

No. 37353-0-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

AOL LLC,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF REVENUE,

Respondent.

Appellant's Reply Brief

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I. INTRODUCTION

AOL filed an amended return for the January 2000 reporting period and paid \$331,377. CP 95-96. AOL thereafter filed suit in Thurston County Superior Court, seeking a refund of the \$331,377. CP 4-8. Although neither the Amended Complaint nor the relevant statutory language makes mention of the term “assessment”, the Department filed a Motion to Dismiss on the grounds that RCW 82.32.150 requires AOL to pay the full amount of a proposed \$19 million, four-year assessment before it could institute an action seeking a refund of the taxes paid with its amended January 2000 tax return. CP 24-38. The trial court granted the motion to dismiss and AOL appealed.

The Department now makes four important concessions that undermine its entire argument: (1) “the statute [RCW 82.32.150] makes no explicit reference to an ‘assessment’”, Resp. Br. at 11; (2) “where a monthly reporting period is not covered by an assessment, taxpayer may pay a single month and file an action in superior court for a refund of the taxes paid for that month”, Resp. Br. at 11 n. 4; (3) the statute does not “require a taxpayer to pay all current taxes owing before filing a refund lawsuit”, Resp. Br. at 12 n. 5; and (4) RCW 82.32.150 “must encompass voluntary reporting and payment as well as assessments”, Resp. Br. at 12. These concessions should end the debate. However, despite these

concessions, the Department still argues that AOL must pay all of a non-final assessment, which AOL is not yet (and may never be) obligated to pay, before suing for a refund of tax paid with its January 2000 return.

II. ARGUMENT

This case boils down to whether AOL may maintain its suit for a refund of the tax it paid with its January 2000 return. The answer to whether it can depends upon the scope of the first sentence of RCW 82.32.150:

All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest.

(Emphasis added.) As discussed in more detail below, it is plain that the phrase “all taxes” in RCW 82.32.150 encompasses voluntary reporting such as AOL’s amended return. This alone is a basis for reversal. As a second and alternative basis for reversal, where the assessment is pending but not yet due, as is the case here, the pendency of such non-final assessment does not bar a claim for refund of amounts paid with an amended return. To defend its position, the Department relies on a tortured construction of the statutory scheme that flies in the face of established principles of statutory construction.

A. The Department Concedes That It Has Read the Word “Assessment” Into RCW 82.32.150

The Department concedes that it “does not interpret RCW 82.32.150 to require a taxpayer to pay **all** current taxes owing before filing a refund lawsuit. . . .” Resp. Br. at 12, n. 5 (emphasis added).¹ Based upon this admission and other concessions by the Department, the Department’s practices, and the statutory scheme of which RCW 82.32.150 is part, “all taxes” under these facts must mean only the January 2000 taxes. As explained below, these are “all taxes” which are currently due (which includes amounts shown to be due on the returns voluntarily filed).

Additionally, despite boldly asserting that “a taxpayer must be required to pay the full amount of an assessment once the Department has issued an assessment”, Resp. Br. at 11, the Department admits that “the statute [RCW 82.32.150] makes no explicit reference to an ‘assessment.’” Resp. Br. at 12. The Department also concedes that this first sentence of RCW 82.32.150 “applies to all court actions in which a taxpayer seeks a refund. [T]he language must **encompass voluntary reporting and**

¹ This concession is consistent with the Department’s application of the statute to other taxpayers in practice. App. Br. at 7-9. Indeed, there must be some scope or limit to the statute – otherwise, taxpayers could be barred from court for filing a subsequent return late, not paying federal taxes, not paying a state tax administered by a different agency, or not paying other, unrelated taxes administered by the Department of Revenue. App. Br. at 9-10.

payment as well as assessments.” Resp. Br. at 12 (emphasis added).²

“The Department agrees that where a monthly reporting period is not covered by an assessment, taxpayer may pay a single month and file an action in superior court for a refund of the taxes paid for that month.”

Resp. Br. at 11 n. 4. In short, the Department concedes that its interpretation of the phrase “all taxes” in RCW 82.32.150—to include voluntary reporting and payment only in some instances (when an assessment has not issued) but not in others—is not based on any language found in the text of the statute.

As the Department admits, the first sentence of RCW 82.32.150 applies to taxes voluntarily reported and paid (*i.e.*, those taxes paid, as in this case, through returns) in addition to taxes assessed, and taxpayers are not required to pay all their taxes before filing a tax refund lawsuit. The Department, however, pulls out of thin air an *additional* requirement that AOL must pay an assessment of taxes that covers the period of the return.³

² The Department’s position is not supported by arguing that even though “assessments” are not specifically referred to in the relevant portion of RCW 82.32.150, neither are “amended returns.” Resp. Br. at 16. That is a red herring. What is referred to in RCW 82.32.150 is “taxes”, and not assessments or amended returns. Additionally, the Department concedes that *Kirkland v. Dep’t of Revenue*, 45 Wn.App. 720, 727 P.2d 254 (1986), not pertaining to taxes paid with a return, is distinguishable. Resp. Br. at 26. The same is true with respect to *Tyler Pipe v. Indus. Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 638 P.2d 1213 (1982).

³ The Department asserts that “AOL has not removed the January 2000 period from its petition to the Department” or administrative appeal. Resp. Br. at 3. However, AOL

“[W]e note the complete absence of any express language establishing such a requirement.” *Agrilink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 397, 103 P.3d 1226 (2005). Since AOL is suing for a refund of taxes voluntarily paid with a return (and made no allegations with respect to any assessed taxes or any challenge to an assessment in its Amended Complaint) and has paid all such taxes, AOL has complied with all of the express requirements of the statute.⁴ *See id.* at 396 (“Where statutory language is plain and unambiguous courts will not construe the statute....”). Here, the Department concedes that AOL has complied with the express requirements but tries to add an unspoken extra bar—and a significant one, which would require that AOL pay more than \$19 million in order to seek refund of less than two percent of that amount.

Furthermore, to follow the Department’s interpretation is to contravene yet another established principle of statutory construction. The word “taxes”, used twice in RCW 82.32.150, must have the same meaning in both places it is used without any additional unstated bar. *Simpson Inv.*

advised the Department that if it “were to dismiss only January 2000” the taxpayer would not object. CP 22.

⁴ The Department’s concerns that a judge would have to determine whether the taxes, interest and penalties were paid in the correct amounts or in what portions are not relevant. For purposes of the Department’s motion, from which AOL appealed, it stipulated that AOL paid the tax, interest and penalties for July 2000. CP 324. With regard to the portions paid, the Department already has an approved mechanism for taxpayers to allocate partial payments of assessments. *See* <http://dor.wa.gov/Docs/forms/Misc/AuditUnprotestedPymtDtl.xls> and <http://dor.wa.gov/Docs/forms/Misc/AuditUnprotestedPymtDtlInstr.pdf>.

Co. v. State, Dep't. of Revenue, 141 Wn.2d 139, 160, 3 P.3d 741, 751 (2000) (“[W]hen the same words are used in different parts of a statute . . . the meaning is presumed to be the same throughout.”). *See also Colo. Common Cause v. Meyer*, 758 P.2d 153, 161 (Colo. 1988) (“This rule of consistent usage ... should have even more force where the identical words or phrases appear within the same sentence of a statutory definition.”) (citations omitted).

Similarly, where the legislature uses the term “taxes”, it is presumed to mean something different than the term “assessment” which is used elsewhere in the statutory scheme (including in the only other sentence of RCW 82.32.150). *Simpson*, 141 Wn.2d at 160; *United Parcel Serv. v. Dep't of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984).⁵

Lacey Nursing Center, Inc. v. Dep't of Revenue, 128 Wn.2d 40, 905 P.2d 338 (1995) cannot be relied upon for adding requirements to a statute that are not found in the express language. In *Lacey*, the supreme court strictly construed **RCW 82.32.180**, reversing the decision of the trial court that an excise tax refund lawsuit could be maintained as a class action under RCW 82.32.180. *Id.* at 344. Of course, an individual

⁵ The Department’s argument that the legislature consistently uses the terms “taxes, penalties and interest” when addressing assessments, Resp. Br. at 11, is in error. For example, RCW 82.32.320 uses the terms specifically with regard to the submission of a return.

taxpayer such as AOL undoubtedly may bring suit under RCW 82.32.180—the specific situation addressed by *Lacey*. *Lacey* dictates only that AOL fully comply with RCW 82.32.180 and, to the extent incorporated, RCW 82.32.150. This AOL has done. *Lacey* does not raise any *additional* barriers to suit beyond what is expressly stated in the statutory scheme. Indeed, the very language of RCW 82.32.180, particularly the third paragraph, emphasizes that—while statutory procedures must be followed prior to accessing the courts—no *additional* requirements may be tacked on to these procedures. *See id.* (“It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.”).

Whereas the petitioner in *Lacey* attempted to read into RCW 82.32.180 language which was not there (*i.e.* authority to bring a class action refund suit), here it is the Department and not the taxpayer which is rewriting the statute, by attempting to redraft the phrase “all taxes” in RCW 82.32.150 into the term “assessment.” In short, despite the Department’s assertions, the requirements of RCW 82.32.150 and RCW 82.32.180—even if strictly interpreted—are met. While nothing in RCW

82.32.180 can be construed to authorize a class action suit, a refund suit such as AOL's is clearly permitted so long as "any tax as required" is paid.

B. Any Requirement to Pay "Taxes" Is Limited to Taxes Due.

The Department argues that "[i]n order to give effect to all of the words in RCW 82.32.150, a taxpayer must be required to pay the full amount of **an assessment** once the Department has issued an assessment." Resp. Br. at 11 (emphasis added). However, as discussed before, the term "assessment" is not used in the applicable portion of RCW 82.32.150, and additionally, is not defined by statute or regulation, and has an uncertain meaning. In fact, RCW 82.32.170 refers to an "original assessment", "additional assessment", and "corrected assessment." Thus, the references by the Department to the "assessment" are very nonspecific. In short and as previously discussed, by the very words of the statute, the question is not which assessments must be paid but which taxes, penalties and interest.

What is clear is that the Department's position is that for AOL to proceed with its tax refund lawsuit for the taxes paid with its January 2000 amended return of \$331,377 it must pay \$19 million, the amount shown on the notice issued by the Department on September 18, 2006. CP 44. It is up to this Court to decide whether, in this case and as an alternative basis,

taxes not currently (and possibly never) due and not the subject of court challenge must be paid in order for AOL to proceed with its lawsuit. The Department makes no assertion or argument that the \$19 million is currently due. Of course, RCW 82.32.150's reference to "taxes" should not include within its scope taxes not due, which the taxpayer is not yet (and may never be) obligated to pay.

A contrary rule would lead to absurd results. If, on June 30, 2008, a taxpayer wanted to bring a suit for taxes it paid with its May 2008 return would the taxpayer be required to pay the taxes that accrued for its June activities even though the return is not due?⁶ Similarly, the notices issued to AOL, referred to in RCW 82.32.160 and commonly known as assessments are merely preliminary or proposed and are not the final action of the Department with respect to the amount owing or due. RCW 82.32.160 provides that they become "final" only "if no . . . petition is filed within the thirty-day period" after issuance of the notice. "After [a] conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner." *Id.* AOL petitioned the Department for correction of the original notices. CP 10. The appeal was assigned as an executive

⁶ A monthly filer is required to report June taxes in July, a quarterly filer is required to report them in September and an annual filer would report them in January of the following calendar year. RCW 82.32.045; WAC 458-20-228(4).

level appeal. CP 11. As the record reflects, no determination was issued as of the time this action was instituted.

According to WAC 458-20-100(6)(b), “The determination in an executive level appeal is the final action of the department.”⁷ This is consistent with the ruling that “The filing of a timely petition [under] RCW 82.32.160 . . . prevents an assessment from becoming final” and the amount becoming due. Determination No. 99-009, 18 WTD 246 (1999).⁸

On January 25, 2008, in the Department’s motion to dismiss filed in a different case, *Comcast of Washington III, et al v. Washington State Department of Revenue*, Thurston County Superior Court No. 07-2-02263-2 at p. 4 (copies of selected pages are attached as Appendix A), the Department stated “The contested tax assessments do not become final and are not subject to collection until the administrative review is concluded.” Citing RCW 82.32.160. In other words, issuance of the Determination is the final action of the Department pursuant to WAC 458-20-100 and establishes the amount and time when payment is due. Before

⁷ While that rule is applicable to executive level appeals, other final actions of the department include a “determination in a small claims appeal”, (6)(a)(iii), a determination in a mainstream appeal, (5)(d), “an expedited appeal” requested by the taxpayer, (6)(c)(v) and a “reconsideration determination”, (7). However, only when a taxpayer does not petition for correction of the original notice does the original notice become the final action. RCW 82.32.160.

⁸ <http://taxpedia.dor.wa.gov/isysquery/a4e5088a-afa7-4d8d-ad0e-2cd2d31e132f/10/doc/>.

then, there is simply no amount due. RCW 82.32.160; Determination No. 99-009, 18 WTD 246 (1999).

While California and Washington use different terminology, their tax schemes are similar with respect to the fact that a pending assessment is not yet due. *City Nat. Corp. v. Franchise Tax Bd.*, 146 Cal. App. 4th 1040, 53 Cal. Rptr. 3d 411 (Cal.Ct.App. 2007) is persuasive for the proposition that a non-final assessment need not be paid to institute a tax refund lawsuit. In *City National*, the taxpayer sought a refund of overpaid franchise taxes for the years 1999 through 2002. The Franchise Tax Board had issued notices of proposed assessments for tax years covering the period of the refund action (1998–2003), and City National protested these notices. In response to the Board’s subsequent challenge to the refund suit, the court held that:

FTB correctly states that “an action for refund may not be maintained until the full amount claimed due for a given reporting period is paid,” and that “[a]ll taxes assessed in any given tax year must be paid in full before a tax refund action can be filed.” The fault in FTB’s position is that the amounts set forth in the NPAs are *not* assessed taxes that are “claimed due.”

Id. at 414. The court’s rationale was that “the proposed assessments were not final, and therefore, City National had paid all the taxes required to maintain an action for refund.” *Id.* at 412. “There is no indication in the

record that at the time of the demurrer FTB had taken any action on those protests. Therefore, the proposed assessments were not final and City National had no obligation at that time to pay them.” *Id.* at 415.

The Department attempts to distinguish *City National* on several grounds. Resp. Br. at 22-25. However, there is no basis to conclude that the court relied on *any* of the minor distinctions put forth by the Department in reaching its decision. The court states its conclusion as follows, that: “because the proposed assessments set forth in the NPAs were not final and City National had paid all taxes that were due at the time it filed its refund action, the trial court erred in dismissing the amended complaint.” *City National*, 53 Cal. Rptr. 3d at 415.

Finally, the policy points argued by the Department are inapplicable to the case at hand. While the Department argues that taking AOL’s position would disrupt the legislature’s intent of ensuring efficient tax collection and uninterrupted revenue, since the assessment of AOL that the Department asserts bars this suit is not yet due, the Department cannot plausibly argue that it is stymied in an attempt to collect what it as-of-yet has no right to collect. As stated previously, the legislature itself has provided for this stay of collection, and “under RCW 82.32.160 the amount of the taxes set forth in the assessments is not due, and may never be due.” App. Br. at 19.

Tyler Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 638 P.2d 1213 (1982), is distinguishable. In that case “Tyler Pipe petitioned the Department for a correction of this assessment. The Department denied the petition and sustained the imposition of the tax establishing May 20, 1981, as the due date for payment of the assessment or a 10 percent penalty would be imposed.” *Id.* at 786-7. In other words, there was a Final Determination fixing the amount of tax and the due date. Here, in contrast, AOL is not obligated to pay anything as of yet, and, to the extent that the Department is deprived of “efficient tax collection and uninterrupted revenue”, Resp. Br. at 29, it is due *only* to AOL’s assertion of its express rights under RCW 82.32.160 – not its contest of an amended return in the instant refund action before the court.

Similarly, since by legislative directive payment is not required pursuant to RCW 82.32.160, the spirit of RCW 82.32.150—requiring prepayment of all taxes contested—is satisfied. The prepayment requirement would be nonsensical and unduly burdensome were it to require prepayment of taxes which were not yet and might never be owed. AOL has unquestionably satisfied the purpose behind the procedural requirement of RCW 82.32.150. *See James v. County of Kitsap*, 154 Wn.2d 574, 588, 115 P.3d 286, 293 (2005) (“It is axiomatic that a judicial power vested in courts by the constitution may not be abrogated by

statute.... However...where statutes prescribe procedures for the resolution of a particular type of dispute, state courts have required substantial compliance or satisfaction of the spirit of the procedural requirements before they will exercise jurisdiction over the matter.”) (citation omitted). For procedural statutes, “substantial compliance” or satisfaction of the “spirit” of such requirements can be sufficient where the intent of the statute is carried out. *Id.*; *Appeal of Des Moines Sewer Dist., U.L.I.D., No. 29*, 97 Wn.2d 227, 228, 643 P.2d 436, 437 (1982).

Where the legislature provides taxpayers the right to petition the Department for review and correction of a proposed assessment without payment as well as imposes statutory obligations in order to bring tax refund lawsuits, the provisions must be harmonized. *See State v. Lilyblad*, 163 Wn.2d 1, ___, 177 P.3d 686, 691 (2008) (noting that statutes are required to be read whenever possible to harmonize provisions); *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (plain meaning of a statute is taken in context with the whole statutory scheme). If taxpayers avail themselves of one provision—petitioning for review of an assessment under RCW 82.32.160, without confronting the argument that the state is being denied “payment of taxes” by reason of the challenge—so should they be permitted to file a refund suit without confronting a similar argument, under principles of harmonization.

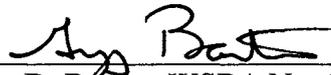
In accordance with the statutes, regulations and Department practice, the notice issued to AOL is not final, and most importantly is not yet due. Consequently, even were RCW 82.32.150 to require anything more than the taxes paid with the January 2000 return—the taxes specifically contested—it defies logic to argue, as the Department does, that it extends to taxes not yet due, and which the taxpayer has no obligation to pay. Therefore, payment of a proposed assessment cannot be a requirement under RCW 82.32.150 in order to bring a suit to request refund of taxes paid pursuant to a voluntarily-submitted amended return.⁹

III. CONCLUSION

For the reasons discussed above, AOL respectfully requests that the Court of Appeals reverse the dismissal of its Amended Complaint.

DATED: July 16, 2008

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⁹ It should be noted that the Washington Supreme Court has specifically permitted both a court challenge and administrative contest. *Qwest v. City of Bellevue*, 161 Wn.2d 353, 166 P.3d 667 (2007) (holding that where a court has original jurisdiction over a dispute, the administrative exhaustion requirement does not apply). Of course, for state purposes under RCW 82.32.180 there is no exhaustion requirement. Resp. Br. at 25.

CERTIFICATE OF SERVICE

I certify I served a copy of Appellant's Brief on Appeal via legal messenger on the following:

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APPENDIX A

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date: February 29, 2008
5 Time: 9:00 a.m.
6 The Honorable Chris Wickham

7 SUPERIOR COURT OF WASHINGTON
8 FOR THURSTON COUNTY

9 COMCAST OF WASHINGTON III,
10 INC., COMCAST OF PUGET SOUND,
11 INC., COMCAST OF BELLEVUE, INC.,
12 COMMUNITY TELECABLE OF
13 SEATTLE, INC., COMCAST OF
14 EVERETT, INC., COMCAST OF
15 PENNSYLVANIA/WASHINGTON/
16 WEST VIRGINIA LP, TCI OF
17 AUBURN, INC., TCI OF SEATTLE,
18 INC., COMCAST OF WA OR,
19 COMCAST OF TACOMA, INC.,
20 COMCAST OF CALIFORNIA/
21 COLORADO/WASHINGTON I, INC.,
22 COMCAST OF WASHINGTON II, INC.,
23 COMCAST OF WASHINGTON IV,
24 INC., AND TCI MATERIALS
25 MANAGEMENT, INC.,

26 Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF REVENUE,

Defendant.

NO. 07-2-02263-2

**DEPARTMENT OF REVENUE'S
MOTION TO DISMISS
NONCOMPLIANT PLAINTIFFS**

I. MOTION

The Defendant, Washington State Department of Revenue, hereby moves the Court for an order dismissing all of the named plaintiffs except Comcast of California/Colorado/Washington I, Inc. and TCI Materials Management, Inc. for failure to comply with RCW 82.32.150 and RCW 82.32.180.

1 noncompliant plaintiffs should be dismissed for failing to comply with the dictates of RCW
2 82.32.150 and 82.32.180.

3 III. STATEMENT OF FACTS

4 Comcast Corporation is the largest cable operator in the United States and offers a
5 variety of entertainment and communications products and services. Comcast Corporation
6 operates its cable television business through a number of subsidiary corporations and
7 limited liability companies. The fourteen named plaintiffs in this case are all subsidiaries of
8 Comcast Corporation.

9 In 2005 the Department of Revenue audited of each of the fourteen Comcast
10 subsidiaries. Adamson Decl. at ¶ 3. The audit covered the January 1999 through December
11 2002 tax reporting periods. *Id.* at ¶ 4. At the conclusion of the audit, the Department issued
12 an assessment notice to all of the Comcast subsidiaries except Comcast of
13 California/Colorado/Washington I, Inc. *Id.* at ¶ 4 and Exs. A1 - A13. Each assessment
14 notice set out the amount of additional tax, interest, and penalty owed for the audited periods.
15 Comcast of California/Colorado/Washington I, Inc., the one Comcast subsidiary that was not
16 issued an assessment notice, was issued a notice of refund due. *Id.* at ¶ 4 and Ex. A14.

17 TCI Materials Management, Inc. paid the entire amount assessed against it. *Id.* at ¶ 6
18 and Ex. B13. Each of the other plaintiffs (except Comcast of California/Colorado/
19 Washington I, Inc., which did not owe any additional tax) made a partial payment of the
20 amount assessed against it. *Id.* at ¶ 6 and Exs. B1 - B12. After applying these payments,
21 only Comcast of California/Colorado/Washington I, Inc. and TCI Material Management, Inc.
22 have paid the entire amount owed for the audited periods. *Id.* at ¶ 8 and Ex. D.

23 On November 9, 2007, the plaintiffs filed their Complaint. In that Complaint,
24 plaintiffs seek (1) a refund of taxes voluntarily paid during an eighteen month period
25 included within the audit, (2) a declaratory ruling relating to reporting instructions set out in
26

1 the audit, and (3) to enjoin the Department from “enforcing its position.” Complaint, ¶¶ 18,
2 21 and 25.

3 In addition to filing this lawsuit, each of the plaintiffs also filed a joint petition for
4 administrative review with the Department of Revenue. Faker Decl. at ¶ 4 and Ex. E. The
5 petition for administrative review involves the same taxes and same tax reporting periods that
6 are at issue in this lawsuit. The Department of Revenue is statutorily authorized to review
7 and correct tax assessments and denial of refund claims. *See* RCW 82.32.160 and 82.32.170.
8 The contested tax assessments do not become final and are not subject to collection until the
9 administrative review is concluded. RCW 82.32.160. Each of the plaintiffs has been
10 notified by the Department that the contested tax assessments have been put on “hold” and
11 are not currently subject to collection. Faker Decl. at ¶ 8 and Ex. G.

12 IV. STATEMENT OF THE ISSUE

13 RCW 82.32.150 and RCW 82.32.180 generally require prepayment of all taxes,
14 penalties, and interest before contesting any part of such tax payments in Superior Court.
15 Given that twelve of the fourteen plaintiffs in this case have not complied with this
16 prepayment requirement, should the Court dismiss those twelve noncompliant plaintiffs?

17 V. EVIDENCE RELIED UPON

18 In support of this Motion, the Department relies upon the Declarations of Donald
19 Adamson and Lisa Faker, and the exhibits attached thereto, and the other records filed in this
20 case.

21 VI. LEGAL ARGUMENTS AND AUTHORITIES

22 A. Taxpayers Must Prepay All Taxes, Penalties, And Interest Before Contesting Any 23 Part Of Such Tax Payments In Superior Court.

24 Washington has set strict requirements that must be met before a taxpayer may
25 challenge an excise tax liability in court. Specifically, RCW 82.32.150 provides that “[a]ll
26 taxes, penalties, and interest shall be paid in full before any action may be instituted in any

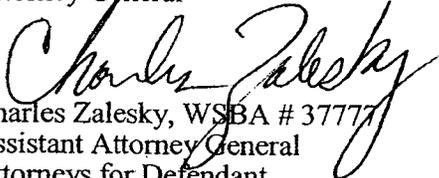
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VII. CONCLUSION

For the foregoing reasons, the Department requests that this Court dismiss all of the plaintiffs except Comcast of California/Colorado/Washington I, Inc. and TCI Materials Management, Inc.

DATED this 25th day of January, 2008.

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