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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
8 THE COUNTY OF GRANT

9 PHILLIP EDWARD SIFFERMAN,

10 Plaintiff,

NO.

11 vs.

12 CHELAN COUNTY and it's Treasurer,
13 DAVID GRIFFITHS; STATE OF
14 WASHINGTON, DEPARTMENT OF
REVENUE (Real Estate Excise Tax),

15 Defendants.

COMPLAINT FOR DECLARATORY
RELIEF AND FOR ORDER DIRECTING
REFUND OF REAL ESTATE EXCISE
TAXES

(CLASS ACTION)

16 Plaintiff, by and through undersigned counsel, for complaint against defendants,
17 alleges and states as follows:

18 I. INTRODUCTION

19 1.1 This is a class action lawsuit for the wrongful collection of real estate
20 excise taxes imposed upon assignors of subleases of land and improvements situated
21 on Indian property.

22 1.2 "Indian country" under Washington law means all lands within the limits of
23 any Indian reservation under the jurisdiction of the United States government, as well
24 as Indian allotments. The land which is the subject matter of this action is land
25 comprising the Moses Allotment number 8 and the Moses Allotment number 10, Chelan
26 County, Washington, as well as other restricted Indian lands, within the state of
27 Washington.
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COMPLAINT FOR DECLARATORY RELIEF AND
FOR ORDER DIRECTING REFUND OF REAL
ESTATE EXCISE TAXES - 1

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1.3 The Real Estate Excise Tax is a tax imposed on the seller. No "sale" of land is involved in the transactions forming the basis of this lawsuit.

II. JURISDICTION

2.1 Pursuant to RCW 36.01.050, actions against Chelan County may be commenced in Douglas County or Grant County. Plaintiff has elected to pursue this litigation in Grant County.

2.2 The authority to issue a Real Estate Excise Tax refund is RCW 82.32.300, which directs the Department of Revenue to prescribe forms and rules pertaining to the collection of Real Estate Excise Taxes. RCW 82.01.060 authorizes the director of revenue to administer all programs relating to taxes and to make, adopt and publish necessary rules to carry out these duties. WAC 458-61A-301(12) specifies procedures for obtaining a refund of real estate excise taxes paid. WAC 458-61A-301(12)(d) specifies circumstances authorizing issuance of a refund.

III. PARTIES

3.1 Plaintiff, Phillip Edward Sifferman ("Sifferman") is a resident of Chelan County, Washington. He brings this action for himself and as putative class representative for a class defined in paragraph 5.1 of this Complaint. At all times relevant herein, Sifferman was a sublessee of land legally described as:

Lot 23, Wapato Point Division 2, Chelan County, commonly known as 232 Manson View Drive; Manson, Chelan County, Washington 98831 ("Sifferman Property").

3.2 David Griffiths is the treasurer of Chelan County, Washington. As treasurer, he and his agents and employees are authorized to impose and collect property taxes, as well as real estate excise taxes.

3.3 The Department of Revenue is an administrative agency of the state of Washington and has authority for the imposition and collection of real estate excise taxes. Real estate excise taxes are divided between the county and the Department of Revenue.

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IV. FACTS

4.1 The Sifferman Property is situated on Indian land allotted to the Wapato family by the U.S. Bureau of Indian Affairs. The master lease of this Indian land is in the name of Louis Wapato and Family Members as Lessor and Wapato Point Resources, Inc., as Lessee. Lessee's interest was assigned to Wapato Point Development Co., Ltd., and subsequently to Wright-Wapato, Inc., which now holds interest of record as Lessee.

4.2 Sifferrmans and others hold portions of the Indian land pursuant to subleases and assignments of sublease rights. The Sifferman Property and improvements thereon have not been subject to Chelan County property taxes because the Sifferman Property and improvements thereon are situated on Indian land.

4.3 At all times relevant, Sifferman and others who occupy Indian land pursuant to subleases and assignment of subleases have paid assessments, a portion of which is allotted to Wright-Wapato, Inc.

4.4 On or around January 27, 2017, Sifferman entered into a transaction whereby he assigned his sublease of the Sifferman Property and improvements thereon for total consideration in the sum of \$1,022,500. The Chelan County Treasurer refused to record the transaction unless Sifferman paid a real estate excise tax of 1.78% of \$1,022,500 or the sum of \$18,205.50, despite the fact that no real estate sale occurred.

4.5 On information and belief, Plaintiff is aware and therefore alleges that Chelan County and it's treasurer have refused to accept recording of similar assignments of sublease transactions involving property on Indian land unless and until real estate excise taxes are paid. The real estate excise tax imposed has varied at times, as either a tax on the entire consideration for the transaction or, inconsistently, a tax on the estimated value of the improvements only.

1 4.6 A portion of the real estate excise tax collected is transferred to and
2 retained by the Department of Revenue. The remainder of the real estate excise tax
3 remains with Chelan County for county purposes.

4 4.7 The Sifferman Property transaction requires payment by Sifferman to
5 Wright-Wapato, Inc., a tribal tax of 3.5% of the transaction price totaling \$35,638.23. At
6 closing, Sifferman was required to pay real estate excise taxes imposed by Chelan
7 County, as well as the tribal tax imposed by Wright-Wapato, Inc., for a total tax
8 obligation of 5.28% of the transaction price.

9 4.8 Sifferman faced a choice of losing the real estate transaction if he refused
10 to pay the real estate excise tax demanded by Chelan County. Sifferman presented a
11 Chelan County Treasurer employee with a copy of a real estate excise tax affidavit for a
12 recent assignment of sublease transaction where the county imposed a real estate
13 excise tax on the purported value of the improvements to the land only. Sifferman
14 offered to pay a real estate excise tax based on the insured value of improvements to
15 the Sifferman property as was previously done in an identical assignment of sublease
16 transaction on the same Indian land. The Chelan County Treasurer employee refused
17 and demanded real estate excise tax be paid on the total consideration for the
18 transaction.

19 4.9 After closing of the transaction, Sifferman, by and through his counsel,
20 issued a demand letter on March 2, 2017, to Defendant Griffiths respectfully requesting
21 he provide the legal basis for imposition of the real estate excise tax on the Sifferman
22 property transaction. No response was received by Plaintiff or his counsel.

23 4.10 On or around March 27, 2017, Sifferman's counsel prepared and
24 submitted a Real Estate Excise Tax Refund Request to the Department of Revenue
25 requesting refund of the real estate excise tax in the sum of \$18,205.50 paid by
26 Sifferman on or around January 27, 2017, pursuant to Real Estate Excise Tax Affidavit
27 No. 173051. The refund request was based upon the fact that the conveyance involved
28 was an assignment of a sublease on Indian land. Sifferman was entitled to claim

1 exemption from the tax and the tax was paid through an error of computation by the
2 Chelan County Treasurer. No real estate excise tax was authorized.

3 4.11 RCW Ch. 82.45 imposes an excise tax on "every sale of real estate in the
4 state of Washington". All sales of real property in this state are subject to the real
5 estate excise tax unless specifically exempted. RCW 82.45.010(3)(c) provides that
6 "sale" does not include the transfer of any leasehold interest, other than a lease with an
7 option to purchase real property.

8 4.12 RCW 82.45.010(1) provides that "sale" includes assignment or transfer of
9 improvements constructed upon leased land. WAC 458-61A-106(1)(b) provides that
10 the transfer of a lessee's interest in a leasehold for valuable consideration is taxable to
11 the extent the transfer includes any improvement constructed on leased land. If the
12 selling price of an improvement is not separately stated, or cannot otherwise be
13 reasonably determined, the assessed value of the improvement as entered on the
14 assessment roles of the county assessor will be used. The Sifferman Property is not
15 entered on the assessment roles of the county assessor because it is situated on Indian
16 land.

17 4.13 The United States Department of the Interior ("Interior") is an executive
18 department charged, among other duties, with managing and administering the lands of
19 Indian reservations. The Bureau of Indian Affairs ("BIA") is an agency within Interior
20 that oversees programs, activities, and operations relating to Indian lands and affairs
21 pursuant to 25 U.S.C. § 2.

22 4.14 One of Interior's responsibilities is to approve the leasing of Indian land to
23 third parties. Interior has promulgated regulations governing the administration of such
24 leases, codified at 25 CFR Part 162. Beginning in 2011, Interior overhauled such
25 regulations through notice and comment rule-making. The new rules became effective
26 January 4, 2013.

4.15 Among the new regulations is 25 CFR § 162.017 entitled, “What taxes apply to leases approved under this part?” Pertinent subsections of this regulation are as follows:

(a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

(c) Subject only to applicable Federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Indian tribe with jurisdiction.

4.16 Pursuant to the foregoing federal regulation, the Sifferman Property assignment of sublease transaction should not have been subject to any Washington State real estate excise tax. The transaction was subjected to taxation by the Indian tribe, which was assessed and paid.

V. CLASS ACTION ALLEGATIONS

5.1 The class identified in this Complaint is composed of numerous putative class members, who have been subjected to imposition of Washington real estate excise tax on transactions involving transfers or assignments of leasehold interests on Indian property situated in the state of Washington. The joinder of all such persons would be a substantial burden on the courts and is impracticable. A class action is a superior method of resolving this controversy. The purposed class is defined as follows: All parties conveying an interest in real property and/or improvements thereon by assignment of lease or assignment of sublease conveying the right to possess and occupy said real property and/or improvements, which property is situated on Indian land located in Indian country in the state of Washington.

5.2 It is not now possible to determine the size of the class because participation as a member of the class will involve ascertaining from Defendants and

1 others the taxpayers constituting the putative class. It is believed that the numbers will
2 satisfy the requirements of CR 23(a)(1) relating to numerosity. CR 23(c)(1) provides
3 that the court may enter an order permitting maintenance of the action as a class action
4 conditionally. With respect to numerosity, the court should conditionally certify the class
5 subject to decertification if, as the litigation proceeds, the numerosity requirement is not
6 satisfied.

7 5.3 There are few, if any, questions of fact involved in this litigation. Common
8 questions of law include whether or not defendants, and perhaps other counties within
9 the state of Washington, have interpreted and enforced collection of real estate excise
10 taxes contrary to state and federal law.

11 5.4 The claims of the Plaintiff in this lawsuit are identical with and therefore
12 typical of the claims of all of the putative class members. Plaintiff is appropriate as a
13 class representative who has paid a wrongfully exacted real estate excise tax. Each
14 member of the putative class will have paid a real estate excise tax under similar
15 circumstances. Questions of law and possibly questions of fact are common to the
16 putative members of the class and predominate over questions affecting only individual
17 members. A class action is superior to other available methods for the fair and efficient
18 adjudication of this controversy. There are, to the best of the knowledge of the Plaintiff,
19 no pending claims, nor any pending litigation concerning this controversy. Thus, the
20 efficiency and desirability of concentrating litigation in this particular class action is
21 apparent.

22 5.5 The class representative and the members of the putative class are
23 adequately represented by counsel who bring this action. Plaintiff's law firm, Siderius,
24 Lonergan & Martin, LLP, has extensive class action experience, including serving as
25 lead counsel in class litigation in the United States District Court for the Western District
26 of Washington; for the United States District Court for the Eastern District of
27 Washington; the Court of Federal Claims; and as plaintiff and defense counsel in class
28 actions in state court. The law firm was lead counsel in *Hemphill v. State of*

1 Washington, 153 Wn.2d 544 (2005) where the State Supreme Court ordered a
2 judgment in favor of the Class for approximately \$150 million assessed against the
3 Department of Revenue for wrongful collection of estate taxes.

4 **VI. CAUSES OF ACTION**
5 **A. FIRST CAUSE OF ACTION - DECLARATORY JUDGMENT**

6 6.1 Plaintiff incorporates the factual allegations of paragraphs 1.1 through 5.5
7 herein as if more fully set forth.

8 6.2 Defendants have violated state and federal law by imposing and collecting
9 a real estate excise tax on transactions involving the assignment of subleases of real
10 property and improvements thereon situated on Indian land in the state of Washington.

11 6.3 Pursuant to RCW Ch. 7.24, the Court should declare the foregoing
12 actions of Defendants to be unlawful and enter a judgment and decree to that effect.

13 **B. SECOND CAUSE OF ACTION - REFUND OF REAL ESTATE EXCISE TAX**

14 6.4 Plaintiff incorporates the factual allegations of paragraphs 1.1 through 6.3
15 herein as if more fully set forth.

16 6.5 Defendants have violated state and federal law by imposing and collecting
17 a real estate excise tax on transactions involving the assignment of subleases of real
18 property and improvements thereon situated on Indian land in the state of Washington.

19 6.6 Plaintiff and putative class members are entitled to refund of real estate
20 excise tax assessed and collected in violation of state and federal law.

21 **VII. RELIEF REQUESTED**

22 WHEREFORE, Plaintiff, for himself and on behalf of member of the class
23 identified in this Complaint, pray for the following:

24 1. That the Class be certified pursuant to the provisions of CR 23(b) and that
25 the Plaintiff be certified as Class representative for the purpose of representing the
26 Class and that Plaintiff's counsel be approved as attorney for the Class;

27 2. For judgment against Defendants, and each of them, in favor of the Class
28 and the Class representative in amounts to be established for refund of illegally

1 assessed and collected real estate excise tax during the four-year period prior to the
2 filing of this Complaint, plus interest at the legal rate;

3 3. For judgment against Defendants, and each of them, for a reasonable
4 attorney's fee for Class counsel; and

5 4. For Plaintiff's costs and disbursements herein to be taxed, as well as such
6 other and further relief as the Court deems just and equitable.

7 DATED this 18th day of May, 2017.



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