.56.020(1)(b). Deception occurs when the defendant knowingly "creates or confirms another's false impression which the actor knows to be false," or "[p]revents another from acquiring information material to the disposition of the property

involved." RCW 9A.56.010(5)(a),(c); see also State v. George, 132 Wn. App. 654, 660, 133 P.3d 487 (2006), affirmed, 161 Wn.2d 203, 164 P.3d 506 (2007).

Key to the offense of theft by deception is that the deception allowed the defendant to obtain control over the property of the victim with intent to deprive him thereof. State v. Casey, 81 Wn. App. 524, 527-31, 951 P.2d 587, review denied, 130 Wn.2d 1009 (1996). Stated in another way, the inquiry is properly focused on whether deception was used by the defendant to obtain the property from the victim. Id.

Lau first incorrectly focuses his argument on whether any deception was used to obtain property from the gamblers who purchased the pull-tabs. See Brf. of Appellant at 45-48. But the State charged Lau with theft from the cities of Federal Way and Burien; therefore the relevant question is whether Lau used deception to obtain property belonging to the cities. The answer is unequivocally yes. When Lau intentionally created in the cities a false impression of what the bars' true tax liability was, he obtained their property (money) by deception. He essentially took control of the cities' right to payment of the tax bill, and was thus properly convicted of theft.

Washington courts have upheld a conviction for theft by deception in an analogous situation. In Monk, a city employee "hid"

her own personal utility account from the city, thus depriving the city of its right to payment. 42 Wn. App. at 320.

The Second Circuit has held similarly, in a case with facts even more closely related to this one. Although there the charge was mail fraud, the court determined that a defendant had obtained money "by means of false or fraudulent pretenses" when he gained money for his corporations by falsely understating sales, thus reducing the corporations' tax bills. Porcelli, 303 F.3d at 456.

In sum, Lau used deceptive means (intentionally filing false tax returns) to obtain control over and deprive the cities of the money owed to them in gambling taxes. There was sufficient evidence of theft by deception, and Lau was properly convicted.

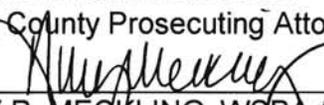
D. CONCLUSION

For all of the above reasons, this Court should affirm Lau's convictions for theft.

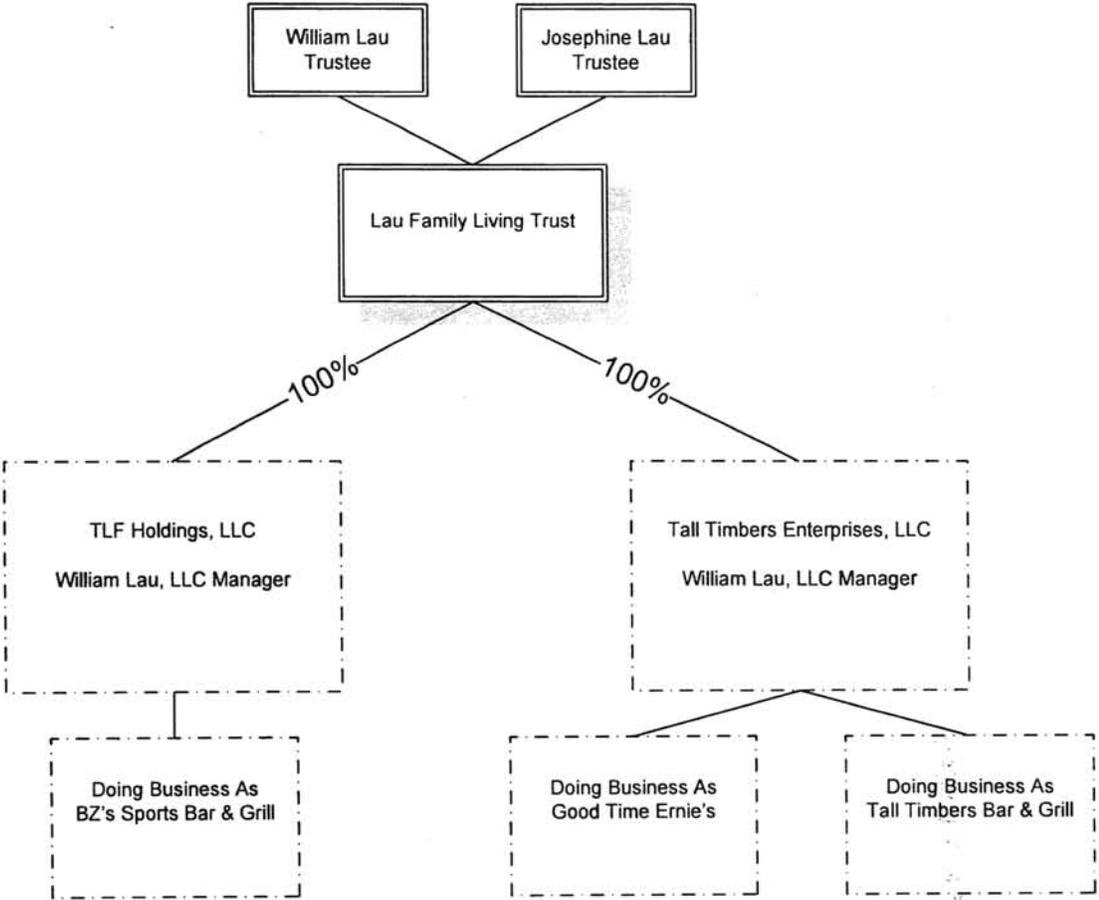
DATED this 14 day of May, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
AMY R. MECKLING, WSBA #28274
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDIX A



APPENDIX B

PUNCH BOARD / PULL-TAB MONTHLY INCOME SUMMARY INSTRUCTIONS

NOTE: You must use a separate "Monthly Income Summary" sheet for each type of activity and each type of prize; i.e. machine pull-tabs, fishbowl pull-tabs, punch boards with merchandise prizes, and punch boards with cash prizes, etc.

The numbered instructions below correspond to the numbers above or adjacent to the items printed on the face on this form. If you require assistance or have questions, please contact the Special Agent assigned to your area or Financial Reporting Services at (800) 345-2529 or (360) 486-3440.

- (1) **SIZE OF GAME:** The total number of punches or pull-tabs available from the board or series prior to being placed in play. You should find this amount recorded on the flare for pull-tabs or on the back of punch boards.
- (2) **NUMBER NOT SOLD:** The total number of punches or pull-tabs that remain unplayed when the device is removed from play. **NOTE:** This amount can only be determined by actual count.
- (3) **NUMBER PLAYED:** The "Size of Game" less "Number Not Sold". For Gambling Commission accounting purposes, "Number Played" means all chances that are removed or missing from the series or board. These chances are assumed to be played whether they were sold, lost, stolen, or otherwise unaccounted for.
- (4) **COST PER PLAY:** The price to play a single chance from the board or series. **NOTE:** The price must be posted on the flare and cannot be changed once the device is placed out for play.
- (5) **GROSS GAMBLING RECEIPTS:** The number of chances (tabs or punches), recorded in the "Number Played" column, multiplied by the amount in the "Cost Per Play" column (see WAC 230-14-280 for definition of gross gambling receipts).
- (6) **CASH PRIZES:** The value of all cash prizes. If you are awarding merchandise prizes, use the appropriate form. **This form is for cash only prizes.** **NOTE:** All winning punches or tabs must be retained by the operator for at least four months following the last day the device was out for play.
- (7) **NET GAMBLING RECEIPTS:** "Gross Gambling Receipts" less "Cash Prizes".
- (8) **ACTUAL CASH COUNT:** The actual cash on hand, per count, when each individual board or set is removed from play. This amount should reasonably agree with "Net Gambling Receipts".
- (9) **CASH OVER OR (SHORT):** The difference between "Net Gambling Receipts" and "Actual Cash Count". This difference could be due to miscounts, stolen or lost punches or tabs, or inadvertent mixing of cash between different boards or sets. Substantial amounts (either over or short) recorded in this column are an indication of problems with dispensing machines, manufacturer errors, and / or accounting controls and should be investigated. **NOTE:** This amount has no effect on "Gross Gambling Receipts" and must not be used to adjust gross receipts. It is an expense of operating the activity and must be reported on your quarterly activity report.
- (10) **TOTALS:** Each column with a total must be summed and these totals should then be combined with the totals from other pages of monthly summaries for similar activities during a month. The various monthly totals must be combined quarterly and the total amounts for the quarter entered on the appropriated lines of your quarterly activity report.

APPENDIX C



Lic Exp: 9/30/2009
Class: D

WASHINGTON STATE GAMBLING COMMISSION
POST OFFICE BOX 42400
OLYMPIA, WA 98504-2400 (360) 486-3474
COMMERCIAL
PUNCHBOARD / PULL-TAB
QUARTERLY ACTIVITY REPORT

Client No: 00-18570 County: 17
License No: 05-10095 City: 34

Limit: \$300,000
Date: 6/5/2009

THIS REPORT COVERS THE PERIOD
JAN - JUN 2009

BZS SPORTS BAR & GRILL
17730 AMBAUM BLVD S STE C
BURIEN WA 98148

RECEIVED
JUL 29 2009
GAMBLING/LICENSING



Due Date 7/30/2009

ATTENTION Submit report even if you had no activity

Please complete the following items: (See enclosed instructions.) Include only items directly related to your Punchboard / Pull-Tab Activity. Please round all amounts to the nearest whole dollar.

	JAN - MAR 2009-1	APR - JUN 2009-2
PUNCHBOARD / PULL-TAB FINANCIAL INFORMATION:		
(1) GROSS GAMBLING RECEIPTS	\$ 47,846	\$ 48,765
(2) TOTAL PRIZES AWARDED - Cash	\$ 30,838	\$ 31,043
- Merchandise (awarded only)	\$ -0-	\$ -0-
(3) COST OF GAMES	\$ 4,028	\$ 3,950
(4) LOCAL GAMBLING TAXES (paid to city or county)	\$ 2,392	\$ 2,438
(5) CASH OVER/SHORT (from monthly income summary)	<input type="checkbox"/> over <input checked="" type="checkbox"/> short \$ 2,402	<input type="checkbox"/> over <input checked="" type="checkbox"/> short \$ 1,638
(6) INVENTORY - Number of Games:		
(a) ON HAND BEGINNING OF QTR (all games)	144	141
(b) PURCHASED DURING THE QTR (+)	129	119
(c) REMOVED FROM PLAY DURING THE QTR (-)	132	129
(d) ON HAND END OF QTR (=)	141	131
(7) GROSS SALES OF FOOD AND DRINK ONLY	\$ 88,350	\$ 89,560

DO NOT SEND MONEY WITH THIS REPORT

Signature and Verification: I declare under the penalties of perjury that this report (including any accompanying statements or lists) has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

WILLIAM LAU
(PRINT NAME OF OFFICER/EMPLOYEE/MEMBER)

[Signature]
(SIGNATURE)

MANAGING AGENT
(TITLE)

July 30, 2009
(DATE)

(206) 715-6292
(DAYTIME TELEPHONE)

This report reflects gambling activity only and does not reflect the overall profitability of the business or organization. Pursuant to RCW 42.56, information contained on Activity Reports and most attachments are available to be disclosed as public documents.

GC2-133
(8/2008)



Lic Exp: 9/30/2009
Class: D

WASHINGTON STATE GAMBLING COMMISSION
POST OFFICE BOX 42400
OLYMPIA, WA 98504-2400 (360) 486-3474
COMMERCIAL

Client No: 00-18570 County: 17
License No: 05-10095 City: 34

Limit \$300,000

Date: 12/7/2009

**PUNCHBOARD / PULL-TAB
QUARTERLY ACTIVITY REPORT**

THIS REPORT COVERS THE PERIOD
JUL - DEC 2009

BZS SPORTS BAR & GRILL
17730 AMBAUM BLVD S STE C
BURIEN WA 98148

RECEIVED

JAN 22 2010



Due Date 1/30/2010

ATTENTION Submit report even if you had no activity

Please complete the following items: (See enclosed instructions.) Include only items directly related to your Punchboard / Pull-Tab Activity. Please round all amounts to the nearest whole dollar.

PUNCHBOARD / PULL-TAB FINANCIAL INFORMATION:	JUL - SEP 2009-3		OCT - DEC 2009-4	
	(1) GROSS GAMBLING RECEIPTS	\$	48,024	\$
(2) TOTAL PRIZES AWARDED - Cash	\$	32,690	\$	26,276
- Merchandise (awarded only)	\$	-0-	\$	-0-
(3) COST OF GAMES	\$	4,812	\$	4,375
(4) LOCAL GAMBLING TAXES (paid to city or county)	\$	2,401	\$	2,107
(5) CASH OVER/SHORT (from monthly income summary)	\$	927	\$	1,829
	<input type="checkbox"/> over		<input type="checkbox"/> over	
	<input checked="" type="checkbox"/> short		<input checked="" type="checkbox"/> short	
(6) INVENTORY - Number of Games:				
(a) ON HAND BEGINNING OF QTR (all games)		131		109
(b) PURCHASED DURING THE QTR	(+)	132	(+)	168
(c) REMOVED FROM PLAY DURING THE QTR	(-)	154	(-)	140
(d) ON HAND END OF QTR (all games)	(=)	109	(=)	137
(7) GROSS SALES OF FOOD AND DRINK ONLY	\$	79,520	\$	81,200

DO NOT SEND MONEY WITH THIS REPORT

Signature and Verification: I declare under the penalties of perjury that this report (including any accompanying statements or lists) has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

WILLIAM LAU
(PRINT NAME OF OFFICER/EMPLOYEE/MEMBER)

MANAGING AGENT
(TITLE)

(206) 715-6292
(DAYTIME TELEPHONE)

(SIGNATURE)

1/29/10
(DATE)

This report reflects gambling activity only and does not reflect the overall profitability of the business or organization. Pursuant to RCW 42.56, information contained on Activity Reports and most attachments are available to be disclosed as public documents.

GC2-133
(6/2008)

APPENDIX D

CITY OF BURIEN



15811 Ambaum Blvd. SW, Ste. "C"
 Burien, WA 98166
 Phone: (206) 241-4647
 Fax: (206) 248-5539

TAX RETURN INSTRUCTIONS:

1. Tax Return must be completed and returned even if no gambling activity occurred in the quarter.
2. Applicable penalties must be included with payment.
3. Enter gross receipts, allowed deductions, taxable revenue, and the calculated tax for each activity. Enter quarterly totals in the "Tax Total" and "Penalty" blocks. Enter your payment amount in the "Total Paid" block.
4. Complete "Business/Activity Changes" section (if applicable).

BUSINESS NAME:

BZ's Sports Bar & Grill
 17730 Ambaum Blvd. S
 Burien, WA 98148

GAMBLING TAX RETURN

(RCW 9.46.110, ORDINANCE 92-07, AS AMENDED)

For Quarter Ending: March 31
 June 30
 September 30
 December 31

DATE DUE: Payment and Tax Return due on the last day of the month following the end of the quarter.

ENCLOSURES REQUIRED: A copy of your Washington State Gambling Commission "Quarterly Report" must be enclosed with this Tax Return.

BUSINESS ACTIVITY CHANGES:

- Activities have been discontinued as of ___/___/___
- Business Ownership Change:
 New Owner _____
 Effective Date ___/___/___
- Address Change: _____

Activity	Gross Receipts	Allowed Deductions (-) Prize Amt. Paid Out	(=) Taxable Revenue	(x) Tax Rate	(=) TAX
Bingo				5%	
Raffles ¹				5%	
Amusement Games				2%	
Punchboards		none allowed		5%	
Pulltabs	47846.00	none allowed	47846.00	5%	2392.30
Cardrooms ²		none allowed		11%	

¹ Cardrooms pay 11% of gross yearly receipts over \$10,000.
² Non-profit/charitable organizations pay 10% of net annual raffle proceeds over \$10,000.

Tax Total	2392.30
Penalty	
Due from Prior Qtr	
TOTAL PAID	2392.30
Check No.	

FILING INSTRUCTIONS

1. Make checks payable to: CITY OF BURIEN.
2. Sign and date the Tax Return.
3. Enclose a copy of your Washington State Gambling Commission Quarterly Report.

For City Use Only

I declare under penalty of perjury that the information reported on this form is true and correct to the best of my knowledge.

SIGNATURE: [Signature] Date: 4/30/09 Print Name: WILLIAM LAU

ORIGINAL: City Copy - Remit with payment to City

4/93-THAT/TPublications-BurienWA-242-3053

CITY OF BURIEN



400 SW 152nd St., Suite 300
 Burien, WA 98166
 Phone: (206) 241-4647
 Fax: (206) 248-5539

TAX RETURN INSTRUCTIONS:

1. Tax Return must be completed and returned even if no gambling activity occurred in the quarter.
2. Applicable penalties must be included with payment.
3. Enter gross receipts, allowed deductions, taxable revenue, and the calculated tax for each activity. Enter quarterly totals in the "Tax Total" and "Penalty" blocks. Enter your payment amount in the "Total Paid" block.
4. Complete "Business/Activity Changes" section (if applicable).

BUSINESS NAME:

BZ's Sports Bar & Grill
 17730 Ambaum Blvd.. S
 Burien, WA 98148

GAMBLING TAX RETURN

(RCW 9.46.110, ORDINANCE 92-07, AS AMENDED)

For Quarter Ending: March 31
 June 30
 September 30
 December 31

DATE DUE: Payment and Tax Return due on the last day of the month following the end of the quarter.

ENCLOSURES REQUIRED: A copy of your Washington State Gambling Commission "Quarterly Report" must be enclosed with this Tax Return.

BUSINESS ACTIVITY CHANGES:

- Activities have been discontinued as of ___/___/___
- Business Ownership Change:
 New Owner _____
 Effective Date ___/___/___
- Address Change: _____

Activity	Gross Receipts	Allowed Deductions (-) Prize Amf. Paid Out	(=) Taxable Revenue	(x) Tax Rate	(=)TAX
Bingo				5%	
Raffles ¹				5%	
Amusement Games				2%	
Punchboards		none allowed		5%	
Pulltabs	48765.	none allowed	48765	5%	2,438.25
Cardrooms ²		none allowed		11%	

¹ Cardrooms pay 11% of gross yearly receipts over \$10,000.
² Non-profit/charitable organizations pay 10% of net annual raffle proceeds over \$10,000.

Tax Total	2,438.25
Penalty	
Due from Prior Qtr	
TOTAL PAID	2,438.25
Check No.	7262

FILING INSTRUCTIONS

1. Make checks payable to: CITY OF BURIEN.
2. Sign and date the Tax Return.
3. Enclose a copy of your Washington State Gambling Commission Quarterly Report.

For City Use Only

I declare under penalty of perjury that the information reported on this form is true and correct to the best of my knowledge.

SIGNATURE: (Officer of Organization) William Lau Date 7/30/09 Print Name WILLIAM LAU

ORIGINAL: City Copy - Remit with payment to City

4/93-Trade/Publications/BurienWA-02-0004

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CITY OF BURIEN
 400 SW 152nd St., Suite 300
 Burien, WA 98166
 Phone: (206) 241-4647
 Fax: (206) 248-5539



GAMBLING TAX RETURN

(RCW 9.46.110, ORDINANCE 92-07, AS AMENDED)

For Quarter Ending: March 31
 June 30
 September 30
 December 31

DATE DUE: Payment and Tax Return due on the last day of the month following the end of the quarter.

ENCLOSURES REQUIRED: A copy of your Washington State Gambling Commission "Quarterly Report" must be enclosed with this Tax Return.

BUSINESS ACTIVITY CHANGES:
 Activities have been discontinued as of ___/___/___
 Business Ownership Change:
 New Owner _____
 Effective Date ___/___/___
 Address Change: _____

TAX RETURN INSTRUCTIONS:

1. Tax Return must be completed and returned even if no gambling activity occurred in the quarter.
2. Applicable penalties must be included with payment.
3. Enter gross receipts, allowed deductions, taxable revenue, and the calculated tax for each activity. Enter quarterly totals in the "Tax Total" and "Penalty" blocks. Enter your payment amount in the "Total Paid" block.
4. Complete "Business/Activity Changes" section (if applicable).

BUSINESS NAME:
 BZ's Sports Bar & Grill
 17730 Ambaum Blvd. S
 Burien, WA 98166

Activity	Gross Receipts	Allowed Deductions (-) Prize Amt. Paid Out	(=) Taxable Revenue	(x) Tax Rate	(=) TAX
Bingo				5%	
Raffles ¹				5%	
Amusement Games				2%	
Punchboards		none allowed		5%	
Pulltabs	48024	none allowed	48024	5%	2,401.20
Cordrooms ²		none allowed		11%	

¹ Cordrooms pay 11% of gross yearly receipts over \$10,000.
² Non-profit/charitable organizations pay 10% of net annual raffle proceeds over \$10,000.

Tax Total	2,401.20
Penalty	
Due from Prior Qtr	Penalty Tax
TOTAL PAID	2,401.20
Check No.	1196

FILING INSTRUCTIONS

1. Make checks payable to: CITY OF BURIEN.
2. Sign and date the Tax Return.
3. Enclose a copy of your Washington State Gambling Commission Quarterly Report.

For City Use Only

I declare under penalty of perjury that the information reported on this form is true and correct to the best of my knowledge.
 SIGNATURE: William Lau Date: 10/28/09 Print Name: WILLIAM LAU

ORIGINAL: City Copy - Remit with payment to City

4/03-Third All Publications-Burien WA-242-0034

APPENDIX E

BZ's 2009

	Gross Per Audit	Difference	Gross Per Record
Jan	\$18,285.50	\$1,000.00	\$17,285.50
Feb	\$19,337.50	\$4,000.00	\$15,337.50
Mar	\$19,823.50	\$4,600.00	\$15,223.50
April	\$16,429.00	\$1,000.00	\$15,429.00
May	\$19,085.25	\$5,000.00	\$14,085.25
June	\$19,251.50	\$0.00	\$19,251.50
July	\$20,923.25	\$0.00	\$20,923.25
Aug	\$19,561.75	\$1,800.00	\$17,761.75
Sep	\$19,339.25	\$0.00	\$19,339.25
Oct	\$16,743.50	\$3,000.00	\$13,743.50
Nov	\$20,102.00	\$2,500.00	\$17,602.00
Dec	\$20,590.50	\$800.00	\$19,790.50

Total \$23,700.00

Month	Page	Per Audit	Difference	Per Record
January	1	\$6,332.75	\$1,000.00	\$5,332.75
January	3	\$18,285.50	\$1,000.00	\$17,285.50
February	3	\$19,337.50	\$4,000.00	\$15,337.50
March	1	\$5,764.00	\$600.00	\$5,164.00
March	4	\$19,223.50	\$4,000.00	\$15,223.50
April	3	\$6,389.50	\$1,000.00	\$5,389.50
May	3	\$19,085.25	\$5,000.00	\$14,085.25
August	1	\$7,133.50	\$1,000.00	\$6,133.50
August	3	\$5,828.00	\$800.00	\$5,028.00
October	2	\$5,188.75	\$2,000.00	\$3,188.75
October	3	\$6,194.50	\$1,000.00	\$5,194.50
November	3	\$5,341.50	\$500.00	\$4,841.50
November	4	\$19,602.00	\$2,000.00	\$17,602.00
December	2	\$6,818.50	\$800.00	\$6,018.50

\$24,700.00

Total Occurrences

14

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$57,446.50	-\$9,600.50	\$47,846.00	-\$0.50	47,846.50
2nd Qu.	\$54,765.75	-\$6,000.75	\$48,765.00	-\$0.75	48,765.75
3rd Qu.	\$59,824.25	-\$11,800.25	\$48,024.00	-\$10,000.25	58,024.25
4th Qu.	\$57,436.00	-\$15,301.00	\$42,135.00		51,136.00
Yearly Total	\$229,472.50	-\$42,702.50	\$186,770.00	-\$19,002.50	205,772.50

On pg. 3 overreported by \$44 did not include in figures above
 Found this in recent Mod 1 completed on 1/4/10. This started investigation.

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Tall Timbers 2005

	Gross Per Audit	Difference	Gross Per Record
Jan			
Feb			
Mar			
April			
May			
June			
July	\$51,894.00	-\$2,000.00	\$49,894.00
Aug			
Sep			
Oct	\$51,430.25	-\$9,000.00	\$42,430.25
Nov			
Dec			

1st Qu.
 2nd Qu.
 3rd Qu.
 4th Qu.

Yearly Total -\$11,000.00

Month	Page	Per Audit	Difference	Per Record
July	8	\$51,894.00	\$2,000.00	\$49,894.00
October	8	\$51,430.25	\$9,000.00	\$42,430.25

\$11,000.00

Total Occurences 2

up

Tall Timbers 2006

	Gross Per Audit	Difference	Gross Per Record
Jan	\$31,374.00	\$0.00	\$31,374.00
Feb	\$31,314.00	\$0.00	\$31,314.00
Mar	\$39,567.50		\$34,182.75
April	\$36,287.25	\$4,000.00	\$32,287.25
May	\$35,732.50	\$2,000.00	\$33,732.50
June	\$34,590.75	\$0.00	\$34,590.75
July	\$33,897.00	\$3,000.00	\$30,897.00
Aug	\$34,684.50	\$4,000.00	\$30,684.50
Sep	\$42,064.25	\$0.00	\$42,064.25
Oct	\$35,194.75	\$5,000.00	\$30,194.75
Nov	\$42,101.00	\$4,000.00	\$38,101.00
Dec	\$43,838.25	\$0.00	\$43,838.25

Total \$27,384.75

Month	Page	Per Audit	Difference	Per Record
March	6	\$39,567.50	\$5,384.75	\$34,182.75
April	6	\$36,287.25	\$4,000.00	\$32,287.25
May	6	\$35,732.50	\$2,000.00	\$33,732.50
July	6	\$33,897.00	\$3,000.00	\$30,897.00
August	5	\$34,684.50	\$4,000.00	\$30,684.50
October	6	\$35,194.75	\$5,000.00	\$30,194.75
November	6	\$42,101.00	\$4,000.00	\$38,101.00

\$27,384.75

Total Occurences 7

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$115,755.50	-\$5,384.50	\$110,371.00	\$0.25	110,370.75
2nd Qu.	\$106,610.50	-\$9,999.50	\$96,611.00	-\$3,999.50	100,610.50
3rd Qu.	\$110,645.75	-\$13,000.75	\$97,645.00	-\$6,000.75	103,645.75
4th Qu.	\$121,134.00	-\$11,052.00	\$110,082.00	-\$2,052.00	112,134.00
Yearly Total	\$454,145.75	-\$39,436.75	\$414,709.00	-\$12,052.00	426,761.00

Did not have grand total. I added each page total myself.

Didn't include total on pg. 6. with grand total

42

Tall Timbers 2007

	Gross Per Audit	Difference	Gross Per Record
Jan	\$35,563.25	\$4,000.00	\$31,563.25
Feb	\$36,338.50	\$6,000.00	\$30,338.50
Mar	\$36,280.25	\$4,800.00	\$31,480.25
April	\$42,454.75	\$6,000.50	\$36,454.25
May	\$40,001.00	\$5,500.00	\$34,501.00
June	\$47,962.75	\$6,000.00	\$41,962.75
July	\$56,769.50	\$14,001.50	\$42,768.00
Aug	\$54,860.00	\$6,600.00	\$48,260.00
Sep	\$41,168.25	\$600.00	\$40,568.25
Oct	\$46,584.25	\$0.00	\$46,584.25
Nov	\$32,251.00	\$4,000.00	\$28,251.00
Dec	\$33,355.50	\$3,000.00	\$30,355.50

Total \$60,502.00

Month	Page	Per Audit	Difference	Per Record
January	6	\$35,563.25	\$4,000.00	\$31,563.25
February	3	\$8,292.50	\$2,000.00	\$6,292.50
February	5	\$34,338.50	\$4,000.00	\$30,338.50
March	2	\$6,823.00	\$200.00	\$6,623.00
March	4	\$6,787.75	\$600.00	\$6,187.75
March	5	\$35,480.25	\$4,000.00	\$31,480.25
April	2	\$9,163.00	\$1,000.50	\$8,162.50
April	6	\$41,454.25	\$5,000.00	\$36,454.25
May	1	\$5,986.75	\$500.00	\$5,486.75
May	6	\$39,501.00	\$5,000.00	\$34,501.00
June	6	\$47,962.75	\$6,000.00	\$41,962.75
July	3	\$12,283.50	\$2,000.00	\$10,283.50
July	6	\$10,622.75	\$2,001.00	\$8,621.75
July	7	\$52,768.50	\$10,000.50	\$42,768.00
August	3	\$7,765.50	\$600.00	\$7,165.50
August	7	\$54,260.00	\$6,000.00	\$48,260.00
September	2	\$9,643.75	\$600.00	\$9,043.75
November	5	\$32,251.00	\$4,000.00	\$28,251.00
December	5	\$33,355.50	\$3,000.00	\$30,355.50

\$60,502.00

Total Occurences

19

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$108,182.00	-\$14,800.00	\$93,382.00	\$0.00	93,382.00
2nd Qu.	\$130,418.50	-\$17,501.50	\$112,917.00	-\$1.00	112,918.00
3rd Qu.	\$152,797.75	-\$21,201.75	\$131,596.00	-\$0.25	131,596.25
4th Qu.	\$112,190.75	-\$13,000.75	\$99,190.00	-\$6,000.75	105,190.75
Yearly Total	\$503,589.00	-\$66,504.00	\$437,085.00	-\$6,002.00	443,087.00

2

Tall Timbers 2008

	Gross Per Audit	Difference	Gross Per Record
Jan	\$31,705.00	\$5,600.00	\$26,105.00
Feb	\$38,152.25	\$7,000.00	\$31,152.25
Mar	\$40,482.25	\$4,100.00	\$36,382.25
April	\$34,005.50	\$3,000.00	\$31,005.50
May	\$34,481.25	\$3,001.25	\$31,480.00
June	\$38,467.25	\$5,000.00	\$33,467.25
July	\$39,668.75	\$7,000.00	\$32,668.75
Aug	\$39,061.25	\$7,300.00	\$31,761.25
Sep	\$30,540.50	\$0.00	\$30,540.50
Oct	\$33,467.50	\$3,000.00	\$30,467.50
Nov	\$30,136.50	\$0.00	\$30,136.50
Dec	\$33,464.00	\$3,000.00	\$30,464.00

Total \$48,001.25

Month	Page	Per Audit	Difference	Per Record
January	1	\$8,038.50	\$1,000.00	\$7,038.50
January	4	\$6,730.00	\$600.00	\$6,130.00
January	5	\$30,105.00	\$4,000.00	\$26,105.00
February	5	\$38,152.25	\$7,000.00	\$31,152.25
March	1	\$6,521.25	\$500.00	\$6,021.25
March	5	\$3,611.25	\$600.00	\$3,011.25
March	5	\$39,382.25	\$3,000.00	\$36,382.25
April	5	\$34,005.50	\$3,000.00	\$31,005.50
May	5	\$34,481.25	\$3,001.25	\$31,480.00
June	6	\$38,467.25	\$5,000.00	\$33,467.25
July	5	\$39,668.75	\$7,000.00	\$32,668.75
August	1	\$6,812.75	\$500.00	\$6,312.75
August	5	\$6,964.00	\$800.00	\$6,164.00
August	6	\$37,761.25	\$6,000.00	\$31,761.25
October	5	\$33,467.50	\$3,000.00	\$30,467.50
December	4	\$33,464.00	\$3,000.00	\$30,464.00

\$48,001.25

Total Occurrences

16

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
Total 1st qu	\$110,339.50	-\$16,700.50	\$93,639.00	-\$0.50	93,639.50
Total 2nd qu	\$106,954.00	-\$11,001.00	\$95,953.00	\$0.25	95,952.75
Total 3rd qu	\$109,270.50	-\$14,300.50	\$94,970.00	-\$0.50	94,970.50
Total 4th qu	\$97,068.00	-\$7,933.00	\$89,135.00	-\$1,933.00	91,068.00
Yearly Total	\$423,632.00	-\$49,935.00	\$373,697.00	-\$1,933.75	375,630.75

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Tall Timbers 2009

	Gross Per Audit	Difference	Gross Per Record
Jan	\$45,041.25	\$5,000.00	\$40,041.25
Feb	\$35,309.25	\$5,000.00	\$30,309.25
Mar	\$47,618.50	\$6,000.00	\$41,618.50
April	\$27,538.25	\$0.00	\$27,538.25
May	\$33,141.00	\$6,000.00	\$27,141.00
June	\$26,459.25	\$6,001.25	\$20,458.00
July	\$36,458.50	\$6,000.25	\$30,458.25
Aug	\$41,822.50	\$5,000.00	\$36,822.50
Sep	\$29,894.75	\$6,000.00	\$23,894.75
Oct	\$29,804.75	\$7,000.00	\$22,804.75
Nov	\$27,929.75	\$6,000.00	\$21,929.75
Dec	\$31,660.00	\$10,600.00	\$21,060.00

Total \$68,601.50

Month	Page	Per Audit	Difference	Per Record
January	6	\$45,041.25	\$5,000.00	\$40,041.25
February	5	\$35,309.25	\$5,000.00	\$30,309.25
March	6	\$47,618.50	\$6,000.00	\$41,618.50
May	4	\$33,141.00	\$6,000.00	\$27,141.00
June	4	\$26,459.25	\$6,001.25	\$20,458.00
July	5	\$36,458.50	\$6,000.25	\$30,458.25
August	6	\$41,822.50	\$5,000.00	\$36,822.50
September	1	\$6,469.00	\$1,000.00	\$5,469.00
September	4	\$28,894.75	\$5,000.00	\$23,894.75
October	3	\$8,043.25	\$2,000.00	\$6,043.25
October	4	\$27,804.75	\$5,000.00	\$22,804.75
November	4	\$27,929.75	\$6,000.00	\$21,929.75
December	3	\$7,864.00	\$600.00	\$7,264.00
December	5	\$31,060.00	\$10,000.00	\$21,060.00

\$68,601.50

Total Occurences

14

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
Total 1st qu	\$127,969.00	-\$16,000.00	\$111,969.00	\$0.00	111,969.00
Total 2nd qu	\$87,138.50	-\$12,001.50	\$75,137.00	-\$0.25	75,137.25
Total 3rd qu	\$108,175.75	-\$17,000.75	\$91,175.00	-\$0.50	91,175.50
Total 4th qu	\$89,394.50	-\$23,601.50	\$65,793.00	-\$1.50	65,794.50
Yearly Total	\$412,677.75	-\$68,603.75	\$344,074.00	-\$2.25	344,076.25

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BZ's 2006

	Gross Per Audit	Difference	Gross Per Record
Jan	\$22,554.50	\$0.00	\$22,554.50
Feb	\$26,830.75	\$767.00	\$26,063.75
Mar	\$30,165.00	\$4,330.25	\$25,834.75
April	\$20,394.50	\$0.00	\$20,394.50
May	\$20,688.00	\$0.00	\$20,688.00
June	\$17,732.00	\$0.00	\$17,732.00
July	\$21,705.25	\$0.00	\$21,705.25
Aug	\$18,094.25	\$0.00	\$18,094.25
Sep	\$18,140.25	\$0.00	\$18,140.25
Oct	\$17,395.00	\$0.00	\$17,395.00
Nov	\$21,928.25	\$0.00	\$21,928.25
Dec	\$13,714.00	\$0.00	\$13,714.00

Total \$5,097.25

Month	Page	Per Audit	Difference	Per Record
February	4	\$5,109.50	\$767.00	\$4,342.50
March	6	\$30,165.00	\$4,330.25	\$25,834.75

\$5,097.25

Total Occurrences 2

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$79,550.25	-\$9,726.25	\$69,824.00	-\$4,629.00	74,453.00
2nd Qu.	\$58,814.50	-\$2,000.50	\$56,814.00	-\$2,000.50	58,814.50
3rd Qu.	\$57,939.75	-\$6,000.75	\$51,939.00	-\$6,000.75	57,939.75
4th Qu.	\$53,037.25	-\$0.25	\$53,037.00	-\$0.25	53,037.25
Yearly Total	\$249,341.75	-\$17,727.75	\$231,614.00	-\$12,630.50	244,244.50

Didn't include total on pg. 6. with grand total

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BZ's 2007

	Gross Per Audit	Difference	Gross Per Record
Jan	\$19,134.00	\$2,000.00	\$17,134.00
Feb	\$16,979.75	\$500.00	\$16,479.75
Mar	\$20,570.00	\$2,400.00	\$18,170.00
April	\$15,423.50	\$900.00	\$14,523.50
May	\$20,796.00	\$2,600.00	\$18,196.00
June	\$21,809.75	\$1,200.00	\$20,609.75
July	\$17,159.25	\$1,600.50	\$15,558.75
Aug	\$22,697.50	\$2,600.00	\$20,097.50
Sep	\$16,106.25	\$300.50	\$15,805.75
Oct	\$17,117.50	\$0.00	\$17,117.50
Nov	\$17,262.25	\$300.00	\$16,962.25
Dec	\$18,160.75	\$0.00	\$18,160.75

Total \$14,401.00

Month	Page	Per Audit	Difference	Per Record
January	4	\$19,134.00	\$2,000.00	\$17,134.00
February	2	\$5,216.00	\$500.00	\$4,716.00
March	1	\$4,684.75	\$1,500.00	\$3,184.75
March	2	\$4,247.50	\$200.00	\$4,047.50
March	3	\$5,407.50	\$300.00	\$5,107.50
March	4	\$5,422.75	\$400.00	\$5,022.75
April	1	\$4,645.25	\$500.00	\$4,145.25
April	3	\$5,936.75	\$400.00	\$5,536.75
May	1	\$6,015.75	\$400.00	\$5,615.75
May	3	\$5,535.25	\$200.00	\$5,335.25
May	4	\$20,196.00	\$2,000.00	\$18,196.00
June	1	\$5,304.00	\$300.00	\$5,004.00
June	3	\$5,714.00	\$600.00	\$5,114.00
June	4	\$5,415.00	\$300.00	\$5,115.00
July	1	\$5,138.00	\$400.00	\$4,738.00
July	2	\$5,770.50	\$600.50	\$5,170.00
July	3	\$5,786.75	\$600.00	\$5,186.75
August	1	\$6,702.00	\$600.00	\$6,102.00
August	2	\$5,842.00	\$500.00	\$5,342.00
August	3	\$4,678.00	\$500.00	\$4,178.00
August	4	\$5,475.50	\$1,000.00	\$4,475.50
September	1	\$4,935.50	\$300.50	\$4,635.00
November	3	\$4,783.50	\$300.00	\$4,483.50

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$56,683.75	-\$4,900.75	\$51,783.00	-\$0.75	51,783.75
2nd Qu.	\$58,029.25	-\$4,701.25	\$53,328.00	-\$1.25	53,329.25
3rd Qu.	\$55,963.00	-\$4,501.00	\$51,462.00	\$0.00	51,462.00
4th Qu.	\$52,540.50	-\$300.50	\$52,240.00	-\$0.50	52,240.50
Yearly Total	\$223,216.50	-\$14,403.50	\$208,813.00	-\$2.50	208,815.50

Total Occurences \$14,401.00
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BZ's 2008

	Gross Per Audit	Difference	Gross Per Record
Jan	\$18,137.50	\$300.00	\$17,837.50
Feb	\$19,244.25	\$600.00	\$18,644.25
Mar	\$23,873.50	\$2,026.00	\$21,847.50
April	\$22,313.00	\$0.00	\$22,313.00
May	\$23,450.50	\$1,200.00	\$22,250.50
June	\$18,185.75	\$1,500.00	\$16,685.75
July	\$18,894.25	\$100.00	\$18,794.25
Aug	\$20,674.75	\$800.00	\$19,874.75
Sep	\$18,996.75	\$677.75	\$18,319.00
Oct	\$20,307.25	\$500.00	\$19,807.25
Nov	\$25,123.50	\$2,000.00	\$23,123.50
Dec	\$16,026.25	\$500.00	\$15,526.25

Total \$10,203.75

Month	Page	Per Audit	Difference	Per Record
January	3	\$6,423.00	\$300.00	\$6,123.00
February	2	\$6,873.75	\$300.00	\$6,573.75
February	3	\$5,464.50	\$300.00	\$5,164.50
March	1	\$7,704.25	\$600.00	\$7,104.25
March	2	\$7,381.00	\$990.00	\$6,391.00
March	3	\$5,404.00	\$400.00	\$5,004.00
May	2	\$6,986.50	\$900.00	\$6,086.50
May	4	\$22,550.50	\$300.00	\$22,250.50
June	1	\$5,638.00	\$500.00	\$5,138.00
June	2	\$6,250.75	\$1,000.00	\$5,250.75
July	3	\$5,154.25	\$100.00	\$5,054.25
August	1	\$6,479.00	\$300.00	\$6,179.00
August	3	\$6,550.25	\$500.00	\$6,050.25
September	1	\$6,201.00	\$677.75	\$5,523.25
October	3	\$6,580.50	\$500.00	\$6,080.50
November	2	\$8,018.25	\$2,000.00	\$6,018.25
December	3	\$5,581.50	\$500.00	\$5,081.50

Total Occurences \$10,167.75
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	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$61,255.25	-\$2,926.25	\$58,329.00	-\$0.25	58,329.25
2nd Qu.	\$63,949.25	-\$2,700.25	\$61,249.00	-\$0.25	61,249.25
3rd Qu.	\$58,565.75	-\$1,577.75	\$56,988.00	\$0.00	56,988.00
4th Qu.	\$61,457.00	-\$3,000.00	\$58,457.00	\$0.00	58,457.00
Yearly Total	\$245,227.25	-\$10,204.25	\$235,023.00	-\$0.50	235,023.50

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Goodtime Ernie's 2006

	Gross Per Audit	Difference	Gross Per Record
Jan	\$10,082.00	\$0.00	\$10,082.00
Feb	[REDACTED]	\$1,000.00	[REDACTED]
Mar	[REDACTED]	-\$28.00	[REDACTED]
April	\$7,422.00	\$0.00	\$7,422.00
May	\$9,333.50	\$0.00	\$9,333.50
June	\$12,079.25	\$0.00	\$12,079.25
July	\$8,534.25	\$0.00	\$8,534.25
Aug	\$4,061.50	\$0.00	\$4,061.50
Sep	\$7,466.00	\$0.00	\$7,466.00
Oct	\$6,153.75	\$0.00	\$6,153.75
Nov	\$7,584.50	\$0.00	\$7,584.50
Dec	\$7,243.00	\$0.00	\$7,243.00

Total \$972.00

Month	Page	Per Audit	Difference	Per Record
February	2	\$7,324.50	\$1,000.00	\$6,324.50

\$1,000.00

Total Occurences

1

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Quarter	\$25,945.50	-\$971.50	\$24,974.00	\$0.50	24,973.50
2nd Quarter	\$28,834.75	-\$4.75	\$28,830.00	-\$4.75	28,834.75
3rd Quarter	\$20,061.75	-\$0.75	\$20,061.00	-\$0.75	20,061.75
4th Quarter	\$20,981.25	\$161.75	\$21,143.00	\$161.75	20,981.25
Yearly Total	\$95,823.25	-\$815.25	\$95,008.00	\$156.75	94,851.25

[REDACTED] On pg. 2 | total changed at bottom of pg.

[REDACTED] On pg. 2 | total changed at bottom of pg.

According to tax return gross receipts reported as \$24,145.00. Diff. of \$1800.50. Difference reflected in Summary.

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Goodtime Ernie's 2007

	Gross Per Audit	Difference	Gross Per Record
Jan	\$6,664.75	\$0.00	\$6,664.75
Feb	\$5,817.50	\$0.00	\$5,817.50
Mar	\$8,065.50	\$0.00	\$8,065.50
April	\$4,502.00	\$0.00	\$4,502.00
May	\$8,276.50	\$0.00	\$8,276.50
June	\$4,022.00	\$0.00	\$4,022.00
July	\$6,874.25	\$0.00	\$6,874.25
Aug	\$5,956.00	\$0.00	\$5,956.00
Sep	\$5,934.25	\$0.00	\$5,934.25
Oct	\$3,447.50	\$0.00	\$3,447.50
Nov	\$3,961.25	\$0.00	\$3,961.25
Dec	\$6,308.75	\$0.00	\$6,308.75

Total \$0.00

Month	Page	Per Audit	Difference	Per Record

Total Occurences

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Quarter	\$20,547.75	-\$1,019.75	\$19,528.00	-\$1,019.75	20,547.75
2nd Quarter	\$16,800.50	-\$0.50	\$16,800.00	-\$0.50	16,800.50
3rd Quarter	\$18,764.50	-\$5,047.50	\$13,717.00	-\$5,047.50	18,764.50
4th Quarter	\$13,717.50	\$5,047.50	\$18,764.50	\$5,047.50	13,717.50
Yearly Total	\$69,830.25	-\$1,020.25	\$68,810.00	-\$1,020.25	69,830.25

Mixed up quarters on QAR (okay). Ended up paying taxes on \$18764 for both quarters. Overpaid reported on taxes for 4th quarter by \$5048. This discrepancy is not included in the Main Summary.

Goodtime Ernie's 2008

	Gross Per Audit	Difference	Gross Per Record
Jan	\$5,226.25	\$0.00	\$5,226.25
Feb	\$4,820.75	\$0.00	\$4,820.75
Mar	\$5,023.25	\$256.00	\$4,767.25
April	\$5,854.50	\$1,000.25	\$4,854.25
May	\$4,346.00	\$0.00	\$4,346.00
June	\$5,168.75	\$0.00	\$5,168.75
July	\$4,850.25	\$0.00	\$4,850.25
Aug	\$5,277.50	\$0.00	\$5,277.50
Sep	\$4,512.50	\$0.00	\$4,512.50
Oct	\$1,222.75	\$0.00	\$1,222.75
Nov	\$3,438.75	\$0.00	\$3,438.75
Dec	\$3,353.00	\$0.00	\$3,353.00

Total \$1,256.25

Month	Page	Per Audit	Difference	Per Record
March	1	\$5,023.25	\$256.00	\$4,767.25
April	1	\$5,854.50	\$1,000.25	\$4,854.25

\$1,256.25

Total Occurrences 2

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Quarter	\$15,070.25	-\$256.25		-\$0.25	14,814.25
2nd Quarter	\$15,369.25	-\$1,000.25	\$14,369.00	\$0.00	14,369.00
3rd Quarter	\$14,640.25	-\$0.25	\$14,640.00	-\$0.25	14,640.25
4th Quarter	\$8,014.50	\$0.50	\$8,015.00	\$0.50	8,014.50
Yearly Total	\$53,094.25	-\$1,256.25	\$51,838.00	\$0.00	51,838.00

 Did not add gross receipts for last game into grand total
 According to tax return gross receipts reported as \$13761. Diff. of \$1309.25.
 Difference reflected in Summary.

Goodtime Ernie's 2009

	Gross Per Audit	Difference	Gross Per Record
Jan	\$4,706.00	\$0.00	\$4,706.00
Feb	\$4,026.00	\$0.00	\$4,026.00
Mar	\$6,665.00	\$600.00	\$6,065.00
April	\$8,166.50	\$0.00	\$8,166.50
May	\$7,737.00	\$0.00	\$7,737.00
June	\$8,025.25	\$0.00	\$8,025.25
July	\$11,093.75	\$2,537.50	\$8,556.25
Aug	\$5,007.25	\$0.00	\$5,007.25
Sep	\$6,688.50	\$0.00	\$6,688.50
Oct	\$9,639.50	\$0.00	\$9,639.50
Nov	\$11,781.25	\$0.00	\$11,781.25
Dec	\$5,002.50	\$0.00	\$5,002.50

Total \$3,137.50

Month	Page	Per Audit	Difference	Per Record
March	1	\$6,665.00	\$600.00	\$6,065.00
July	2	\$5,776.25	\$537.50	\$5,238.75
July	2	\$10,556.25	\$2,000.00	\$8,556.25

\$3,137.50

Total Occurences 3

	Gross Per Audit	Difference	Gross Per QAR/Tax Return	Difference	Gross Per Record
1st Qu.	\$15,397.00	-\$600.00	\$14,797.00	\$0.00	14,797.00
2nd Qu.	\$23,928.75	-\$4,000.75	\$19,928.00	-\$4,000.75	23,928.75
3rd Qu.	\$22,789.50	-\$2,227.50	\$20,562.00	\$310.00	20,252.00
4th Qu.	\$26,423.25	-\$5,000.25	\$21,423.00	-\$5,000.25	26,423.25
Yearly Total	\$88,538.50	-\$11,828.50	\$76,710.00	-\$8,691.00	85,401.00

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to James Lobsenz, the attorney for the appellant, at Carney Badley Spellman, P.S., 701 Fifth Avenue, Suite 3600, Seattle, WA 98104-7010, containing a copy of the Brief of Respondent, in STATE V. WILLIAM LAU, Cause No. 67523-1-I, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

05/14/12

Date