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The Honorable Kathryn J. Nelson
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NO: 18-2-08733-9

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

TAYLOR BLACK, ANNE BLACK, JERRY
KING, RENE KING, ROGER
STRUTHERS, MARY LOUISE
STRUTHERS, and FRANK MAIETTO,
individually and on behalf of a class of all
persons similarly situated,

Plaintiff,

v.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY, and STATE OF
WASHINGTON

Defendants.

No.: 18-2-08733-9

**MOTION FOR SUMMARY
JUDGMENT**

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 This case raises significant issues of constitutionality and requests very substantial
3 monetary relief. However, the issues in the case are actually quite simple. The plaintiffs ask
4 this court to determine the constitutionality of the legislation authorizing the motor vehicle
5 excise taxes (MVET) currently levied by Sound Transit. Although the action has been brought
6 as a class action, plaintiffs believe that the merits of the plaintiffs’ claims can and should be
7 evaluated prior to the time that the motion to certify the class is brought.¹

8 Plaintiffs request **declaratory relief** as follows:

- 9 (1) A judgment that Chapter 44, Laws of 2015, Sec. 319(1), enacted as ESSB 5987
10 § 319(1) and codified at RCW 81.104.160(1), is unconstitutional;
11 (2) A judgment that Defendants are not authorized to collect Motor Vehicle Excise Tax
12 (“MVET”) pursuant to the statute codified at RCW 81.104.160(1).

13 Plaintiffs seek **injunctive relief** as follows:

- 14 (1) An order enjoining Defendants from collecting the amount of MVET purportedly
15 authorized by RCW 81.104.160(1);
16 (2) An order enjoining Defendants to return to all class members the amount of MVET
17 collected by Defendants in reliance on the purported authorization of
18 RCW 81.104.160(1).

19 **II. STATEMENT OF FACTS**

20 Central Puget Sound Regional Transit Authority (“Sound Transit”) is a Washington
21 municipal corporation. It may levy taxes, however, any levy must be pursuant to both specific

22 _____
23 ¹ Giving precedence to a motion determining the merits of the case prior to determining
24 whether the class should be certified has been specifically approved in *Chavez v. Our Lady of*
25 *Lourdes Hospital at Pasco*, 190 Wash. 2d 507, 515 n. 6, 402 P.3d 825 (2017): “[A] trial court
26 retains discretion, for purposes of judicial economy, to delay ruling on a motion for class
certification until after hearing dispositive motions.” This principle is particularly applicable
to this case, where the basis for class certification is CR 23(b)(2), making joinder of the other
class members compulsory.

1 statutory authorization and approval of the voters in the geographic area it serves, which
2 encompasses specific portions of King, Pierce, and Snohomish Counties. Pursuant to an
3 authorizing statute and voter approval, Sound Transit may levy and collect an excise tax, at a
4 rate approved by the voters, on the annual registration of every motor vehicle owned by a
5 resident of the taxing district (the “MVET”). To calculate MVET, one multiplies three values:
6 (1) the tax rate authorized by statute and ballot proposition, (2) the vehicle value (typically
7 MSRP when purchased), and (3) a statutory valuation and depreciation schedule.

8 In 1991, the legislature enacted a valuation and depreciation schedule for determining the
9 value of a vehicle subject to MVET, which it amended in 1998.² The MVET authorization
10 statute, including the 1991 valuation schedule, was subsequently repealed, leaving municipal
11 governments in the state with no express statutory authorization for locally imposed MVET.
12 In 2006, the legislature reauthorized municipalities to levy a locally imposed MVET. In doing
13 so, it enacted RCW 82.44.035. That section establishes a valuation and depreciation schedule
14 “[f]or the purpose of determining any locally imposed motor vehicle excise tax . . .”
15 RCW 82.44.035. The 2006 schedule is significantly different from the earlier, repealed
16 valuation schedule. Use of RCW 82.44.035 to calculate the tax base for MVET results in a
17 different calculated vehicle value, or tax base, than results from use of the repealed 1991
18 schedule.

19 In 2015, the legislature enacted ESSB 5987, which in relevant part is codified at
20 RCW 81.104.160(1) (codifying ESSB 5987 § 319(1)). That act purported to authorize Sound
21 Transit to seek voter approval to “levy and collect an excise tax, at a rate approved by the
22 voters, but not exceeding eight-tenths of one percent on the value, under chapter 82.44 RCW,
23 of every motor vehicle owned by a resident of the taxing district . . .” RCW 81.104.160(1).

25 ² The amended schedule, found in Chapter 321, Laws of 1998, Sec. 4, is attached hereto as
26 Exhibit A.

1 The legislation included an amendment to the valuation schedule that was then in effect as a
2 result of the adoption of RCW 82.44.035:

3 Notwithstanding any other provision of this subsection or chapter 82.44 RCW, a motor
4 vehicle excise tax imposed by a regional transit authority before or after July 15, 2015,
5 must comply with chapter 82.44 RCW as it existed on January 1, 1996, until December
31st of the year in which the regional transit authority repays bond debt to which a motor
vehicle excise tax was pledged before July 15, 2015.

6 RCW 81.104.160(1). Pursuant to this purported statutory authorization, in November 2016,
7 Sound Transit sought and received voter approval via a ballot proposition (“ST3”) for an
8 additional MVET levy of 0.8%. Beginning on or about March 1, 2017, Defendant State of
9 Washington, through the Department of Licensing (“DoL”), contracted with Sound Transit to
10 collect the levy when vehicles are registered, and now remits the levy to Sound Transit. Since
11 instituting the new levy, Sound Transit has collected many millions of dollars in additional
12 MVET beyond the amount it had been authorized to collect prior to November 2016.

13 III. STATEMENT OF ISSUES

14 1. Did ESSB 5987 § 319(1) (the “Act”) violate Wash. Const. Art. II § 37?

15 a. Did the Act amend a previous act, namely, RCW 82.44.035? [Yes]

16 b. Did the Act set forth in full RCW 82.44.035, the previous act it amended? [No]

17 c. Must the Act comply with Art. II § 37 because it is not a complete act? [Yes]

18 i. Does the Act require reference to another act to understand the scope of duties?

19 ii. Does the Act render a previous act erroneous?

20 2. What remedy follows from a violation of Wash. Const. Art. II § 37?

21 a. Should the Court declare RCW 81.104.160(1) unconstitutional? [Yes]

22 b. Should the Court enjoin Sound Transit from further collection of the 0.8% ST3 MVET?

23 [Yes]

24 c. Should the Court order Sound Transit to refund collected but unauthorized MVET? [Yes]

1 **IV. EVIDENCE RELIED ON**

2 Plaintiffs rely on ESSB 5987 § 319(1), codified at RCW 81.104.160(1); and
3 RCW 82.44.035.

4 **V. SUMMARY OF ARGUMENT**

5 Art. II § 37 of the Washington State Constitution³ requires that any legislation that amends
6 the existing law of the state must set forth in full the text of the statute being amended and
7 indicate by strikeout and underline what change the new legislation will make to existing law.
8 In drafting, debating, amending, and enacting ESSB 5987, the legislature did not comply with
9 the constitution’s full disclosure requirement.

10 The Act does not disclose that it amends the existing statutory vehicle valuation schedule,
11 RCW 82.44.035, much less “set forth at full length” that section. In fact, it makes no reference
12 to the existing statutory valuation schedule at all. Yet, as the result of the Act, the existing
13 valuation schedule does not apply as it is written to the locally imposed MVET which Sound
14 Transit imposes in reliance on the Act. After enactment of the new ST3 MVET by statute and
15 ballot proposition, no person could review the existing version of the Revised Code of
16 Washington and identify the legal basis for the valuation used by Sound Transit and the DoL
17 when calculating and collecting the MVET. In fact, the ST3 valuation schedule does not appear
18 in the Revised Code of Washington *at all*.

19 ESSB 5987 § 319(1) does not fall into one of the few, narrow exceptions to Art. II § 37
20 recognized by the Supreme Court. It is plainly not a “complete act.” It explicitly identifies in
21 its text that one must refer elsewhere to know the legal basis for valuation – one of the three
22 numbers multiplied to determine the amount of MVET owed. And elsewhere within § 319, the
23 legislature recognized the requirement to set forth in full the text of other statutes it amended.
24 Yet, upon its passage, the Act renders erroneous a straightforward reading of the existing

25 ³ “No act shall ever be revised or amended by mere reference to its title, but the act revised or
26 the section amended shall be set forth at full length.”

1 valuation schedule. The Act requires reference to other statutes but renders RCW 82.44.035
2 erroneous, which means the legislature did not comply with Art. II § 37.

3 Because the Act violates the constitutional full disclosure requirement, the Supreme
4 Court’s remedy applies: the section must fall. As a result, Sound Transit lacks the required
5 statutory authorization for levying the 0.8% MVET, and this Court should enjoin further
6 collection of the additional 0.8% MVET. Finally, because the levy never had the required
7 authorization, the Court should order Sound Transit to refund to taxpayers the amounts it
8 collected in reliance on the unconstitutional statute.

9 VI. ARGUMENT

10 A. The History and Background of Article II § 37

11 1. The “Full Disclosure” Rule

12 Our Constitution demands that when the legislature amends an existing statute, it fully
13 disclose how the new bill will alter existing law, by setting forth in full the text of the existing
14 law. “No act shall ever be revised or amended by mere reference to its title, but the act revised
15 or the section amended shall be set forth at full length.” Art. II § 37. This requirement ensures
16 that both the legislators voting on the bill, as well as citizens who review an enactment, can
17 readily discern the effect of the legislation on existing laws, and fully understand any change
18 in the rights and duties of a citizen. “When reading a new statute, a citizen or legislator must
19 not be required to search out other statutes which are amended to know the law on the subject
20 treated in the new statute.” *Washington Educ. Ass’n v. State*, 93 Wash. 2d 37, 39, 604 P.2d
21 950, 952 (1980) (“WEA I”). Compliance with the Constitution’s mandate will “avoid
22 uncertainty created by the need to refer to existing law to understand the effect of the new
23 enactment, whether it be an appropriations act or a codified statute.” *WEA I*, 93 Wash. 2d at
24 40. “Another important purpose of Const. art. 2, s 37 . . . is the necessity of insuring that
25 legislators are aware of the nature and content of the law which is being amended and the effect
26 of the amendment upon it.” *Flanders v. Morris*, 88 Wash. 2d 183, 189, 558 P.2d 769, 773

1 (1977). The Supreme Court expressed that long-standing concern beginning in its earliest cases
2 applying the section. “The mischief designed to be remedied was the enactment of amendatory
3 statutes in terms so blind that legislators themselves were sometimes deceived in regard to
4 their effect, and the public, from the difficulty in making the necessary examination and
5 comparison, failed to become apprised of the changes made in the laws.” *Spokane Grain &*
6 *Fuel Co. v. Lyttaker*, 59 Wash. 76, 78, 109 P. 316, 317 (1910).

7 “No act shall ever be revised or amended by mere reference to its title, but the act revised
8 or the section amended shall be set forth at full length.” Art. II § 37. This constitutional
9 provision constrains the exercise of legislative power, whether by the legislature or by the
10 people through an initiative. According to Art. II § 37, any proposal to amend existing statutes,
11 and thereby change the rights and duties of the people, must fully disclose the changes that
12 would result from the proposed legislation.

13 **2. The “Complete Act” Exception to Article II § 37**

14 The Supreme Court has identified a category of enactments which might alter the scope
15 and effect of prior law, or render prior law erroneous, yet not fall subject to the Art. II § 37
16 requirement. If a new law is “a complete act, independent of prior acts and standing alone as
17 the law on the particular subject which it treats,” *Weyerhaeuser Co. v. King Cty.*, 91 Wash. 2d
18 721, 732, 592 P.2d 1108, 1115 (1979), then it need not set forth at full length every other
19 statute it might affect. The Court applies a two part test to determine if an act falls within the
20 “complete act” exemption from compliance with Art. II § 37. First, “[i]s the new enactment
21 such a complete act that the scope of the rights or duties created or affected by the legislative
22 action can be determined without referring to any other statute or enactment?” Second,
23 “[w]ould a straightforward determination of the scope of rights or duties under the existing
24 statutes be rendered erroneous by the new enactment?” *Washington Educ. Ass’n v. State*, 97
25 Wash. 2d 899, 652 P.2d 1347 (1982) (internal citations omitted) (“WEA II”).

1 The Court has noted the close relationship between the two parts of this test. “[C]omplete
2 acts may well result in a person reading an existing statute and being unaware there is new law
3 on the subject.” *Amalgamated Transit Union Local 587 v. State*, 142 Wash. 2d 183, 253, 11
4 P.3d 762, 804 (2000), as amended (Nov. 27, 2000), opinion corrected, 27 P.3d 608 (Wash.
5 2001). Where an act is not complete, but instead requires reference to another act to be
6 understood, and yet renders another act erroneous, it has violated the Constitution.

7 **B. ESSB 5987 § 319(1) Violates Article II § 37**

8 In light of the foregoing legal principles, review of ESSB 5987 § 319(1) demonstrates
9 that the legislature did not comply with Art. II § 37.

10 **1. ESSB 5987 § 319(1) Amends RCW 82.44.035 (Issue 1(a))**

11 Art. II § 37 applies when a new law amends a previous act. Thus, one must first resolve
12 whether ESSB 5987 amends RCW 82.44.035 at all, because otherwise it does not trigger the
13 constitutional requirement. “The determination whether an act is an amendment does not
14 depend on whether it purports on its face to be amendatory. . . . The test to be applied . . . is
15 whether it changes a prior act in scope and effect.” *Weyerhaeuser*, 91 Wash. 2d at 731. Here,
16 ESSB 5987 § 319(1) changes the scope and effect of the 2006 valuation schedule. Thus, it
17 amends RCW 82.44.035, and triggers the Art. II § 37 requirement that it “set forth at full
18 length” that earlier act.

19 Prior to the enactment of ESSB 5987, one section of RCW provided a vehicle valuation
20 schedule for locally imposed MVET: RCW 82.44.035.⁴ That section established the valuation
21 schedule, and thus one of the three factors for calculating all locally imposed MVET instituted
22 since the statute’s enactment in 2006. On its face, the statute applies “[f]or the purpose of
23 determining *any* locally imposed motor vehicle excise tax . . .” RCW 82.44.035 (emphasis
24 added). After enactment of ESSB 5987, however, that is no longer true. DoL and Sound Transit

25 _____
26 ⁴ The full text of RCW 82.44.035 is appended as Exhibit B.

1 do not use RCW 82.44.035 for the purpose of determining the locally imposed motor vehicle
2 excise tax of 0.8% of value levied by Sound Transit pursuant to that new enactment. This
3 alteration extends beyond the introductory phrase of the statute. Sound Transit imposes the
4 ST3 MVET based on a different valuation than the codified valuation in every year of a
5 vehicle’s age. It thereby “alters the scope and effect of” the section and therefore “is clearly
6 amendatory of that section . . .” *Weyerhaeuser*, 91 Wash. 2d at 730.

7 The amendment to RCW 82.44.035 closely tracks the amendment found unconstitutional
8 in *Weyerhaeuser*. There, the legislature had amended the Forest Practices Act, purporting to
9 “prohibit imposition of water quality control conditions on forest practices through a shoreline
10 substantial development permit . . .” *Weyerhaeuser*, 91 Wash. 2d at 726. It thereby took from
11 local governments significant regulatory authority that it had earlier granted them through the
12 Shoreline Management Act. *Id.* The legislature, however, “did not set out those provisions of
13 the SMA which were affected. The result was to substantially alter the scope and effect of the
14 SMA without changing the language of the statute to reflect that alteration.” *Weyerhaeuser*,
15 91 Wash. 2d at 730.

16 Here, too, the legislature substantially altered the scope and effect of RCW 82.44.035. It
17 no longer applies to any locally imposed MVET, as it states. It applies instead to any locally
18 imposed MVET instituted since its passage except the one authorized by ESSB 5987. Just as
19 in *Weyerhaeuser*, where the legislature purported to withdraw certain authority from local
20 governments without identifying how and where it altered the statute which initially granted
21 that authority, the Act changes the obligation of Sound Transit, a local government, to use
22 RCW 82.44.035, without identifying that it does so.

23 The Act’s amendment is also similar to the change in law identified as an amendment in
24 *Flanders v. Morris*, 88 Wash. 2d 183. There, “the statutory law of this state ha[d] provided for
25 public assistance on the basis of need with no age restriction.” *Flanders*, 88 Wash. 2d at 189.
26 In a later-passed appropriations bill, the legislature enacted “a provision which limits general,

1 non-continuing public assistance to persons who, if single, are at least 50 years old.” *Id.* at 184.
2 But it did not set out, nor even identify, the section of RCW that contained the existing
3 restrictions on the availability of public assistance. By adding restrictions elsewhere in the law,
4 the legislature changed the scope and effect of the existing law, making it inapplicable under
5 certain circumstances, yet without setting out that alteration in the act itself. The Court held
6 that “[t]he new restriction is clearly an amendment” to the existing statute. *Id.* at 189. Here,
7 too, by adding a restriction to the otherwise general applicability of RCW 82.44.035, the
8 legislature amended that prior act.

9 **2. ESSB 5987 § 319(1) Does Not “Set Forth At Full Length” RCW 82.44.035**
10 **And How It Is Amended (Issue 1(b))**

11 ESSB 5987 § 319(1) makes no mention of RCW 82.44.035. It does not identify it even
12 by section number, much less “set forth in full” the section as Art. II § 37 requires. The entire
13 subsection (§ 319(1)) reads as follows:

14 Regional transit authorities that include a county with a population of more than one
15 million five hundred thousand may submit an authorizing proposition to the voters,
16 and if approved, may levy and collect an excise tax, at a rate approved by the voters,
17 but not exceeding eight-tenths of one percent on the value, under chapter 82.44
18 RCW, of every motor vehicle owned by a resident of the taxing district, solely for
19 the purpose of providing high capacity transportation service. The maximum tax rate
20 under this subsection does not include a motor vehicle excise tax approved before
21 July 15, 2015, if the tax will terminate on the date bond debt to which the tax is
22 pledged is repaid. This tax does not apply to vehicles licensed under RCW
23 46.16A.455 except vehicles with an unladen weight of six thousand pounds or less,
24 RCW 46.16A.425 or 46.17.335(2). Notwithstanding any other provision of this
25 subsection or chapter 82.44 RCW, **a motor vehicle excise tax imposed by a**
26 **regional transit authority before or after July 15, 2015, must comply with**
chapter 82.44 RCW as it existed on January 1, 1996, until December 31st of the
year in which the regional transit authority repays bond debt to which a motor
vehicle excise tax was pledged before July 15, 2015. Motor vehicle taxes collected
by regional transit authorities after December 31st of the year in which a regional
transit authority repays bond debt to which a motor vehicle excise tax was pledged
before July 15, 2015, must comply with chapter 82.44 RCW as it existed on the date
the tax was approved by voters.

25 RCW 81.104.160(1) (emphasis added). No word of RCW 82.44.035 appears in this
26 subsection, nor anywhere in the act. It is not even mentioned by code section, and certainly is

1 not “set forth at full length,” as required by the Constitution. Instead, § 319(1) would require
2 “compliance” with the long-since repealed statute, including the use of a repealed valuation
3 schedule, thereby amending the existing schedule, but without setting it forth.

4 **3. ESSB 5987 § 319(1) Is Not A “Complete Act” Immune From The**
5 **Requirement It Set Forth The Statute It Revises Or Amends (Issue 1(c))**

6 A complete act is one in which a person can determine the scope of her rights or duties
7 by review of only the act itself. *WEA II*, 97 Wash. 2d at 903; *see also Naccarato v. Sullivan*,
8 46 Wash. 2d 67, 74, 278 P.2d 641 (1955). ESSB 5987 § 319(1) fails this test. The section
9 authorizes Sound Transit to impose MVET “not exceeding eight-tenths of one percent on the
10 value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing
11 district . . .” RCW 81.104.160. But to calculate the value, as the text itself acknowledges, one
12 must look elsewhere. A person reading this statute would know that she must pay 0.8% of her
13 vehicle’s value, but would also know that the legal definition of the vehicle’s value is found
14 elsewhere. The scope of the taxpayer’s duty – the amount of tax owed – cannot be determined
15 exclusively by review of ESSB 5987 § 319(1).

16 **(a) ESSB 5987 § 319(1) Requires Reference To Another Act**

17 This fails the “complete act” test just as did the statute at issue in *Weyerhaeuser*. There,
18 the Court concluded that the enactment failed the test because it “cannot be understood without
19 reference to both the FPA and the SMA. It is therefore not a complete act and is not excepted
20 from application of the constitutional requirement.” *Weyerhaeuser*, 91 Wash. 2d at 732.
21 Similarly here, the act cannot be understood without reference to both the relevant portions of
22 Chapter 81.104 governing “High Capacity Transportation Systems,” and a separate valuation
23 schedule, not found within the act or even the chapter or title of which it is a part.

24 **(b) ESSB 5987 § 319(1) Renders A Straightforward Reading Of**
25 **RCW 82.44.035 Erroneous**

1 “Another purpose of the constitutional limitation is to apprise those who are affected by
2 an existing law of any important changes.” *WEA I*, 93 Wash. 2d at 41. Compliance with Art.
3 II § 37 ensures that “[c]itizens or legislators must not be required to search out amended
4 statutes to know the law on the subject treated in a new statute. Under article II, section 37, a
5 new statute must explicitly show how it relates to statutes it amends.” *Washington Ass’n of*
6 *Neighborhood Stores v. State*, 149 Wash. 2d 359, 373, 70 P.3d 920, 927 (2003). To ensure that
7 this constitutional purpose is served, the court applies a second part to the test: does a new
8 enactment render a straightforward reading of the earlier statute erroneous? Here, the new law
9 is not complete, and requires reference to another act to be understood and applied.⁵ It also
10 renders erroneous the sole statutory MVET vehicle valuation schedule, RCW 82.44.035.

11 Since its enactment in 2006, Chapter 82.44 permits the institution of new, locally imposed
12 MVET, and within that chapter, RCW 82.44.035 provides the vehicle valuation schedule for
13 use in calculating those new MVETs. But after 2015, no person reading RCW 82.44.035 would
14 know that the legislature had enacted an exception – that a locally imposed motor vehicle
15 excise tax could be assessed based on a completely different valuation schedule. If a person
16 wished to calculate the tax he owes to any other local government, he could find the value of
17 his vehicle, apply the discount of RCW 82.44.035 based on age, and multiply that by the tax
18 rate. That straightforward reading of RCW 82.44.035 would be erroneous if a person made
19 that calculation for purposes of paying the locally imposed ST3 levy of 0.8%. Yet, nothing in
20 the statute alerts the reader that it has a glaring exception.

21 This flaw parallels the unconstitutional enactment at issue in *WEA I*. There, “[u]nder the
22 existing statutory scheme, school districts [had] . . . the power to expend the district’s funds,
23 from whatever sources, for its own purposes, as authorized by law.” That included the power

24 ⁵ Actually, the new enactment requires reference to a no-longer extant, repealed, former section
25 of Chapter 82.44. Nonetheless, whether one can find the referenced section or not, there is no
26 valuation schedule in RCW 81.104.160, and a valuation schedule must be used to understand
and apply the law by calculating the tax owed.

1 to “[f]ix, alter, allow and order paid [teacher] salaries and compensation . . .” *WEA I*, 93 Wash.
2 2d at 41. A later appropriations bill limited the ability of a school district to fix salaries by
3 limiting the amount of raises. Yet it did not set forth the statute it amended, so that a party
4 reading the earlier statute would have no idea that the school board’s authority to set teacher
5 salaries had been limited. Because it rendered a straightforward reading of the earlier act
6 erroneous, the Court found the later enactment unconstitutional under Art. II § 37.

7 **C. What Remedies Flow from the Constitutional Violation?**

8 **1. The Court Should Invalidate the Unconstitutional Enactment (Issue 2(a))**

9 Where a statute violates Art. II § 37, “[i]nvalidation of the unconstitutional enactment is
10 the proper remedy.” *Amalgamated Transit Union*, 142 Wash. 2d at 256. Where a Washington
11 court finds that an enactment failed to comply with Art. II § 37, it strikes down the statute. *See*,
12 *e.g.*, *Amalgamated Transit Union*, 142 Wash. 2d at 256 (holding that while “the State urges
13 that if the court holds that I–695 violates art. II, § 37, the remedy is not invalidation of I–695,
14 but rather a declaration that the other law continues in force. We disagree. Invalidation of the
15 unconstitutional enactment is the proper remedy”); *WEA I*, 93 Wash. 2d at 41 (“Because RCW
16 28A.58.100(1) was not fully set forth in the appropriations act which purported to amend it,
17 the offending limitation on the powers of school districts is unconstitutional and of no effect”);
18 *Weyerhaeuser*, 91 Wash. 2d 721 (applying only the earlier statute to evaluate a permit after
19 declaring the later statute unconstitutional under Art. II § 37).

20 Here, ESSB 5987 § 319(1), purporting to establish the authority of Sound Transit to
21 collect an additional 0.8% MVET, failed to comply with Art. II § 37. “Invalidation of the
22 unconstitutional enactment is the proper remedy.” *Amalgamated Transit Union Local 587 v.*
23 *State*, 142 Wash. 2d 183, 256, 11 P.3d 762, 806 (2000), as amended (Nov. 27, 2000), opinion
24 corrected, 27 P.3d 608 (Wash. 2001). The constitution and Supreme Court precedent allow no
25 other course.

1 **2. The Court Should Enjoin Sound Transit from Collecting The ST3 MVET**
2 **(Issue 2(b))**

3 “Unlike the sovereign state, counties and other municipal subdivisions possess no
4 inherent power of taxation. The constitution itself does not grant them the taxing power, but,
5 by art. 7, § 9, the legislature is authorized to vest them with this power.” *Pac. First Fed. Sav.*
6 & *Loan Ass’n v. Pierce Cty.*, 27 Wash. 2d 347, 353, 178 P.2d 351, 354 (1947). With that
7 authorization, Sound Transit, a municipal corporation, may collect taxes. “For all corporate
8 purposes, all municipal corporations may be vested with authority to assess and collect
9 taxes . . .” Wash. Const. Art. VII § 9. However, “municipal corporations secure their right, not
10 only to tax, but assess, from *express legislative authority* . . .” *Pac. First Fed. Sav. & Loan*
11 *Ass’n v. Pierce Cty.*, 27 Wash. 2d 347, 352, 178 P.2d 351, 354 (1947) (emphasis added); *see*
12 *also King Cty. v. City of Algona*, 101 Wash. 2d 789, 791, 681 P.2d 1281, 1282 (1984) (the
13 Supreme Court has “consistently held that municipalities must have express authority, either
14 constitutional or legislative, to levy taxes”); *Citizens for Financially Responsible Gov’t v. City*
15 *of Spokane*, 99 Wash. 2d 339, 343, 662 P.2d 845, 848 (1983) (reiterating “[t]he general rule is
16 municipalities possess, with respect to taxation, only such power as has been granted to them
17 by the constitution or the general laws of the state”).

18 Sound Transit received express legislative authority to levy a “[s]pecial motor vehicle
19 excise tax as provided in RCW 81.104.160.” RCW 81.104.140(4)(a)(ii). Because
20 RCW 81.104.160(1), added to the statute by ESSB 5987 § 319(1), is unconstitutional, Sound
21 Transit lacks the required express statutory authority to levy the additional 0.8% MVET
22 purportedly authorized by that section. As such, the Court should enjoin it from collecting that
23 levy.
24
25
26

1 **3. The Court Should Order The Refund Of Impermissibly Collected MVET**
2 **(Issue 2(c))**

3 Sound Transit has never had the required express statutory authorization to collect the
4 additional 0.8% MVET which it began collecting on or about March 1, 2017. Since it began
5 collecting that impermissible tax, it has impermissibly collected MVET from taxpayers in its
6 jurisdiction. Sound Transit must refund these overpayments. “Refunds of locally imposed
7 motor vehicle excise taxes must be handled in the same manner and under the same terms and
8 conditions as provided in RCW 46.68.010.” RCW 82.44.120(1). That section in turn mandates
9 that “[a] person who has paid all or part of a vehicle license fee under this title is entitled to a
10 refund if the amount was *paid in error* . . .” RCW 46.68.010(1) (emphasis added).
11 Additionally, this Court should order the refund to all taxpayers, because the statute mandates
12 action by DoL without requiring any individual taxpayer petition. “The department shall
13 refund overpayments of vehicle license fees and motor vehicle excise taxes under Title 82
14 RCW that are ten dollars or more. A request for a refund is not required.” RCW 46.68.010(2).

15 Here, due to the constitutional invalidation of the additional 0.8% MVET, the mandatory
16 refund satisfies the statutory conditions. “A claim for a refund may be made by a person who:
17 (a) Is not seeking a full refund; and (b) Believes the amount of the locally imposed motor
18 vehicle excise tax paid was incorrect or too much.” RCW 82.44.120(2). After invalidating only
19 the additional ST3 MVET of 0.8%, taxpayers are entitled to a partial refund of the MVET,
20 because it was paid in error and the amount imposed was too much. Finally, this remedy is
21 essentially self-executing, because “[b]efore a local government subject to this chapter may
22 impose a motor vehicle excise tax, the local government shall contract with the department for
23 reimbursement for any refunds paid to a person by the treasurer.” RCW 82.44.120(4). Thus,
24 Sound Transit, the DoL, and the state treasurer have already established the mechanism for
25 calculating and issuing refunds of excess MVET payments.
26

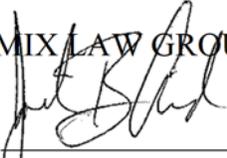
1 Alternatively, Sound Transit and DoL must make the refunds pursuant to the catch-all
2 provision of RCW 43.88.170, providing for refunds of “amounts received by the agency in
3 consequence of error, either of fact or of law . . .” RCW 43.88.170. Levy of the 0.8% MVET
4 occurred due to an error of law, namely, the erroneous conclusion that the statute passed
5 constitutional muster. DoL must therefore refund those amounts it received in error.

6 **VII. CONCLUSION**

7 ESSB 5987 § 319(1) amended the pre-existing vehicle valuation schedule, RCW
8 82.44.035. But it did not even identify that section, much less “set forth in full” the amended
9 earlier act, as required by Art. II § 37. Thus, the section is unconstitutional, and this Court
10 should invalidate it. Sound Transit therefore lacks the required statutory authority to collect
11 the additional 0.8% MVET purportedly authorized by that invalid enactment, and must cease
12 collecting it and refund all amounts collected pursuant to the unconstitutional enactment.

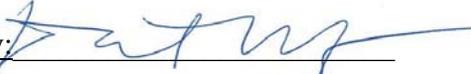
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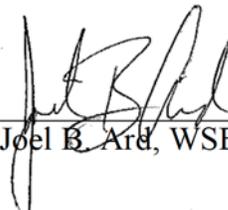
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1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing document was served via the Pierce County eLINX e-
3 service system all parties and counsel who have appeared in the matter pursuant to prior
4 agreement, and via email to the email addresses listed below:

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22
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Ex.

A

thousand pounds combined gross weight. The annual amount of such additional excise tax shall be fifty-eight one-hundredths of one percent of the value of the vehicle.

The department shall distribute the additional tax collected under this subsection as follows:

(a) For each trailing unit subject to subsection ~~((5))~~ (4) of this section, an amount equal to the clean air excise tax prescribed in subsection ~~((3))~~ (2) of this section shall be distributed in the manner prescribed in RCW 82.44.110~~((3))~~ (2);

(b) ~~((f))~~ The remainder of the additional excise tax collected under this subsection~~((, ten percent shall be distributed in the manner prescribed in RCW 82.44.110(2) and ninety percent))~~ shall be distributed in the manner prescribed in RCW 82.44.110(1). This tax shall not apply to power units used exclusively for hauling logs.

~~((5))~~ (4) The excise taxes imposed by subsections (1) ~~((through (3)))~~ and (2) of this section shall not apply to trailing units which are used in combination with a power unit subject to the additional excise tax imposed by subsection ~~((4))~~ (3) of this section. This subsection shall not apply to trailing units used for hauling logs.

~~((6))~~ (5) In no case shall the total tax be less than two dollars except for proportionally registered vehicles and except for vehicles on which a credit is granted under section 2 of this act.

~~((7))~~ (6) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

Sec. 4. RCW 82.44.041 and 1990 c 42 s 303 are each amended to read as follows:

(1) For the purpose of determining the tax under this chapter, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	83
4	75
5	67
6	59
7	52
8	44

9	36
10	28
11	21
12	13
13 or older	10

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining the tax under this chapter, the value of a motor vehicle other than a truck-type power or trailing unit shall be the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model.

(b) The value determined in (a) of this subsection shall be divided by the applicable percentage listed in this subsection to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the vehicle for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	((100)) 95
3	((95)) 89
4	83
5	74
6	65
7	57
8	48
9	40

10	31
11	22
12	14
13 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a handicapped person.

Sec. 5. RCW 82.44.110 and 1997 c 338 s 68 are each amended to read as follows:

The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) ~~((1.60))~~ 1.455 percent into the motor vehicle fund through June 30, 1999, and 1.71 percent beginning July 1, 1999, to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) ~~((8.15))~~ 7.409 percent into the Puget Sound capital construction account in the motor vehicle fund through June 30, 1999, and 8.712 percent beginning July 1, 1999.

(c) ~~((4.07))~~ 3.70 percent into the Puget Sound ferry operations account in the motor vehicle fund through June 30, 1999, and 4.351 percent beginning July 1, 1999.

(d) ~~((5.88))~~ 5.345 percent into the ~~((general fund to be distributed))~~ city police and fire protection assistance account under RCW 82.44.155 through June 30, 1999, and 6.286 percent beginning July 1, 1999.

(e) ~~((4.75))~~ 4.318 percent into the municipal sales and use tax equalization account ~~((in the general fund))~~ created in RCW 82.14.210 through June 30, 1999, and 5.628 percent beginning July 1, 1999.

(f) ~~((1.60))~~ 1.455 percent into the county sales and use tax equalization account ~~((in the general fund))~~ created in RCW 82.14.200 through June 30, 1999, and 1.71 percent beginning July 1, 1999.

(g) ~~((62.6440))~~ 13.573 percent into the general fund through June 30, ~~((1995; and 57.6440 percent into the general fund beginning July 1, 1995))~~ 1999.

(h) ~~((5))~~ 43.605 percent into the transportation fund created in RCW 82.44.180 through June 30, 1999, and 51.203 percent beginning July 1, ((1995)) 1999.

(i) ~~((5.9686))~~ 5.426 percent into the county criminal justice assistance account created in RCW 82.14.310 through June 30, 1999, and 3.892 percent beginning July 1, 1999.

Ex.

B

RCW 82.44.035**Valuation of vehicles.**

(1) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a truck or trailer shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	67
4	55
5	45
6	37
7	30
8	25
9	20
10	16
11	13
12	11
13	9
14	7
15	3
16 or older	0

(2) The reissuance of a certificate of title and registration certificate for a truck or trailer because of the installation of body or special equipment shall be treated as a sale, and the value of the truck or trailer at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a vehicle other than a truck or trailer shall be eighty-five percent of the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection (3) based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model. The value determined in this subsection (3)(a) shall be divided by the applicable percentage listed in (b) of this

subsection (3) to establish a value equivalent to a manufacturer's base suggested retail price and this value shall be multiplied by eighty-five percent.

(b) The year the vehicle is offered for sale as a new vehicle shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	72
4	63
5	55
6	47
7	41
8	36
9	32
10	27
11	26
12	24
13	23
14	21
15	16
16 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a vehicle and equipment that are designed to facilitate the use or operation of the vehicle by a person with a disability.

[2010 c 161 § 910; 2006 c 318 § 1.]

NOTES:

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW **46.04.013**.