WASHINGTON
POLICY CENTER
*Improving lives through market solutions*

# POLICY BRIEF

## Washington Policy Center files Amicus Brief in *AUTO v. State of Washington* case

*Tribal-owned gas stations receive gas-tax "refunds" from state for taxes consumers pay. Practice is based on agreement signed by Governor Gregoire*

Bob Pisue
Director, Coles Center for Transportation

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## Introduction

In 2007, Governor Christine Gregoire signed agreements with Indian tribes to allow tribes that operate gas station businesses to be "refunded" 75 percent of the state gas tax on all fuel sold on tribal lands. Prior to the agreements, the State typically refunded tribes for fuel consumed by tribal members on reservations. The tribes were key supporters of Governor Gregoire in her 2004 re-election effort.

The 2007 agreements created a special status for Indian-owned gas stations and resulted in unfair competition with businesses owned by other Washington citizens, which are typically not eligible to receive refunds for fuel sold at their businesses.

In 2011, a group of Washington businesses called the Automotive United Trades Organization (AUTO) asked the Washington State Supreme Court to review a lower court decision that refused to address whether the Gregoire agreements were illegal and unfair. The Washington State Supreme Court found in favor of AUTO and directed the lower court to continue with proceedings, but the lower court again rejected AUTO's claims.

In 2012, the State Supreme Court announced that it would again review the lower court's handling of AUTO's case. The Court will hear the case on May 12, 2015.

As it did the first time the State Supreme Court ruled in favor of AUTO, Washington Policy Center (WPC) filed an Amicus Curiae brief in support of AUTO in the case, believing that constitutional protections for disbursement of "refunds" have been violated. The State Supreme Court agreed to receive Washington Policy Center's brief on April 8, 2015.

WPC is asking the court to consider the following points:

1. Indian tribes cannot receive a tax "refund" because they are not the taxpayer.

A refund is typically issued by the State when a taxpayer pays too much tax, either by overpaying an applicable tax or paying a tax that does not apply to the taxpayer. Indian tribes do not pay the state gas tax and therefore cannot overpay a tax they do not pay. Payments given by the State to Indian tribes should therefore not be considered as "tax refunds." They are simply transfers of money from the public treasury to a private Indian-owned business.

2. Expenditure of public funds for policy purposes must be appropriated by the State legislature and not disguised as tax refunds.

   Since state gas tax payments to private Indian tribes do not constitute a tax refund, any public money paid out of the state Motor Vehicle Account to an Indian tribe should be legally appropriated by the state legislature first, and should include a recorded vote of elected representatives.

According to State Auditor Brian Sonntag, approximately $193 million in state gas tax revenue has been paid to Indian tribes between 2005 and 2013, with annual payments rising above $30 million. Under the agreement, Sonntag estimated an additional $340 million will be given to Indian tribes over the next decade.

WPC research found that money currently paid to the tribes is designated to be used for transportation purposes only, yet Indian tribes do not make audits publicly available to confirm how these funds are used. Our research also questioned whether public money from the state Motor Vehicle Fund may have been used to undercut gas stations owned by their competitors, in violation of the constitution and the agreements with the State.

Any payments from the State to tribal leaders or Indian-owned private businesses should be appropriated by the legislature with full transparency and accountability, because these payments are not a "refund" for overpayment of fuel taxes.

No. 89734-4

SUPREME COURT
OF THE STATE OF WASHINGTON

AUTOMOTIVE UNITED TRADES ORGANIZATION,

Appellant,

v.

The STATE OF WASHINGTON; JAY INSLEE, in his official capacity as Governor of the State of Washington; PAT KOHLER, in her official capacity as Director of the Washington State Department of Licensing,

Respondents.

# BRIEF OF AMICUS CURIAE WASHINGTON POLICY CENTER

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## I. INTRODUCTION AND IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae Washington Policy Center ("WPC") is a non-profit, independent, non-partisan think tank dedicated to promoting sound public policy based on free market solutions.

The parties' briefs have touched upon budgetary issues in their discussion of a "[r]efund[] authorized by law for taxes paid on motor vehicle fuels" under the 18th Amendment and the need for an appropriation of any Motor Vehicle Fund ("MVF")[1] dollars by the Legislature for such refunds in order to comply with article VIII, § 4 of the Washington Constitution.

It is the purpose of amicus here to address these budget-related issues in detail. What constitutes a refund "authorized by law" is well-developed under Washington law. Similarly, there are well-developed principles as to what constitutes an appropriation and when such an appropriation must be made.

In order to provide for government transparency and accountability of elected officials spending public dollars, it is vitally important for this Court to establish clear lines between what constitutes a refund to a taxpayer and an appropriation of funds for a public purpose.

[1] The MVF was created by RCW 46.68.070.

## II. STATEMENT OF THE CASE

Amicus WPC acknowledges and agrees with the statements of the case in the Appellant's briefing.

## III. ARGUMENT

### A. Under Washington Law, Refunds Are Overpayments of Taxes Based on an Error of Law or Fact.

A central issue in the present case is whether payments of funds from the MVF to various Native American tribes are a "refund authorized by law" under the 18th Amendment, ratified as article II, § 40 of Washington's Constitution. Payments of such funds from the MVF to the tribes are not authorized under any of the 18th Amendment's other explicitly enumerated objects of expenditure.

This Court touched on refunds of taxes paid into the MVF in *Washington Off Highway Vehicle Alliance v. State*, 176 Wn.2d 225, 290 P.3d 954 (2012), and the Court of Appeals addressed a similar question in *Northwest Motorcycle Ass'n v. State, Interagency Comm'n for Outdoor Recreation*, 127 Wn. App. 408, 110 P.3d 1196 (2005), *review denied,* 156 Wn.2d 1008 (2006). In both cases, however, there was no question that the taxpayers overpaid, or should not have paid at all, the applicable fuel tax. Instead, the issues in those cases were to whom the refund was to be paid and how the refund was to be used.

There are well-developed principles in Washington that govern what constitutes a tax refund that should guide this Court in defining a permissible "refund authorized by law" under the 18th Amendment. On numerous occasions, the Legislature has enacted statutes authorizing state and local agencies collecting taxes and fees to refund them if they are improperly exacted. Such statutes are necessary because at common law tax or fee refunds were a matter of legislative grace. *See Guy F. Atkinson Co. v. State*, 66 Wn.2d 570, 575, 403 P.2d 880 (1965) ("No executive or ministerial officer has authority to refund taxes except under express statutory authority.").[2] The grounds upon which tax refunds may be obtained are likewise governed by statute. *See, e.g., Elliot & Co., Inc. v. State*, 191 Wash. 385, 388, 71 P.2d 168 (1937) (rejecting request for refund of gasoline tax that was not permitted by statute).

18th Amendment "refunds authorized by law" are constitutionally-directed. Thus, this Court applies certain long-standing constitutional interpretive principles. Words in the Constitution must be given their usual, ordinary, and non-technical meaning. *Automobile Club of Wash. v. City of Seattle*, 55 Wn.2d 161, 167, 346 P.2d 695 (1959). This Court has the exclusive power to construe the meaning and scope of the 18th

[2] In the absence of statutory authority for a refund, refunds are not permitted. Wash. Att'y Gen. Op. No. 21 (1970) (county not authorized to make refund of weight violation ticket because the counties lacked statutory authority to make such a refund).

Amendment. "The legislature has no constitutional power to define the meaning and scope of a constitutional provision." *Wash. State Highway Comm'n v. Pacific N.W. Bell Tel. Co.*, 59 Wn.2d 216, 222, 367 P.2d 605 (1961).

This Court could decide to construe "refunds authorized by law for taxes paid on motor vehicle fuels" entirely on its own. In so doing, it could be guided by the usual meaning of a "refund" as a payment made to a taxpayer who has paid taxes in error, whether that error is one of law or fact. Such an interpretation is consistent with the narrow and strict construction given to tax refund statutes generally.

Alternatively, this Court could construe the language to allow tax refunds from the MVF where the Legislature has specifically provided for them by statute so long as the taxpayer has paid the tax.[3]

Regardless of whether this Court construes the constitutional language afresh or leaves the definitions of refunds to the Legislature, the same result should pertain. First, by its plain language, the 18th Amendment speaks of "refunds authorized by law for taxes paid on motor vehicle fuels." By its very terms, that constitutional language contemplates that refund beneficiary must have actually paid the taxes.

[3] The 18th Amendment does not allow refunds of taxes *indirectly paid*, as does RCW 82.36.280, for example.

This interpretation is further reinforced by the various tax refund statutes enacted by the Legislature.

Alternatively, if the court construes "refunds authorized by law" to mean refunds authorized by statute, a careful analysis of the applicable tax refund statutes demonstrates that the payments to the tribes are not refunds.

In the case of traditional fuel or gas taxes imposed under chapter 82.36 RCW, there are a number of explicit refund statutes that may apply. A taxpayer may claim a refund if the fuel was used in a vehicle off the public highways. RCW 82.36.280. Such a refund is authorized by law, whether paid directly *or indirectly*. Refunds are also available for the loss or destruction of fuel in certain circumstances, RCW 82.36.370, to private non-profit providers of transportation services to persons with special needs, RCW 82.36.285, to taxpayers purchasing and using fuels for manufacturing, cleaning, or dyeing, RCW 82.36.290, or to purchasers of fuel for export, RCW 82.36.300. There is no general, catch-all tax refund statute for fuel taxes paid under chapter 82.36 RCW.[4]

Generally, statutes authorizing tax refunds make clear that refunds are appropriate if taxes are exacted improperly due to an error of fact or

[4] RCW 82.36.450, relating to tribal fuel compacts, makes no mention of procedures for refunds, or refunds at all.

law, i.e., that the taxpayer paid too much given the taxpayer's individual circumstances, or the particular tax law did not apply to the taxpayer. For example, RCW 82.32.060 addresses tax refunds with respect to excise taxes like fuel taxes. A refund is due if "any amount of tax, penalty, or interest has been paid in excess of that properly due," and the refund must "be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option." RCW 82.32.060(1). Arguably, this Court should treat RCW 82.32.060 as the statute implementing the 18th Amendment and giving content to the amendment's term "[r]efund[] authorized by law." As such, any refund could only be made to the tribes if the taxes paid by the tribes were in an amount "in excess of that properly due." RCW 82.32.060.

The Legislature has also provided for tax or fee refunds in a number of other specific instances, some of which involve revenue sources deposited into the MVF.[5] For example, the Legislature taxes special fuels, all liquids and gases used for vehicular propulsion that are not taxed under chapter 82.36 RCW. RCW 82.38.010; RCW 82.38.020(23). The Legislature provided for refunds of such taxes if not used for propulsion of vehicles on the highways. RCW 82.38.180. In

[5] *E.g.*, RCW 46.68.010 addresses refunds of vehicular license fees, RCW 82.44.120 deals with refund claims involving locally imposed motor vehicle excise taxes, and RCW 82.02.080 permits refunds of local development impact fees.

implementing that refund provision, courts have looked first to whether the tax was improperly collected. *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn. App. 925, 946 P.2d 1235 (1997); *Nor-Pac Enterprises v. Dep't of Licensing*, 129 Wn. App. 556, 119 P.3d 889 (2005).

Moreover, recognizing the need for a general policy on refunds, the Legislature enacted RCW 43.88.170 which states:

> Whenever any law which provides for the collection of fees or other payment by an agency does not authorize the refund of erroneous or excessive payments thereof, refunds may be made or authorized by the agency which collected the fees or payments of all such amounts received by the agency *in consequence of error, either of fact or of law*. The regulations issued by the governor pursuant to this chapter shall prescribe the procedure to be employed in making refunds.

(emphasis added). Similarly, RCW 43.01.072 provides:

> Whenever any law which provides for the collection of fees or other payments by a state agency does not authorize the refund of erroneous or excessive payments thereof, refunds may be made or authorized by the state agency which collected the fees or payments of all such amounts received by the state agency *in consequence of error, either of fact or of law* as to: (1) The proper amount of such fee or payments; (2) The necessity of making or securing a permit, filing, examination or inspection; (3) The sufficiency of the credentials of an applicant; (4) The eligibility of an applicant for any other reason; (5) The necessity for the payment.

(emphasis added). These latter two statutes are particularly important because they make clear the general policy of the State on refunds,

confining them to circumstances where a taxpayer has paid taxes erroneously based on an error of fact or law.

In *Clark County Public Utility District No. 1 v. State, Dep't of Revenue*, 153 Wn. App. 737, 222 P.3d 1232 (2010), the Court of Appeals addressed the interplay between various tax refund statutes. There, certain public utility districts overpaid the privilege taxes imposed by the State under RCW 54.28.020 for selling energy. The districts collected the privilege tax on what they described as basic service charges, expenses such as debt service, insurance, and some labor costs that the districts incur even when energy is not sold. The districts sought a refund of the tax on the basic service charges. The Court of Appeals first held that the privilege tax under RCW 54.28.020 was inapplicable to such basic service charges as they were not derived from sales of electrical energy. *Id*. at 749. The court then concluded that RCW 82.32.060 (refunds of excise taxes) was inapplicable as the privilege tax was not an excise tax. *Id*. at 758. However, the court permitted a refund under the general tax refund statutes, RCW 43.01.072 and RCW 43.88.170.

This case is significant because of the court's process for analyzing a refund issue. It first determined if the taxpayer wrongfully paid the tax in whole or in part. It also carefully assessed the applicability of the various refund statutes, both the particular refund statute for excise taxes,

RCW 82.32.060 and the general refund statutes, RCW 43.01.072 and RCW 43.88.170.

These statutory refund provisions have also been discussed in various Attorney General opinions.[6] For example, the Attorney General addressed a situation where nonresident military personnel improperly paid Washington motor vehicle excise taxes on vehicles and excise taxes on house trailers. The Attorney General concluded that under United States Supreme Court precedent, nonresident military personnel should not have paid such taxes at all, but a refund was not available to them because under RCW 82.44.120, the applicable statute, a refund was available only if the taxes were paid in "an erroneously excessive amount," and more general tax refund statutes were inapplicable. Wash. Att'y Gen. Op. No. 98 (1966). Notably, the Attorney General also opined there that in order for a payment to qualify as a refund in the absence of an error of law or fact, there must be a legislative direction that a "refund" under such circumstances is authorized.[7] *Id*.

[6] Attorney General opinions, though not controlling, are given "great weight" in interpreting a statute. *Thurston County ex rel. Bd. of County Comm'rs v. City of Olympia*, 151 Wn.2d 171, 177, 86 P.3d 151 (2004).

[7] Nothing here in RCW 82.36.450 appears to be such an express direction. That statute only addresses circumstances where "tribal immunities" or "preemption of the state motor vehicle fuel tax" are present.

More critically for the analysis here, a refund is not available unless the taxes were paid in error, either of fact or law. The Attorney General addressed a situation where a claimant paid an annual power license fee for a hydroelectric project, but that project became inoperable due to an earth slide. The Attorney General concluded that no refund could be paid because there was no error of fact or law. Wash. Att'y Gen. Op. No. 71 (1966). The fee was paid "exactly as required by statute." Consequently, RCW 43.88.170 did not authorize a refund. Similarly, the Department of Licensing had no authority to refund the licensing fee and motor vehicle excise tax paid by a taxpayer where the taxpayer's vehicle was destroyed or removed from Washington and licensed elsewhere. Wash. Att'y Gen. Op. No. 7 (1979). The Attorney General stated:

> … there is, at present, no *statutory prohibition* against a refund of either the license fee or the motor vehicle excise tax under the factual circumstances therein described. This does not, however, mean that a refund of either of the two payments may legally be made for, under established principals [sic] of public law the mere absence of a statutory prohibition is not determinative of a question such as this. The governing rule, as set forth in such cases as *State ex rel. Eastvold v. Maybury*, 49 Wn.2d 533, 304 P.2d 663 (1956) and *State ex rel. Holcomb v. Armstrong*, 39 Wn.2d 860, 239 P.2d 545 (1952), is that state agencies have only those powers which have been granted to them by the legislature, either expressly or by necessary implication. Thus, in order to be able to make a refund of given license fees or taxes an agency must be able to point to some statutory provision authorizing this to be done. There is, however, at present no such statutory authority for the

> refunding of motor vehicle license fees or motor vehicle excise taxes lawfully, and not erroneously, paid—presumably in response to standard departmental billing procedures—by a motor vehicle owner.

*Id*. (emphasis in original).

This Court should construe the term "refund" in the 18th Amendment narrowly to mean a return of an overpayment of taxes paid, based on an error of law or fact. Alternatively, if the Court chooses to construe "refund authorized by law" to mean a refund authorized by statute, insofar as no specific tax refund statute in chapter 82.36 RCW applies here, this Court must look to the more general tax refund statutes. RCW 82.32.060, relating to excise taxes, does not apply here as no tax has been imposed upon the tribes "in excess of that properly due." Similarly, RCW 43.01.072 and RCW 43.88.170 specifically require that a refund may occur only if taxes are paid by the taxpayer because of an error in law or fact. In the absence of such an error compelling the taxpayer to pay taxes, no refund here is appropriate.

This cautious approach to the treatment of an 18th Amendment "refund" is merited because of the constitutional requirement in article VIII, § 4 that public funds may only be spent pursuant to a legislative appropriation. In order to fulfill the constitutional transparency and

accountability principles underlying that constitutional provision, refunds should be narrowly construed.

### B. In Order to Fulfill the Policies of Article VIII, § 4, Expenditures of Public Funds for Affirmative Policy Purposes Must Be Appropriated by the Legislature and Not Disguised As Tax Refunds.

The 18th Amendment indicates that refunds are a proper object of expenditure from the MVF when they are "authorized by law." This Court has never been called upon to construe this aspect of the 18th Amendment. As noted *supra*, the Court could treat "refunds authorized by law" as refunds authorized by statute. Alternatively, this Court could construe "authorized by law" as a term of art requiring necessary legislative action before such payments may be made from a fund in the State Treasury. That means an appropriation, required by article VIII, § 4 of our Constitution.

Our Progressive Era framers had a particular purpose in mind when they adopted article VIII, § 4. They did not trust the executive branch custodians of public moneys. They wanted transparency and accountability for public funds, and thus required legislative appropriations and that appropriations be limited to a two year duration. As noted in Robert F. Utter, Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* (Oxford University Press: 2013) at 157:

> The two-year payment parameter appears to be original to Washington. The framers explained that they inserted the two-year clause to prevent the Legislature from authorizing expenditures to be made any further ahead than years.

(citations omitted).

Moreover, this Court has clearly articulated that the purpose of article VIII, § 4 is to ensure transparency and accountability. The elected Legislature,[8] not anonymous executive branch officials, must authorize public fund expenditures in an open process[9] for which they are ultimately accountable to the voters. The expenditures are of a sum certain for a publicly articulated reason, and cannot exceed a duration of two years.[10]

This Court's treatment of an appropriation will not be meaningful absent an understanding of the budgetary process contemplated by the Budget and Accounting Act, RCW 43.88. That Act establishes an elaborate budgetary process followed by state agencies. Agencies must provide their budget requests in prescribed form to the Office of Financial

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[8] That the Legislature is the appropriate institution for this activity is consistent with its constitutional role concerning budgets and taxation. The Legislature has "the exclusive power of deciding how, when, and for what purpose public funds should be used by governmental agencies in carrying on the state's business." *State ex rel. Decker v. Yelle*, 191 Wash. 397, 400, 71 P.2d 379 (1937).

[9] The legislative budget process is ably described by Edward D. Seeberger in *Sine Die: A Guide to the Washington State Legislative Process* (Univ. of Wash. Press: 1989) at 114-25.

[10] Appropriations are the maximum authorization to incur expenditures, RCW 43.88.070, and agencies may not expend money beyond their appropriation. RCW 43.88.130. Appropriations lapse if not expended within the two-year budget cycle. RCW 43.88.140.

Management for submission to the Legislature. RCW 43.88.030. Significant detail is required as to revenues and expenditures. *Id.* All of budgetary efforts must comport with generally accepted accounting principles for state governments. RCW 43.88.037. The Legislature then usually adopts three significant budget-related measures -- a capital budget to expend general fund revenues (usually including bond revenues) for construction-related needs, a general fund budget, and a transportation budget that encompasses both operational and capital needs.

Only in *rare*, specifically articulated, circumstances does the Act excuse the need for an appropriation. An appropriation of refunds is not necessary *if the refund meets the definition of a refund in RCW 43.88.170*--an overpayment by the taxpayer based on error of fact or law. RCW 43.88.180.

An appropriation is the "legislative authorization to make expenditures and incur obligations from a particular account. Appropriations typically limit expenditures to a specific amount and purpose within a fiscal year or biennial timeframe." Office of Financial Management, *A Guide to the Washington State Budget Process* 9 (2014), *available at http://www.ofm.wa.gov/reports/budgetprocess.pdf* (last visited Jan. 14, 2015). *See also, State ex rel. Post-Intelligencer Pub. Co. v. Lindsley*, 3 Wash. 125, 127-28, 27 Pac. 1019 (1891) (appropriation is "an

authority from the legislature, given at the proper time, and in legal form, to the proper officer, to supply sums of money out of that which may be in the treasury in a given year to specified objects or demands against the state."); *Island County Committee on Assessment Ratios v. Dep't of Revenue*, 81 Wn.2d 193, 204, 500 P.2d 756 (1972) (an appropriation "is not a mandate to spend, rather it is an authorization given by the legislature to a designated agency to use not to exceed a stated sum for specified purposes."). *Any* doubts as to whether the Legislature intended an appropriation invalidates the expenditure. *Mason-Walsh-Atkinson Kier Co. v. Dep't of Labor & Indus.*, 5 Wn.2d 508, 514-15, 105 P.2d 832 (1940).

Under article VIII, § 4, an appropriation is different than a statutory direction to expend funds, as this Court determined in *Washington Association of Neighborhood Stores* when it stated: "Directing a legislative appropriation, as in this case, is not the same as making an appropriation." 149 Wn.2d 359, 366, 70 P.3d 920 (2003). *See also, State v. Perala*, 132 Wn. App. 98, 117, 130 P.3d 852, *review denied*, 158 Wn.2d 1018 (2006) (statutory duty to disburse funds is not itself an appropriation).

This interpretation of article VIII, § 4 makes sense. From a practical standpoint, virtually all programs funded in the Legislature's

general fund or transportation budget bills are described in statute. If executive branch agencies could spend money from the general fund or the MVF merely because such programs were described in statute and funding for such programs was generally authorized, there would *never* be a need for a general fund or transportation budget bill. Rather, a general statutory authorization for a program is insufficient to constitute an appropriation under article VIII, § 4.

Moreover, two significant constitutional goals would be frustrated if a mere statutory authorization constituted an appropriation. First, the explicit purpose of the 18th Amendment -- to preserve fuel tax revenues to be used for highway purposes -- would be jeopardized. A broad definition of a "refund" coupled with the notion that statutory authorization constituted an appropriation would mean that the Legislature could easily circumvent the restrictions of the 18th Amendment to limit MVF expenditures to highway purposes. For example, the Legislature could enact a statute providing that it is necessary to relocate utility facilities and the Department of Transportation is authorized to spend funds to effectuate that purpose. Under the State's analysis in its brief, nothing would prevent the agency from accessing MVF moneys to "refund" sums to utilities for facility relocation, notwithstanding this Court's determination in *Washington State Highway Commission* that such an

expenditure from the MVF was constitutionally prohibited under the 18th Amendment.

Second, all of the transparency and accountability policy underpinnings for article VIII, § 4 are frustrated if a statutory authorization suffices to permit the Department of Licensing to pay moneys to the tribes. Under the current scheme:

- the payments by DOL from the MVF are in the millions of dollars annually and escalating;
- an executive agency makes the payments and the Legislature does not specifically authorize the payments in a budget bill;
- there is no two-year restriction on the payments;
- there is no maximum cap on the payments;
- there is no description on the object of the payments.

The above policy reasons support the view that a narrow definition of a "refund" under the 18th Amendment is in order. Where the payment is a "true" refund, that is, the taxpayer overpaid the tax due to an error of fact or law, the need for the strict oversight of payment of public money contemplated by article VIII, § 4 is less pressing. Where, however, as in the case of payments to the tribes, there is a larger public policy objective, the need for the oversight mandated by article VIII, § 4 is critical. The State here concedes that tribal members were not illegally subject to Washington fuel taxes. Instead, it asserts that the payments are justified to

forestall tribal entry into the fuel distribution chain. *E.g.*, Br. of Resp'ts at 9, 32. Given that ostensible policy purpose for the payments, they are less like "refunds" than they are appropriations, no different than authorizations to spend public money for K-12 education, human services, or road maintenance. Article VIII, § 4 should apply to such payments.

The transparency and accountability principles of article VIII, § 4 are a strong basis for this Court to conclude that a cautious, and narrow, definition should be accorded the term "refund" under the 18th Amendment. Moreover, even if a broader definition of a "refund" is employed by this Court, such refunds are not "authorized by law" merely because a statute generally authorized the program for which the payments are made.

## IV. CONCLUSION

This Court should narrowly construe 18th Amendment refunds to encompass only payments to taxpayers who have improperly paid taxes due to an error of fact or law.

If the Court chooses a broader conception of "refund" under the 18th Amendment, then in order to preserve sound principles of public finance and implement the principles set forth in article VIII, § 4 of our Constitution, it should hold that such refunds are not "authorized by law" absent legislative appropriation.

DATED this 26th day of March, 2015.

Respectfully submitted,

/s/ Joseph P. Hoag

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on this 26th day of March, 2015, I caused to be served a true and correct copy of the following **BRIEF OF AMICUS CURIAE WASHINGTON POLICY CENTER** upon:

| | |
|---|---|
| Eric Mentzer<br>Alicia O. Young<br>Assistant Attorney General<br>PO Box 40126<br>Olympia, WA 98504-0126<br>ericm@atg.wa.gov<br>alicia.young@atg.wa.gov<br>*Attorneys for Respondents State of Washington* | ☐ via facsimile<br>☐ via overnight courier<br>☑ via first-class U.S. Mail<br>☑ via email<br>☐ via electronic court filing<br>☐ via hand delivery |
| Rene D. Tomisser<br>Senior Counsel, Atty Gen. of Wash.<br>Torts Division<br>PO Box 40126<br>Olympia, WA 98504-0126<br>renet@atg.wa.gov<br>*Attorneys for Respondents State of Washington* | ☐ via facsimile<br>☐ via overnight courier<br>☑ via first-class U.S. Mail<br>☑ via email<br>☐ via electronic court filing<br>☐ via hand delivery |
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Dated this 26th day of March, 2015.

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NARDA PIERCE
COMMISSIONER

WALTER M. BURTON
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# THE SUPREME COURT

STATE OF WASHINGTON

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April 8, 2015

RE: *Automotive United Trades Organization v. The State of Washington; Jay Inslee, et al.*, Cause No. 89734-4

Dear Counsel:

The Chief Justice has granted the motion to file amicus curiae briefs in this case by Harry J.F. Korrell and Joseph P. Hoag, on behalf of the Washington Policy Center. The brief has therefore been filed.

After considering the objection thereto, the Chief Justice has granted the motion to file an amicus brief by several counsel on behalf of Indian Tribal Governments Party To Fuel Tax Agreements. The Chief Justice has also approved the joinder in the motion by Scott Crowell and Bruce Didesch on behalf of the Shoalwater Bay Indian Tribe.

But after considering the objection thereto, the Chief Justice has denied the motion by the Indian Tribal Governments to submit a brief with an appendix. An amended brief without the appendix may be served and filed no later than April 15, 2015. With the exception of the declaration, any material in the proposed appendix that the movants believe may not be readily available to the court will be accepted by the State Law Librarian and maintained on file in the State Law Library until 30 days after a decision in this case is final. Such materials should be mailed to the State Law Library in hard copy, bound or within a binder, accompanied by a copy of this letter to the following address:

Washington State Law Library
Temple of Justice
PO Box 40751
Olympia, WA 98504-0751

Copies of any materials sent to the State Law Library shall be mailed on the same date to counsel for the parties.

Counsel for the parties are informed by this letter that April 28, 2015, will be the due date for any answers to these briefs. The case will be heard on May 12, 2015, as currently scheduled.

Yours very truly,

Walter M Burton

Walter M. Burton
Deputy Commissioner

WB:hl

cc: John C. Sledd
Cory J. Albright
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