☐ EXPEDITE
☐ No hearing set
☒ Hearing is set
Date: October 18, 2019
Time: 9:00 AM
Judge: Hon. Garold Johnson
Department 10

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,

Plaintiffs,

v.

Central Puget Sound Regional Transit Authority, and State Of Washington,

Defendants.

No. 19-2-11073-8

Motion for Preliminary Injunction

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Table Of Contents

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Table Of Authorities

Cases

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Statutes

Constitutional Provisions

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Introduction

CPSRTA and the State of Washington violate the law every day they collect a 0.3% motor vehicle excise tax ("MVET"). They calculate the tax using a repealed statute, the version of RCW 82.44.041 as amended July 1, 1999 and repealed in 2002. That statute can be found nowhere in the Revised Code of Washington, is never identified as governing, and has twice been superseded, first by RCW 82.44.035 in 2006, and again by RCW 81.104.160(3) in 2010. The use of 1999 RCW 82.44.041 has no legal basis—not in any statute, not in any judicial opinion or court order. The only valid statute specifying the value of vehicles for purposes of imposing this MVET is RCW 82.44.035. Pending a final judgment in this case, Plaintiffs ask this Court to order the Defendants to cease their unlawful collection of MVET revenue, and begin using the only legally available valuation schedule for calculating taxes owed: RCW 82.44.035.

Until recently, the State and CPSRTA claimed they used 1996 RCW 82.44.041 for MVET valuation, and justified this on two grounds: first, they claimed that *Pierce County v. State*, 159 Wash. 2d 16 (Wash. 2006) (*"Pierce County II"*) required the continued use of 1996 RCW 82.44.041; and second, they claimed the legislature codified that requirement from *Pierce County II* in RCW 81.104.160(3) in a so-called "technical amendment" passed in 2010. Neither justification withstands scrutiny: the defendants admit they are not following the "technical amendment," and they can find no justification for their behavior in the *Pierce County II* decision.

On September 10, 2019, just before the oral argument in a related case,[1] the State of Washington filed with the Washington Supreme Court a "Notice" acknowledging that it had repeatedly misstated which valuation schedule it uses to impose the ST1 and ST3 MVETs. The State and CPSRTA had consistently argued that they had continuously used RCW 82.44.041 as it existed in 1996 (the "1996 schedule"). They had insisted that the text was therefore an "existing law," which was incorporated by reference into both the 2010 "technical amendment" governing the 0.3% MVET at issue here, and the 2015 legislation authorizing ST3, challenged in that case. On

[1] In 2018 Plaintiffs sued the defendants challenging the ST3 MVET on Art. II § 37 grounds. That case is currently pending before the Washington Supreme Court.

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September 10, 2019, the State conceded that it had actually used RCW 82.44.041 as amended in 1998 since the effective date of that amendment, July 1, 1999.

This disclosure means that the State and CPSRTA admit that they are taxing millions of vehicle owners without statutory authorization. To cure this problem, they must choose one of two alternatives: either begin following RCW 81.104.160 (1) and 81.104.160 (3) as written, or begin applying the only valid law—RCW 82.44.035—that prescribes how vehicles should be valued.

Plaintiffs bring the present motion to prevent the State and CPSRTA from following either of two unlawful courses of action. The defendants might continue to ignore the language of both RCW 82.44.035 and RCW 81.104.160 (3), and continue to collect taxes based on valuation schedules that have no statutory authorization. Second, the defendants might attempt to defend the 2010 "technical amendment" to RCW 81.104.160 (3) despite its clear violation of both Wash. Const. Art. II § 19 and Wash. Const. Art. II § 37, thereby raising taxes for the MVET. Plaintiffs seek to prevent the defendants from taking either unlawful course of action. Instead, Plaintiffs ask this Court to order the defendants, pending a final resolution of the case on the merits, to apply the sole existing statutory valuation schedule, RCW 82.44.035, to the imposition of the 0.3% ST1 MVET.

Plaintiffs will demonstrate that:

I. Plaintiffs enjoy a clear right to limit their tax liability to an MVET calculated using RCW 82.44.035;

II. The defendants have imposed, and continue to threaten to impose, an MVET that is not based on RCW 82.44.035;

III. The plaintiffs will suffer substantial injury if the requested relief is not granted.

Relief Requested

Plaintiffs ask the Court to enjoin the State and CPSRTA from collecting the 0.3% ST1 MVET based on vehicle valuation schedules other than the schedules found in chapter 82.44 RCW, namely, RCW 82.44.035.

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Statement Of Facts

I. Washington's MVET: Legislation and Litigation

Over decades, Washington has enacted, repealed, and re-enacted statutory authorization for locally imposed motor vehicle excise tax ("MVET").[2] Those statutes authorizing MVET always required the local government to calculate the value of vehicles subject to any imposed tax using a valuation (depreciation) schedule found in Chapter 82.44 RCW, titled "Motor Vehicle Excise Taxes."

Pursuant to MVET authorization enacted in the 1990s, CPSRTA began levying MVET in 1997.[3] The authorization required it to value vehicles according to Chapter 82.44 RCW. In 1999, when the legislature amended the valuation schedules in RCW 82.44.041,[4] lowering valuation and thereby taxes for 2 and 3 year old cars, CPSRTA followed suit, as the authorizing statute required.

In 2002, I-776 repealed the CPSRTA MVET.[5] The initiative also repealed the MVET valuation schedule.[6] With court approval, CPSRTA continued to levy the MVET while challenging the initiative. It also continued to use the 1999 pre-repeal version of Chapter 82.44 RCW for vehicle valuation.

In 2003, in *Pierce County v. State*, 150 Wash. 2d 422 (Wash. 2003) ("*Pierce County I*"), the Supreme Court ruled that I-776 had only a single subject. It reviewed a superior court decision which had "found that sections 2, 3, 4, 6, and 8 were 'the operative and relevant sections'" of the initiative. *Id.* at 432. It remanded for further proceedings.

In early 2006, the legislature enacted new valuation schedules in Chapter 82.44 RCW, codified at RCW 82.44.035.[7] Those valuation schedules were more favorable to vehicle owners

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[2] The complex history of the MVET statutes and valuation schedules, including exactly what text was in a section of RCW on any given day, can confuse. The attached Declaration of Joel Ard includes as Exhibits all relevant statutes, including all relevant versions as published and amended over the years.

[3] Ard Decl. Exhs. A, B, C, D.

[4] Ard Decl. Exhs. E, F, G.

[5] Ard Decl. Exh. J, § 6.

[6] Ard Decl. Exh. J, § 5.

[7] Ard Decl. Exhs. M, O.

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than either the 1996 or 1999 schedules. The pre-repeal text of RCW 81.104.160, which CPSRTA followed during the pendency of its challenge to repeal, required it to value vehicles "under chapter 82.44 RCW."[8] However, CPSRTA and the Department of Licensing did not begin using the newly codified schedules and value vehicles under Chapter 82.44 RCW.

Late in 2006, in *Pierce County II*, the Supreme Court ruled that I-776 § 6—the repeal of RCW 81.104.160 MVET authority—had been unconstitutional as to CPSRTA, on the grounds that ceasing to collect the tax could impair the bond contracts that CPSRTA had already issued, which were secured by MVET revenue. CPSRTA continued to collect MVET. It also continued to use the 1999 valuation schedules.

In 2010, apparently realizing that its continued use of old schedules was indefensible in the face of the text of 1996 RCW 81.104.160 that required use of RCW 82.44.035 ("value, under chapter 82.44 RCW"), CPSRTA slipped an amendment of that section into a "technical amendments" bill, SB 6379, Chapter 161, Laws of 2010 (the "2010 Act").[9] Purportedly making no policy change, and supposedly 'codifying' the Supreme Court's decision in *Pierce County II*, § 903 of SB 6379 amended RCW 81.104.160 as follows:

> Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160 (1) shall be repealed, terminated, and expire on December 5, 2002, except for a motor vehicle excise tax for which revenues have been contractually pledged to repay a bonded debt issued before December 5, 2002, as determined by Pierce County et al. v. State, 159 Wn.2d 16, 148 P.3d 1002 (2006). In the case of bonds that were previously issued, the motor vehicle excise tax must comply with chapter 82.44 RCW as it existed on January 1, 1996.

CPSRTA missed the mark. It was not following "chapter 82.44 RCW as it existed on January 1, 1996" when this law was enacted. It had not been following that 'version' for seven years. And even after it secured this enactment—intended to give it statutory cover for not having complied with Chapter 82.44 RCW as required by pre-repeal RCW 81.104.160—it still never complied with chapter 82.44 RCW as it existed on January 1, 1996. Even today, it does not. CPSRTA began using

[8] Ard Decl. Exhs. B, C, F, H.

[9] Ard Decl. Exh. R.

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the 1999 schedules as soon as they became law, and has never deviated from them. It simply doesn't follow the law it wrote.

II. The State and CPSRTA Acknowledge Their Errors

During litigation before this Court and the Supreme Court over the similar 2015 MVET authorization, CPSRTA and the State insisted that the 2015 clause was defensible as a repeat of the 2010 Act[10], which it called a codification of *Pierce County II*. As the key fact in support of this defense, they insisted that they had used the 1996 schedule continuously since 1997. CPSRTA said of the 2015 bill that "RCW 81.104.160 (1) was drafted to refer to the two depreciation schedules because Sound Transit already imposed a 0.3% MVET tax that ***used the 1996 version of chapter 82.44 RCW to calculate that tax***."[11] At the Supreme Court, CPSRTA reinforced this claim. "Sound Transit has used the 1996 depreciation schedule since it began collecting the MVET in 1997, continues to use it today, and is legally required to use the 1996 schedule until the bonds to which the MVET are pledged are paid off in 2028."[12] It made this fact claim repeatedly: "Sound Transit continues to use the 1996 depreciation schedule from RCW 82.044.041 until the 1999 bonds are retired. . . Accordingly, the 1996 depreciation schedule in RCW 82.44.041 continued to be the statutory depreciation schedule for the Sound Transit MVET even after the Legislature enacted RCW 82.44.035."[13] CPSRTA described § 903—which required CPSRTA to change depreciation schedules from 1999 to 1996—by asserting that "the Legislature codified *Pierce County* as part of a technical amendments bill." CPSRTA summarized the state of affairs as follows:

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[10] Throughout this brief, Plaintiffs refer to only the final, and full sentence of amendment, as the "2010 Act." Specifically, this refers to the sentence "In the case of bonds that were previously issued, the motor vehicle excise tax must comply with chapter 82.44 RCW as it existed on January 1, 1996." This sentence, and this sentence alone, is challenged as violating Art. II §§ 19 and 37, and Plaintiffs acknowledge that it is severable from SB 6379 as a whole, including the preceding amendatory clause beginning with the comma: ", except for a motor vehicle excise tax for which revenues have been contractually pledged to repay a bonded debt issued before December 5, 2002, as determined by *Pierce County et al. v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006)."

[11] DeWolf Decl. Exh. B at 17:6-8.

[12] DeWolf Decl. Exh. C at 2.

[13] DeWolf Decl. Exh. C at 7.

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> In summary, notwithstanding both I-776's putative repeal of the 1996 depreciation schedule (RCW 82.44.041) in 2002, and the enactment of a new schedule (RCW 82.44.035) in 2006, the Sound Transit 0.3% MVET has always been calculated using the 1996 depreciation schedule. That result is required by *Pierce County*, which held the 1996 schedule was not repealed as to Sound Transit, and was codified by the Legislature in 2010.[14]

This assertion was the key material fact supporting CPSRTA's defense of the 2015 act. CPSRTA defined the issue on appeal as follows:

> The Washington Supreme Court held that I-776's repeal of the 1996 depreciation schedule used by Sound Transit for its initial MVET was not enforceable as to Sound Transit because it unconstitutionally impaired Sound Transit's bond contract. In 2010, the Legislature codified the Supreme Court's decision, and Sound Transit's ability to continue to use the 1996 depreciation schedule until Sound Transit's 1999 Bonds are retired.[15]

It defended the 2015 act as a complete act by arguing that "The Legislature's decision to use the 1996 schedule for any new MVET until the 1999 Bonds are paid off ensures that ***the same vehicle depreciation schedule is used*** for the period of time in which the 0.3% MVET and a new voter-approved MVET are both assessed."[16] It insisted that the legislative history of the 2015 act showed that "the Legislature fully understood the new law's operation. For example, the original and all subsequent bill reports provided: 'The ***depreciation schedule remains the same*** as the MVET schedule in effect for the existing MVET until the bonds are repaid and then the schedule switches to the schedule that is in effect at the time the MVET is approved by the voters.'"[17] CPSRTA argued that the 2015 Act fit the Supreme Court's definition of an Art. II § 37 reference statute because:

> The Legislature was not reenacting the 1996 depreciation schedule to the extent it was effectively repealed by I-776. Rather, the Legislature was simply using the then existing (in 2015) and currently used (*e.g.*, in 2019) depreciation schedule that Sound Transit has used since 1999, when it pledged to collect the MVET to secure payment of the 1999 Bonds. That schedule will continue to be used until 2028, when the bonds will be paid off and retired.[18]

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[14] DeWolf Decl. Exh. C at 12.

[15] DeWolf Decl. Exh. C at 12.

[16] DeWolf Decl. Exh. C at 18 (emphasis added).

[17] DeWolf Decl. Exh. C at 19 (emphasis added).

[18] DeWolf Decl. Exh. C at 25.

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CPSRTA went further in its defense, implicating the 2010 Act once again:

> That [1996] schedule was not repealed as to Sound Transit and did not have to be reenacted to continue to apply to Sound Transit's MVET. Moreover, Black completely ignores the technical amendment the Legislature made in 2010 to enact RCW 81.104.160 (3) and to acknowledge and codify the Supreme Court's holding that Sound Transit is legally required to continue to use the 1996 depreciation schedule until the 1999 Bonds are retired. Black's reenacting a repealed statute scenario is a ***mischaracterization of the facts***.[19]

The Supreme Court held oral argument on the 2015 Act at 1:30 on September 10th. At 12:05 that day, just 85 minutes before the argument, the State filed a one page brief that began:

> It has come to our attention in the last 24 hours that the State's Response Brief and Answer to Amicus Briefs contain an inaccurate factual statement. In writing those briefs, our understanding was that the valuation schedule currently used by the Department of Licensing was the "depreciation schedule that existed on January 1, 1996." Br. of Resp't State of Wash. at 2. We have just learned that the valuation schedule the Department has applied for some time is that contained in Referendum 49, Chapter 321, Laws of 1998. We write to notify the Court immediately of this error. The State will not be presenting at oral argument, which will be handled by Respondent Sound Transit . . .[20]

Statement Of Issues

1. Did SB 6379, Chapter 161, Laws of 2010, § 903 violate Wash. Const. Art. II § 19? [Yes]
   a. Did SB 6379 have a restrictive title? [Yes]
   b. Was the 2010 Act fairly embraced by the title of SB 6379? [No]
   c. If SB 6379 had a general title, did the 2010 Act have rational unity with it? [No]
2. Did SB 6379, Chapter 161, Laws of 2010, § 903 violate Wash. Const. Art. II § 37? [Yes]
   a. Is the Act a complete act? [No]
   b. Did the Act render a previous act erroneous, namely, RCW 82.44.035? [Yes]
3. What remedy follows from a violation of Art. II § 19 and Art. II § 37?
   a. Should the Court declare the 2010 Act unconstitutional? [Yes]
   b. Should the Court enjoin further use of a schedule other than RCW 82.44.035 for the 0.3% ST1 MVET? [Yes]

[19] DeWolf Decl. Exh. C at 25 (emphasis added).

[20] DeWolf Decl. Exh A.

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Argument

A preliminary injunction should be granted where the moving party has established "(a) a clear legal or equitable right, (b) a well-grounded fear of immediate invasion of that right, and (c) that the act complained of will result in actual and substantial injury." *Huff v. Wyman*, 184 Wash. 2d 643, 651 (Wash. 2015). In this case (a) Taxpayers have a clear right to limit their tax liability to an MVET calculated using RCW 82.44.035; (b) Plaintiffs have a well-grounded fear that, absent intervention by this Court, taxes will be collected using a valuation table other than those found in RCW 82.44.035; and (c) the collection of excessive taxes will result in actual and substantial injury.

III. Taxpayers Have A Clear Right To Compliance With The Law

Plaintiffs and all taxpayers have a clear right to the government calculating tax liability according to constitutionally permissible statutes authorizing such taxes. That means MVET must be calculated according to chapter 82.44 RCW, which today means RCW 82.44.035. 1996 RCW 81.104.160 authorized the 0.3% MVET, and required the government to calculate it according to "value under chapter 82.44 RCW." When Chapter 82.44 RCW changed in 1999, the government changed the rate of taxation, because 1996 RCW 81.104.160 required it to do so. Chapter 82.44 RCW changed again in 2006, but the government has refused to follow suit. The State and CPSRTA have insisted that they need not use chapter 82.44 RCW because the "1996 schedule" had been in continuous use since 1997, and therefore that the Supreme Court required continued use of that schedule in *Pierce County II* . The 2010 legislature, they say, subsequently 'codified' the decision in the 'technical amendment' to RCW 81.104.160 (3). Neither argument withstands scrutiny.

[redacted]1996 RCW 81.104.160 Did Not Mandate Use Of A Specific Valuation Schedule.

The Legislature authorized CPSRTA to collect MVET based on "value, under chapter 82.44 RCW . . ." 1996 RCW 81.104.160. A person subject to the MVET could readily calculate his tax liability by multiplying the value of his vehicle by the relevant number found in the table in chapter 82.44 on the day he paid the tax. The legislature did not elect to incorporate the 1996 tables into RCW 81.104.160, or in any other way bind CPSRTA to the use of the 1996 tables. Nor did it attempt

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to forbid a future legislature from amending the valuation tables in Chapter 82.44 RCW, and thereby alter the valuations governing the MVET authorized by RCW 81.104.160.

Two facts make this conclusion unassailable. **First**, when RCW 82.44.041 changed, CPSRTA changed. After Ref. 49 altered the content of Chapter 82.44 RCW, CPSRTA and the State followed the law as it changed. Plainly, in 1999, neither CPSRTA or the State thought that RCW 81.104.160 mandated use of certain schedules as they existed at the onset of the MVET. **Second**, the text of the 2010 Act—and the text of the 2015 Act, challenged earlier—show how the legislature drafts a statute purporting to bind use of a statute as it existed at a moment in time. RCW 81.104.160 did not have such a mandate in 1996 or in 1999. RCW 81.104.160, as written in 1996, requires CPSRTA and the State to value vehicles under Chapter 82.44 RCW as it exists on the day the tax is levied. That text was not changed by the attempted repeal of I-776, nor was the text altered when the repeal was declared unconstitutional in *Pierce County II*,

***Pierce County II* Did Not Require Use Of 1996 RCW 82.44.041.**

The decision in *Pierce County II* expressly held ***only*** that the repeal of MVET authority had been unconstitutional, and made no comment at all on the repeal of the valuation schedules, a repeal resulting from I-776 § 5. Of course, CPSRTA and the State were not using the 1996 schedules when the Pierce County II decision was issued. They had not been using those 1996 schedules since July 1, 1999, three and a half years before the lawsuit had even been filed. Neither CPSRTA nor the State can point to a word in the *Pierce County II* decision that even hints at a mandate that they change valuation schedules.

Indeed, neither CPSRTA not the state can point to a word in the decision that discusses valuation schedules at all, or discusses I-776 § 5, the section that repealed the valuation schedules. The question was never raised. In *Pierce County II*, the Court reviewed a trial court order "ruling section 6 of the initiative unconstitutional." *Id.* at 22. It concluded that "***Section 6*** of the initiative provides for repeal of the MVET . . . We find that ***section 6*** reduced the Sound Transit bondholder's security. Accordingly, we hold that ***section 6*** impermissibly impairs the contractual

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obligations between Sound Transit and the bondholders." *Id.* at 51 (emphasis added).[21] Thus, following *Pierce County II*, CPSRTA and the State are authorized to levy an MVET under the statutory authority of 1996 RCW 81.104.160. That text requires defendants to value vehicles "under chapter 82.44 RCW."

Pierce County II, relying on a substantial body of case law construing the state and federal contracts clauses, held that complete repeal of one of multiple tax revenue streams securing bonds did, in fact, substantially impair CPSRTA's Series 1999 bonds. Neither the parties, nor the trial court, nor the Supreme Court gave any consideration to whether the 2006 alteration of the valuation schedules substantially impaired those bonds. How could anyone have resolved that question? The January 13, 2005 notice of appeal to the Supreme Court predated the 2006 enactment of RCW 82.44.035. It is impossible that the record in *Pierce County II* could have addressed the fact question of whether application of the 2006 schedules to the 0.3% ST1 MVET substantially impaired a contract, because the 2006 schedules did not then exist.[22]

The holding in *Pierce County II* allowed CPSRTA and the State to continue to rely on pre-repeal RCW 81.104.160 as written in 1996. Therefore, beginning on June 7, 2006, when RCW 82.44.035 was enacted, the 0.3% ST1 MVET, as authorized by 1996 RCW 81.104.160, required CPSRTA and the State to value vehicles under chapter 82.44, meaning the schedules of newly enacted RCW 82.44.035. Just as the schedule change in July 1999 required a change in the 0.3% ST1 MVET, so too did the schedule change in 2006. But neither defendant complied.

The 2010 Act Did Not Permissibly Authorize Use of 1996 RCW 82.44.041.

The 2010 Act changed both the pre-repeal RCW 81.104.160 and then-existing RCW 82.44.035, seeking to impose a tax increase on vehicle owners. It changed pre-repeal RCW

[21] Neither *Pierce County I* nor *Pierce County II* made any comment on the repeal of RCW 82.44.041, resulting from I-776 § 5. It was not within the "operative sections" identified in *Pierce County I* , which also noted that "[Sections 4–5: Actions of the 2002 legislature made these sections, pertaining to RCW 35.58.273, unnecessary.]" *Id.* at 431 (brackets in original).

[22] Of course, an amendment to valuation schedules *could* substantially impair a contract. The legislature could not evade the holding of *Pierce County II* by, for example, amending the schedules to zero value in every year. But the question was not addressed in that litigation.

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81.104.160 by purporting to bind the MVET to valuation schedules from a specific moment in time, which the pre-repeal statute did not do. It ordered the State and CPSRTA to use schedules they were not then using, which increased taxes on certain vehicles. And it amended the existing RCW 82.44.035, which stated on its face it applied to any locally imposed motor vehicle excise tax. The 2010 Act went beyond the subject of the bill it appeared in, violating Art. II § 19. Because it did not set forth at full length the statute it amended, it violated Art. II § 37.

The 2010 Act Violates Art. II § 19.

In evaluating a single subject challenge under Art. II § 19, the court engages in a two step process. First, the court determines whether the bill's title is general or restrictive. *See, e.g.*, *City of Burien v. Kiga*, 144 Wash. 2d 819, 825 (Wash. 2001). Next, "[i]f the title is general and comprehensive, it will be given a liberal construction; in such case, no elaborate statement of the subject of the act is necessary, and a few well-chosen words suggestive of the general subject treated is all that is required. If, however, the title is a restricted one, it will not be regarded so liberally, and provisions which are not fairly within such restricted title will not be given force." *State ex rel. Washington Toll Bridge Authority v. Yelle*, 32 Wash. 2d 13, 26 (Wash. 1948). For a restrictive title, "provisions of the bill not fairly embraced therein cannot be given force." *Id.* If the bill has a general title, "any subject reasonably germane to such title may be embraced within the body of the bill." *Yelle*, 32 Wash. 2d at 26. Here, while the title is restrictive, the tax increase falls even outside the scope of a general title should the Court construe it as such.

SB 6379 Has A Restrictive Title.

SB 6379 has a restrictive title: "AN ACT Relating to streamlining and making technical corrections to vehicle and vessel registration and title provisions." This title falls well within the range of titles that courts have called 'restrictive'. The Legislature limited the undertaking in SB 6379 to "streamlining and making technical corrections to vehicle and vessel registration and title provisions." Addressing a similar title, the Appellate Court said, "In specifying that the adjustments are intended 'to enhance benefit and tax equity', the title becomes restrictive; it does not suggest a bill that might embrace any and all manner of changes to the unemployment insurance

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system." *Batey v. State, Employment Sec. Dept.*, 154 P.3d 266, 270, 137 Wash. App. 506, 513 (Wash. App. Div. 1, 2007). Here, too, the Legislature specified that the entire bill was for "streamlining and making technical corrections." It re-emphasized this narrow scope in the first section, which stated that "statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy or legal implications." SB 6379 § 1. The restrictive title limited the scope of what the Legislature could include in the bill to only that which was fairly embraced by it.

A Tax Hike Is Not Fairly Embraced By The Title Of SB 6379.

The title of SB 6379 excludes any substantive policy change, especially an increase in motor vehicle excise tax. As the Supreme Court held in a similar case, "One would not normally expect a statute whose title concerns procedural matters—here, 'court costs'—to contain statutory language establishing both a substantive legal right and a legal liability." *Patrice v. Murphy*, 136 Wash. 2d 845, 854 (Wash. 1998). One would also not normally expect "streamlining" or "technical corrections" to contain an increase in vehicle valuation tables and thus a tax hike. Instead, the tax increase runs afoul of the core protection of Art. II § 19: "Article II, section 19's prohibition requires a bill title give notice to the general public and, most especially, to parties whose rights and liabilities are affected by the bill." *Patrice*, 136 Wash. 2d at 854. Car owners in the CPSRTA geography would never suspect that SB 6379 had buried deep within it a provision that hiked taxes on 2 and 3 year old cars.

As the Court has repeated, one of the major purposes of Art. II § 19 is "to assure that the ***members of the legislature*** and the public are generally aware of what is contained in proposed new laws." *Washington State Legislature v. State*, 139 Wash. 2d 129, 146 (Wash. 1999). Here, as repeatedly emphasized by CPSRTA during litigation over the 2015 Act, members of the legislature thought that SB 6379, including § 903, were mere technical amendments. In 2010, the legislature mistakenly thought that CPSRTA used the 1996 schedules, so that an act codifying its use of those schedules made no change in the law. The same mistake continued unabated through 2015 and until 12:05 pm on September 10, 2019. Had the legislature known that the 2010 Act mandated a

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tax increase, no doubt it would not have been included, or not drafted as written, in a technical amendments bill.

As the Court has also repeatedly reminded the legislature, "[t]he purpose of the single subject clause is to prohibit the enactment of an unpopular provision pertaining to one subject by attaching it to a more popular provision whose subject is unrelated." *Kiga*, 144 Wash. 2d at 825. It hardly bears mention that tax increases are unpopular. There cannot be a less popular form of legislative action. And of course, 'technical amendments', clean up and repair of improperly drafted or superseded RCW, epitomizes the kinds of feel-good act that, while uninteresting, is certainly far more popular and readily supported than any tax hike. Slipping a tax hike into such a bill strikes at the heart of the ban on mixing subjects found in Art. II § 19.

This act is best construed in a manner similar to the Supreme Court's oft-repeated approach to appropriations bills. The Court has often noted that "greater latitude must be granted the legislature in enacting multisubject legislation under the appropriations bill title than any other, since the purpose of appropriations bills is to allocate monies for the state's multitudinous and disparate needs." *Flanders v. Morris*, 88 Wash. 2d 183, 188 (Wash. 1977). Yet, as a corollary, the Court refuses to allow substantive policy changes in appropriations bills. "An appropriations bill violates section 19 if it defines rights or alters existing laws." *Retired Public Employees Council of Washington v. Charles*, 148 Wash. 2d 602, 629 (Wash. 2003). While no case has ever addressed the Art. II § 19 status of "technical amendments" bills like SB 6379, a similar analysis is appropriate. The Legislature titled the bill in a manner that plainly expressed a narrow purpose, but one that could reach many different statutes: streamlining and making technical corrections to any number of the myriad statutes governing vehicle and vessel registration and title. And in fact, the ensuing bill ***did*** make changes to scores of statutes across many titles and chapters of RCW. The relationship among all these—save the tax hike in § 903—was simple: streamlining and correcting existing statues related to vessel and vehicle title and registration. Art. II § 19 need not be construed to limit the number of titles or chapters such a technical amendments bill can address, just as it allows a broad scope for appropriations. But just like an appropriations bill, Art. II § 19 limits the

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effect of the technical amendments bill to the subject expressed in its title: streamlining and technical corrections. Not a tax hike. SB 6379 § 903 is not fairly embraced within the title of the bill, and fails Art. II § 19.

Even If The Title Is General, The Tax Increase In § 903 Has No Rational Unity With The Title.

Here, even if the Court concludes the title is general, the clause requiring an increase in taxes levied by CPSRTA nonetheless did not fall within any measure of rational unity with that title. As the Court has held, where the title is general, "[t]he second step in analyzing the single-subject requirement is to determine the connection between the general subject and the incidental subjects of the enactment. . . Where a general title is used, all that is required is rational unity between the general subject and the incidental subjects." *State v. Haviland*, 345 P.3d 831, 834–35, 186 Wash. App. 214, 219–20 (Wash. App. Div. 2, 2015) (internal citations omitted). The "rational unity" of SB 6379's title excludes tax increases.

The 2010 Act Violated Art. II § 37.

Art. II § 37 requires that any act amending an existing statute restate that amended statute at full length. CPSRTA has insisted for almost a decade that the 2010 Act merely codified its non-stop use of the 1996 schedules. However, it has now come to light that the 2010 Act did not codify then-present use, but instead amended RCW 82.44.035, the applicable and governing valuation schedule, by substituting a repealed and unused schedule. It did not restate the existing schedule in full, but nonetheless amended it. The well-known two part test for Art. II § 37 requires the court to determine whether the challenged Act is complete, and also to determine if the Act renders erroneous a straightforward determination of rights and duties under the existing statute. Both prongs are mandatory. *See El Centro de La Raza v. State*, 192 Wash. 2d 103, 129 (Wash. 2018).

The 2010 Act Is Not Complete.

In the first prong of the test, the court inquires "whether the new enactment is such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *El Centro*, 192 Wash. 2d at

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129. The 2010 Act is plainly not "complete" under this test. It is a short amendment to an existing statute that requires reading elsewhere to make any sense of what is required to comply. To understand the import of the section, a person must find the governing terms of the "motor vehicle excise tax for which revenues have been contractually pledged to repay a bonded debt issued before December 5, 2002 . . ." After finding that, a reader would have to find the long-since repealed, unused, 1996 valuation schedule. Whether or not requiring that train of research is permissible, it means that the statute is not complete.

[redacted]The 2010 Act Rendered RCW 82.44.035 Erroneous.

The second prong of the test under Art. II § 37 asks whether or not "a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the new enactment." *El Centro*, 192 Wash. 2d at 129 (internal quotations omitted). Here, a straightforward determination of the scope of duties under RCW 82.44.035 is rendered erroneous by the 2010 Act. Thus, the 2010 Act fails Art. II § 37.

In *El Centro*, the legislature's authorization of charter schools included a provision that a charter school's employees could only form a bargaining unit consisting of employees of that charter school. This constituted an amendment to RCW 41.56.060(1), which granted broad authority to the Public Employment Relations Commission (PERC) to direct the formation of bargaining units that would include charter school employees: "[I]t is clear that charter school employees not covered by chapter 41.59 RCW would be covered by chapter 41.56 RCW because they are public employees." *El Centro*, 192 Wash. 2d at 132. Because RCW 41.56.060(1) was amended by a statute that restricted its scope, Art. II § 37 required that the amending act set forth the change at full length. Because it did not, the court held the restriction invalid. *El Centro*, 192 Wash. 2d at 1157.

Similarly, absent the 2010 Act, RCW 82.44.035 would apply to the repealed 0.3% ST1 MVET, according to its explicit terms. That authorizing statute explicitly required that vehicle value be governed by Chapter 82.44 RCW. CPSRTA knew this, and altered valuation schedules as soon as Chapter 82.44 RCW was amended to change those schedules. Without the 2010 Act, a taxpayer

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could determine his tax duty under the 0.3% ST1 MVET by multiplying his vehicle MSRP times the tax rate times the relevant line in RCW 82.44.035's schedule for his vehicle age. But the 2010 Act makes that determination wrong, because it rendered RCW 82.44.035 erroneous.

Flanders, 88 Wash. 2d 183, demonstrates the constitutional flaw in the 2010 Act. *Flanders* invalidated a law under Art. II § 37 in practically identical fashion. Lois Flanders, a 28-year-old unemployed woman, qualified for public assistance under the law as it existed the day the supplemental appropriations bill for the 1975-77 biennium was passed. That appropriations bill included a provision that temporarily, for the two-year duration of the appropriation, restricted a single person's eligibility for public benefits to those over the age of 50. Because the appropriations statute changed how the state would grant benefits compared to existing law, the court held that Art. II § 37 required the statute to set forth the earlier statute at full length. Because the statute failed to comply with this requirement, the court held it invalid:

> The new restriction is clearly an amendment to RCW 74.04.005, adding to the restrictions already enumerated there. However, the statute will never reflect this change but will continue to read as it always has, with no age restriction. One seeking the law on the subject would have to know one must look under an 'appropriations' title in the uncodified session laws to find the amendment. The fact that the budget bill is not codified strikes at the very heart and purpose of Const. art. 2, § 37.

Flanders, 88 Wash. 2d at 189 (emphasis in original). Here too, the 2010 Act suspends the generally applicable governing statute, RCW 82.44.035, but that statute will "never reflect this change," and instead will permit a repealed, uncodified, unrecited valuation schedule to govern the valuation of motor vehicles. This disrespect for the integrity of the Revised Code of Washington "strikes at the very heart and purpose of Const. art. 2, § 37."

The Supreme Court reached a similar result in *Washington Educ. Ass'n v. State*, 93 Wash. 2d 37 (Wash. 1980) ("*WEA I*"). In an appropriations bill the Legislature had placed a limitation on school districts' grants of salary increases. *WEA I*, 93 Wash. 2d at 40. That limitation conflicted with existing statutes that granted broad authority to school districts to fix employee salaries. "A straightforward reading of these statutes indicates that districts have the power to spend funds, from whatever source, as they choose on teacher salaries. The challenged limitation purports to

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amend this authority." *WEA I*, 93 Wash. 2d at 41. The court therefore held that because the appropriations bill did not "fully set forth" the amendment to the existing statutes, the purported limitation in the appropriation bill was "unconstitutional and of no effect." *Id.*

IV. Plaintiffs Have A Well-Grounded Fear Of Unlawful Taxation.

The second element of the test for a preliminary injunction is whether the plaintiff has a well-grounded fear that, in the absence of the requested relief, the plaintiff's right will be invaded. *Spokane School Dist. No. 81 v. Spokane Educ. Ass'n*, 192 Wash. App. 291 (Div. 3 2014) (trial court properly enjoined scheduling of arbitration not authorized by collective bargaining agreement). In many cases the threatened injury is merely speculative. For example, in *In re Rare Coin Galleries of America, Inc.*, 862 F.2d 896 (1st Cir. 1988) the Court reversed the entry of a preliminary injunction because the plaintiffs offered no evidence that the defendants would act unreasonably to the prejudice of the plaintiffs' rights: "Speculation or unsubstantiated fears of what may happen in the future cannot provide the basis for a preliminary injunction." *Id.* at 902. Here, by contrast, the defendants admit that they are not following the law prescribed by RCW 81.104.160 (3). They have also made no commitment to changing their taxation policies to comply with statutory and constitutional requirements.

V. Plaintiffs Will Suffer Substantial Injury.

The third element of the test for a preliminary injunction is whether the plaintiffs will suffer actual and substantial injury if the requested relief is not granted. "An injunction is an extraordinary equitable remedy designed to prevent serious harm. Its purpose is not to protect a plaintiff from mere inconveniences or speculative and insubstantial injury." *Tyler Pipe Indus., Inc. v. State*, 96 Wash. 2d 785, 796 (Wash. 1982). The daily revenue from the ST1 MVET is approximately $500,000 per business day. CPSRTA's own estimate of the effect of using (repealed) RCW 82.44.041, instead of RCW 82.44.035, is to collect an additional $125,000 from the taxpayers.[23] In a month that amounts to approximately $3 million in unlawful taxation. That is

[23] According to a spreadsheet prepared by CPSRTA in connection with the ST3 litigation, applying the valuation schedule in RCW 82.44.035 would result in reducing their revenue by 25%.

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not mere inconvenience or merely speculative or insubstantial injury. Taxpayers cannot be expected to pay an unlawful tax and hope for a refund at some future date.

Conclusion

The 2010 Act was not a mere 'technical amendment', and went far beyond codifying the Supreme Court's decision in *Pierce County II*. It sought to alter the 0.3% ST1 MVET authorization, locking the MVET to a specific historic set of valuation schedules where the initial authorization allowed the legislature to change schedules over time. Because CPSRTA and the State were not using the 1996 schedules on the day the 2010 Act passed, it mandated a change in behavior in the form of a tax hike. That tax hike was hidden in a technical amendments bill, and fell far outside the scope of the bill's subject as expressed in its title. It also amended the existing valuation schedules, which stated on their face that they governed the MVET of RCW 81.104.160, just as that statute stated that it was governed by chapter 82.44 RCW and therefore RCW 82.44.035. But the 2010 Act, while rendering RCW 82.44.035 erroneous, did not restate it in full, in violation of Art. II § 37.

CPSRTA and the State recently revealed that they have never followed the 2010 Act, and currently impose the 0.3% ST1 MVET using valuation schedules for which there is no statutory authorization, Constitutional or otherwise. Every day that tax is imposed, it harms Plaintiffs and every other vehicle owner in the CPSRTA area. This Court should enjoin further unlawful taxation by the government, and require defendants to follow the law upheld in *Pierce County II*: a 0.3% MVET calculated on "value under Chapter 82.44 RCW."

October 2, 2019.

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Certificate Of Service

I certify under penalty of perjury under the laws of the United States of America that on October 2, 2019, I served the foregoing Motion, together with the Declarations of Ard and DeWolf and their exhibits, the Proposed Order, and Note for Motion Docket, all via email per agreement between the parties on the following:

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