

HONORABLE JOHN R. RUHL
Noted for Hearing:
November 17, 2017, 10:00am

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

S. MICHAEL KUNATH,
Plaintiff,
v.
CITY OF SEATTLE,
Defendant,
and
ECONOMIC OPPORTUNITY
INSTITUTE,
Intervenor-Defendant.

CONSOLIDATED
No. 17-2-18848-4 SEA

DEFENDANT CITY OF SEATTLE'S
MOTION FOR SUMMARY
JUDGMENT

SUZIE BURKE, *et al.*,
Plaintiffs,
v.
CITY OF SEATTLE, *et al.*,
Defendant.

DENA LEVINE, *et al.*,
Plaintiffs,
v.
CITY OF SEATTLE,
Defendant.

SCOTT SHOCK, *et al.*,
Plaintiffs,
v.
CITY OF SEATTLE,
Defendant.

CITY'S MOTION FOR SUMMARY JUDGMENT

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Faced with ever increasing demands to fund public services and priorities such as a
3 population explosion, housing affordability, and homelessness, and recognizing that existing
4 state and local taxes hit low- and moderate-income residents the hardest, the City of Seattle
5 (“City”) enacted a personal total income tax on high-income residents. This tax will generate
6 much needed revenue while taxing those best able to pay.
7

8 Plaintiffs challenge the legality of the City’s personal income tax. But the tax is within
9 the taxing authority delegated by the state and should be upheld. First, the law taxes residents’
10 total personal income, not net income. Thus, a state law prohibiting city net income taxes does
11 not apply. Second, the City’s personal income tax is not a tax on property so constitutional
12 restrictions on property taxes do not apply. The 1930s cases that held income is property for tax
13 purposes should be overturned because those cases relied on case law that is no longer valid,
14 incorrect statements of the law, and unfounded conclusions. Indeed, the weight of judicial
15 authority at the time, and today, holds that an income tax is not a property tax. Third, the City’s
16 personal income tax is best characterized as an excise tax, or perhaps *sui generis* (as the
17 Washington Supreme Court recently indicated). The City has been granted broad authority to
18 enact non-property taxes, both in the form of excise taxes and otherwise for all local purposes.
19 Pursuant to these statutes, the City has full authority to enact a local income tax.
20
21

22 The City respectfully requests this Court grant it summary judgment and declare the
23 City’s personal income tax both statutorily authorized and constitutional.

24 **II. STATEMENT OF FACTS**

25 Seattle is in a dynamic era, highlighted by historic growth. Declaration of Gregory J.
26 Wong (“Wong Decl.”), Ex. A at 1. For many in our community, these are prosperous times. *Id.*
27

1 But as Seattle grows and evolves, it finds itself facing several challenges. First, the need for
2 public services is increasing. *Id.* The City has declared a homelessness state of emergency, faces
3 inadequate provision of mental and public health services, is experiencing a growing demand and
4 need for transit, is dealing with stubborn education equity and racial achievement gaps, and
5 continues to work to address the effects of climate change at the local level. *Id.* Each of these
6 needs are ones that the City’s leaders desire to address as a matter of policy.
7

8 Second, issues of affordability dominate local conversations.¹ People with low and
9 middle incomes are having a significantly harder time living in Seattle. Part of this stems from
10 housing affordability, with Seattle experiencing the highest growth in housing prices in the
11 nation.² Exacerbating the affordability crisis is the fact that Washington state has the most
12 regressive tax system in the nation. Wong Decl., Ex. I.³ The current tax scheme results in low-
13 and middle-income residents paying a disproportionate share of their income to support state and
14 local government compared to residents with high incomes. *Id.* As a result of these and other
15 pressures, it is growing more difficult for our teachers, police officers, and other modest wage
16 earners to live in the same city in which they work.⁴
17

18 To increase revenue to address these challenges, the City adopted a local personal total
19 income tax on high-income residents. Wong Decl., Ex. A (the “Ordinance”). The Ordinance
20 imposes a personal income tax on all “resident taxpayers” in Seattle. SMC 5.65.030.B.
21

22 ¹ See e.g., Seattle Channel, *Changing Seattle: Mayoral Candidates Debate Growth, Affordable Housing &*
23 *Homelessness* (Sept. 12, 2017) (debate on “our city’s most pressing issues: growth, affordable housing, and
24 homelessness.”), available at <https://www.seattlechannel.org/videos?videoid=x82178>.

25 ² See e.g., Mike Rosenberg, *Seattle Times*, “Seattle home price growth is nearly double any other U.S. city” (Sept.
26 26, 2017), available at [https://www.seattletimes.com/business/real-estate/seattle-home-price-growth-is-nearly-
27 double-any-other-u-s-city/](https://www.seattletimes.com/business/real-estate/seattle-home-price-growth-is-nearly-double-any-other-u-s-city/).

³ Institute on Taxation and Economic Policy, *Who Pays: A Distributional Analysis of the Tax Systems in All Fifty*
26 *States* (2015), full report available at <https://itep.org/whopays>.

⁴ See e.g., Gene Balk, *Seattle Times*, “Will the last middle-class person leaving Seattle turn out the lights?” (Apr.
14, 2017), available at [https://www.seattletimes.com/seattle-news/data/will-the-last-middle-class-person-leaving-
seattle-turn-out-the-lights/](https://www.seattletimes.com/seattle-news/data/will-the-last-middle-class-person-leaving-seattle-turn-out-the-lights/).

1 Individual taxpayers who report more than \$250,000 per year in total personal income to the
2 Internal Revenue Service (“IRS”) and married, filing jointly taxpayers who report more than
3 \$500,000 per year in total personal income to the IRS, pay an income tax equal to 2.25% of their
4 total income over those thresholds.⁵ *Id.* For example, a married couple that files jointly and
5 reports annual total personal income to the IRS of \$600,000 would pay an income tax of \$2,250
6 to the City.⁶ Resident taxpayers who report total personal income less than the threshold amounts
7 are taxed at a rate of 0%, and therefore pay no income tax to the City. *Id.*

9 The Ordinance defines “total income” as “the amount reported as income before any
10 adjustments, deductions, or credits on a resident taxpayer’s United States individual income tax
11 return for the tax year, listed as ‘total income’ on line 22 of Internal Revenue Service Form
12 1040....” SMC 5.65.020.G.⁷ Thus, what the IRS considers “total income” attributable to an
13 individual taxpayer is the same as what the City considers “total income” of the same taxpayer.

15 The City determined that the income tax would generate an estimated \$140 million in
16 new revenue annually. Wong Decl., Ex. B at 2. The Ordinance’s fiscal note states that these
17 additional funds “would have a significant impact on City revenues” and could be used to
18 address the policy priorities described above. *Id.* The City Budget Office (“CBO”) conducted an
19 analysis to determine whether the thresholds of \$250,000 and \$500,000 would, in general, target
20 high-income households in Seattle. *Id.*, Ex. C. The CBO evaluated the reasonableness of the
21 thresholds based on three measures: (1) the distribution of incomes in the City, (2) household
22 expenditure data for the Seattle area, and (3) basic cost-of-living indices. *Id.* Based on these

24 ⁵ The Ordinance takes into account different taxpayer situations, such as trusts and married couples where one
25 spouse is not a Seattle resident. SMC 5.65.020.E, .040. Because these provisions are not material to the Ordinance’s
26 overall validity, the City will use the two main filings statuses (individual and married filing jointly) in its briefing.

⁶ The couple reports \$100,000 in total income over the \$500,000 threshold. $\$100,000 \times 2.25\% = \$2,250$.

⁷ The Ordinance uses the amount of income the Resident Taxpayer reports as “total income” to the IRS, regardless
27 of which form is filed. *Id.* The City will use line 22 on Form 1040 in its briefing as it is the most common form filed
and the differences in tax forms are not material to the legal issues.

1 measures, the CBO concluded that the income thresholds were three to nine times that of what an
2 average household needs to live in Seattle. *Id.* at 3 (“Those subject to the tax have incomes in the
3 top three percent of all Seattle households.”).

4 In July 2017, after a series of public meetings, the City Council passed the Ordinance
5 unanimously and the Mayor signed it into law. *Id.*, Ex. A at 3. Rather than seek a referendum and
6 popular vote on the Ordinance, Plaintiffs instead filed four separate lawsuits challenging the
7 constitutionality of the Ordinance and the City’s authority to impose an income tax.
8

9 **III. STATEMENT OF ISSUES**

10 1. The Ordinance taxes personal “total income”. Does a state law that only prohibits cities
11 from imposing net income taxes apply?

12 2. Prior case law that held income is property was based on incorrect premises; the legal
13 underpinnings of those decisions have disappeared; and the majority of courts properly hold that
14 an income tax is not a property tax. Should Washington overturn prior holdings and conclude
15 that income is not property for tax purposes?
16

17 3. The legislature has granted the City broad authority to tax, including excise taxes and
18 otherwise for all “local purposes”. Does the City have the authority to impose a personal income
19 tax, which is best understood as an excise tax, under these statutes?
20

21 **IV. EVIDENCE RELIED UPON**

22 This Motion relies on the Declaration of Gregory J. Wong and its attached exhibits.

23 **V. AUTHORITY**

24 **A. As a matter of law, the City’s total personal income tax falls within the legislature’s**
25 **delegation of the taxing power.**

26 Plaintiffs’ challenges to the City’s income tax all relate to the City’s statutory authority to
27 impose an income tax and the proper characterization of such a tax. These are matters of law that

1 can and should be resolved on summary judgment.

2 The Washington Constitution authorizes the legislature to grant cities the power to levy
3 taxes for local purposes. *See Watson v. City of Seattle*, __ Wn.2d __, 401 P.3d 1, 9-10 (2017).
4 Article VII, § 9 provides that “[f]or all corporate purposes, all municipal corporations may be
5 vested with authority to assess and collect taxes....” Further, Article XI, § 12 authorizes the
6 legislature to grant municipalities the power to levy taxes for “county, city, town, or other
7 municipal purposes” and provides that only local authorities may “assess and collect taxes for
8 such purposes.” Local taxes must serve local purposes, but otherwise these constitutional
9 provisions do not limit the objects or subjects of municipal taxation. *See City of Wenatchee v.*
10 *Chelan Cnty. Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 337, 325 P.3d 419 (2014). The *Watson*
11 court noted that “these provisions reflect Washington’s adoption of what scholars refer to as
12 ‘home rule’—shorthand for the presumption of autonomy in local governance.” 401 P.3d at 10.
13 The court held that home rule “seeks to increase government accountability by limiting state-
14 level interference in local affairs.” *Id.* The court concluded: “In this context, it is appropriate for
15 Washington courts to ‘liberally construe[.]’ legislative grants of power to cities, particularly first
16 class cities.” *Id.* (citation omitted). The converse is also true: exceptions to legislative grants of
17 taxing power should be narrowly construed. *See id.* at 9-10; *Shoulberg v. Pub. Util. Dist. No. 1*,
18 169 Wn. App. 173, 179, 280 P.3d 491 (2012). Here, this Court should evaluate whether the
19 legislature’s liberal grants of taxing authority allow the City to adopt a local tax on total income.
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23 **B. The City’s tax on “total income” is not a net income tax.**

24 Plaintiffs claim that the City’s income tax conflicts with a state law that provides: “A
25 county, city, or city-county shall not levy a tax on net income.” RCW 36.65.030 (emphasis
26 added). Simply put, total personal income is not net income. RCW 36.65.030 does not apply.
27

1 The statute’s plain language only prohibits the City from imposing a tax on net income.
2 The limitation to “net income” must be given effect. *See HomeStreet, Inc. v. State, Dep’t of*
3 *Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (“[E]ach word of a statute is to be accorded
4 meaning. Whenever possible, statutes are to be construed so no clause, sentence or word shall be
5 superfluous, void, or insignificant.” (quotations omitted)). Courts may use dictionary definitions
6 to discern the plain meaning of undefined statutory terms. *Id.* at 451. “Net income” means the
7 “[t]otal income from all sources minus deductions, exemptions, and other tax reductions.”
8 Black’s Law Dictionary (10th ed. 2014); *see also* Webster’s Third New Int’l Dict. 1520 (1993)
9 (“Webster’s”) (“net income” means “the balance of gross income remaining after deducting
10 related costs and expenses [usually] for a given period and losses allocable to the period”); *Audit*
11 *& Adjustment Co. v. Earl*, 165 Wn. App. 497, 503, 267 P.3d 441 (2011) (relying on Black’s Law
12 Dictionary and Webster’s definitions of “net income” to construe state regulations). Thus, a “tax
13 on net income” means a tax imposed on the balance of income remaining after deductions,
14 exemptions, and other reductions. By limiting the prohibition to “net income” taxes, the
15 legislature implicitly permitted otherwise authorized gross or total income taxes. *See Ellensburg*
16 *Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737, 750, 317 P.3d 1037 (2014) (“Where a
17 statute specifically designates the things or classes of things upon which it operates, an inference
18 arises in law that all things or classes of things omitted from it were intentionally omitted by the
19 legislature....” (quotations omitted)).
20
21
22

23 The City’s personal income tax is not imposed on net personal income. Rather, it is
24 imposed on total personal income. SMC 5.65.030.B. The Ordinance defines “total income” as
25 “the amount reported as income before any adjustments, deductions, or credits on a resident
26 taxpayer’s United States individual tax return for the tax year, listed as ‘total income’ on line 22
27

1 of [IRS] Form 1040....” SMC 5.65.020.G (emphasis added). The IRS calculates total personal
2 income in the “Income” section of Form 1040 (lines 7-22). *See* Wong Decl., Exs. D (Form
3 1040), ln. 7-22, H (Instructions for Form 1040) at 21-31. The taxpayer reports personal income
4 received from various taxable sources on lines 7 to 21, including wages, salaries, tips, taxable
5 interest, alimony, business income or (losses), and capital gains or (losses), among other things.
6 *Id.* The “total income” (line 22 on Form 1040) is the sum total of all such personal income. *Id.*

7
8 Line 22 total income reported to the IRS does not subtract personal deductions,
9 exemptions, and other reductions allowable under the Internal Revenue Code to determine net
10 taxable income. The taxpayer reports certain personal deductions further down the form, on lines
11 23 to 36, and then subtracts these deductions from total income to calculate the taxpayer’s
12 “adjusted gross income” (line 37). *See id.*, Exs. D, ln. 23-37, H at 31-38. Then, in the “Tax and
13 Credit” section, the taxpayer reports and subtracts standard or itemized deductions and
14 exemptions (lines 40 and 42) from adjusted gross income to calculate the taxpayer’s “taxable
15 income” (line 43), which is used to calculate the amount of federal tax (line 44). *See id.*, Exs. D,
16 ln. 38-44, H at 38-44. Thus, line 43 is the taxpayer’s net income subject to federal tax, *i.e.*, the
17 balance remaining after all deductions and exemptions are taken.
18

19 That a taxpayer’s “total income” for purposes of IRS Form 1040 is based, in part, on
20 business income or (loss) (line 12) received or incurred by the taxpayer, rather than the total
21 receipts of the business, does not transform the City’s tax on total personal income into a tax on
22 the taxpayer’s net income. The City’s tax is imposed on the individual resident taxpayer. It is not
23 a tax on businesses. The City’s tax captures the total income received by the individual resident
24 taxpayer regardless of whether that income is received as wages by an employee or distributions
25 of profits of a business by an owner. The profits or (loss) from a business distributed to a
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27

1 business owner are appropriately calculated on a net basis, *i.e.*, total receipts of the business less
2 expenses and deductions attributable to the business. *See id.*, Exs. D, ln. 12, G (Schedule C); *see*
3 *also* 26 U.S.C. § 62(a)(1). Neither the City nor the federal government taxes as personal income
4 the gross income of a business owned by an individual.

5
6 The other line 7-21 items calculated on a net basis are likewise the profits/loss from
7 various types of business and non-wage activities. *See Wong. Decl.*, Ex. D., ln. 17-18. Thus,
8 although netting occurs, the netting only reflects that the taxpayer pays personal income taxes
9 solely on actual profits, dividends, or other gain received. And the City taxes that total amount of
10 such profits, dividends or other gain as income without deductions or exemptions. Thus, the City
11 taxes total personal income, not net income. *See Audit & Adjustment Co.*, 165 Wn. App. at 503
12 (holding “net earnings” from real estate sale could not be considered “net income” within the
13 meaning of state rules on charity care eligibility, even though both are calculated on a net basis,
14 because “net earnings” does not deduct all costs and expenses attributable to the sale). The
15 Ordinance does not implicate RCW 36.65.030’s prohibition of a city tax on net income.

16
17 **C. An income tax is not a tax on property.**

18 The main constitutional and statutory authority issues Plaintiffs raise can be addressed
19 only after answering a threshold question: “What is the nature of an income tax?” Whether the
20 income tax need comply with constitutional restrictions on property taxes and whether the City is
21 authorized to enact a specific type of tax depend on the answer. As explained below, an income
22 tax is an excise tax, or perhaps it is *sui generis*. Regardless, it is not a property tax.

23
24 **1. *Stare decisis* does not apply if the prior cases were incorrect and harmful or**
25 **their legal underpinnings have disappeared.**

26 The City acknowledges that the Supreme Court previously held that income is “property”
27 and that an income tax is a “property tax”. *See, e.g., Culliton v. Chase*, 174 Wash. 363, 25 P.2d

1 81 (1933); *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936). But “stare decisis is
2 neither a straight-jacket nor an immutable rule; it leaves room for courts to balance their respect
3 for precedent against insights gleaned from new developments, and to make informed judgments
4 as to whether earlier decisions retain preclusive force.” *W.G. Clark Constr. Co. v. Pac. Nw.*
5 *Reg’l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (quoting *Carpenters*
6 *Local Union No. 26 v. U.S. Fid. & Guar. Co.*, 215 F.3d 136, 142 (1st Cir. 2000)). As Justice
7 Hale stated: “Rules of law, like governments, should not be changed for light or transient causes;
8 but, when time and events prove the need for a change, changed they must be.” *State ex rel.*
9 *Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963) (reversing
10 precedent interpreting state debt limit under Const. art. VIII, §§ 1, 3).
11

12 Washington courts have identified two circumstances in which they will reconsider prior
13 decisions. First, “[a]n opinion can be incorrect when it was announced, or it can become
14 incorrect because the passage of time and the development of legal doctrines undermine its
15 bases.” *State v. Abdulle*, 174 Wn.2d 411, 415-16, 275 P.3d 1113 (2012). As the Supreme Court
16 explained: “stare decisis does not compel us to follow a past decision when its rationale no
17 longer withstands careful analysis. When the generalization underpinning a decision is
18 unfounded, we should not continue in blind adherence to its faulty assumption.” *Rose v.*
19 *Anderson Hay & Grain Co.*, 184 Wn.2d 268, 282, 358 P.3d 1139 (2015). Second, the courts will
20 reconsider precedent “when the legal underpinnings of [the] precedent have changed or
21 disappeared altogether.” *W.G. Clark Constr. Co.*, 180 Wn.2d at 66 (overturning federal
22 preemption cases due to evolving U.S. Supreme Court precedent and national shift in preemption
23 jurisprudence). Both of these circumstances apply to the Washington Supreme Court’s cases
24 holding income is property and, thus, these cases should be overturned.
25
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1 **2. The primary case law relied on for the holding that “income is property” was**
2 **incorrect and unfounded, and its underpinnings have disappeared.**

3 The Supreme Court’s case law holding that income is property relies on a faulty
4 conclusion articulated in the original 1933 case striking down an income tax: *Culliton*. At issue
5 in *Culliton* was a statewide, graduated income tax initiative overwhelmingly approved in 1932.⁸
6 The historical and social context leading up to the 1932 income tax is relevant. For the first forty
7 years of Washington’s statehood, the state primarily relied on real property taxes to support
8 government services. *Culliton*, 174 Wash. at 385-87 (Blake, J. dissenting). At the time, most
9 people’s wealth was kept in real property. *Id.* at 385. This system of taxation worked because
10 “the value of tangible property was great and the cost of government little.” *Id.* But economics
11 soon began to shift. Increasingly, “wealth was going into intangibles, into stocks, bonds,
12 securities of various sorts—indicia of property which could easily elude the search of the tax
13 collector.” *Id.* At the same time, the cost of government increased greatly and property values
14 began to collapse. *Id.* at 386. This resulted in an onerous tax burden on real estate. *Id.* By 1929,
15 the problem was so acute that the legislature created a commission to investigate the issue and
16 make recommendations. *Id.* at 387.⁹ In 1930, the people passed Amendment 14 to the
17 Constitution to capture intangible property in the definition of “property” and allow for different
18 rates of taxation between classes of property. Const. art. VII, § 1.¹⁰ In 1931, the legislature
19 passed a personal, graduated income tax and a business income tax as a means to create revenue
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23 ⁸ See Results of 1932 General Election, Initiative to the People 69, available at

https://www.sos.wa.gov/elections/results_report.aspx?e=102&c=&c2=&t=&t2=5&p=&p2=&y.

24 ⁹ See Report of the Washington Tax Investigation Commission (1930) (attached as Wong Decl., Ex. E). The
25 Report Introduction discusses some of this same historical and social context for tax reform.

26 ¹⁰ See also Don Burrows, *The Economics and Politics of Washington’s Taxes From Statehood to 2013* at 131
27 (2013) (“At the time of the 1930 amendment’s passage, many of its supporters believed that the new classification
authority would allow the state to impose personal and corporate income taxes. Among the strongest supporters of
Amendment 14 were groups that favored income taxes. ... The [Washington Tax Equalization] Council favored
shifting the tax burden from the owners of real property to holders of securities, bonds and other intangible
properties that accounted for over 60 percent of the wealth in the state.”) (Mr. Burrows is a former Director of the
Washington State Department of Revenue and his book contains further historical background).

1 streams that did not rely on real estate taxes, but the governor vetoed both measures. *See* Hugh
2 D. Spitzer, *A Washington State Income Tax—Again?*, 16 U. Puget Sound L. Rev. 515, 527
3 (1993).¹¹ In response, the people enacted the personal income tax by initiative in 1932.

4 The basic logic of the *Culliton* court’s opinion is straightforward: income is property;
5 taxes must be uniform within each class of property; income constitutes a single class; and
6 therefore a graduated income tax violates the Constitution’s uniformity requirement. But the
7 Supreme Court did not undertake an in-depth analysis of why income is a form of property.
8 Instead, the *Culliton* court simply stated: “It has been definitely decided in this state that an
9 income tax is a property tax, which should set the question at rest here.” 174 Wash. at 376. The
10 sole authority the court cited in support of this statement was *Aberdeen Savings & Loan Assoc. v.*
11 *Chase* (“*Aberdeen*”), 157 Wash. 351, 289 P. 536, 290 P. 697 (1930). The court’s decision in
12 *Aberdeen*, however, includes no such holding. And to the extent *Aberdeen* relied on federal case
13 law for the proposition that an income tax may be a property tax under the U.S. Constitution,
14 those cases have been overruled by the U.S. Supreme Court.
15

16
17 *Aberdeen* addressed a 1929 law that imposed a “tax measured by income upon banks and
18 financial corporations.” *Aberdeen*, 157 Wash. at 353. Under the law, savings and loans paid a
19 different corporate income tax from commercial banks and other competitors. *Id.* at 360-61. The
20 law also taxed interest income from federal securities. *Id.* at 369. Plaintiffs brought several
21 claims, including that the law violated the Fourteenth Amendment of the U.S. Constitution and
22 the then-existing uniformity provision in Article VII of the Washington Constitution. *Id.* at 357.
23 The *Aberdeen* court struck down the law. First, the court held the law violated the Fourteenth
24 Amendment’s Equal Protection Clause based almost exclusively on *Quaker City Cab Co. v.*
25

26
27 ¹¹ Professor Spitzer’s article provides significant historical background and analysis regarding income taxes and related case law in Washington. Professor Spitzer is counsel of record for the City in this case.

1 *Pennsylvania*, 277 U.S. 389, 48 S. Ct. 553, 72 L. Ed. 927 (1928), in which the U.S. Supreme
2 Court held that a tax on certain cab companies but not others conducting the same business, such
3 as natural persons and partnerships, was an arbitrary distinction that violated the Equal
4 Protection Clause. *Id.* at 361-64, 373-74. Second, the *Aberdeen* court held that the law’s taxation
5 of income from government securities violated federal law. *Id.* at 365-74. But the court went no
6 further, stating that its “holding renders unnecessary any discussion of [the] contention that the
7 act...violates the uniform taxation provisions of the Constitution of the state of Washington, or
8 other provisions thereof.” *Id.* at 374. Thus, contrary to *Culliton*, the *Aberdeen* court did not rule
9 that income is property for purposes of Article VII of the Washington Constitution.
10

11 The state and the legislatively-created Advisory Tax Commission, as *amicus curiae*,
12 petitioned the Supreme Court for rehearing in *Aberdeen* and its companion cases. Spitzer at 550-
13 51. They argued that the *Aberdeen* opinion potentially could be read broadly to decide additional
14 constitutional issues, including the legality of future taxes. *Id.* In denying rehearing, the court
15 confirmed the limited scope of its holding, stating that the decision “should not be construed as
16 determining any question which was not before the court” and was based solely on “the
17 decisions of the Supreme Court of the United States [(*Quaker City Cab Co.*)]”, which treated the
18 tax at issue as attempting “to establish a property and not an excise or corporation franchise tax.”
19 *Wash. Mut. Savings Bank v. Chase*, 157 Wash. 351, 392, 290 P. 697 (1930). Thus, to the extent
20 *Aberdeen* treated an income tax as a property tax, it was only applying the U.S. Supreme Court’s
21 decision in *Quaker City Cab Co.* for federal Equal Protection Clause purposes.¹²
22

23
24 In 1973, however, the U.S. Supreme Court expressly overruled *Quaker City Cab Co.*,
25 noting that it was “a relic of a bygone era”. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S.

26 ¹² The same was true in the companion case to *Aberdeen*, *Burr v. Chase*, 157 Wash. 393, 396, 289 P. 551 (1930)
27 (“The opinion of the Supreme Court of the United States in the case of *Quaker City Cab Co. v. Pennsylvania* [] is
even more exactly in point in this case than it was in the case of *Aberdeen Savings & Loan Association*....”).

1 356, 365, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973). Accordingly, the legal underpinnings of
2 *Aberdeen* and *Culliton* have changed and are no longer valid.

3 Indeed, the U.S. Supreme Court has consistently rejected the characterization of an
4 income tax as a property tax. The court explained as early as 1916 that a prior, influential
5 decision striking down the federal income tax as a “direct” tax on property for federal
6 constitutional apportionment purposes (*Pollock v. Farmers’ Loan & Trust Co.*) did not so hold:
7 “[T]he conclusion reached in the Pollock Case did not in any degree involve holding that income
8 taxes generically and necessarily came within the class of direct taxes on property, but, on the
9 contrary, recognized the fact that taxation on income was in its nature an excise entitled to be
10 enforced as such....” *Brushaber v. Union Pac. R. Co.*, 240 U.S. 1, 16-17, 36 S. Ct. 236, 60 L. Ed.
11 493 (1916). Further, the U.S. Supreme Court has explicitly rejected the concept articulated in
12 *Pollock*, and subsequently relied on in Washington case law, that a tax on income derived from
13 property is the same as a property tax.¹³ *Graves v. People of State of New York ex rel. O’Keefe*,
14 306 U.S. 466, 480, 59 S. Ct. 595, 83 L. Ed. 927 (1939) (“The present [state income] tax applie[s]
15 to salaries at a specified rate. ... It is measured by income which becomes the property of the
16 taxpayer when received as compensation for his services; and the tax laid upon the privilege of
17 receiving it is paid from his private funds and not from the funds of the government, either
18 directly or indirectly. The theory, which once won a qualified approval, that a tax on income is
19 legally or economically a tax on its source, is no longer tenable....”).¹⁴

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23 *Culliton’s* incorrect characterization of *Aberdeen*, and implicit acceptance of the U.S.
24 Supreme Court case law on which *Aberdeen* relies, has had a ripple effect throughout
25 Washington jurisprudence. The erroneous concept—that it is well-settled that “income is

26 ¹³ See *Jensen*, 185 Wash. at 222 (so holding and citing *Pollock*)

27 ¹⁴ See also *South Carolina v. Baker*, 485 U.S. 505, 515-25, 108 S. Ct. 1355, 99 L. Ed. 2d 592 (1988) (confirming
that *Pollock* has been overruled in its entirety).

1 property”—has been repeated throughout Washington’s income tax case law without question.
2 *See, e.g., Jensen*, 185 Wash. at 216-17 (rejecting personal income tax framed as privilege tax and
3 relying on *Culliton* for the premise that “income is property, and that an income tax is a property
4 tax”); *Petroleum Nav. Co. v. Henneford*, 185 Wash. 495, 496-97, 55 P.2d 1056 (1936) (rejecting
5 corporate income tax framed as a privilege tax based on *Aberdeen*, *Culliton*, and *Jensen*); *Power*,
6 *Inc. v. Huntley*, 39 Wn.2d 191, 195, 235 P.2d 173 (1951) (rejecting corporate net income tax
7 framed as an excise tax based on *Aberdeen*). These cases rely on the incorrect presumption based
8 on *Culliton* and *Aberdeen* that income is property, and reject that an income tax could be an
9 excise tax based on that presumption. None of these cases have conducted a substantive analysis
10 of the nature of an income tax. As demonstrated above, because *Culliton*’s statement of the law
11 was incorrect and unfounded, and because the bases on which *Aberdeen* was decided have since
12 disappeared, it is time for Washington courts to revisit the question.
13
14

15 **3. *Culliton*’s statement that the majority of courts characterized income as**
16 **property was incorrect and unfounded.**

17 In addition to its mischaracterization of *Aberdeen*, the *Culliton* court, without citation,
18 relied on the conclusory statement that “[t]he overwhelming weight of judicial authority is that
19 ‘income’ is property and a tax upon income is a tax upon property.” 174 Wash. at 374. This was
20 simply an incorrect statement. Contrary to the *Culliton* court’s characterization, by the 1930s the
21 majority of courts held that an income tax is not a property tax. In his exhaustive treatise on state
22 taxation, Professor Wade Newhouse researched every state’s income tax laws and cases. Wade J.
23 Newhouse, *Constitutional Uniformity and Equality in State Taxation* (1984). Professor
24 Newhouse notes that nationwide the issue of how to characterize an income tax “came to a boil
25 from 1922 through 1936”—the exact timeframe in which *Culliton* and *Jensen* were decided. *Id.*
26 at 2020. Professor Newhouse concludes:
27

1 Overall, for all the bitter controversy of the 1920s and the 1930s, in the end there
2 were only five state courts which actually ruled negatively on income taxes under
3 the uniformity limitations, with that negative position either abandoned or
4 modified in three of them, leaving only two state courts seemingly standing by
their strict uniformity interpretations with respect to income taxes: Washington
and Pennsylvania.

5 ...
6 A majority of those courts reviewed above have characterized the income tax as a
‘nonproperty’ tax. Without determining its precise nature in relation to all those
7 other various kinds of taxes which are not property taxes, it was ruled not to be a
tax upon property.

8 *Id.* at 2021, 29 (emphasis added). Washington’s treatment of an income tax as a property tax was
9 and remains an outlier.

10 In the modern era, the Illinois Supreme Court dealt with the exact issue presented here. In
11 Illinois, a 1932 case (*Bachrach*) had held that income is property based on *Pollock* and an
12 assertion that the “weight of judicial authority” so held. In 1969, the Illinois Supreme Court
13 reversed that holding, noting that *Pollock* was no longer good law and that: “The court in
14 *Bachrach* also implied that the ‘overwhelming weight of judicial authority’ holds that an income
15 tax is a property tax. We have reviewed the many State cases dealing with this question and find
16 the weight of authority to be that an income tax is not a property tax.” *Thorpe v. Mahin*, 250
17 N.E.2d 633, 634-36 (Ill. 1969). Tellingly, *Bachrach*’s (now overruled) misstatement of law was
18 part of the briefing before the *Culliton* court. *See Spitzer* at 558 n.282. The *Culliton* court’s
19 erroneous statement regarding the weight of judicial authority was never accurate. Washington
20 should follow the lead of Illinois and correct this error.

21
22
23 **4. *Culliton*’s conclusion regarding the nature of income based on the definition
of “property” was incorrect.**

24 The *Culliton* court also relied on what it characterized as the “peculiarly forceful
25 constitutional definition” of property in the Constitution—“everything, whether tangible or
26 intangible, subject to ownership”—and reasoned that “income is either property...or no one
27

owns it.” 174 Wash. at 374. But the court’s tautological and conclusory statement is incorrect. The Constitution’s definition of property as “anything subject to ownership” does not answer the relevant question, it simply raises it: “Is income subject to ownership?”

The nature of income is not that of a static asset subject to ownership that can be kept or sold, such as land (tangible property) or stocks and bonds (intangible property). Rather, income is better characterized as money in motion, an expectancy that is earned either from time worked or the outcome of a business and is taxed accordingly. Post taxation, that money can be spent or turned into a static asset such as land or stocks. Other courts have adopted this understanding of income in their discussions on the nature of an income tax:

A tax on income, as thus defined and ascertained, is not a property tax. The income or gain thus derived from capital, from property, from labor, or from both combined, because of its fluctuating and indeterminate nature, during this period and process of its making, has not yet become an investment or an increment to the permanent wealth or property of the individual who has to pay the tax, and therefore it is not a property tax.

Sims v. Ahrens, 271 S.W. 720, 732 (Ark. 1925). This concept also finds support in the common meaning of “income”. Webster’s defines “income” as “1: a coming in: entrance, influx...2: a gain or recurrent benefit usually measured in money that derives from capital or labor....” Webster’s at 1143. One does not own a “coming in” or “gain” until after it is taxed and then realized as an asset. This contrasts with the pertinent dictionary definition of “property”, which is “something owned or possessed...something to which a person or business has a legal title....” *Id.* at 1818. (Contrary to the *Culliton* court’s characterization of Washington’s constitutional definition as “peculiarly forceful”, it appears to mirror the standard dictionary definition closely.)

Moreover, income is not transferable in the same way as property. If you own property—whether personal, real estate, stocks, or intellectual property—part of your bundle of rights in that property is the ability to transfer ownership. For example, in your will, you can transfer any

1 of that property to your heirs. But income, *per se*, is not transferrable. You cannot pass it on to
2 your heirs—not the income itself that is, but only the asset that may result from after-tax income.

3 Further, as noted above, the 1930 constitutional amendment defining “property” was
4 passed in response to the concern at that time that wealth was being moved from real property
5 (taxed) to intangible property (not taxed). That concern does not support characterizing income
6 as intangible property, as it is not an asset into which wealth can be transferred. The dictionary
7 definition of “intangible property” is helpful. Webster’s defines “intangible property” as:
8 “property having no physical substance apparent to the senses: incorporeal property...often
9 evidenced by documents (as stocks, bonds, notes, judgments, franchises) having no intrinsic
10 value or by rights of action, easements, goodwill, trade secrets.” Webster’s at 1173. Similarly,
11 Black’s defines “intangible property” as: “Property that lacks a physical existence. Examples
12 include stock options and business goodwill.” PROPERTY, Black’s Law Dictionary (10th ed.
13 2014). Tellingly, income is not listed as an example in any of the definitions. Instead, the
14 definitions reflect property in which wealth can be kept or transferred. Accordingly, income is
15 not property in the common or constitutional sense.
16
17

18 **5. Categorizing income as property is harmful to low- and moderate-income**
19 **citizens and the ability of governments to adequately fund services.**

20 Washington’s long-standing adherence to the incorrect and unfounded statements in
21 *Culliton* has had a significant negative impact on the state’s and Seattle’s citizens. As far back as
22 1932, the people initially passed an income tax statewide by initiative to address significant
23 harm: “Existing methods of taxation, primarily based on property holdings, are inadequate,
24 inequitable and economically unsound. Present conditions point the need of a new subject matter
25 for taxation, which should be based on the ability to pay. Earnings for a given period are a fair
26 measure of such ability.” *Culliton*, 174 Wash. at 372 (quoting initiative). The same is true today.
27

1 Washington has the most regressive tax structure in the nation, with our low- and moderate-
2 income earners paying a significantly greater share of their income in taxes than high-income
3 households. Raising new revenue within the existing tax structure harms low- and moderate-
4 income earners and limits the City's ability to meet increasing need for City services. *Culliton*
5 and its progeny have created and exacerbated this harm, and should not be followed.

7 **D. An income tax is best understood as an excise tax, which the legislature has
8 authorized the City to enact.**

9 Rather than a property tax, an income tax is best understood as one of many types of
10 excise taxes. As noted above, the U.S. Supreme Court has squarely rejected the *Pollock* case, on
11 which much of the "income-is-property" case law relies. And that court has explained how
12 income taxes and property taxes are different:

13 The incidence of a tax on income differs from that of a tax on property. Neither
14 tax is dependent upon the possession by the taxpayer of the subject of the other.
15 His income may be taxed, although he owns no property, and his property may be
16 taxed, although it produces no income. The two taxes are measured by different
17 standards, the one by the amount of income received over a period of time, the
18 other by the value of the property at a particular date. Income is taxed but once;
the same property may be taxed recurrently. The tax on each is predicated upon
different governmental benefits; the protection offered to the property in one state
does not extend to the receipt and enjoyment of income from it in another.

19 *People of the State of New York ex rel. Cohn v. Graves*, 300 U.S. 308, 314, 57 S. Ct. 466, 81 L.
20 Ed. 666 (1937). Instead of a property tax, the U.S. Supreme Court observed as far back as 1937
21 that "[t]he question as to the nature of [an income] tax has come up repeatedly under state
22 constitutions requiring taxes upon property to be equal and uniform, or imposing similar
23 restrictions. Many, perhaps most, courts hold that a net income tax is to be classified as an
24 excise." *Hale v. Iowa State Bd. of Assessment & Review*, 302 U.S. 95, 104-05, 58 S. Ct. 102, 82
25 L. Ed. 72 (1937) (citing cases); *see also Thorpe*, 250 N.E.2d at 635-36 (discussing *Cohn*, *Hale*,
26 and other authorities that hold an income tax generally is regarded as an excise tax).

1 The nature of an income tax is that of an excise because it is “a contribution exacted from
2 those domiciled or doing business in the state for the purpose of defraying the expenses of
3 government, the contribution being measured by the ability of the taxpayer to pay, which in turn
4 is determined by the extent of his income. He is required to pay this tax because he is domiciled
5 or doing business in the state, and so enjoys the protection of government, the right to earn a
6 living, to receive, keep, and expend, income, and to be safe in his property and pursuit of
7 happiness.” *Reynolds Metal Co. v. Martin*, 107 S.W.2d 251, 258-59 (Ky. 1937).¹⁵

9 *Jensen’s* rejection of the excise tax argument is without merit. The *Jensen* court stated
10 that “the mere right to own and hold property cannot be made subject of an excise tax, because to
11 tax by reason of ownership of property is to tax the property itself. ... The right to receive
12 property (income in this instance) is but a necessary element of ownership, and, without such a
13 right to receive, the ownership is but an empty thing and of no value whatever.” 185 Wash. at
14 218-19 (citations omitted). This argument is circular, in that it rests on the faulty notion that
15 income is property in the first place—a construct that is wrong, as discussed above. Moreover,
16 the cases *Jensen* cites in support do not stand for the proposition that an income tax is not an
17 excise tax. In *McFeely v. Comm’r of Internal Revenue*, 296 U.S. 102, 56 S. Ct. 54, 80 L. Ed. 83
18 (1935), the U.S. Supreme Court stated that the time one starts to own property is when they
19 acquire it. 296 U.S. at 107. Nothing in the case purported to equate income as property, or even
20 that income is owned as one would own a piece of land. The same is true in the other cited
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22

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24 ¹⁵ See also, e.g., *Cohn*, 300 U.S. at 313 (“Domicil itself affords a basis for such taxation. Enjoyment of the
25 privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from
26 responsibility for sharing the costs of government.... A tax measured by the net income of residents is an equitable
27 method of distributing the burdens of government among those who are privileged to enjoy its benefits.”);
Hattiesburg Grocery Co. v. Robertson, 88 So. 4, 5-6 (Miss. 1921) (same); *Kopp v. Baird*, 313 P.2d 319, 321 (Idaho
1957) (same); *Vilas v. Iowa State Bd. of Assessment & Review*, 273 N.W. 338, 340 (Iowa 1937) (same); *Ryan v.*
Commonwealth, 193 S.E. 534, 537 (Va. 1937) (same); *Dooley v. City of Detroit*, 121 N.W.2d 724, 730 (Mich. 1963)
(same for city income tax).

1 cases—they all involve taxes on real or personal property that were characterized as excises. *See*
2 *Dawson v. Kentucky Distilleries & Warehouse Co.*, 255 U.S. 288, 293-94, 41 S. Ct. 272, 65 L.
3 Ed. 638 (1921) (tax on ownership of whiskey in bonded warehouses at the time it is removed);
4 *Thompson v. Kreutzer*, 72 So. 891, 891-92 (Miss. 1916) (tax on timber lands); *In re Opinion of*
5 *the Justices*, 94 N.E. 1043, 1044 (Mass. 1911) (taxes on real estate and personal property). None
6 of the cases relate to income taxes.
7

8 Once the notion that income is property is properly rejected, the rationale our Supreme
9 Court long ago recognized in upholding the state B&O tax applies to an income tax. In *State ex*
10 *rel. Stiner v. Yelle*, 174 Wash. 402, 407, 25 P.2d 91 (1933), the court held that the B&O tax, as
11 measured by a business' gross proceeds, sales, or income, "does not concern itself with income
12 which has been acquired, but only with the privilege of acquiring, and that the amount of the tax
13 is measured by the amount of income in no way affects the purpose of the act or the principle
14 involved." This logic mirrors the rationale used by the above courts that recognize a personal
15 income tax is an excise tax. There is no reasonable distinction between a privilege tax on a
16 business based on gross income and a privilege tax on individuals based on total income.
17 Accordingly, an income tax should be understood as an excise tax.
18

19 Properly understood as an excise tax, a total personal income tax is within the City's
20 delegated taxing authority. The legislature has authorized the City to levy excise taxes under two
21 statutes: RCW 35A.82.020 and RCW 35.22.280(32).¹⁶ First, as a first class city, the City
22 possesses the same excise tax authority granted to code cities to "impose excises for regulation
23 or revenue in regard to all places and kinds of business, production, commerce, entertainment,
24 exhibition, and upon all occupations, trades and professions and any other lawful activity...."
25

26
27 ¹⁶ The City is also empowered to levy excise taxes under RCW 35A.11.020's comprehensive grant of tax
authority, as explained in Section V.E, *infra*.

1 RCW 35A.82.020 (emphasis added); *see also* RCW 35.22.570 (granting first class cities all
2 powers conferred on other cities). This broad taxing power is liberally construed in favor of the
3 city imposing the tax. RCW 35A.01.010; *see also City of Wenatchee*, 181 Wn. App. at 337.

4 Second, RCW 35.22.280 enumerates “broad legislative powers” delegated to first class
5 cities, including Seattle. *Watson*, 401 P.3d at 10; *see also* RCW 35.22.900 (ch. 35.22 RCW
6 “shall be liberally construed”). In relevant part, this statute authorizes the City to “grant licenses
7 for any lawful purpose, and to fix by ordinance the amount to be paid therefor....” RCW
8 35.22.280(32). As the Supreme Court has explained, the licensing power granted to first class
9 cities is dual: cities have the right to impose license taxes either for the lawful purpose of
10 regulation or for the lawful purpose of raising revenue. *Watson*, 401 P.3d at 10. When the power
11 is exercised for revenue purposes, licensing is “merely the method provided for raising the
12 revenues.” *Id.* (quotation omitted).

13
14
15 Both RCW 35A.82.020 and RCW 35.22.280(32) grant the City the power to impose a tax
16 on its residents’ receipt of total personal income. The Ordinance imposes “excises for...revenue
17 ...upon [the] lawful activity” of resident taxpayers’ receipt of income within Seattle. *See* RCW
18 35A.82.020; SMC 5.65.030.B. Likewise, the Ordinance imposes an excise on receipt of income
19 for the “lawful purpose” of raising revenue for critical City objectives. *See* SMC 5.65.010.A.
20 Accordingly, the City’s income tax falls well within its broad excise tax authority.

21 **E. An income tax also could be appropriately characterized as *sui generis*, for which
22 the legislature has also granted the City authority.**

23 Some states’ courts classify income taxes neither as an excise tax nor as a property tax;
24 instead, they treat income taxes as a unique category. One court said: “In many ways such a tax
25 is *sui generis*. It imposes a tax on the net income or revenue which passes into or through a
26 man’s hands within a prescribed period, a large share of which never finds permanent
27

1 investment.” *Reed v. Bjornson*, 253 N.W. 102, 105 (Minn. 1934); *see also* Spitzer at 559-61;
2 Robert C. Brown, *The Nature of the Income Tax*, 17 Minn. L. Rev. 127, 143-45 (1933)
3 (analyzing income tax cases and arguing that income taxes are *sui generis*).

4 This is an alternative and reasonable characterization that Washington courts could adopt.
5 Indeed, our Supreme Court recently alluded to this concept when it noted that local “taxation
6 must fall into one of three categories: property, income, or excise taxes.” *Watson*, 401 P.3d at 10
7 (quoting Washington State Department of Revenue Tax Reference Manual). Distinguishing
8 between property, income, and excise taxes makes sense, per our Supreme Court, State
9 Department of Revenue, and several states and legal scholars such as those cited above.

10 Whether understood as an excise tax or *sui generis*, the City has authority to impose its
11 income tax under RCW 35A.11.020, which confers “all powers of taxation for local purposes”
12 within the City’s territorial limits subject only to constitutional and statutory constraints. RCW
13 35A.11.020’s sweeping grant of tax authority reflects the legislature’s decision to implement by
14 legislation the “home rule” principle for certain cities including Seattle.

15 The home rule principle presumes “autonomy in local governance,” namely, that a city
16 may exercise powers that do not violate a constitutional provision, legislative enactment, or the
17 city’s charter. *Watson*, 401 P.3d at 10.¹⁷ By pushing power to the local level and reducing
18 interference by the legislature and other state agencies, home rule increases government
19 accountability, which is “particularly important with respect to local taxation authority.” *Id.*
20 Home rule arose in opposition to Dillon’s Rule, which asserts that a local government exercises
21 no powers except as expressly granted by law, or incidental to powers expressly granted. *See*
22 Spitzer, 38 Seattle U. L. Rev. at 839-42 (summarizing history of Dillon’s rule and home rule).

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¹⁷ Citing Hugh Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 Seattle U. L. Rev. 809, 809
(2015); *Citizens for Financially Responsible Gov’t*, 99 Wn.2d at 343.

1 Home rule gained traction in Washington in early to mid-twentieth century. *See id.* In
2 1965, the legislature convened a special committee to prepare a code of laws for city
3 governments with “a form of statutory home rule.” Laws of 1965, Ex. Sess., ch. 115, § 2 at 2061.
4 In a report to the legislature the following year, the committee confirmed that Chapter 35A.11 of
5 the proposed Optional Municipal Code “expresses the state legislature’s intent to confer the
6 greatest power of local self-government, consistent with the State Constitution, upon the cities
7 and directs that the laws be liberally construed in favor of the city as a clear mandate to abandon
8 the so-called ‘Dillon’s Rule’ of construction.” Wong Decl., Ex. F at 4. In 1967, the legislature
9 enacted the Optional Municipal Code proposed by the committee, granting code cities (and, by
10 extension under RCW 35.22.570, first class cities like Seattle) “all powers of taxation for local
11 purposes” limited only by the Constitution and specific statutes. RCW 35A.11.020. Along with
12 this taxing power, the legislature delegated “all powers possible for a city or town to have under
13 the Constitution of this state, and not specifically denied to code cities by law.” *Id.* The Optional
14 Municipal Code’s stated purpose confirms the legislature’s intent to supersede Dillon’s Rule and
15 grant municipal powers to first class and code cities to the fullest extent permitted by the
16 Constitution. RCW 35A.01.010. Nothing in the Constitution or state law excludes total income
17 as a subject of municipal taxation. Indeed, the statutory prohibition of local net income taxes
18 discussed above suggests that gross or total income taxes are otherwise permitted. Thus, the
19 Ordinance is authorized by the comprehensive tax authority granted under RCW 35A.11.020.
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23 **F. Plaintiffs’ constitutional claims fail.**

24 Whether the City’s Ordinance is characterized as an excise tax or *sui generis*, the end
25 result is the same: an income tax is not a property tax. Plaintiffs’ claims based on constitutional
26 provisions applicable to property taxes, therefore, must fail. Article VII, § 1’s uniformity
27

1 requirements and Article VII, § 2's one-percent cap apply only to property taxes.

2 Plaintiffs' equal protection claim also fails. Courts have long upheld taxes against equal
3 protection challenges as long as there is a rational basis for the classifications. *See e.g., Hemphill*
4 *v. Wash. State Tax Comm'n*, 65 Wn. 2d 889, 891-93, 400 P.2d 297 (1965) (tax classification
5 distinctions need only a rational basis and do not violate the Equal Protection Clause if any state
6 of facts reasonably can be conceived that would sustain them). The City's decision to tax only
7 high-income residents is rational in light of the regressive nature of Washington's tax system and
8 the current affordability crisis. The City did not want to further exacerbate these issues.

9 Therefore, the City set thresholds that tax only those who can afford it. *See Wong Decl., Ex. C.*¹⁸

11 VI. CONCLUSION

12 The City enacted its total personal income tax to generate revenue that will help address
13 pressing issues it faces today. The legislature has authorized the City's tax either as an excise tax
14 or pursuant to the City's home rule power to impose taxes for local purposes. Nothing in the
15 Constitution or state law prohibits the City's income tax. The City respectfully requests this
16 Court grant it summary judgment on all claims against it.

18 DATED this 29th day of September, 2017.

19 PACIFICA LAW GROUP LLP

20 /s/ Gregory J. Wong

21 Paul J. Lawrence, WSBA # 13557

22 Gregory J. Wong, WSBA #39329

23 Jamie L. Lisagor, WSBA #39946

24 ¹⁸ Some of Plaintiffs' complaints contain allegations regarding the City Charter. But the City Charter states: "The
25 City shall, in addition to the powers enumerated in this Charter, have all other powers now or hereafter granted to or
26 exercised by municipal corporations of like character and degree, and also all powers now or hereafter granted to
27 incorporated towns and cities, by the laws of this state, and may exercise the same by ordinance and not otherwise." City Charter art. IV, § 15. As argued, the legislature has granted the City authority to impose taxes through excises and for local purposes, and therefore the Charter also permits it. Further, as the City is authorized to impose the tax, it does not constitute an unconstitutional invasion of privacy to request income data as alleged in one complaint. The only information required for the City income tax is the same that is required of the federal income tax.

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APPENDIX


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Wash. Const. art. VII, § 1 A-1
Wash. Const. art. VII, § 2 A-2
Wash. Const. art. VII, § 9 A-4
Wash. Const. art. XI, § 12..... A-5
RCW 35.22.280 A-6
RCW 35.22.900 A-11
RCW 35A.01.010..... A-12
RCW 35A.11.020..... A-13
RCW 35A.82.020..... A-15
RCW 36.65.030 A-16

APPENDIX

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Wash. Const. art. VII, § 1 A-1
Wash. Const. art. VII, § 2 A-2
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RCW 36.65.030 A-16

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 7. Revenue and Taxation (Refs & Annos)

West's RCWA Const. Art. 7, § 1

§ 1. Taxation

Effective: December 7, 2006

[Currentness](#)

The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word “property” as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided*, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of fifteen thousand (\$15,000.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner.

Credits

Adopted 1889. Amended by Amendment 14 (Laws 1929, ch. 191, § 1, p. 499, approved Nov. 1930); Amendment 81 (Laws 1988, H.J.R. No. 4222, p. 1551, approved Nov. 8, 1988); Amendment 98 (Laws 2006, H.J.R. 4223, approved November 7, 2006, effective December 7, 2006).

[Notes of Decisions \(275\)](#)

West's RCWA Const. Art. 7, § 1, WA CONST Art. 7, § 1

Current through amendments approved 11-8-2016.

End of Document

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 7. Revenue and Taxation (Refs & Annos)

West's RCWA Const. Art. 7, § 2

§ 2. Limitation on Levies

Effective: December 6, 2007

[Currentness](#)

Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percent of the true and fair value of such property in money. Nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only as follows:

(a) By any taxing district when specifically authorized so to do by a majority of at least three-fifths of the voters of the taxing district voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of such taxing district, at which election the number of voters voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters of the taxing district voting on the proposition to levy when the number of voters voting on the proposition exceeds forty percent of the number of voters voting in such taxing district in the last preceding general election. Notwithstanding any other provision of this Constitution, any proposition pursuant to this subsection to levy additional tax for the support of the common schools or fire protection districts may provide such support for a period of up to four years and any proposition to levy an additional tax to support the construction, modernization, or remodelling of school facilities or fire facilities may provide such support for a period not exceeding six years. Notwithstanding any other provision of this subsection, a proposition under this subsection to levy an additional tax for a school district shall be authorized by a majority of the voters voting on the proposition, regardless of the number of voters voting on the proposition;

(b) By any taxing district otherwise authorized by law to issue general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment, when authorized so to do by majority of at least three-fifths of the voters of the taxing district voting on the proposition to issue such bonds and to pay the principal and interest thereon by annual tax levies in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of voters voting on the proposition shall constitute not less than forty percent of the total number of voters voting in such taxing district at the last preceding general election. Any such taxing

district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein. The provisions of this section shall also be subject to the limitations contained in [Article VIII, Section 6, of this Constitution](#);

(c) By the state or any taxing district for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort.

Credits

Adopted by Amendment 17 (Laws 1943, H.J.R. No. 1, p. 936, approved Nov. 1944). Amended by Amendment 55 (Laws 1971, S.J.R. No. 1, approved Nov. 7, 1972); Amendment 59 (Laws 1971, H.J.R. No. 47, approved Nov. 7, 1972); Amendment 64 (Laws 1975-76, 2nd Ex.Sess., S.J.R. No. 137, approved Nov. 2, 1976); Amendment 79 (Laws 1986, H.J.R. No. 55, approved Nov. 4, 1986); Amendment 90 (Laws 1997, H.J.R. No. 4208, approved Nov. 4, 1997); Amendment 95 (Laws 2002, H.J.R. No. 4220, approved Nov. 5, 2002); Amendment 101 (Laws 2007, H.J.R. No. 4204, approved Nov. 6, 2007, effective Dec. 6, 2007).

[Notes of Decisions \(63\)](#)

West's RCWA Const. Art. 7, § 2, WA CONST Art. 7, § 2
Current through amendments approved 11-8-2016.

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 7. Revenue and Taxation (Refs & Annos)

West's RCWA Const. Art. 7, § 9

§ 9. Special Assessments or Taxation for Local Improvements

[Currentness](#)

The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

Credits

Adopted 1889.

[Notes of Decisions \(98\)](#)

West's RCWA Const. Art. 7, § 9, WA CONST Art. 7, § 9

Current through amendments approved 11-8-2016.

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 11. County, City and Township Organization (Refs & Annos)

West's RCWA Const. Art. 11, § 12

§ 12. Assessment and Collection of Taxes in Municipalities

[Currentness](#)

The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

Credits

Adopted 1889.

[Notes of Decisions \(79\)](#)

West's RCWA Const. Art. 11, § 12, WA CONST Art. 11, § 12

Current through amendments approved 11-8-2016.

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West's Revised Code of Washington Annotated
Title 35. Cities and Towns (Refs & Annos)
Chapter 35.22. First-Class Cities (Refs & Annos)

West's RCWA 35.22.280

35.22.280. Specific powers enumerated

Effective: July 22, 2011

[Currentness](#)

Any city of the first class shall have power:

- (1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;
- (2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;
- (3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;
- (4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;
- (5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;
- (6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;
- (7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;
- (8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway,

or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his or her heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the

keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words “public markets” are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said

city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for three hundred sixty-four days, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto.

Credits

[2011 c 96 § 25, eff. July 22, 2011; 2009 c 549 § 2046, eff. July 26, 2009; 2008 c 129 § 1, eff. June 12, 2008; 1993 c 83 § 4; 1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280. Prior: 1890 p 218 § 5; RRS § 8966.]

[Notes of Decisions \(171\)](#)

West's RCWA 35.22.280, WA ST 35.22.280

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.

West's Revised Code of Washington Annotated
Title 35. Cities and Towns (Refs & Annos)
Chapter 35.22. First-Class Cities (Refs & Annos)

West's RCWA 35.22.900

35.22.900. Liberal construction

Currentness

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter, but the same shall be liberally construed for the purpose of carrying out the objects for which this chapter is intended.

Credits

[1965 c 7 § 35.22.900. Prior: 1890 p 224 § 8.]

West's RCWA 35.22.900, WA ST 35.22.900

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.

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West's Revised Code of Washington Annotated
Title 35a. Optional Municipal Code (Refs & Annos)
Chapter 35A.01. Interpretation of Terms

West's RCWA 35A.01.010

35A.01.010. Purpose and policy of this title--Interpretation

[Currentness](#)

The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state. Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality.

Credits

[1967 ex.s. c 119 § 35A.01.010.]


[Notes of Decisions \(6\)](#)

West's RCWA 35A.01.010, WA ST 35A.01.010

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 35a. Optional Municipal Code (Refs & Annos)
Chapter 35A.11. Laws Governing Noncharter Code Cities and Charter Code Cities--Powers

West's RCWA 35A.11.020

35A.11.020. Powers vested in legislative bodies of noncharter and charter code cities

Effective: July 22, 2007

[Currentness](#)

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in [RCW 66.08.120](#), *82.36.440, 48.14.020, and 48.14.080.

Credits

[2007 c 218 § 66, eff. July 22, 2007; 1993 c 83 § 8; 1986 c 278 § 7; 1984 c 258 § 807; 1969 ex.s. c 29 § 1; 1967 ex.s. c 119 § 35A.11.020.]

[Notes of Decisions \(23\)](#)

West's RCWA 35A.11.020, WA ST 35A.11.020

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.

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West's Revised Code of Washington Annotated
Title 35a. Optional Municipal Code (Refs & Annos)
Chapter 35A.82. Taxation--Excises

West's RCWA 35A.82.020

35A.82.020. Licenses and permits--Excises for regulation

[Currentness](#)

A code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity: PROVIDED, That no license or permit to engage in any such activity or place shall be granted to any who shall not first comply with the general laws of the state.

No such license shall be granted to continue for longer than a period of one year from the date thereof and no license or excise shall be required where the same shall have been preempted by the state, nor where exempted by the state, including, but not limited to, the provisions of [RCW 36.71.090](#) and chapter 73.04 RCW relating to veterans.

Credits

[1967 ex.s. c 119 § 35A.82.020.]

[Notes of Decisions \(2\)](#)

West's RCWA 35A.82.020, WA ST 35A.82.020

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Revised Code of Washington Annotated
Title 36. Counties (Refs & Annos)
Chapter 36.65. Combined City and County Municipal Corporations

West's RCWA 36.65.030

36.65.030. Tax on net income prohibited

[Currentness](#)

A county, city, or city-county shall not levy a tax on net income.

Credits

[1984 c 91 § 3.]

West's RCWA 36.65.030, WA ST 36.65.030

The statutes are current with all effective legislation through the 2017 Third Special Session of the Washington legislature.

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 29th day of September, 2017, I caused to be served a true copy of the foregoing document upon:

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14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 DATED this 29th day of September, 2017.

19 /s/ Tricia O'Konek

20 Tricia O'Konek