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NO. 96383-5
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LOWE'S HOME CENTERS, LLC

Petitioner

v.

DEPARTMENT OF REVENUE, STATE OF WASHINGTON

Respondent

FROM THE COURT OF APPEALS, DIVISION II
NO. 50080-9-II

**PETITIONER LOWE'S HOME CENTERS, LLC'S
JOINDER OF THE MEMORANDUM OF AMICUS CURIAE
FILED BY THE COUNCIL ON STATE TAXATION**

[Treated as answer to amicus brief by the Council on State Taxation](#)

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INTRODUCTION

On April 12, 2019, the Council on State Taxation (“COST”), a nonprofit trade association consisting of many of the largest multistate corporations in the United States, filed a motion with this Court requesting leave to file a Memorandum of Amicus Curiae (the “Amicus Brief”) in support of the positions asserted in this appeal by Petitioner Lowe’s Home Centers, LLC (“Lowe’s”). COST filed its proposed Amicus Brief along with its motion for leave. No party objected and, by Letter Ruling dated April 22, 2019, the Chief Justice of this Court granted COST leave to file the Amicus Brief. This Court also gave the parties an opportunity to respond to the Amicus Brief by no later than May 14, 2019

By filing of this joinder, Lowe’s hereby adopts the various arguments and authorities set out in the Amicus Brief as if fully set forth in Lowe’s own briefing on appeal.

ARGUMENTS

First, Lowe’s adopts the arguments set out in Part A of the Arguments section of the Amicus Brief.¹ Specifically, Lowe’s agrees with COST’s arguments that (i) the lower court “placed improper weight on the dicta used in the *Home Depot* case” (Amicus Brief, p. 4); (ii) RCW

¹ Part A carries the title: “The Court of Appeals’ Rational for its Decision is Contrary to the Plain Meaning of the Statute.” (Amicus Brief, p. 4.)

82.08.037 (the “Bad Debt Credit Statute”) is “written to justifiably provide relief to sellers that remit sales tax on a transaction that purchasers ultimately fail to fully pay” (*id.*, p. 5); (iii) “under the plain, unambiguous meaning of that statute, Lowe’s is entitled to retail sales tax credits based on the payments it made as the guarantor of debt obligations arising from Lowe’s credit card accounts” (*id.*); and (iv) “the lower court arbitrarily bifurcated the initial payment and inappropriately labeled the transaction between Lowe’s and the Banks as the ‘profit-sharing [of] bad debts.’” (*Id.*, p. 6.)

The Amicus Brief also refers to the Streamlined Sales and Use Tax Agreement (“SSUTA”), to which Washington is a full member state, noting that SSUTA Section 320 forms the basis of the Bad Debt Credit Statute. The Section only requires that a retailer write off a bad debt in its books and records to qualify as eligible to claim the bad-debt sales tax deduction. Lowe’s agrees that neither Section 320 nor the Bad Debt Credit Statute requires or even implies that a retailer seeking the bad debt deduction must carry the specific accounts of the private label credit card customers in its books. Rather, “under the plain, unambiguous meaning to [the Bad Debt Credit Statute], Lowe’s is entitled to retail sales tax credits based on the payments it made as the *guarantor* of debt obligations arising from Lowe’s credit card accounts.” (*Id.*, p. 5.)

Lowe's also agrees with and adopts the arguments, set out in Part B of the Amicus Brief, that the majority's decision below "introduces an unwarranted and inconsistent application of the B&O Tax Bad-Debt Deduction." (*Id.*, p. 7.) Specifically, "[t]he *only* criteria for eligibility for [the B&O tax] deduction are (1) the accrual of 'bad debts' as understood in IRC § 166 and (2) prior payment of B&O tax on the amounts later qualifying as 'bad debts.'" (*Id.*, p. 8.) Therefore, "the decision of the Court of Appeals is fatally flawed by the court's adoption of extra-statutory requirements for the sales tax credit, based entirely on the word 'seller' in the sales tax statute, because it would also undermine uniformity in application of the B&O tax deduction across classifications and create inconsistency between the two statutes." (*Id.*, pp 10-11.)

Finally, Lowe's hereby adopts the arguments set out in Parts C and D of the Amicus Brief, pointing out that since the lower court's interpretation of the Bad Debt Credit Statute is inconsistent with the SSUTA bad debt provision, Washington could be subject to sanctions for not being in substantial compliance with SSUTA. (*Id.*, pp. 12-13.) Moreover, "allowing sellers to claim Bad-Debt Deductions is sound sales tax policy." (*Id.*, p. 14.)

CONCLUSION

For the reasons set out in this joinder, Lowe's hereby adopts the arguments set out in the Amicus Brief filed by COST as though the same were incorporated and fully set forth in Lowe's own briefing on appeal.

Respectfully submitted this 14th day of May, 2019.

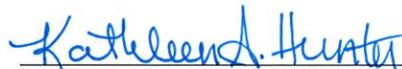


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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 14th day of May, 2019, I caused to be served a true and correct copy of the foregoing via Legal Messenger and addressed to the following:

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