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APPEARANCES CONTINUED:

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Reported by: RENEE L. MUNOZ, CCR, RPR, CRR

1 Monday, June 25th, 2012, at 2:12 p.m.

2 Pasco, Washington

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4 (Whereupon the following is a specifically requested  
5 portion in the above-entitled case, the COURT'S ORAL  
6 RULING, and does not represent a transcript of the entire  
7 matter heard on the record in open court.)

8

9 THE COURT: I do find that this is a new tax.  
10 The principle reason is if you look at the statute prior  
11 to the amendment, it not only defined the tax but also  
12 included a methodology for its collection, and here that  
13 the brand new methodology is taxing the components of the  
14 roll-your-own cigarettes.

15 So, if you look at the overall scheme here, coupled  
16 with the evidence of how the Executive Branch and the  
17 Legislative Branch viewed it, coupled with the absence of  
18 or a lack of taxing of the roll-your-own cigarettes, I  
19 find it's a new tax.

20 I also find that obviously the plaintiffs here  
21 have -- none of them have paid the tax because it has not  
22 gone into affect. Therefore, they need to show that  
23 there is a constitutional violation. I'll concur with  
24 the plaintiffs that for a tax to pass constitutional  
25 muster, the tax must be enacted "pursuance of law."

1           I did independent research and reviewed 30 cases  
2           that analyzed that or applied that phrase, and it appears  
3           to me the tax enactments must be consistent with other  
4           legislative enactments and must be not be outside of the  
5           authority of the taxing agency in order to comply with  
6           that.

7           The other legislative enactment is Initiative 1053.  
8           That requires a two thirds majority for the new tax. I  
9           disagree with the State on the application of the  
10          Enrolled Bill doctrine. In the case of Brown versus  
11          Owens -- I think Brown versus Owens is limited to the  
12          situation of court involvement during the legislative  
13          process, but once the legislature purports to sign off on  
14          a bill then it is subject to court scrutiny, which is  
15          what we're doing here today.

16          I find that the plaintiffs must demonstrate a  
17          well-founded fear of immediate invasion of a right.  
18          Well, as citizens we have a right to insist that our  
19          legislature acts in a constitutionally consistent manner.  
20          Whenever they don't, a citizen's right is thereby  
21          invaded.

22          In terms of the injury, I concur with the State.  
23          The requirement that a taxpayer have to pay this action  
24          is not, in and of itself, a substantial injury, but here  
25          we have a niche business that was created based upon a

1       certain tax structure. That without that -- until and  
2       unless that tax structure is legitimately changed, these  
3       businesses simply would not exist.

4               They, therefore, have suffered an actual and  
5       substantial injury in the form of essentially the demise  
6       or near demise of the business. Balancing the equities  
7       between a business owner who is legitimately invested in  
8       a business and the State that attempts to enforce an  
9       unconstitutional tax, the equities weigh in favor of the  
10      citizens, not the State.

11             Therefore, I am granting the restraining order, but  
12      we do need security. I had initially thought 12 million  
13      dollars. That is, the annual projected revenues would be  
14      appropriate, but counsel corrected my thinking there  
15      perhaps. If the thing -- no, even if it's upheld then  
16      the revenues go down. I think a bond in the amount of  
17      \$200,000.00 would be appropriate for security. It does  
18      not necessarily have to be a bond. Cash deposit or a  
19      bond.

20             Now, the temporary restraining order does not go  
21      into affect until the bond has been posted. Any order  
22      must so reflect so that there's no confusion as to when,  
23      if, this order goes into affect.

24             MR. WEISS: For point of clarification, your  
25      Honor, is there a preliminary injunction, because we had

1 asked for a temporary restraining order only has a  
2 short-term duration of 14 days. We had asked for a  
3 preliminary injunction pending trial on the merits.

4 THE COURT: You're correct. It is the  
5 preliminary injunction.

6 MR. WEISS: We understand about the bond, and  
7 that that must be posted in order for the order to become  
8 effective.

9 THE COURT: All right. It appeared to me that  
10 this case was such that the issues are complex enough and  
11 need the continuity of judicial officer. So, I've been  
12 pre assigned to it.

13 Will you hand one of those to each counsel. That's  
14 the pre assignment letter advising you of that.

15 MR. WEISS: Would you like us to prepare a  
16 proposed order that contains your findings, something a  
17 little more detailed?

18 THE COURT: Yes. If the two of you can't agree  
19 on the form, then you'll need to note it up between now  
20 and Friday, I suppose.

21 MR. WEISS: All right, and will we be permitted  
22 to arrange for the posting of the bond prior to the entry  
23 of the order? Can we rely on the oral ruling that you  
24 put into the record?

25 THE COURT: Sure. Sure.

1                   MR. HANKINS:   Your Honor?

2                   THE COURT:   Did you want to be heard on any of  
3   that?

4                   MR. HANKINS:   Uh -- well, the only thing is,  
5   your Honor, I wonder if you would entertain a motion for  
6   a stay of your ruling as well?

7                   THE COURT:   Let's do this.   This is my last week  
8   as presiding -- civil presiding.   So, Friday I know I  
9   have a docket over in Benton County.   If there's any  
10   further motions or if there's argument over presentment  
11   of the order, work with court administration to get onto  
12   the foot of that docket.

13                  MR. HANKINS:   Understood.

14                  THE COURT:   I don't know my schedule well enough  
15   to know where I'll be Tuesday, Wednesday Thursday, but I  
16   know where I'll be Friday afternoon.

17                  MR. WEISS:   Thank you, your Honor.

18                  THE COURT:   All right.   Thank you then.

19                  MR. HANKINS:   Thank you, your Honor.

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23                  (Whereupon the requested proceedings concluded at

24   3:06 p.m.)

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1       STATE OF WASHINGTON       )  
2       COUNTY OF FRANKLIN       )       SS.

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4               I, RENEE L. MUNOZ, Official Court Reporter of the  
5       Superior Court of the Pasco Judicial District, State of  
6       Washington, in and for the County of Franklin, hereby  
7       certify that the foregoing pages comprise a full, true  
8       and correct transcript of the proceedings had in the  
9       within-entitled matter, recorded by me in stenotype on  
10      the date and at the hour herein written, and thereafter  
11      transcribed by me into typewriting.

12

13              That I am certified to report Superior Court  
14      proceedings in the State of Washington.

15

16              WHEREFORE, I have affixed my official signature this  
17      \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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RENEE L. MUNOZ  
Official Court Reporter  
Benton-Franklin Counties  
Superior Court