

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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,

Respondents,

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,

Petitioners.

NO. 87556-1

RULING GRANTING  
TEMPORARY STAY

**FILED**

JUN 29 2012

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

On June 28, 2012, the Franklin County Superior Court issued an order preliminarily enjoining the enforcement of recently enacted legislation that establishes a mechanism for the collection of state cigarette taxes upon “roll-your-own” cigarettes acquired through roll-your-own machines within retail establishments, set to take effect July 1, 2012. *See* LAWS OF 2012, 2d Sp. Sess., ch. 4, § 13. The court determined that the law was subject to RCW 43.135.034(1), which requires a two-thirds vote of both houses of the legislature in order to enact any measure that “raises taxes.” The challenged legislation did not pass by a two-thirds majority in the Senate.

The same day the superior court issued its order, the State filed a notice of discretionary review in this court along with a motion for an order staying the superior court's decision pending this court's consideration of a motion for discretionary review. The State asks that the motion for a stay be granted before the July 1 effective date of the legislation, but it alternatively requests that a temporary stay be immediately granted pending the court's consideration of the stay motion. Today respondents Dana Henne, 1/2 Price Smokes, Inc., and RYO Machine, LLC (the plaintiffs below), filed a response to the motion for a stay. They assert that the United States Congress is about to pass legislation taxing and regulating roll-your-own machines that may render moot the state law issues involved in this case. Also, noting that the superior court made the effect of its preliminary injunction contingent on respondents filing a bond, respondents state that they presently intend not to file a bond while they assess the effect of the federal legislation. Thus, they urge, there is no present need to stay the superior court's order.

But respondents reserve the right to post a bond at any time and thereby activate the injunction. In challenging the superior court's injunction the State raises debatable issues. Given that, and given that public policy generally disfavors injunctions against tax measures, *see Tyler Pipe Industries, Inc. v. Department of Revenue*, 96 Wn.2d 785, 796-97, 638 P.2d 1213 (1982), I am persuaded that the superior court's order should at least be temporarily stayed while this court considers the State's motion to stay the injunction pending discretionary review. *See* RAP 8.1(b)(3). The motion for a stay and the motion for discretionary review will be considered in accordance with the schedule issued this day by the deputy clerk.<sup>1</sup>

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<sup>1</sup> In their briefs the parties may discuss the effect, if any, of the federal legislation.

The State's request to temporarily stay the superior court's preliminary injunction order of June 28, 2012, pending this court's consideration of the State's motion for a stay pending review is granted.



DEPUTY COMMISSIONER

June 29, 2012