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SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of THE ESTATE OF HELEN M. HAMBLETON,
Deceased,

STEVE HAMBLETON, in his capacity as personal representative of the
Estate of Helen M. Hambleton,

Respondent,

v.

THE DEPARTMENT OF REVENUE OF THE STATE OF
WASHINGTON,

Appellant.

***AMICUS CURIAE BRIEF OF THE
DORIS H. McINNIS QTIP TRUST***

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I. INTRODUCTION

This case presents many complexities, but at its core involves a simple principle: the Legislature cannot impose an entirely new tax on transfers of property completed years before the law's enactment.

Unfortunately, the Washington Legislature violated this principle by adopting Enrolled House Bill 2075 (hereinafter "EHB 2075"). Laws of 2013, 2d Spec. Sess., ch. 2 § 2. The Court should protect taxpayers from EHB 2075's unconstitutional imposition of a new retroactive estate tax.

The Respondents have presented compelling arguments about EHB 2075's unconstitutionality as a matter of law. *See* Brief of Respondents, at 18-33. This *amicus curiae* brief offers additional insights into the unconstitutionality of new, non-curative, non-remedial retroactive tax laws like EHB 2075.

First, this brief focuses on the unjust, unfair, and capricious nature of EHB 2075. A common set of constitutional concerns regarding retroactive tax laws should inform this Court's due process, separation of powers, and impairment of contractual obligations analyses. This brief emphasizes separation of power problems posed by EHB 2075's attempt to retroactively make judicial determinations. Finally, it addresses negative policy consequences if EHB 2075 were sustained or if the nearly unbridled retroactive taxing power claims by the State were adopted.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Legislature's imposition of an entirely new, retroactively applied estate tax on completed transfers related to the estates of individuals who died before May 17, 2005 necessarily impacts trusts and estates beyond the parties in this case.

The extent to which the Court passes on EHB 2075's constitutionality will likely determine whether *Amicus Curiae*, the Doris H. McInnis QTIP Trust, will be subject to retroactive taxation. The Doris H. McInnis QTIP Trust was established upon the death of the decedent on November 8, 2003, whereupon a QTIP election was made by the Trustee and her husband, Mr. John S. McInnis. Mr. McInnis died on October 24, 2013. As the QTIP Trust administration is ongoing, it is undetermined as to whether the Doris H. McInnis QTIP Trust will have unique circumstances bearing on as-applied challenges to EHB 2075. However, to the extent that this Court addresses facial challenges to EHB 2075's constitutionality, the co-Successor Trustees of the Doris H. McInnis QTIP Trust have a duty to the Trust beneficiaries to protect Trust property from unconstitutional, retroactive taxation. Accordingly, *Amicus Curiae*, the Doris H. McInnis QTIP Trust, has a substantial interest in ensuring that the Court subjects the Legislature's 2013 retroactive imposition of the State's 2005 stand-alone estate tax to constitutional scrutiny.

III. STATEMENT OF THE CASE

Amicus Curiae adopts the Statement of the Case offered to the Court by the Respondents. *See* Br. of Respondent, at 4-9.

As this Court explained in *Estate of Clemency v. State* (aka *Estate of Bracken* or "*Bracken*"), "[i]n response to *Hemphill*, the legislature passed the Estate and Transfer Tax Act (Act), creating a stand-alone tax effective May 17, 2005." 175 Wn.2d 529, 569, 290 P.3d 99 (2012) (citing *Estate of Hemphill v. Dep't of Revenue*, 153 Wn.2d 544, 105 P.3d 391 (2005)(additional cite omitted). The crux of this case is that EHB 2075 in involves retroactive application of an entirely new estate tax on transactions taking place several years ago, where rights have long since vested and reasonable expectations of taxpayers long been settled.

IV. ARGUMENT

B. Imposing a New and Non-Curative, Non-Remedial, Retroactive Tax Law, Such as EHB 2075 is inherently Unjust, Unfair, and an Affront to the Rule of Law

The Legislature's power to adopt laws with retroactive application is limited because "[r]etroactivity is not favored in the law." *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208, 109 S.Ct 468 (1988). Such disfavor is expressed in "the presumption against retroactive legislation," which "is deeply rooted in our jurisprudence and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film*

Products, 511 U.S. 244, 265, 114 S.Ct. 1483 (1994) (quoting *Kaiser Aluminum & Chem. Co. v. Bonjorno*, 494 U.S. 827, 855, 110 S.Ct. 1570, 1586 (1990)(Scalia, J., concurring).

Principles of justice, fairness, and the rule of law form the deep roots of that constitutional jurisprudence. As Justice Stevens explained:

Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the ‘principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.’

Landgraf, 511 U.S. at 265 (internal cite omitted). “In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions.” *Id.* at 265-6.

Conversely, “[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.” *General Motors Corp. v. Romein*, 503 U.S. 181, 191, 112 S.Ct. 1105 (1992). “[T]he unfairness of imposing new burdens on persons after the fact” is of particular concern because:

The Legislature’s unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsiveness to political pressures poses a risk

that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.

Langraf, 511 U.S. at 270, 266. “Groups targeted by retroactive laws, were they to be denied all protection, would have a justified fear that a government once formed to protect expectations now can destroy them.”

Eastern Enterprises v. Apfel, 524 U.S. 498, 549, 533 118 S.Ct. 2131 (1998). (Kennedy, J., concurring in judgment and dissenting in part).

Given these concerns about fairness, justice and the rule of law, “[i]t is therefore not surprising that the antiretroactivity principle finds expression in several provisions of our Constitution.” *Langraf*, 511 U.S. at 266 (citing U.S. CONST. Art I, § 10, cl. 1 (the *Ex Post Facto* Clause and bans on state laws “impairing the Obligation of Contracts”); U.S. CONST. AMEND. V (Takings Clause); U.S. CONST. Art. I §§ 9-10 (prohibitions on “Bills of Attainders”). “The Due process Clause also protects the interests in fair notice and repose that may be comprised by retroactive legislation.” *Id.* at 266 (citing U.S. CONST. AMEND V and *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17, 96 S.Ct. 2882 (1976)).

Beyond those specific provisions, the concept of legislative power contains inherent limits. Declared one prominent jurist, there are certain “fundamental principles of legislation” that define the essence of all laws:

[I]f the legislature were to enact, that *A. B.* was guilty of treason, and that he should suffer the penalty of death, it

would be the sworn duty of the court, or of any member of it, to grant a *habeas corpus*, and discharge him. Or if they should enact, that his estate should be confiscated, or transferred, or taken for the use of the public without an equivalent, such acts would not be laws; and they never could be executed, but by a court as corrupt, or as passionate, as the legislature which should have passed them.

So, if the legislature should attempt to destroy or impair the legal force of contracts, by declaring that those who were indebted should be discharged without paying their debts, or on paying a less sum than they owed, or in something different from what was agreed; such acts would be unconstitutional, although not expressly prohibited; because, by the fundamental principles of legislation, the law or rule must operate prospectively only, unless in cases where the public safety and convenience require that errors and mistakes should be overruled; the power to do which has been immemorially exercised, and we believe, within the constitutional power of the legislature. For it is doing no one wrong, to prevent his taking advantage of a mere error or mistake.

Now, if the act in question impairs the force and obligation of contracts, or injures private property, or disturbs any vested rights, we ought to declare it void, and we should be ready to do so.

Foster v. Essex Bank, 16 Mass. 245, 270-271, 8 Am.Dec. 135 (Mass. 1819) (Parker, C.J.). See also Joseph Story, *Commentaries on the Constitution* § 1398 (5th ed. 1891) (“Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.”)

These antiretroactive considerations cannot be dismissed as hard-headed. They recognize the necessity of retroactive laws for limited purposes. Exceptions exist in “cases where the public safety and convenience require that errors and mistakes should be overruled,” *Foster*, 16 Mass. at 271. But “a legislature, which, in its acts not expressly authorized by the constitution, limits itself to correcting mistakes, and to providing remedies for the furtherance of justice.” *Id.* at 273.

Those “fundamental principles of legislation,” *Id.* at 271, including the disfavor of retroactive laws,” are “deeply rooted in our jurisprudence,” *Langraf*, 511 U.S. at 265 (internal cite omitted). Accordingly, when this Court undertakes its due process analysis to “consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitations,” *U.S. v. Hemme*, 476 U.S. 558, 568-569, 106 S.Ct. 2071 (1986), antiretroactive considerations expressed in earlier decisions informs the meaning of those constitutional limitations.

This Court has recognized antiretroactivity principles. *See, e.g., Estate of Burns*, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997)(“Courts disfavor retroactivity because of the unfairness of impairing a vested right or creating a new obligation with respect to past transactions”) (citing

Langraf, 511 U.S. at 270-1); *Heilig v. Puyallup City Council*, 7 Wash. 29, 32, 34 P. 164 (1893).

In light of basic concerns for justice, fairness and the rule of law, this Court has declined to give retroactive effect to statutes conferring priority on tax liens. *In Re Cascade Fixture*, 8 Wn.2d 263, 270-3, 111 P.2d 991 (1941). It has held unconstitutional the Legislature's attempt to impose an employment excise tax in the period prior to when it became operative. *Bates v. McLeod*, 11 Wn.2d 648, 656, 102 P.2d 472 (1941).¹ And *Bracken* reaffirmed that antiretroactive principles announced in earlier U.S. Supreme Court decisions are still good law. 175 Wn.2d at 564-576, (quoting and approving *In re Estate of McGrath*, 191 Wash. 496, 71 P.2d 395 (1937)).

Disturbingly, EHB 2075's attempt to retroactively subject estates to an entirely new tax. *See Bracken*, 175 Wn.2d at 569 ("In response to *Hemphill*, the legislature passed the Estate and Transfer Tax Act (Act), creating a stand-alone tax effective May 17, 2005") (citing 153 Wn.2d 544; Laws of 2005, ch. 516, § 1, *codified as* ch. 83.100 RCW). EHB 2075

¹ Principles of justice, fairness, and the rule of law have also been recognized by this Court regarding retroactive tax assessments. State taxing authorities cannot change their positions regarding specific taxes owed by a taxpayer and retroactively demand back taxes. *See Hansen Baking Co.*, 48 Wn.2d 737, 743, 296 P.2d 670 (1956). Arbitrary authority to retroactively impose back tax assessments would mean that "taxpayers would never be able to close their books with assurance." *Id.* *See also Group Health Co-op. of Puget Sound, Inc. v. State Taxd Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967); *Stroh Brewery v. State Dept. Rev.*, 104 Wn.App. 235, 15 P.3d 692 (2001). While this case involves legislation rather than tax assessments, it relies on analogous reasoning.

flies in the face of *Bracken* and the principles its rests on. The Legislature's brazen attempt to retroactively tax QTIP Trust transfers where rights vested years earlier – and years before the adoption of the new stand-alone state estate tax – is inherently unjust and unfair. EHB 2075 is an affront to rule of law principles.

C. EHB 2075 Violates the Separation of Powers By Attempting to Make Judicial Determinations

EHB 2075 *retroactively* overrules longstanding constitutional jurisprudential understanding of when trust property transfers. In that respect, EHB 2075 makes an impermissible judicial determination. More particularly, EHB 2075 violates the separation of powers by seeking to reverse this Court's express ruling in *Bracken* about what constitutes a taxable transfer under the Court's plain reading of state law.

1. The Timing for Trust Property Has Transferred is a Judicial Determination

In *Bracken*, this Court observed that “[t]he requirement for a transfer is constitutionally grounded and long standing.” 175 Wn.2d at 564. In explaining why an estate tax on transfers requires an actual transfer, this Court quoted *McGrath*:

It is...in the very nature of things, impossible for an estate or inheritance tax to be exacted with respect to something in which the decedent did not own or have some kind of right at the time of his death, for in such a case there is no transfer.

That an estate tax cannot be collected with respect to property unless some right in it be transferred by the death of the decedent is held in many cases.

191 Wash. at 503 (quoted in *Bracken*, 175 Wn.2d at 566). *McGrath*, in turn, relied on “the principles invoked by the supreme court of the United states in the trust and gift cases.” *Id.* at 507-510. (discussing and applying the principles regarding taxation of trusts and gifts in *Coolidge v. Long*, 282 U.S. 582, 605, 51 S.Ct. 306 (1931) (additional cites omitted).

Bracken recognized that “[t]he requirement for a transfer is constitutionally grounded and long standing.” 175 Wn.2d at 564. Namely: “Property is transferred from a trustor when a trust is created, not when an income interest in the trust expires,” *Id.* at 566 (citing *Coolidge*, 282 U.S. at 605); “QTIP does not actually pass to or from the surviving spouse,” *Id.* at 566 (citing *Estate of Bonner v. U.S.* 84 F.3d 196, 198 (5th Cir.1996)); and “[t]he transfer is taxed later at a time when there is no transfer, by virtue of the deferral election.” *Id.* at 567.

But EHB 2075 disregards established principles regarding taxable transfers. Given its *retroactive* nature, EHB 2075 makes an essentially judicial determination. In this respect it runs contrary to the separation of powers principles that have “carefully preserved judicial functions from

legislative encroachment.” *City of Tacoma v. O’Brien*, 85 Wn.2d 266, 271, 534 P.2d 117 (1975).

“While a court will not controvert legislative findings of fact, the legislature is precluded by the constitutional doctrine of separation of powers from making Judicial determinations.” *Id.* at 271. Whereas “[a] judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist,” legislation “looks to the future and changes existing conditions by making a new rule, to be applied thereafter.” *Id.* at 272 (quoting *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226, 29 S.Ct. 67 (1908)).

EHB 2075 seeks to retroactively override the constitutional rule that property is transferred by a trustor to a trust upon its creation. *See Bracken* 175 Wn.2d at 564. In particular, EHB 2075 attempts to impose taxes on trusts where federal QTIP elections were made several years before the death of the surviving spouse – and several years before the Legislature adopted its new stand-alone estate tax. Making a retroactive determination of when a transfer of property takes place pursuant to a QTIP trust election – and in so doing, overriding a longstanding, constitutional rule regarding taxable transfers – “is a function exclusively judicial, and a legislative attempt to make such an adjudication violates the separation of powers doctrine and is void.” *O’Brien*, 85 Wn.2d at 272.

What's more, EHB 2075 would impose tax liability where no State QTIP election option was even available at the time of transfer to provide a benefit or *quid pro quo* that could be deemed the basis for a present transfer subject to state estate tax. *See Bracken*, 175 Wn.2d at 568-9.

2. The Legislature Cannot *Retroactively* Overrule This Court's Interpretation of the Statute in *Bracken*

The Legislature's separation of powers violation is all the more pronounced by its brazen attempt to rewrite a specific statutory construction by this Court. "It is a fundamental rule of statutory construction that once a statute has been construed by the highest court of the State, that construction operates as if it were originally written in to the statute." *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 506, 198 P.3d 1021 (2009). However, "separation of powers problems are raised when a subsequent legislative enactment is viewed as a clarification *and applied retroactively*, if the subsequent enactment contravenes the construction placed on the original statute by this court." *Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 558 637 P.2d 652 (1981) (citing *Johnson v. Morris*, Wn.2d 922, 557 P.2d 1299 (1976) (emphasis added)). Accordingly, "the legislature may not retroactively overrule a decision of the State's highest court." *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 627, 90 P.3d 659 (2004).

Bracken analyzed Washington's 2005 new stand-alone estate tax according to the ordinary rules of statutory construction to ascertain the intent of the Legislature as well as the rule of construction that tax statutes "must be construed most strongly against the taxing power and in favor of the taxpayer," *Id.*, at 564 (quoting *Lamtec Corp. v. Dept. of Rev.*, 170 Wn.2d 838, 842-3, 246 P.3d 788 (2011) (internal cite omitted)). This Court expressly declared that *McGrath*'s restatement of classic principles about the nature of estate taxes and transfers necessary to trigger such taxes "would apply equally to any Washington estate tax." *Bracken*, 175 Wn.2d at 565 (citing 191 Wash. 496). And in applying those foregoing principles this Court held:

Where a basis for taxation exists, a taxpayer can agree to defer the taxation, and federal estate tax can be assessed on fictional QTIP transfers by the Estates on rationales that also support Washington's creation of a state QTIP election that operates prospectively. But those rationales do not support the retroactive estate taxation of federal QTIP that DOR attempted to impose here.

Id. at 568. Rather:

Given the subject, nature, and purpose of the legislation, the statute and regulation present no ambiguity. They can be plainly read to create a state estate tax scheme which, like its federal counterpart, has a QTIP election that is designed to operate prospectively.

Id. at 571.

But EHB 2075 purports to overrule the Court's decision in *Bracken*, boldly declaring its intent "to reinstate the legislature's intended meaning when it enacted the estate tax." EHB 2075, § 1(5). EHB 2075 creates "separation of power problems" because it "contravenes the construction placed on the original "contravenes the construction placed on the original statute by this Court." *Washington State Farm Bureau Federation v. Gregoire*, 162 Wn.2d 284, 304, 174 P.3d 1142 (2007) (citing *Overton*, 96 Wn.2d at 558.)

Nor can EHB 2075 be considered a "curative" retroactive amendment. Aside from due process and other constitutional impairments of vested rights, *see* Br. of Respondents at 13-34, EHB 2075 neither "clarifies or technically corrects an ambiguous statute." *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461, 832 P.2d 1303 (1992). "Ambiguity exists when a law "can be reasonably interpreted in more than one way." *Vashon Island Comm. for Self-Gov't v. Wash. State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995). But in *Bracken*, this Court based its ruling on the premise that "the statute and regulations are not ambiguous." 175 Wn.2d at 575. Instead, EHB 2075 illegitimately attempts to reverse the plain reading of the statute that was confirmed by the construction offered by this Court. That violates the separation of powers.

C. Detrimental Public Policy Consequences Would Result if EHB 2075 Were Upheld

The crux of this case is that EHB 2075 seeks to retroactively impose an entirely new tax on transactions taking place several years ago, where rights have long since vested and reasonable expectations of taxpayers long been settled. *See Bracken*, 175 Wn.2d at 569 (“In response to *Hemphill*, the legislature passed the Estate and Transfer Tax Act (Act), creating a stand-alone tax effective May 17, 2005”) (citing 153 Wn.2d 544; Laws of 2005, ch. 516, § 1, *codified as* ch. 83.100 RCW). A ruling that the Legislature *cannot* retroactively impose taxes on transactions taking place years earlier through an entirely new tax offers this Court a clear and principled basis for limiting retroactive taxation by the Legislature. Such a ruling would leave untouched the Legislature’s discretion to adopt remedial and curative or measures regarding its existing tax laws. The Legislature’s discretion to adopt “transitional” measures from old tax policies to new tax policies – containing some retroactive effect in amending prior law – would remain undisturbed. Finally, judicially voiding a retroactive taxation on transactions completed several years prior would still fully respect the wide discretionary power of the Legislature in formulating tax policies operating *prospectively*.

On the other hand, negative public policy consequences would be especially likely if EHB 2075 were sustained. And adverse policy consequences would follow, if the all-but-unbridled retroactive taxing power claims advanced by the State in this case were adopted.

Given that the Legislature is seeking to retroactively impose taxation through the State's new stand-alone estate tax, a ruling to uphold EHB 2075 would lack a clear limiting principle on the Legislature's retroactive taxing power. By nature, legislation that cures defects in existing tax laws or alters existing tax laws according to transitional plans with short-term retroactive impact contains its own inherent limits. That is, the nature of the underlying tax law to be amended would give scope to the types of activities to be taxed and under what circumstances, thereby implying limits on impositions of new tax liabilities on wholly unrelated activities and circumstances. But retroactive imposition of tax liabilities through entirely new tax schemes contains no such implied limits for retroactive tax analysis.

Should the Legislature assume the power to tax past conduct by imposing entirely new tax schemes, judicial determination of any remaining limits on such a power would be improperly reduced to *ad hoc* determinations about remote degrees of retroactivity resulting from any particular tax law or tax assessment. For instance, might new tax schemes

imposing tax liabilities be permitted on transactions taking place three years ago? Five years ago? Seven years ago? Of course, EHB 2075 does contemplate taxing trusts involving property rights that transferred and vested more than seven years ago. But beyond EHB 2075's retroactive severity that respect, whether retroactive legislation is remedial and curative or an amendment to an existing law necessary for transition to a new policy – as opposed to an entirely new tax – is a clear and critical distinction to be made in considering “the nature of the tax.” *See Hemme*, 476 U.S. at 568-569.

If the Legislature can impose new tax liabilities through new tax laws on conduct taking place several years ago, the ability of citizens to make choices in reasonable anticipation of the likely tax consequences of their actions would be severely undermined. Instead, taxpayers who acted consistent with the law but suddenly face retroactive taxation from new legislative tax schemes could become subject to financial hardship by their *not* unreasonable failure to anticipate such taxation. Such a result would be inherently unjust and unfair to taxpayers who should be able to expect the law to reasonably settle expectations.

Moreover, the jurisprudence of the U.S. Supreme Court and of this Court recognizes that “[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective

legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.” *Romein*, 503 U.S. at 191; *Apfel*, 524 U.S. at 533. And that same jurisprudence recognizes the dangers that “[t]he Legislature’s unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration.” *Langraf*, 511 U.S. at 266.

A ruling to uphold retroactive application of new tax schemes such as EHB 2075 would also create a precedent friendly to future retroactive tax schemes by the Legislature. In fact, a decision blessing the power of the Legislature to impose tax liabilities on past conduct through entirely new tax schemes would likely embolden the Legislature. From the vantage point of the Legislature, retroactive taxation offers a lucrative and ultra-efficient mechanism for obtaining revenue from easy targets. So long as the new tax’s retroactive application is unanticipated, taxpayers will not have planned for it like they are typically able to do for all other taxes. But the super-efficiency of retroactive taxation contains the potential for abuse, and for that reason is constitutionally disfavored.

Concerns about Legislative abuse have deep jurisprudential roots. Easy tax targeting of past conduct through new and retroactively applied tax schemes thereby “poses a risk that [the Legislature] may be tempted to

use retroactive legislation as a means of retribution against unpopular groups or individuals.” *See, e.g., Langraf*, 511 U.S. at 266.

Regrettably, the State’s appeal to retroactive taxation as a means to fund State priorities needlessly pits a group or individuals against the rest of the citizenry. *See* Brief of Appellant at 15-16. However, constitutional analysis does not pit the objects of State spending against individual rights. State spending on public goods are not factors for rational basis review. The proper test is whether retroactive application of a tax statute fits within the fair, consistent, and efficient collection of revenue based on the type of tax involved. *See, e.g., W.R. Grace & Co. v. Dep’t of Revenue*, 137 Wn.2d 580, 973 P.2d 1011 (1999) (upholding retroactive application of measure to cure constitutional defects of B&O tax scheme). Because it would apply a new tax retroactively and over a span of several years, EHB 2075 does not meet the requirements of that test.

VI. CONCLUSION

For the foregoing reasons, *Amicus Curiae*, the Doris H. McInnis QTIP Trust, urges the Court to uphold the trial court and, if necessary, hold that EHB 2075 is unconstitutional.

RESPECTFULLY SUBMITTED this 8th day of January, 2014.

NEWTON ♦ KIGHT L.L.P.

By



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CERTIFICATE OF SERVICE

I, Seth L. Cooper declare and state as follows:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. I am an attorney at law. My business and mailing address is: 1820 32nd Street, P.O. Box 79, Everett, WA 98206
3. On January 8, 2014, I caused to be served a copy of the **AMICUS CURIAE BRIEF OF THE DORIS H. McINNIS QTIP TRUST** on the following, per the method indicated:

Thomas M. Culbertson
Laura J. Black
LUKINS & ANNIS, P.S.
1600 Washington Trust Financial Center
717 W Sprague Ave
Spokane, WA 99201-0466

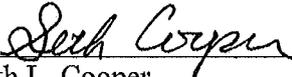
Delivery Method: *Via U.S. Mail*

David M. Hankins
Charles Zalesky
STATE OF WASHINGTON
Revenue Division, OID No. 91027
P.O. Box 40123
Olympia, WA 98504-0123

Delivery Method: *Via U.S. Mail*

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

Dated at Everett, Washington, this 8th day of January, 2014.



Seth L. Cooper

OFFICE RECEPTIONIST, CLERK

From: Seth L. Cooper <Seth@NewtonKight.com>
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Dear Clerk's Office,

Attached please find our motion for leave to file an *amicus curiae* brief in Case No. 89419-1, *In the Matter of the Estate of Helen M. Hambleton*. Also attached for filing is our *amicus curiae* brief. A certificate of service is attached at the end of the brief.

Respectfully,

Seth Cooper
Counsel for the Doris H. McInnis QTIP Trust

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