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No. 45482-3-II

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

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ASSOCIATION OF WASHINGTON SPIRITS AND WINE  
DISTRIBUTORS

Appellants

v.

WASHINGTON STATE LIQUOR CONTROL BOARD

Respondent

and

WASHINGTON RESTAURANT ASSOCIATION, NORTHWEST  
GROCERY ASSOCIATION and COSTCO WHOLESALE CORPORATION

Intervenor-Respondents

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REPLY BRIEF OF APPELLANT

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ORIGINAL

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Under I-1183 (the "Initiative"), both distributors and distillers were afforded new business opportunities: they could both sell spirits to private retailers where before they could not. This was advantageous for distributors. It was also advantageous for distillers. The Initiative permitted distillers to cut out the middlemen (distributors) and sell directly to retailers, thereby increasing profits. When distributing spirits, distillers – like distributors – receive a direct benefit that was previously reserved for the state.

Recognizing this, the Initiative made clear that when distillers and certificate of approval ("COA") holders act as distributors, they are required to "comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers" and comply with the "applicable laws and rules relating to distributors." RCW 66.24.640; RCW 66.28.330(4). The Thurston County Superior Court concluded that these requirements are unambiguous. Verbatim Report of Proceedings ("VRP") at 31.

Respondent ("Board") and Intervenor-Respondents (collectively "Costco") argue on appeal that the distributor fee provisions under RCW 66.24.055(3)(a)-(c) are not "applicable laws and rules relating to distributors." This is incorrect. Not only are they "applicable" to distributors, they are key provisions, ensuring that distributors pay – in

addition to, and separate from, a distributor's annual license fee – for the privilege of selling spirits directly to retailers.

Initially, the Board understood the Initiative as requiring direct-selling distillers<sup>1</sup> to comply with the distributor fee provisions under RCW 66.24.055(3)(a). Citing RCW 66.24.640 and RCW 66.28.330(4), the Board adopted regulations requiring that such distillers pay fees based on sales they make directly to retailers, akin to sales made by distributors. Under the regulations, direct-selling distillers must pay fees equal to ten percent of their gross direct distribution sales during their first two years of licensure and five percent thereafter – just like distributors. WAC 314-23-030; WAC 314-28-070(3).

Then, in an effort to increase revenues beyond what was contemplated by the voters, the Board ignored the clear statutory directives it had found compelling in adopting regulations to implement RCW 66.24.055(3)(a). Instead, the Board exempted direct-selling distillers from complying with another key provision of RCW 66.24.055(3)(c): that the ten percent fees must equal \$150 million in the first year and that distributors must pay, on a pro rata basis, any shortfall. RCW 66.24.055(3)(c); WAC 314-23-025.

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<sup>1</sup> Certificate of Approval holders, in the context of the regulations at issue here, are out-of-state distillers or agents of out-of-state distillers. Accordingly, in this brief “direct-selling distillers” is intended to include entities licensed as distillers and entities holding Certificates of Approval.

In an implicit acknowledgment that its enactment of WAC 314-23-025 is inconsistent with the statutory scheme, the Board now argues that its decision to require direct-selling distillers to pay the ten percent distribution fees was not mandated by the statutory requirement that they comply with rules and laws applicable to distributors. Rather, the Board argues, it merely used its inherent authority to levy fees under RCW 66.08.330. Accordingly, the Board claims, it has the authority to ignore RCW 66.24.640 and RCW 66.28.330(4) and excuse direct-selling distillers from paying their pro rata share of the shortfall.

In essence, the Board's argument is as follows: Because we (the Board) had the authority to levy fees, we also had the authority to choose not to levy fees. The second contention does not follow from the first. While the Board may have the inherent authority to levy fees, it does not have the authority to elect not to levy fees in the face of clear statutory directives requiring them.

The Board's argument is also directly contradictory to the rationale it used to successfully defend its enactment of WAC 314-23-030, the regulation that requires direct-selling distillers to pay the ten percent distribution fee. The Board repeatedly – and correctly – represented to the Thurston County Superior Court that its enactment

of WAC 314-23-030 was not an exercise of the Board's discretion; it was mandated by statute. Accordingly, enactment of WAC 314-23-025, which flatly ignores that same statutory mandate, exceeded the Board's authority and was an arbitrary abuse of its discretion.

Costco's arguments are equally unavailing. In attempting to make a plain language argument, Costco reads the \$150 million shortfall provision in isolation, contrary to well-established rules of statutory construction. In addition, to the limited extent that Costco does address the provisions requiring direct-shipping distillers to comply with the "applicable laws and rules relating to distributors," its reading renders the term "applicable" meaningless and the statutes superfluous - again, in contravention of established tenets of statutory construction. Finally, Costco's attempt to explain away the above requirements as being limited to laws and rules relating to self-distribution "operations," but not to fee provisions, falls flat, as Costco is unable to provide either law or logic in support of the proposition.

- A. **The Board's "new" arguments ignore the statutory scheme and conflict with the Board's prior representations to the superior court.**

The Board's enactment of WAC 314-23-025 clearly conflicts with its prior enactment of WAC 314-23-030. Specifically, when it enacted WAC 314-23-030, the Board determined that RCW 66.24.640

required industry members acting as distributors to comply with the requirements imposed on “spirits distributor licensee[s]” under RCW 66.24.055(3)(a). Yet when it enacted WAC 314-23-025 it concluded that industry members acting as distributors were not required to comply with requirements imposed on “persons holding spirits distributor licenses” by RCW 66.24.055(3)(c).<sup>2</sup> Indeed, the superior court below explicitly recognized that “the language of 314-23-030 seems completely at odds with what was adopted in 314-23-025.” VRP at 31. The only way for the Board to justify this inconsistency was for it to conclude that “persons holding spirits distributor licenses” is a smaller group than “spirits distributor licensees,” which is precisely the position the board took in January of 2012. Clerks Papers (“CP”) at 31.

In apparent acknowledgement that its enactment of WAC 314-23-025 is inconsistent with the statutory scheme, and that its prior justification for the inconsistency is untenable, the Board, in its response brief, abandons its prior justification. Instead, it argues for

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<sup>2</sup> It is clear upon reading the statute that the two provisions of RCW 66.24.055(3) at issue here create one distributor license fee. Subsection (3)(a) levies a fee of ten percent of a licensee’s revenue from the sale of spirits to retailers. Subsection (3)(c), which assessed additional payments determined “ratably according to their spirits sales” in 2012, merely raised the percentage for 2012 to whatever was necessary to generate \$150 million. In other words, the statute created a single distributor license fee but left the percentage amount of that fee for 2012 to be determined when the size of the shortfall became known.

the first time that it is the Board's broad and inherent authority to impose fees "that authorize[s] the Board to impose an additional fee on distillers and certificate of approval holders who exercise limited distribution rights, and not, as the Distributor Association suggests, the requirement to comply [with] the 'applicable laws and rules relating to distributors,' RCW 66.24.640, *see also* RCW 66.28.330(4)." Brief of Respondent at 16. This argument quickly falls apart upon examination.

First, while the Board may have had the inherent authority to levy fees, it did not have the authority to not levy fees in the face of clear statutory directives requiring the Board to do so. As discussed, two statutes specifically address the issue of direct-selling distillers. RCW 66.24.640, entitled "[l]icensed distillers operating as spirits retailers/distributors," states:

Any distiller licensed under this title may act as a retailer and/or distributor to retailers selling for consumption on or off the licensed premises of spirits of its own production, and any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state under such certificate. The board must by rule provide for issuance of certificates of approval to spirits suppliers. An industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors and/or retailers, except that an industry member operating as a distributor under this section may maintain a warehouse off the distillery premises for the distribution of spirits of its own production to spirits retailers

within the state, if the warehouse is within the United States and has been approved by the board.<sup>3</sup>

In addition, RCW 66.28.330(4), which addresses miscellaneous rules surrounding “[s]pirits sales,” states:

A distiller holding a license or certificate of compliance as a distiller under this title may act as distributor in the state of spirits of its own production or of foreign-produced spirits it is entitled to import. The distiller must, to the extent consistent with the purposes of chapter 2, Laws of 2012, comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers.

As the superior court below correctly found, these statutes are “unambiguous on their face.” VRP at 31. The statutes explicitly provide that to the extent industry members sell spirits to retailers they must comply with all laws and rules applicable to distributors selling spirits to retailers. “Applicable” in this context modifies distributing/selling spirits to retailers. This necessarily includes the rules levying fees distributors must pay when they sell spirits to retailers. Such sales are the essence of a distiller choosing to act as a distributor, and the statutory provisions imposing a fee based on sales to retailers are unquestionably provisions “applicable” to distributors.

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<sup>3</sup> The single exception in RCW 66.24.640 allowing a direct-selling distiller to operate a warehouse that would not be permitted of a distributor is significant. By enumerating one specific exception to the mandate that anyone acting pursuant to the statute must comply with the applicable laws and rules relating to distributors the drafters must have intended it to be the only exception. *Spain v. Employment Sec. Dept.*, 164 Wn.2d 252, 258, 185 P.3d 1188 (2008). Had they meant to create other exceptions to compliance with the terms of RCW 66.24.640, they could have easily done so.

Neither the Board nor Costco is able to explain why such fee provisions are not “applicable” as the term is used in the statutes.

Prior to filing its response brief in this appeal, the Board had recognized that the fee provision requiring “spirits distributor licensees” to pay a fee based on their sales of spirits to retailers was an “applicable” rule that direct-selling distillers must comply with. Indeed, the Board repeatedly stated to the Superior Court for Thurston County, in no uncertain terms, that “RCW 66.24.640, which says that distillers and COA holders acting as distributors must comply with all laws applicable to distributors ... required the Board, and this court, to find that the distillers and COA holders who choose to distribute their products are subject to the ten percent distributor fee.” Brief of Respondents at 21, *Wash. Restaurant Ass’n v. Wash. State Liquor Control Bd.*, No. 12-2-01312-5 (Mar. 1, 2013).

The Board’s “new” argument – besides directly conflicting with its prior representations to the superior court – is nothing more than a straw man. Under RCW 66.08.030, the Board is indeed authorized to levy “fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title ....” RCW 66.08.030(5). But this authorization in no way permits the Board to ignore statutory mandates, as the Board did in this case. When

asked by the superior court below about the inconsistencies between WAC 314-23-030 and WAC 314-23-025, the Board candidly admitted that the inconsistencies resulted from an attempt to maximize revenues:

[P]art of it was, quite frankly, the Board wanted to maximize the revenues the State gets from liquor sales, and you're going to get more if distributors contribute a minimum of \$150 million, and the Board also gets to collect ten percent fees from other people who act as distributors occasionally in the course of their business as authorized by law.

VRP at 18. The Board cannot disregard what it has correctly determined to be a statutory mandate in order to maximize revenues, or for any other reason – and particularly not when maximizing revenue is not a stated policy of the Initiative.

When the voters passed I-1183, they did so first and foremost for the purpose of making liquor distribution and liquor sales more efficient and less costly to “taxpayers, consumers, distributors, and retailers.” Laws of 2012, ch. 2, § 101(1). In furtherance of this, the voters agreed to “[p]rivatize and modernize wholesale distribution and retail sales of liquor in Washington state in a manner that will reduce state government costs and provide increased funding for state and local government services, while continuing to strictly regulate the distribution and sale of liquor.” Laws of 2012, ch. 2, § 101(2)(a). The

increased funding was to come from reduced government costs and from license fees, including the ten percent fees on sales of spirits to retailers and the \$150 million to be paid in the first year. Specifically, the voters agreed to “[m]aintain the current distribution of liquor revenues to local governments and dedicate a portion of the new revenues raised from liquor license fees to increase funding for local public safety programs, including police, fire, and emergency services in communities throughout the state.” Laws of 2012, ch. 2, § 101(2)(k).

Thus, the “new revenues raised from liquor license fees” contemplated by the Initiative were already built into the statutory fee provisions. As of June 3, 2013, after the balance of the \$150 million came due and was paid, the state had received all fees contemplated under the Initiative to that point.<sup>4</sup> The Board exceeded its authority when – in an effort to increase revenues beyond what the Initiative contemplated – it consciously ignored the statutory mandate that industry members acting as distributors comply with laws and rules applicable to distributors selling spirits to retailers.

Tellingly, in making its “new” argument, the Board fails to explain why the fee provisions under RCW 66.24.055(3)(a)-(c) are not

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<sup>4</sup> Indeed, the distributors collectively paid the State \$104 million dollars on June 3, 2013, to satisfy this obligation. CP 105-06.

“applicable” rules relating to distributors selling spirits to retailers. The best the Board can come up with is the argument that,

[w]here the activities authorized by different licenses overlap, it is appropriate and reasonable that those activities be subject to the same or similar applicable regulatory requirements, such as reporting requirements and requirements relating to fair dealing and undue influence.... But a general provision requiring compliance with applicable laws and rules does not trump specific provisions setting fees.

Brief of Respondent at 19; *see also* Response of Intervenor-Respondents at 11-13. This argument actually supports Appellant’s position.

Here, the issue involves the selling of spirits to retailers by distributors and by other industry members, activities authorized by different licenses that overlap. Accordingly, it is “appropriate and reasonable” that the activity be subject to the same regulatory requirements, including the fee requirements for that activity. That is precisely what RCW 66.24.640 and RCW 66.28.330(4) require. Distributors and direct-selling distillers have different licenses, but the licenses authorize the same overlapping activity – selling spirits to retailers. The Initiative, read as a whole, requires that the activity be subject to fees. The Board exceeded its authority by removing a subset of industry members engaging in that activity from a portion of those fees.

Moreover, despite the Board and Costco's repeated arguments to the contrary, following the statutory mandate does not lead to a general provision trumping a specific provision. Rather, it is the natural result of all parts of a statutory scheme being read together. In interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the legislature, or in this case the voters, as expressed in the act. *Burlington Northern, Inc. v. Johnston*, 89 Wn.2d 321, 326, 572 P.2d 1085 (1997). The act must be construed as a whole, and effect should be given to all the language used. *Id.* All of the provisions of the act must be considered in their relation to each other, and, if possible, harmonized to insure proper construction of each provision. *Id.* It is also the duty of the court to reconcile apparently conflicting statutes and to give effect to each of them, if this can be achieved without distortion of the language used. *State v. Fagalde*, 85 Wn.2d 730, 736, 539 P.2d 86. (1975).

Here, the fee provisions of RCW 66.24.055(3)(a)-(c) apply to spirits distributor licensees when they sell spirits to retailers. RCW 66.24.640 and RCW 66.28.330(4) direct that industry members, when they distribute spirits, must comply with the rules and laws that apply to spirits distributor licensees when they sell spirits to retailers. Read together, as required, neither provision trumps the other; rather,

the statutes complement each other and form a distribution fee scheme in which industry members – whether spirits distributor licensees, distillers, craft distillers, or COA holders – pay their pro rata share of fees in exchange for the privilege and benefit of distributing spirits and in proportion to the extent to which they exercise that privilege.

**B. Costco’s strained reading of RCW 66.24.640 and RCW 66.28.330(4) renders the term “applicable” extraneous and removes all significance from the statutes.**

In its response brief, Costco labors to characterize RCW 66.24.055(3)(a)-(c)’s fee provisions requiring distributors to pay fees equal to a percentage of their sales of spirits to retailers as rules that are not “applicable” to distributors selling spirits to retailers. These arguments fail.

First, like the Board, Costco fails to construe the Initiative as a whole, fails to give effect to all the language used, and fails to consider all of the provisions of the Initiative in relation to each other. Brief of Intervenor-Respondents at 8-13. In sum, Costco makes no effort to harmonize the provisions to insure proper construction of each. Rather, Costco attempts to drive a wedge between complementary statutes, repeatedly describing RCW 66.24.640 and RCW 66.28.330(4) as “distant and general provisions” in relation to

RCW 66.24.055(3)(a)-(c). Brief of Intervenor-Respondents at 7. In reality, they are neither distant nor general. Both explicitly deal with the circumstances of distillers and COA holders selling spirits to retailers. Indeed, they provide the statutory authority for such sales. The grant of this privilege is accompanied by the reasonable requirement that, to the extent they act as distributors, direct-selling distillers must comply with the laws and rules that apply to distributors selling spirits to retailers. Costco's attempt to minimize the significance, and alter the substance, of these rules is disingenuous at best.

Second, Costco's interpretation reads words out of the statute. As Costco notes, statutes must be construed so that "no clause, sentence or word shall be superfluous, void, or insignificant." *United Parcel Serv., Inc. v. Dep't of Rev.*, 102 Wn.2d 355, 361, 687 P.2d 186 (1984). Yet Costco's interpretation of RCW 66.24.640 and RCW 66.28.330(4) reads the term "applicable" out of the statutes - indeed, it renders the statutes themselves superfluous.

Costco notes that some provisions of the initiative, such as RCW 82.08.150(2) and 66.28.330(1), refer to "a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to

Title 66 RCW.”<sup>5</sup> Costco goes on to argue that if the drafters of the Initiative wished to extend a particular law or rule applicable to distributors to other industry members, they would have done so explicitly as they did in the two cited sections. Brief of Intervenor-Respondents at 10, 14. Therefore, in Costco’s view, the fact that the distributor fee provisions do not refer to “other licensee[s] acting as a spirits distributor” means that they are not “applicable” laws.

Such a reading defies common sense because it renders both RCW 66.24.640 and RCW 66.28.330(4) redundant and superfluous. Under this argument, direct-selling distillers would only be required to comply with “distributor” rules that some other provision of the Initiative explicitly applied to them. Indeed, Costco itself undercuts this argument by later backtracking and arguing that the statutes impose only the “operational” requirements of distributors on other industry members acting as distributors. But none of the “operational”

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<sup>5</sup> RCW 66.28.330(1) merely states that a distributor and any licensee acting as a distributor may not sell spirits below cost except under certain limited circumstances. Further down, under subsection (4), the statute explains that distillers and COA holders may indeed act as distributors but, to the extent that they do so, they must “comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers.” Subsection (4) is much broader than subsection (1) and gives meaning and context to subsection (1). It would be ridiculous to read subsection (1) as rendering the language in subsection (4) surplusage, but that is what Costco argues.

RCW 82.08.150 is found under the “Excise Tax” title, and the “or other licensee” language was likely added to aid readers of that title by minimizing the need to cross reference Title 66.

requirements Costco alludes to include the “or other licensee” language. Brief of Intervenor-Respondents at 15.

This latter argument - that RCW 66.24.640 and RCW 66.28.330(4) only apply to regulation of self-distribution “operations” - has no legal basis. Costco focuses on the word “operating” in the sentence “[a]n industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors,” and on the word “act” in the sentence “[a] distiller holding a license or certificate of compliance as a distiller under this title may act as a distributor” to support its assertion that the statutes merely regulate self-distribution “operations.” Read in context, the words “operating” and “act” obviously limit the statutes to instances in which industry members are actually “operating” or “acting” as distributors selling spirits to retailers, as opposed to, for example, distilling spirits. The words simply do not place limitations on the types or classification of rules or laws that are “applicable” under the statutes. In making this argument, Costco is grasping at straws.

Third, Costco’s “sky is falling” argument that giving RCW 66.24.640 and RCW 66.28.330(4) their plain meaning would “extinguish the clear and multiple distinctions between license types

created by the Initiative” is misplaced. Brief of Intervenor-Respondents at 7. Obviously, distillers and distributors have different licenses and license requirements. For example, both pay separate and different annual license fees for their respective licenses, and the different licenses permit different activities.<sup>6</sup> But as discussed, where the activities authorized by different licenses overlap, it is appropriate and reasonable that those activities be subject to the same or similar applicable regulatory requirements. That is precisely what RCW 66.24.640 and RCW 66.28.330(4) accomplish. Costco is correct that selling spirits to retailers does not turn a “distiller” into a “spirits distributor licensee,” but it does subject that distiller to the laws and rules that apply to distributors when they sell spirits to retailers. The fee provisions of RCW 66.24.055(3)(a)-(c) apply to distributors when they sell spirits to retailers, so they apply to distillers and COA holders when they do the same. Any other reading ignores the very provisions

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<sup>6</sup> Costco argues that the “all laws applicable to distributors” language in RCW 66.24.640 and RCW 66.28.330(4) would impose not just obligations but also benefits that are exclusive to distributors, thereby eliminating the “classification between license types.” Brief of Intervenor-Respondents at 17-18. But the statutory language requires direct-selling distillers to “comply” with rules applicable to distributors selling spirits to retailers. The requirement that a party “comply” with applicable rules does not somehow grant that party additional rights and benefits it would not otherwise be entitled to.

that authorize distillers and COA holders to distribute spirits in the first place.<sup>7</sup>

**C. The Board and Costco's analogies to wine and beer provisions are misplaced.**

The Board and Costco's analogies to existing wine and beer manufacturers' provisions are misplaced and misleading. Under RCW 66.24.170(3) and RCW 66.24.240(2), domestic wineries and breweries may elect to distribute their own production, provided they comply with "the applicable laws and rules related to [beer and wine] distributors." Costco and the Board argue that I-1183's statutory scheme with regard to spirits distributor fees was intended to mirror these provisions; that the Board has not interpreted either of the provisions to mean that "all laws and rules relating to distributors" apply to wineries and breweries; and, thus, that RCW 66.24.055(3) should not apply to industry members who elect to act as distributors. Brief of Intervenor-Respondents at 18-20. This argument is faulty for several reasons. First, there is nothing in the beer and wine manufacturers' provisions even roughly comparable to the ten percent

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<sup>7</sup> Costco argues that Appellant's reading of the statutory scheme would "impose the \$1,320 annual spirits distributor license fee on non-distributor licensees that already owe an annual issuance fee on licenses for their basic types of business." Brief of Intervenor-Respondents at 16-17. This argument ignores the statutory language "[t]he distiller must, to the extent consistent with the purposes of chapter 2, Laws of 2012, comply with all provisions ...." RCW 66.28.330(4). It would be inconsistent with the purposes of the Initiative (make liquor distribution and liquor sales more efficient and less costly to taxpayers, consumers, distributors, and retailers) to require the doubling up of annual license fees.

distribution fee or the \$150 million requirement of RCW 66.24.055(3)(a)-(c). The Board and Costco cannot say that, if there were such provisions, beer and wine manufacturers would be freed from complying with them. Second, neither the Board nor Costco can cite to any regulation, provision, or other authority that shows beer and wine manufacturers acting as distributors are currently exempt from any tax or other payment required of beer and wine distributors. Thus, any comparison to the wine and beer manufacturers' provisions is an unhelpful distraction.

**D. WAC 314-23-025 violates Washington's privilege and immunities clause.**

Costco and the Board labor to differentiate spirits distributors and industry members acting as spirits distributors for purposes of Washington's privileges and immunities clause, arguing that direct-selling distillers do not operate "similar or identical" businesses as distributors. But, to the extent that a distiller or COA licensee operates as a distributor and sells spirits to retailers, it operates exactly the same business as distributors. The case Costco cites to argue that industry members engaged in the "same business" can be treated differently, *United Parcel Serv., Inc. v. Dep't of Rev.*, 102 Wn.2d 355, 687 P.2d 186 (1984), is easily distinguished. There, a distinction had been made between vehicles used entirely within the state and

vehicles used in substantial part outside the state. The court determined that “[i]t is logical, or at least conceivable, that vehicles used entirely within the state would benefit from the services provided by the state to a greater degree than would vehicles often used outside the state.” *Id.* at 369. In other words, though the parties were engaged in the “same business” the different uses made of their vehicles justified a difference in tax structure. No such distinction can be made here. Industry members operating as distributors sell the same product (spirits) to the same parties (retailers) in the same location (in-state) as do distributors. The fees imposed by RCW 66.24.055(3) are directly proportionate to those sales.

The Board and Costco mistakenly compare business types – distributors versus distillers for example – in making their arguments. The correct analysis is to compare the activities being taxed. *See, e.g., Hemphill v. Washington State Tax Comm'n*, 65 Wn.2d 889, 891-92, 400 P.2d 297 (1965) (analyzing the distinction between the activities of skating and bowling). The taxed activity in this case is exactly the same: the selling of spirits to retailers. There is simply no rational basis for treating industry members differently than distributors when they elect to act as distributors.

E. Conclusion

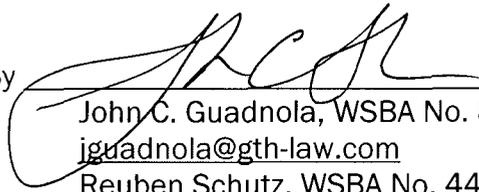
For the above reasons, and for the reasons articulated in Appellant's Opening Brief, Appellant respectfully requests that the Court reverse the superior court and declare RCW 314-23-025 invalid.

Dated this 9<sup>th</sup> day of July, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gina A. Mitchell, declare that on July 9, 2014, I caused the following pleadings:

1. Appellant's Reply Brief

together with this Declaration of Service, to be served on counsel for all parties as follows:

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

  
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