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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

<p>SCOTT SHOCK, SALLY OLJAR, STEVE DAVIES, and JOHN PALMER,</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE CITY OF SEATTLE, a Washington Municipal corporation,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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I. NATURE OF ACTION

1. Plaintiffs seek a declaratory judgment that City of Seattle Ordinance 125339, imposing a graduated income tax currently targeting “high-income residents,” violates Article VII, Section 1, of the Washington State Constitution, as well as the Due Process, Takings, and Equal Protection Clauses of the U.S. Constitution and Washington State Constitution. Plaintiffs additionally seek a permanent injunction forbidding the City from enforcing the unconstitutional income tax against its residents.

1 2. This case is controlled by a long line of binding cases from Washington’s Supreme
2 Court that consistently hold: Income is property. *See Aberdeen Savings & Loan Ass’n. v. Chase*,
3 157 Wash. 351, 289 P. 536 (1930); *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933); *Jensen*
4 *v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936); *Petroleum Nav. Co. v. Henneford*, 185 Wash.
5 495, 55 P.2d 1056 (1936); *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951). Thus, “an
6 income tax is a property tax.” *Power*, 39 Wn.2d at 195. On at least eight occasions between 1930
7 and 2003, Washington’s Supreme Court held that a tax on property must comply with the
8 Uniformity Clause of Article VII, Section 1, of the Washington State Constitution, which requires
9 that “all taxes shall be uniform upon the same class of property.” *See Aberdeen Savings & Loan*,
10 157 Wash. 351; *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; *Petroleum Nav.*, 185 Wash.
11 495; *Power*, 39 Wn.2d 191; *Apartment Operators Ass’n of Seattle v. Schumacher*, 56 Wn.2d 46,
12 351 P.2d 124 (1960); *Harbour Village Apartments v. City of Mukilteo*, 139 Wn.2d 604, 989 P.2d
13 542 (1999); *Washington Public Ports Ass’n v. Dep’t of Revenue*, 148 Wn.2d 637, 62 P.3d 462
14 (2003).

15 3. On July 10, 2017, the City Council voted unanimously to impose a 2.25% income
16 tax on individuals who earn over \$250,000 in total income per year, and married couples earning
17 over \$500,000 in total income per year. Persons with incomes below those amounts are subject to
18 an income tax as well; but for the time being, they are taxed at a rate of 0%.

19 4. A half century ago, Washington’s Supreme Court directed the government that, if
20 it believed that changed circumstances warrant an income tax not allowed by the Constitution, then
21 the proper course of action is to follow the legislative procedure to amend the Constitution—not
22 to try to effect such an amendment through the courts. *Apartment Operators Ass’n*, 56 Wn.2d at
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1 47-48. The City ignored this direction, opting instead to try to force a change in the State's
2 Constitution and long-standing tax policy through city hall and the courts.

3 5. However, both the U.S. and Washington Constitutions do not permit the Courts to
4 do the Legislature's work. First, the Court lacks the authority to amend the Constitution's plain
5 command that a tax on property must be uniform. Second, the fact that income constitutes property
6 subject to the protections guaranteed by the State and Federal Constitutions is well-settled in
7 Washington. *Power*, 39 Wn.2d at 194 ("It is no longer subject to question in this court that income
8 is property."). Thus, any challenge to the character of income as property must be brought to the
9 Legislature because a court's power does not include the ability "to eliminate or change established
10 property rights." *Stop the Beach Renourishment v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 735,
11 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010) (Kennedy, J., concurring); *see also id.* at 715 ("If a
12 legislature *or a court* declares that what was once an established right of private property no longer
13 exists, it has taken that property, no less than if the State had physically appropriated it or destroyed
14 its value by regulation.") (Scalia, J., lead opinion).

15 6. The City's current decision to target high earners (while retaining the ability to
16 impose the tax on lower income brackets at some future date) also violates the Equal Protection
17 Clauses of the Fourteenth Amendment to the U.S. Constitution and Article 1, Section 12, of the
18 Washington State Constitution. The Ordinance, by its plain language, targets "high-income
19 residents" to pay for a variety of general needs, such as providing green jobs, addressing
20 homelessness, replacing possible lost federal funding, creating a legal controversy concerning the
21 constitutionality of a graduated income tax, etc. Unlike a typical graduated income in which all
22 persons with an ability to pay bear some tax responsibility, the City's income tax law states *if*
23 *you're rich, you pay; if you're not, you don't*. There is no rational basis for this distinction.

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1 7. The citizens of Washington are entitled to take part in a debate whether to amend
2 the Constitution and whether to change long-standing, statewide tax policy. Seattle’s decision to
3 circumvent the Legislature, and to exclude a majority of Washingtonians, from this debate must
4 be rejected.

5 **II. PARTIES**

6 8. Plaintiffs Scott Shock, Sally Oljar, Steven Davies, and John Palmer, are Seattle
7 residents, subject to the City’s income tax ordinance. Plaintiffs are all Seattle residents who pay
8 Seattle taxes, including sales taxes, and will be subject to the new income tax at either the zero or
9 2.25% rate.

10 9. Defendant the City of Seattle is a municipal corporation, chartered by the State of
11 Washington.

12 10. Plaintiffs reserve the right to name additional defendants as may be necessary.

13 **III. STANDING**

14 11. Plaintiffs have standing to challenge the constitutionality of Seattle’s income tax
15 ordinance because each Plaintiff is a taxpayer residing in Seattle and is subject to Ordinance
16 125339.

17 12. Plaintiffs also have standing to challenge the constitutionality of Seattle’s income
18 tax ordinance because this lawsuit involves a controversy of substantial public importance that will
19 directly and immediately affect Seattle residents. *Walker v. Munro*, 124 Wn.2d 402, 419-20, 879
20 P.2d 920 (1994); *State ex rel. Boyles*, 103 Wn.2d 610, 614, 694 P.2d 27 (1985); *City of Tacoma v.*
21 *O’Brien*, 85 Wn.2d 266, 269, 534 P.2d 114 (1975). Indeed, the City’s stated goal of using this
22 case as a vehicle to overturn almost 90 years of Washington Supreme Court case law interpreting
23

1 the State Constitution to prohibit graduated income taxes will impact every citizen and business in
2 Washington.

3 **IV. JURISDICTION AND VENUE**

4 13. This civil action is a case of actual controversy between Plaintiffs and Defendant,
5 arising under the Washington State Constitution.

6 14. This Court has jurisdiction over this matter pursuant to RCW 2.08.010, RCW
7 4.28.020, RCW 7.24.010, RCW 7.40.010, and/or Article IV, Sections 1 and 6, of the Washington
8 State Constitution.

9 15. Pursuant to RCW 4.12.020, venue is proper in King County Superior Court because
10 the City of Seattle sits within county limits.

11 16. Pursuant to RCW 7.24.110, a copy of this Complaint is being served upon the
12 Office of the Attorney General of Washington.

13 **V. FACTUAL BACKGROUND**

14 17. On July 10, 2017, the Seattle City Council unanimously voted to amend and adopt
15 Council Bill 119002 to establish a city-wide income tax initially targeting wealthy residents.

16 18. On July 14, 2017, Seattle Mayor Ed Murray signed into law Ordinance 125339,
17 titled in part, “AN ORDINANCE imposing an income tax on high-income residents.” (Exhibit A)

18 19. The Ordinance imposes an annual “tax on the total income of every resident
19 taxpayer,” defining “total income” as “the amount reported as income before any adjustments,
20 deductions, or credits on a resident taxpayer’s United States individual income tax return for the
21 tax year, currently listed as ‘total income’ on line 22 of Internal Revenue Service Form 1040 or
22 ‘total income’ on line 15 of Internal Revenue Service Form 1040A.” SMC 5.65.020, .030

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1 20. Although the City uses the phrase “total income,” the Ordinance imposes a tax on
2 net income because the income reported on line 22 of Internal Revenue Service Form 1040 or line
3 15 of Internal Revenue Service Form 1040A are determined after calculating various deductions,
4 exclusions, and expenses. SMC 5.65.020

5 21. The Ordinance does not impose the tax at a uniform tax rate as required by Article
6 VII, Section 1, of the Washington State Constitution, which states that “all taxes shall be uniform
7 upon the same class of property.” See *Aberdeen Savings & Loan*, 157 Wash. 351; *Culliton*, 174
8 Wash. 363; *Jensen*, 185 Wash. 209; *Petroleum Nav.*, 185 Wash. 495; *Power*, 39 Wn.2d 191;
9 *Apartment Operators Ass’n of Seattle*, 56 Wn.2d 46; *Harbour Village Apartments*, 139 Wn.2d
10 604; *Washington Public Ports Ass’n*, 148 Wn.2d 637.

11 22. Instead, the Ordinance states that individuals who earn over \$250,000 in total
12 income per year, or married couples earning over \$500,000 in total income per year, must pay a
13 2.25% income tax. SMC 5.65.030(B). Persons with incomes below those amounts are subject to
14 the tax ordinance but, for the time being, will be taxed at a rate of 0%. SMC 5.65.030(B) (“There
15 is imposed a tax on the total income of *every resident taxpayer* in the amount of their total income
16 multiplied by the applicable rates as follows.”) (emphasis added).

17 23. The threshold income and tax rates are subject to change. The Ordinance states
18 that the City will adjust the threshold total income amounts annually for inflation and based on
19 adjustments to the Consumer Price Index. SMC 5.65.030(C).

20 24. There is nothing in the Ordinance limiting the City’s belief that it is authorized to
21 adopt new income tax rates.

22 25. Seattle’s income tax ordinance applies to all persons who reside in the City for at
23 least half of the year. SMC 5.65.020.

1 26. The Ordinance requires all residents who might be subject to the 2.25% income tax
2 to file a tax return with the City on or before April 15 each year. SMC 5.65.070.

3 27. If a person fails to timely file a tax return with the City, or files a return with
4 incomplete or incorrect information, he or she will be subject to a monetary penalty of at least
5 \$500 and up to \$1,250. SMC 5.65.130. If the City determines that a person intentionally failed to
6 file, or filed a return with incomplete or incorrect information, the City may impose additional
7 penalties including a requirement that the individual pay up to 100% of the deficiency. SMC
8 5.65.130. The City may also charge a person suspected of willfully violating the income tax with
9 a gross misdemeanor, punishable by a fine not to exceed \$5,000, or by imprisonment for less than
10 a year, or both. SMC 5.65.070, .250.

11 28. The Ordinance will go into effect on January 1, 2018. SMC 5.65.030(A).

12 29. Plaintiffs are residents of the City of Seattle and plan to remain so for the
13 foreseeable future.

14 30. Plaintiffs pay Seattle’s property and sales taxes and will be subject to the
15 Ordinance, which “impose[s] a tax on the total income of *every resident taxpayer* in the amount
16 of their total income multiplied by the applicable rates as follows.” SMC 5.65.030(B). Plaintiffs’
17 income and holdings may qualify for the “high-earner” 2.25% tax rate.

18 **VI. DECLARATORY RELIEF ALLEGATIONS**
19 **(Ch. 7.24 RCW)**

20 **A. Seattle’s Wealth Tax Is Unauthorized and Unlawful**

21 31. Plaintiffs repeat and reallege Paragraphs 1-30 as if fully set forth herein.

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1 32. There is an actual, present and justiciable controversy between Plaintiffs and the
2 City concerning whether the City of Seattle has the legal authority under the Washington State
3 Constitution, the laws of Washington, and the City Charter to impose an income tax on its
4 residents.

5 33. The City of Seattle is subject to and controlled by the Washington State
6 Constitution, the general laws, and the City charter. Wash. Const. art. XI, § 10.

7 34. The City of Seattle has no inherent taxing powers. It enjoys only that taxing
8 authority specifically delegated by the State Legislature. Wash. Const. art. VII, § 9; Wash. Const.
9 art. XI, § 12.

10 35. The City enacted its wealth tax without any Legislative grant of authority to impose
11 a tax on income. In fact, the Legislature specifically prohibited all cities and counties from levying
12 a tax on net income. RCW 36.65.030.

13 36. Although the City uses the phrase “total income” to try to avoid this direct
14 prohibition, the Ordinance plainly levies a tax on income that meets the definition of “net income”
15 under controlling law.

16 37. The City Charter does not grant the City the authority to levy a tax on income.

17 38. A declaratory relief judgment will terminate and afford relief from the uncertainty
18 and insecurity giving rise to this controversy.

19 39. This constitutional claim is ripe for equitable relief.

20 **B. Seattle’s Wealth Tax Violates the Uniformity Clause of the Washington State**
21 **Constitution**

22 40. Plaintiffs repeat and reallege Paragraphs 1-39 as if fully set forth herein.
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1 41. There is an actual, present, and justiciable controversy between Plaintiffs and the
2 City concerning whether Seattle’s decision to impose a graduated income tax on individual and/or
3 household income violates the Uniformity Clause of Article VII, Section 1, of the Washington
4 Constitution.

5 42. Since 1930, the Washington State Supreme Court has repeatedly held that an
6 individual’s income constitutes property subject to the Uniformity Clause. *See Aberdeen Savings*
7 *& Loan*, 157 Wash. 351; *Culliton*, 174 Wash. 363; *Jensen*, 185 Wash. 209; *Petroleum Nav.*, 185
8 Wash. 495; *Power*, 39 Wn.2d 191. In each of those cases, the Supreme Court held that an income
9 tax is a property tax. And on at least eight occasions between 1930 and 2003, Washington’s
10 Supreme Court has held that a tax on property must comply with the Uniformity Clause of Article
11 VII, Section 1, of the Washington State Constitution, which states that “all taxes shall be uniform
12 upon the same class of property.” *Aberdeen Savings & Loan*, 157 Wash. 351; *Culliton*, 174 Wash.
13 363; *Jensen*, 185 Wash. 209; *Petroleum Nav.*, 185 Wash. 495; *Power*, 39 Wn.2d 191; *Apartment*
14 *Operators Ass’n of Seattle*, 56 Wn.2d 46; *Harbour Village Apartments*, 139 Wn.2d 604;
15 *Washington Public Ports Ass’n*, 148 Wn.2d 637.

16 43. The City imposed a graduated income tax in purposeful violation of that long line
17 of binding precedent from the State’s High Court as part of a political strategy to create a
18 constitutional controversy—a controversy that threatens to diminish the well-established
19 constitutional protections enjoyed by every citizen of the State.

20 44. The City’s income tax may only be lawfully implemented after an amendment to
21 the Constitution. The Court lacks power to validate the tax in the meantime.

1 45. The City’s unilateral actions also threaten Plaintiffs’ rights and the State’s
2 economy, which derives substantial benefits from the constitutional barriers to targeted income
3 taxes, like the tax imposed by the City of Seattle.¹

4 46. A declaratory relief judgment will terminate and afford relief from the uncertainty
5 and insecurity giving rise to this controversy.

6 47. This constitutional claim is ripe for equitable relief.

7 **C. Seattle’s Income Tax Strategy Violates the Equal Protection Clauses of the U.S.**
8 **Constitution and Washington State Constitution**

9 48. Plaintiffs repeat and reallege Paragraphs 1-47 as if fully set forth herein.

10 49. There is an actual, present, and justiciable controversy between Plaintiffs and the
11 City concerning whether Defendant’s decision to initially target its “high-income residents” to
12 bear the entire burden of funding the purported public needs justifying Seattle’s income tax
13 violates the Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution and
14 Article I, Section 12, of the Washington State Constitution. *Aberdeen Savings & Loan*, 157 Wash.
15 351 (The decision to impose an income tax on securities that applied to savings and loans but not
16 to commercial banks violated equal protection.).

17 50. The Ordinance, by its plain language, targets “high-income residents” to fund
18 solutions for the public needs identified in the Ordinance’s purpose section. There is no rational
19 relationship between the designated class and the identified public needs. Nor is there any rational
20 basis for distinguishing persons who earn in excess of \$250,000 per year (or married households
21 earning in excess of \$500,000) from all other persons.

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¹ <http://www.choosewashington.com/why-washington/our-strengths/pro-business/>

1 51. A declaratory relief judgment will terminate and afford relief from the uncertainty
2 and insecurity giving rise to this controversy.

3 52. This constitutional claim is ripe for equitable relief.

4 **VII. INJUNCTIVE RELIEF ALLEGATIONS**

5 **(Ch. 7.40 RCW)**

6 53. Plaintiffs repeat and reallege Paragraphs 1-52 as if fully set forth herein.

7 54. Plaintiffs have no adequate remedy at law to address the City’s decision to impose
8 an unconstitutional income tax on a small segment of its population—approximately 11,000 of
9 Seattle’s 704,000 residents.²

10 55. There is a substantial likelihood that Plaintiffs will succeed on the merits of their
11 claim that the City’s income tax violates the Uniformity Clause of the Washington State
12 Constitution and the Takings and Due Process Clauses of the U.S. Constitution and the
13 Washington State Constitution.

14 56. Plaintiffs will suffer irreparable injuries and will continue to suffer such injuries
15 absent an injunction prohibiting the Defendant from enforcing its unconstitutional income tax.

16 57. An injunction restraining Defendant from enforcing the income tax will not impair,
17 but rather enhance, the public interest.

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23 ² <http://www.seattletimes.com/seattle-news/politics/seattle-income-tax-details-revealed-as-city-council-weighs-targeting-wealthy-households/>

1 **VIII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray for the following relief:

3 1. For a declaration that the City of Seattle lacked lawful authority under the
4 Washington State Constitution, the laws of Washington, and the City of Seattle Charter to impose
5 a graduated income tax on its residents;

6 2. For a declaration that the Ordinance is invalid and violates the Uniformity Clause
7 of Article VII, Section 1, of the Washington State Constitution;

8 3. For a declaration that the Ordinance is invalid and violates the Equal Protection
9 Clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 12, of the
10 Washington State Constitution;

11 4. For a permanent injunction forbidding Defendants from enforcing the Ordinance;

12 5. For an award of reasonable attorney fees, expenses, and costs as allowed by law
13 and equity, including RCW 4.84.010; and

14 6. For such other relief as the Court deems just and proper.

15 PACIFIC LEGAL FOUNDATION
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17 Date: Aug. 30, 2017

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