NO. 1037023

SUPREME COURT
OF THE STATE OF WASHINGTON

BETTER BUSINESS BUREAU GREAT WEST & THE PACIFIC

Petitioner,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Respondent.

DEPARTMENT OF REVENUE'S AMENDED ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

This case does not merit review because the Court of Appeals applied established summary judgment standards in the context of a tax refund action. The taxpayer, Better Business Bureau Great West & The Pacific (the BBB), maintained it was entitled to a full tax deduction under RCW 82.04.4282 for dues paid by its accredited member businesses. The Department of Revenue moved for summary judgment, supported by evidence establishing that the BBB was not entitled to a full deduction. That evidence established that members receive something of significant value in exchange for their dues: licensing rights to advertise their BBB rating and to use the BBB's intellectual property in their advertising. The BBB failed to rebut that evidence, and the trial court correctly granted summary judgment to the Department. On appeal, the BBB seeks to rewrite history and claim it might be entitled to a partial deduction under RCW 82.04.4282. The Court of Appeals properly rejected the BBB's argument.

In petitioning for this Court's review, the BBB has not shown that any of the RAP 13.4(b) review criteria are met. What the BBB mischaracterizes as "newly-minted standards," Pet. at 11, a "new approach," *id.* at 23, and a "striking departure," *id.* at 25, is just an application of established summary judgment standards.

The Department met its initial burden of proving there was no genuine issue of material fact that the BBB was not entitled to a *full* tax refund, as it claimed. *See Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989). It is settled law that the BBB, as the non-moving party, cannot merely rest on its allegations in response, but must instead offer admissible evidence to defeat summary judgment. *See Sartin v. Est. of McPike*, 15 Wn. App. 2d 163, 172, 475 P.3d 522 (2020). The trial court and Court of Appeals found that the BBB failed to offer any such rebuttal evidence and granted summary judgment to the Department consistent with settled law. And while the BBB argues the Court of Appeals' decision was

inconsistent with various legal authorities, a closer look reveals no such inconsistency. Review is thus not warranted under RAP 13.4(b)(1) or (2).

The BBB fails to articulate any other basis for review. For instance, aside from mentioning the constitutional right to a jury trial, which does not apply to tax refund actions and is not properly raised or preserved here, the BBB asserts no significant question of constitutional law that could warrant review. Nor is the fact that the Department moved to publish the decision, which the Court of Appeals has granted, a basis for granting review.

The Court should deny the BBB's petition.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the courts below correctly conclude that the Department met its burden on summary judgment to show there was no genuine issue of material fact that the BBB could not fully deduct its membership dues, as it had claimed?

2. Did the courts below correctly conclude that in the absence of records showing otherwise, the Department could presume the entire amount of membership dues was taxable?

III. COUNTERSTATEMENT OF THE CASE

The BBB is a non-profit corporation that provides services to both businesses and consumers in several states, including Washington. CP 2. Businesses may choose to become accredited by the BBB, meaning they agree to uphold the BBB's accreditation standards and pay the appropriate accreditation fees, which the BBB refers to as dues. CP 826. The primary benefit to a business of BBB accreditation is the receipt of a "nonexclusive, non-assignable and nontransferable license" to (1) advertise the member business's BBB accreditation and rating, and (2) use the BBB's trademarks (e.g., the BBB Accredited Business seal) in all forms of the member's advertising. CP 864.

In 2019, the BBB sought a tax ruling from the Department to verify its tax reporting status. CP 73. Based on

information provided by the BBB, the Department concluded that the BBB's dues were not fully deductible under RCW 82.04.4282 because the BBB provided certain things of value in exchange for them. CP 75-76. That statute allows a deduction of "bona fide" dues. RCW 82.04.4282 also states that dues that "are in exchange for any significant amount of goods or services . . . shall not be considered as a deduction." The BBB sought administrative review from the Department, which ultimately concluded that the dues were generally taxable unless the BBB could prove some portion was deductible. CP 78, 98-99.

Later, the Department audited and sought records from the BBB to determine its actual Washington tax liability. CP 102. The Department reached an initial conclusion that the BBB's dues were fully taxable, but invited the BBB to provide additional documentation to substantiate any deductible portion. CP 105. The BBB instead filed a complaint in Thurston County Superior Court, attempting to challenge the Department's initial

conclusions. CP 1, 69. Ultimately, the BBB did not provide any additional documentation, and the Department issued an assessment for 2017, which the BBB paid. *See* CP 35, 922.

The BBB amended its complaint and sought a refund of the taxes it paid for the 2017 period. CP 28. The BBB maintained that its Washington dues were *fully deductible* under RCW 82.04.4282. CP 28, 822-23, 853-54.[1] Following discovery, the Department moved for summary judgment that the dues were not *fully deductible* because BBB-accredited members received something of value in exchange for them—the license to advertise their BBB accreditation status and BBB rating, and to use the BBB-trademarked seal in all forms of the member's advertising. CP 786. In support, the Department

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[1] During discovery, when the Department attempted to gather information to ascertain if the BBB was entitled to a partial deduction, the BBB simply gave no such information. *See* CP 853-854 (stating that the BBB's records did not distinguish what portion of dues are attributed to the various services provided by the BBB, and refusing to elaborate on how the BBB classified its gross income for Washington tax purposes).

offered the BBB Accreditation Agreement and other BBB records demonstrating the inherent value of advertising one's BBB accreditation status. CP 814-94.

In opposing the Department's motion, the BBB relied primarily on a 1981 trial court decision that allowed the BBB to fully deduct its dues based on the facts at that time, and one conclusory declaration stating that the facts had not changed since that time. CP 1032-35. The trial court concluded that the Department met its summary judgment burden by offering admissible and unrebutted evidence establishing the BBB provided something of value in exchange for the dues. CP 1108-10; 3 RP 44-46. The dues were not fully deductible under RCW 82.04.4282, and the BBB's conclusory declaration failed to establish otherwise. 3 RP 47-50. In ruling on the motions, the court explained that "this is really a sort of standard application of summary judgment principles." 3 RP 48.

The BBB appealed. The Court of Appeals likewise concluded that the BBB had failed to present "any admissible

evidence showing that all or a portion of the membership fees" were deductible. Slip Op. at 18. In the absence of such evidence, the Department "can presume that the entire amount of dues is taxable because BBB did not attempt to segregate the portion of dues" that are deductible from the nondeductible portion. *Id.* (citing *Auto. Club of Wash. v. Dep't of Revenue*, 27 Wn. App. 781, 786, 621 P.2d 760 (1980)). The Court of Appeals also affirmed the trial court's discovery ruling related to application of the privilege in RCW 82.32.330. *Id.* at 19-20.

The Department moved for publication on the grounds that the decision "clarifies established legal principles and provides guidance on a legal privilege that is of general interest to taxpayers, satisfying the criteria in RAP 12.3(d)(2) and (d)(3)." Pet., App. B at 2. While the motion was pending, the

BBB sought this Court's review.[2] The Court of Appeals later granted the motion and transferred the petition to this Court.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

The Court should deny the BBB's petition for review because the courts below applied established summary judgment principles to this routine tax refund action. For that reason, none of the requirements for granting discretionary review under RAP 13.4(b) are met. Indeed, the BBB's petition fails to even mention, let alone argue, that it meets those requirements. Under RAP 13.4(b), a petition for review will be accepted *only* if (1) the Court of Appeals decision is in conflict with a Supreme Court decision, (2) the decision is in conflict with a published Court of Appeals decision, (3) the decision implicates a significant question of law under the state or federal Constitution, or (4) there is an issue of substantial public

[2] The BBB has not petitioned for review of the discovery-related privilege issue. *See* Pet. at 3 (identifying the summary judgment ruling as the sole issue for review).

interest that the Supreme Court should determine. RAP 13.4(b). Instead of arguing why review should be accepted under RAP 13.4(b), the BBB mischaracterizes the Court of Appeals' decision, misunderstands basic principles of tax law, and misrepresents the Department's motion to publish.

More importantly, the BBB has offered no compelling reason for the Court to accept review of the straightforward Court of Appeals decision that applies established principles of summary judgment. The BBB sought to deduct 100 percent of its Washington dues under RCW 82.04.4282 and offered no evidence to rebut the Department's evidence that, at most, the dues were only partially deductible because members received something of value in exchange for those dues. Because the BBB made no effort on summary judgment to establish the dues were even partially deductible, the trial court correctly granted summary judgment to the Department. The Court should deny the BBB's petition for review.

A. The Court of Appeals' Decision Correctly Applied Established Legal Principles Recognized by this Court and the Court of Appeals

Review is not warranted under RAP 13.4(b)(1) or (2) because the Court of Appeals correctly applied established summary judgment principles to this tax refund action, and the decision below does not conflict with any legal authority cited by the BBB.

1. The Court of Appeals followed settled case law

In addressing the interplay between the standards on summary judgment in a tax refund action, the Court of Appeals correctly recognized the taxpayer bears the ultimate burden of proving a tax deduction applies. The Court stated, "[i]n a tax deduction claim, the taxpayer has the burden to show they are qualified for the deduction." Slip Op. at 12 (citing *Grp. Health Co-op. of Puget Sound, Inc. v. Wash. State Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967)). That the taxpayer bears the burden of proving a tax deduction is an established legal principle. RCW 82.32.180 ("At trial, the burden shall rest upon

the taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax."); *Cashmere Valley Bank v. Dep't of Revenue*, 181 Wn.2d 622, 334 P.3d 1100 (2014) ("A taxpayer has the burden of proving that it qualifies for a tax deduction."); *Wash. Imaging Servs., LLC v. Dep't of Revenue*, 171 Wn.2d 548, 555, 252 P.3d 885 (2011) ("As the taxpayer seeking a refund of B&O taxes that it paid, Washington Imaging has the burden of proving that the Department incorrectly assessed the tax and it is entitled to a refund") (citing RCW 82.32.180); There is no conflict under RAP 13.4(b)(1) or (2) with respect to this principle.

The Court also correctly recognized that tax deductions "are narrowly construed against the taxpayer." Slip Op. at 12 (citing *Analytical Methods, Inc. v. Dep't of Revenue*, 84 Wn. App. 236, 241, 928 P.2d 1123 (1996)). This again is an established legal principle. *Royal Oaks Country Club v. Dep't of Revenue*, 2 Wn.3d 562, 569, 541 P.3d 336 (2024) (citing

Avnet, Inc. v. Dep't of Revenue, 187 Wn.2d 44, 49-50, 384 P.3d 571 (2016) ("The B&O tax applies broadly, and deductions are construed narrowly."); *Lacey Nursing Center, Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.3d 338 (1995). ("It is a general principle that tax statutes conferring credits, refunds or deductions are construed narrowly."). Applying those legal principles, the Court correctly stated that "BBB had the burden to show it qualified for the tax deduction and to quantify what amount of its dues qualified for the deduction." Slip Op. at 14.

With respect to summary judgment, the Court of Appeals correctly observed that "[a] moving defendant can meet [their initial burden on summary judgment] by showing the plaintiff cannot support their claim with any evidence." Slip Op. at 8-9 (citing *Sartin*, 15 Wn. App. 2d at 172). *See Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989) ("If the moving party is a defendant and meets this initial showing [an absence of an issue of material fact], then the inquiry shifts to

the party with the burden of proof at trial, the plaintiff."); *Sligar v. Odell*, 156 Wn. App. 720, 725, 233 P.3d 914 (2010) (recognizing that a complete failure of proof concerning an element essential to a nonmoving party's case necessarily renders all other facts immaterial).

The Court recognized that the burden then shifts to the plaintiff to present "specific facts" that reveal a genuine issue of material fact about an essential element on which they will have the burden of trial. Slip Op. at 8-9 (quoting *Sartin*, 15 Wn. App. 2d at 172). And the Court noted, "conclusory statements of fact are insufficient to defeat a summary judgment motion." *Id.* (quoting *Hamblin v. Castillo Garvia*, 23 Wn. App. 2d 814, 831, 517 P.3d 1080 (2022), *rev. denied*, 200 Wn.2d 1029 (2023)).

Applying these black-letter legal standards, the Court of Appeals correctly concluded that the Department "bore the initial burden to show there was no genuine issue of material fact as to whether BBB's membership dues were *wholly* deductible under RCW 82.04.4282." Slip Op. at 13 (emphasis

added). This is because the BBB maintained the position that its dues were "fully deductible from its gross income." *Id.* at 1; *see also* CP 822-823 (BBB's answer to the Department's interrogatory, claiming that the full amount of the BBB membership dues is deductible), 976 (BBB's partial motion for summary judgment, arguing that "BBB membership dues should not be taxed"); 3 RP 8:12-13 (BBB's argument at the summary judgment hearing that "the dues are fully deductible as bona fide dues under RCW 82.04.4282"). To disprove the BBB's claim that the dues were *fully* deductible, the Department needed to show there was no genuine issue of material fact that the BBB gave something of value in exchange for the dues.

This is exactly what the Department proved: the BBB provided "things of value" in the form of a license to use the BBB's "trademarked seal in online and offline advertising." Slip Op. at 13. With this evidence, the Department "met its initial burden to show that BBB was not entitled to a deduction

of its *total* revenue from membership dues." *Id.* (emphasis added).

Once the Department did so, "[t]he burden then 'shifts to the plaintiff to present specific facts that reveal a genuine issue of material fact.'" *Id.* at 9 (quoting *Sartin*, 15 Wn. App. 2d at 172). And "[i]f a plaintiff does not show sufficient evidence to create a genuine issue of material fact 'about an essential element on which [they] will have the burden of proof at trial,' summary judgment is appropriate." *Id.* (quoting *Sartin*, 15 Wn. App. 2d at 172).

The Court of Appeals correctly concluded that "the burden shifted to BBB to provide specific facts that reveal a genuine issue of material fact or to show that the DOR is not entitled to judgment as a matter of law." Slip Op. at 14. But, as the Court of Appeals correctly observed, "in response, BBB failed to present specific facts or sufficient evidence showing that *all* of the membership dues" were deductible. *Id.* (emphasis added). Rather, the BBB relied solely on the 1981 trial court

decision and a declaration alleging that the facts had not materially changed since that time. CP 1037-46. Yet the facts clearly had changed. In 2017, advertising one's BBB accreditation status and rating was the primary reason businesses became accredited. CP 864. But in the tax period at issue in the 1981 decision, BBB members were precluded from advertising their BBB membership. CP 950-51. Both the trial court and Court of Appeals agreed these were material changes that rendered the 1981 trial court decision inapplicable. 3 RP 46; Slip Op. at 11. Since the BBB was unable to show any genuine issue of material fact regarding the BBB's entitlement to the full deduction the BBB sought, the trial court correctly granted summary judgment to the Department. *Id.* As the trial court judge described it, this case involved "a sort of standard application of summary judgment principles." 3 RP 48.

Finally, the Court of Appeals relied on established precedent in concluding that "[a]bsent BBB putting forth evidence showing its attempt to segregate these expenses, the

DOR may presume that the entire amount of membership dues is taxable." Slip Op. at 15 (citing *Auto. Club*, 27 Wn. App. at 786-87). Thus, the Department could assess tax on the full amount of the BBB's gross income because the BBB failed to offer evidence that would allow a segregation between the deductible and non-deductible portions of the dues. *Id.*

The BBB wrongly claims that the legal precedent on which the Court relied—*Automobile Club of Washington v. Department of Revenue*, 27 Wn. App. 781, 786-87, 621 P.2d 760 (1980)—has "no reasoning or support." Pet. at 30. Yet that decision cited a Washington Supreme Court opinion, *Tidewater Terminal Co. v. State*, 60 Wn.2d 155, 372 P.2d 674 (1962). *Auto. Club*, 27 Wn. App. at 787. There, the Court held that when a taxpayer "did not supply information to the [Department] which would enable it to segregate exempt income," it was "reasonable for the [Department] to measure the tax imposed against all the income from the [taxpayer's] operations, presuming that it was derived from the taxable

activities." *Tidewater Terminal*, 60 Wn.2d at 162. Thus, the Court of Appeals' decision falls squarely within settled law and correctly concluded that the Department was entitled to summary judgment as a matter of law. The BBB fails to show any conflict with precedent from this Court or the Court of Appeals to satisfy RAP 13.4(b)(1) or (2).

2. The Court of Appeals' decision does not conflict with any of the legal authority cited by the BBB

While the BBB attempts to portray the Court of Appeals' decision as inconsistent with various legal authorities, the BBB has either misinterpreted those authorities or has fundamentally misunderstood Washington tax law. These cases are in fact consistent with the Court of Appeals' decision.

First, the Court's decision does not conflict with *State ex rel. Bond v. State*, 62 Wn.2d 487, 383 P.2d 288 (1963). *See* Pet. at 17. There, a former state employee sought reinstatement in his position. *Bond*, 62 Wn.2d at 488. The State asserted the affirmative defense of laches. *Id.* The trial court rejected that argument and granted summary judgment to the employee. *Id.*

On appeal, the Court reversed, holding that to receive summary judgment, the employee had to prove that laches did not apply:

> Thus, even though in a trial on the merits the state would have the burden of proving its affirmative defense of laches, the reverse is true on [the employee's] motion for summary judgment. Where the issue of laches has been properly raised, [the employee] must establish that there is no laches or reasonable inference thereof to be drawn from the undisputed facts.

Id. at 490. In simple terms, the *Bond* case requires the party moving for summary judgment to disprove the non-moving party's argument through undisputed facts for summary judgment to be granted.

That is precisely what the Department did in this case: it disproved the BBB's *sole* argument that it was entitled to a *full* deduction through undisputed facts. *See* Slip Op. at 13 ("Thus, the [Department] met its initial burden to show that BBB was not entitled to a deduction of its *total* revenue from membership dues." (emphasis added)). Under the BBB's interpretation of the *Bond* case, however, the Department would not only have to

disprove the BBB's stated position—that it was entitled to a full deduction—but also that the BBB was even entitled to a partial refund. However, the BBB never made any substantive argument or offered evidence that it was alternatively entitled to a partial refund to the trial court. Disproving a claim the taxpayer never pursued is not the requirement to receive summary judgment under *Bond* or any other legal authority. Therefore, there is no conflict.

The BBB also incorrectly asserts that the Court of Appeals' decision conflicts with *Hash by Hash v. Children's Orthopedic Hospital and Medical Center*, 110 Wn.2d 912, 757 P.2d 507 (1988). *See* Pet. at 17-20. In the *Hash* case, a patient was injured during physical therapy at a hospital. *Id.* at 913. The patient sued the hospital, alleging the injury resulted from the hospital's negligence. *Id.* The hospital moved for summary judgment, based on an expert opinion stating that the physical therapy met the applicable standard of reasonable care. *Id.* at 914. The hospital did not, however, provide evidence "setting

forth its version of the facts surrounding the injury." *Id.* After the patient failed to provide any evidence in response, the trial court granted the hospital's motion. *Id.* On appeal, this Court reversed, concluding that the hospital failed to meet its initial burden because it had not asserted the necessary facts in the first place:

> The court had no evidence from which to determine how the fracture occurred. At the very least, to support a motion for summary judgment the moving party is required to set out its version of the facts and allege that there is no genuine issue as to the facts as set out . . . We find it impossible to uphold a ruling that there is no genuine issue as to any material fact when the record contains all questions and no facts.

Id. at 916. Essentially, *Hash* requires that the moving party on summary judgment provide the material facts to the case, and then argue that those facts are not in dispute.

Here, the Court of Appeals correctly concluded that the Department did just that by pointing to facts in the record "support[ing] that there is much value in BBB accreditation and

BBB's trademarks." Slip Op. at 16. Thus, the Department did precisely what the hospital in *Hash* failed to do: provide the material facts in the first place.

The BBB incorrectly relies on *Hash* to argue that the Department was not entitled to summary judgment because, in the BBB's words, "the record below leaves significant questions begging for answers." Pet. at 20. These "questions" and "answers" apparently related to the amount of a partial deduction to which the BBB *might* be entitled. *See id.* But those "questions" were never before the trial court because the BBB maintained it was entitled to a *full* deduction. To the extent it may have intended to pursue a partial deduction, it did not do so at the trial court. With no such "questions" before the court, the Department did not need to provide corresponding "answers" on summary judgment. Accordingly, the Court of Appeals' decision is consistent with the *Hash* decision.

3. The Court of Appeals' decision does not create a "new approach" for summary judgment in tax disputes

What the BBB incorrectly calls a "new approach" in tax cases is nothing more than a proper application of settled summary judgment principles. *See* Pet. at 23. The BBB asserted that it was entitled to a *full* deduction and when the Department disproved that through undisputed facts in the record, it was entitled to summary judgment on that claim, tax case or not. Slip Op. at 16.

But the BBB argues "[t]he fact that some value may have been received by members is alone not a sufficient showing under the plain language of RCW 82.04.4282 . . . to fully disallow the deduction." Pet. at 20. The BBB implies the Department had the additional burden on summary judgment to disprove that the BBB was entitled to any partial deduction. *See* Pet. at 23-24 (arguing that the Department had to prove the value of the goods and services provided equaled or exceeded the total dues received "to reduce the deduction to zero").

Putting aside that the BBB ignores the *Automobile Club* holding that the Department may presume the dues are taxable in the absence of a segregation, 27 Wn. App. at 786-87, the BBB flips Washington tax law on its head. It is the taxpayer—not the Department—that must prove the extent to which any deduction applies. The BBB appears to erroneously believe that, as a starting point, it is entitled to a full deduction and the Department must prove any reduction to it. *See* Pet. at 12 ("Rather, such furnishing [of goods or services] merely *reduces* the total deductible amount . . . ."); Pet. at 24 ("Only by making such a showing [of the value of any goods or services] could DOR provide a sufficient factual predicate to reduce the deduction to zero."); Pet. at 30, n.11 (referring to what the BBB calls a "deduction reduction" clause in RCW 82.04.4282).

Whether the dues were partially or wholly deductible, proving that amount is the BBB's burden. *See Grp. Health Co-op.*, 72 Wn.2d at 429; RCW 82.32.180. This applies to RCW 82.04.4282, and any other tax deduction, including the

deduction for salmon recovery grants under RCW 82.04.4339 mentioned by the BBB. *See* Pet. at 25-26.[3] In reality, the BBB is arguing for a "new approach," where the moving party in summary judgment would need to present undisputed facts regarding an issue that the non-moving party never claimed in the first place. The Court of Appeals applied the correct standard.

B. There is No Significant Question of Constitutional Law in this Case

Review is also not warranted under RAP 13.4(b)(3), which allows review if there is "a significant question" of constitutional law implicated. The BBB's argument that the Court of Appeals' decision impacts its right to a jury trial, for many reasons, does not implicate such a right.

First, there is nothing in the record supporting the BBB's statement that it, "like many taxpayers, requested a trial by

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[3] While not at issue here, the analysis for whether a taxpayer was entitled to the deduction under RCW 82.04.4339 would be the same at summary judgment.

jury." Pet. at 28. The record is silent as to the BBB's request for a jury trial and contains no evidence supporting the BBB's claim that "many taxpayers" request jury trials. The BBB cited nothing to support its assertion. *Id.* Moreover, the BBB has not preserved any argument about jury trial access, as it never raised it below.

Second, this case cannot implicate a "significant" question of law under the Constitution because taxpayers do not have a right to jury trial in tax cases. *See Peters v. Sjoholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) (holding there is no jury trial right before the imposition and enforcement of any tax liability); *Dexter Horton Bldg. v. King Cnty.*, 10 Wn.2d 186, 191-95, 116 P.2d 507 (1941) (holding there is no jury trial right in tax refund actions) *rev'd on other grounds*, *Roon v. King Cnty.*, 24 Wn.2d 519, 526, 166 P.2d 165 (1946). This makes sense, because tax refund actions are a creature of state statute with no territorial analog, and the state constitution merely "guarantee[s] those rights to trial by jury which existed at the

time of the adoption of the constitution." *Durrah v. Wright*, 115 Wn. App. 634, 637, 63 P.3d 184 (2003) (internal citation omitted).

Even if there were a jury trial right in tax refund cases, the BBB fails to show how applying established summary judgment principles would violate that right. The Court of Appeals correctly applied those principles to the tax deduction in RCW 82.04.4282. The BBB cannot show that the decision involves a "significant question" of constitutional law warranting review under RAP 13.4(b)(3).

C. There is No Issue of Substantial Public Interest Warranting Review

Finally, the BBB fails to identify any issue of substantial public interest under RAP 13.4(b)(4). Instead, the BBB mischaracterizes the Department's motion for publication and speculates that the Department seeks to use the Court of Appeals decision to the detriment of taxpayers by reducing its evidentiary burden in tax refund cases. Pet. at 11.

But the Court of Appeals' decision does not create any new summary judgment standards in tax cases. Instead, it correctly applies the established standards applicable in all civil cases. Doing so is hardly an issue of "substantial" public interest, even if there was value in requesting the Court of Appeals publish its decision. The Department moved for publication "because it clarifies established legal principles" regarding the parties' burdens on summary judgment in the context of tax refund actions. *See* Pet., App. B at 2. The BBB's statement that the Department "moved for publication (attached as App. B) of the opinion arguing that it resolves three issues of first impression" is wrong. Pet. at 1, n. 1.[4] The mere fact that the Department moved to publish the decision does not warrant review under RAP 13.4(b)(4).

[4] The only issue that could arguably be of "first impression" related to a discovery issue on which the BBB has not sought review.

V. CONCLUSION

None of the criteria in RAP 13.4(b) apply to this case. The Court of Appeals applied well-established legal authority to reach the correct result. The Department respectfully requests that this Court deny review.

This document contains 4,992 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 10th day of January, 2025.

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

DATED this 10th day of January, 2025 at Chehalis, WA.

Dani McFadden, Paralegal

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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