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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FRANKLIN COUNTY

DANA HENNE, an individual taxpayer and Washington resident; 1/2 PRICE SMOKES, INC., a Washington corporation; and RYO MACHINE, LLC, an Ohio limited liability company,

Plaintiffs,

v.

BRAD FLAHERTY, in his official capacity as Director of the Washington Department of Revenue; PAT KOHLER, in her official capacity as Administrative Director of the Washington State Liquor Control Board; and the STATE OF WASHINGTON,

Defendants.

No. 12-2-50512-1

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This matter came on regularly for hearing before the Court on Monday, June 23, 2012, on Plaintiffs' Motion for Preliminary Injunction. The Court heard oral argument of counsel for Plaintiffs and Defendants and considered the following:

1. Complaint for Declaratory and Injunctive Relief;
2. Corrected Motion for Preliminary Injunction;
3. Declaration of Dana Henne;
4. Declaration of Gary Alexander;
5. Declaration of Phil Accordino;

ORDER GRANTING PRELIMINARY INJUNCTION - 1

- 1 6. Declaration of Christopher N. Weiss;
- 2 7. Second Declaration of Christopher N. Weiss;
- 3 8. Defendants' Opposition to Motion for Preliminary Injunction;
- 4 9. Declaration of Steve Smith,
- 5 10. Declaration of Stuart Thronson,
- 6 11. Declaration of David Hankins and
- 7 12. Reply Supporting Plaintiffs' Motion for Preliminary Injunction.

8 Based on the arguments of counsel and the evidence presented, the Court finds that Plaintiffs'
9 motion is made with good cause and is warranted under law. In addition to the findings and
10 conclusions set forth by the Court during its ruling from the bench on June 25, 2012, that
11 Opinion has been transcribed and is attached hereto as Appendix A and is hereby incorporated
12 by reference, the Court finds:

13 A. This Court has jurisdiction to hear this matter.

14 B. 3E2SHB 2565 constitutes a new tax under RCW ch. 82.24 that would have the
15 effect of raising state revenue and raising taxes within the meaning of Initiative 1053, RCW
16 43.135.034.

17 C. The Washington Constitution provides that "[n]o tax shall be levied except in
18 pursuance of law." Wash. Const. Art. VII, § 5. "In pursuance of law" requires that a new tax may
19 only be levied in a manner consistent with other lawful enactments. In this case, such other
20 enactment is Initiative 1053, RCW 43.135.034.

21 D. 3E2SHB 2565 was required to have received a two-thirds majority vote in both
22 the House of Representatives and the Senate to secure passage of the new tax legislation. The
23 Court finds that 3E2SHB 2565 did not receive a two-thirds majority vote in the Senate.

24 E. Plaintiffs have demonstrated a substantial likelihood of success on the merits of
25 their claims, including having demonstrated a clear legal right to the constitutional application of
26 Washington law and a well-grounded fear that they will suffer sufficient actual, substantial,

ORDER GRANTING PRELIMINARY INJUNCTION - 2

1 irreparable harm for a preliminary injunction to issue. Plaintiffs' showing includes their
2 demonstration that Plaintiff 1/2 Price Smokes, Inc. is a niche business dependent on roll-your-
3 own machines that will suffer actual, irreparable harm in the form of demise thereof proximately
4 caused by the levy and collection by defendant state officials of the new tax under 3E2SHB 2565
5 if an injunction is not entered.

6 F. The balancing of the equities weighs in favor of the plaintiffs here. As citizens,
7 they have the right to insist that the government will comply with the laws of this State.
8 Although the requirement that a taxpayer pay a tax is not, in and of itself, a substantial injury,
9 the alleged harm to Defendants if this motion is granted is outweighed by the substantial injury
10 that Plaintiffs will suffer if a preliminary injunction does not issue at this time.

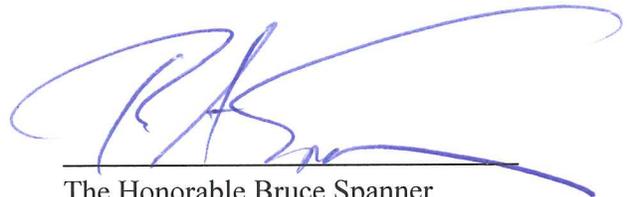
11 G. Plaintiffs shall post security, whether in the form of cash or bond, in the amount
12 of \$200,000.

13 Based on the above findings,

14 **IT IS ORDERED** that pending the determination of Plaintiffs' application for a
15 permanent injunction, Washington officials, including Defendants, are barred from enforcing the
16 recent amendments in 3E2SHB 2565 to Title 82 of the Revised Code of Washington.

17 **IT IS FURTHER ORDERED** that this order shall not take effect until the required bond
18 has been posted.

19 DATED: June 28 2012.



21 The Honorable Bruce Spanner
22 Superior Court Judge

1 Presented by:

2 STOEL RIVES *LLP*

3 *Chris Weiss*

4 Christopher N. Weiss, WSBA No. 14826
5 Maren R. Norton, WSBA No. 35435

6 *Attorneys for Plaintiffs*

7 Copy Received; Approved as to Form;
8 Notice of Presentation Waived:

9

10 ROBERT M. MCKENNA, ATTORNEY GENERAL

11

12 By: DAVID M. Hankins *By Chris Weiss WSBA No. 14826*

13 David M. Hankins, WSBA No. 19194
14 Rebecca R. Glasgow, WSBA No. 32886

(per attached authority)

15 *Attorneys for Defendants*

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