Civil Division

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[Quoted text hidden]

Bagshaw, Sally <Sally.Bagshaw@seattle.gov> Tue, May 23, 2017 at 5:01 PM
To: "sally1.bagshaw@gmail.com" <sally1.bagshaw@gmail.com>

[Quoted text hidden]

Sally Bagshaw <sally1.bagshaw@gmail.com> Tue, May 23, 2017 at 5:02 PM
To: Brad Bagshaw Gmail <bhbagshaw@gmail.com>

Please see below. I'd love your next responses!

---------- Forwarded message ----------
From: **Bagshaw, Sally** <Sally.Bagshaw@seattle.gov>
Date: Tue, May 23, 2017 at 4:56 PM
Subject: FW: Attorney Client Privileged Communication
[Quoted text hidden]

Bradley Bagshaw <bhbagshaw@gmail.com> Tue, May 23, 2017 at 5:15 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

This strikes me as a thoughtful response. Happy to discuss further tonight.
[Quoted text hidden]
--
Bradley H. Bagshaw
1107 1st Ave. #2003
Seattle, WA 98101
bhbagshaw@gmail.com

Bradley Bagshaw <bhbagshaw@gmail.com> Wed, May 24, 2017 at 4:12 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

Since we didn't get a chance to talk about this last night, I'll give you my comments now.

1. Taxing Income from line 22 of form 1040: This solution may well not get by the statute any easier than using adjusted gross income. Many taxpayers report net income on line 22. For example, someone running a grocery store, or a small law office, or who is a writer, or even a flight instructor — anyone who is unincorporated and not in a partnership and has business or trade income — reports gross income net of all business expenses on line 22. (This income will first be reported on Schedule C, then the net income from Schedule C will be transferred to line 12, and then summed with with any other income the taxpayer earns on line 22). For taxpayers like this, this will be a tax on net income. If you tax line 22 income, the tax will need to be progressive because if it weren't every taxpayer, from the receptionist to the CEO, would pay the tax on all his or her income, so you will have the Constitutional challenge for sure — in the unlikely event it gets by RCW 36.65.030.

2. It is possible that a tax on unearned income could be challenged on the theory that capital gains income is the same class of "property" as wage income and must be taxed at the same rate. It doesn't look the same to me, and I doubt there is any precedent for this proposition, but I am not a property tax expert. This might be an issue to run by Spitzer.

4. All in all, it overstates the issue to say, as I more or less did earlier, that the one percent tax on unearned income will cruise through any court challenge, but, in my opinion, it has a much better chance of becoming law than a progressive income tax.

B

[Quoted text hidden]

Sally Bagshaw <sally1.bagshaw@gmail.com> Wed, May 24, 2017 at 4:54 PM
To: Bradley Bagshaw <bhbagshaw@gmail.com>

So....what do I do now? What do you recommend?

[Quoted text hidden]

Bradley Bagshaw <bhbagshaw@gmail.com> Wed, May 24, 2017 at 4:57 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

Let's discuss over a scotch.

[Quoted text hidden]

To: Sally Bagshaw
From: Bradley Bagshaw
Date: April 30, 2017
Re: City Authority to Tax Adjusted Gross Income

In 1984, the Washington legislature prohibited cities from taxing net income: "A county, city, or city-county shall not levy a tax on net income." RCW 36.65.030.

A tax on "adjusted gross income," as defined in the internal revenue code, would most likely be held to be a tax on net income within the meaning of this statute. "Adjusted Gross Income" is defined as gross income net of certain deductions. 26 U.S.C. § 62. The list of allowed deductions is lengthy and complex, as befits this complex law. See Appendix A. It includes items one would normally deduct to reach net income, like the expenses of carrying out a trade or business and certain expenses of employees. See Appendix A at (a)(1) and (a)(2). In any event, since adjusted gross income is income less certain deductions, it may accurately be called "net income," and if so characterized would not be liable to city imposed taxation.

If the City of Seattle imposes the tax on adjusted gross income being currently discussed, it would in all likelihood be held invalid under RCW 36.65.030 in any court challenge. If a court were to invalidate on this statutory basis, it would likely not reach the issue of whether an income tax is consistent with the Washington Constitution.

Capital gains - more likely to get

Appendix A

26 U.S.C. § 62

(a) General rule For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers The deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator—

(i)

by reason of the participation of the educator in professional development courses related to the curriculum in which the educator provides instruction or to the students for which the educator provides instruction, and

(ii)

in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education) , computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income) , and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

income tax

February 23, 2017

Councilmember Bagshaw,

Thank you for asking me for my comments on the proposed Seattle tax on unearned income. Here they are:

1. The tax as proposed is unconstitutional under *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). In *Culliton*, the Supreme Court held in a 5-4 decision that progressive income taxes are unconstitutional because they are taxes on property, and the Constitution requires that all taxes on property must be uniform. *See Art. VII, Sec. 1, Washington Constitution.* The current proposal is unconstitutional under this reading because it is not uniform, the rate is zero for taxpayers earning less that $250,000 and 2.5% on unearned income for taxpayers earning more than $250,000.

Unless voted on and approved by sixty percent of the voters, the tax is also unconstitutional under *Art. VII, Sec. 2* of the Constitution because legislatively enacted taxes on property are limited to one percent of the value of the property.

However, *Culliton* is out of the mainstream and its reasoning that income is property is highly suspect. Years ago, Hugh Spitzer analyzed this in an excellent law review article. *See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690311*. In my opinion, *Culliton* is indeed archaic and would most certainly be decided differently today. However, that does not mean *Culliton* will be reversed. Sound legal principles argue that a Constitutional interpretation long relied upon is best changed by a Constitutional amendment, not by the Court. This argument may well have extra force in our fine state where income taxation is such a long running hot topic, and where Supreme Court judges are, as we and they well know, elected statewide.

2. If the proposed tax were limited to one percent and made uniform, there would be no legitimate argument as to its legality. This revised tax would still be quite progressive — those who earn less that $250,000 annually generally have very little unearned income and would pay a very small portion of this tax. And if coupled with a reduction in the sales tax rate, as I suggest below, it would result in those at the bottom of the income scale paying significantly less tax than they do today. True, it would raise only $40 million, but that is a not insignificant sum. And it is a sure thing, which may well be better than a bet that the Supreme Court will reverse long-standing precedent and face voter rage east of the mountains.

3. The position paper makes two main arguments for passage of the tax. First, it states that we must bolster city revenue because the federal government may withdraw all federal funding, to the tune of $85 million, because Seattle will refrain from helping the federal government identify and deport those who are in the country unlawfully. This argument is deceptive. The United States Constitution prohibits the federal government from withholding federal funds from a municipality to force the municipality to do its bidding. *See Printz v. United States*, 521 U.S. 898 (1997). At most, it could withhold

funds related to the role the municipality refuses to accept, policing in this instance. It is my understanding that the real risk is about $14 million related to law enforcement. Making wild claims ($85 million!) that are unsupported by the facts is the tool of trade of the Trump administration. I hope we will do better.

Second, the paper makes the point that Washington's tax system is highly regressive and this would be one step towards addressing that. Good point. I agree.

4. As far as the position paper reads, this is a tax without a mission. "Let's raise $100 million because we can!" is a poor argument that plays right into the Republicans long-standing criticism of the "tax and spend Democrats" except it's worse here — the Democrats don't even have a spending plan, just a tax plan. Instead, how about attacking the problem that the tax is designed to address by using the money raised to reduce the highly regressive sales tax. When the new Sound Transit tax kicks in this coming April, our sales tax rate in Seattle will be 10.1%, with 2.7% going to the City of Seattle. I suggest using the $100 hundred million (or the $40 million if we go for the sure thing) to reduce or eliminate that 2.7%. It would make our tax system substantially more progressive and help retailers attract business to Seattle. Win — win.

Your devoted constituent,

B

February 23, 2017

Councilmember Bagshaw,

Thank you for asking me for my comments on the proposed Seattle tax on unearned income. Here they are:

1. The tax as proposed is unconstitutional under *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). In *Culliton*, the Supreme Court held in a 5-4 decision that progressive income taxes are unconstitutional because they are taxes on property, and the Constitution requires that all taxes on property must be uniform. *See Art. VII, Sec. 1, Washington Constitution.* The current proposal is unconstitutional under this reading because it is not uniform, the rate is zero for taxpayers earning less that $250,000 and 2.5% on unearned income for taxpayers earning more than $250,000.

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However, *Culliton* is out of the mainstream and its reasoning that income is property is highly suspect. Years ago, Hugh Spitzer analyzed this in an excellent law review article. *See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690311.* In my opinion, *Culliton* is indeed archaic and would most certainly be decided differently today. However, that does not mean *Culliton* will be reversed. Sound legal principles argue that a Constitutional interpretation long relied upon is best changed by a Constitutional amendment, not by the Court. This argument may well have extra force in our fine state where income taxation is such a long running hot topic, and where Supreme Court judges are, as we and they well know, elected statewide.

2. If the proposed tax were limited to one percent and made uniform, there would be no legitimate argument as to its legality. This revised tax would still be quite progressive — those who earn less that $250,000 annually generally have very little unearned income and would pay a very small portion of this tax. And if coupled with a reduction in the sales tax rate, as I suggest below, it would result in those at the bottom of the income scale paying significantly less tax than they do today. True, it would raise only $40 million, but that is a not insignificant sum. And it is a sure thing, which may well be better than a bet that the Supreme Court will reverse long-standing precedent and face voter rage east of the mountains.

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Your devoted constituent,

B

Gmail **Sally Bagshaw <sally1.bagshaw@gmail.com>**

Income Tax

1 message

Bradley Bagshaw <bhbagshaw@gmail.com> Mon, May 22, 2017 at 4:12 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

Here is the memo I promised you this morning.

Love B

--
Bradley H. Bagshaw
1107 1st Ave. #2003
Seattle, WA 98101
bhbagshaw@gmail.com

Income 5-22-2017.docx
119K

To: Sally Bagshaw
From: Bradley Bagshaw
Date: May 22, 2017
Re: City Authority to Tax Income

Seattle is considering a progressive tax on net income and you have asked me for my thoughts. The worthy goal of such a tax is to make our local tax burden less regressive. My analysis is set out below, with the caveat that it is somewhat off the cuff and should be verified by a practicing lawyer who takes a thorough look at the law.

Summary: The most discussed proposal to impose a 1.5% tax on adjusted gross income (as defined by the internal revenue code) in excess of $250,000 ($500,000 married filing jointly). In my opinion, this tax will not survive a court challenge for two reasons. First, cities are prohibited by statute from enacting any tax on net income. Second, the proposed tax would be unconstitutional under current Washington precedent holding that "income taxes" are "property taxes" which the Washington Constitution requires to be uniform, that is, not progressive. The precedent is from the 1930s and runs contrary to most modern thinking, and forcing the Supreme Court to reconsider this ruling is one reason advanced for pursuing this tax. However, given the statutory prohibition against cities enacting income taxes, it is unlikely that a court would even consider constitutionality and simply reject the tax on statutory grounds. The tax as currently proposed would accomplish nothing.

There is a different path that will make our tax system less regressive. A uniform tax on gross income is not prohibited by either statute or by the Constitution, and it is probably within the City's general taxing authority. If the tax were limited to unearned financial income — capital gains from stocks, stock dividends, and interest — the tax would be progressive because the wealthy earn almost all of this type of income. It would

be even more progressive if the tax receipts were used to reduce the highly regressive sales tax.

Statutory Authority. In 1984, the Washington legislature prohibited cities from taxing net income: "A county, city, or city-county shall not levy a tax on net income." RCW 36.65.030.

A tax on "adjusted gross income," as defined in the internal revenue code, would most likely be held to be a tax on net income within the meaning of this statute. "Adjusted Gross Income" is defined as gross income net of certain deductions. 26 U.S.C. § 62. The list of allowed deductions is lengthy, as befits this complex law. *Id*. It includes items one would normally deduct to reach any definition of net income, like the expenses of carrying out a trade or business and certain work-related expenses incurred by employees. See *Id.* at (a)(1) and (a)(2). In any event, since adjusted gross income is income less certain deductions, it may accurately be called "net income" regardless of the nature of the deductions allowed.

If a court were to invalidate the tax on statutory grounds, it would likely not reach the issue of whether the tax is consistent with the Washington Constitution. As a general matter, a court will refuse to decide constitutional issues unless doing so is necessary to reach a decision on the case before the court.

Constitutional Authority. The tax as proposed is unconstitutional under *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). In *Culliton*, the Supreme Court held in a 5-4 decision that progressive income taxes are unconstitutional because they are taxes on property, and the Constitution requires that all taxes on property be uniform. *See Art. VII, Sec. 1, Washington Constitution.* The current proposal is unconstitutional under this

reading because it is not uniform — the rate is zero for income less that $250,000 and 1.5% for income above $250,000.

If the tax rate is higher than 1%, as it is in the current proposal, the tax is also unconstitutional under *Art. VII, Sec. 2* of the Constitution, unless it is approved by a vote of 60% of the people. Legislatively enacted taxes on property are limited to 1% of the value of the property. *Id.*

However, *Culliton's* holding that "income" is a form of "property" is archaic. Years ago, Hugh Spitzer analyzed this issue in an excellent law review article, and concluded that *Culliton* would most likely be decided differently if the issue were raised today. *See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690311*. I agree. However, that does not mean *Culliton* will be reversed. A sound argument can be made that a Constitutional interpretation long relied upon is best changed by a Constitutional amendment, not by the Court. This argument will have extra force in our fine state where income taxation is politically poisonous outside Seattle, and where Supreme Court judges are, as we and they well know, elected statewide.

A Proposal That Would Probably Work. If the tax were levied on gross income, limited to 1%, and made uniform, there would be no legitimate argument as to its legality. Moreover, limiting the tax to unearned income (capital gains from stocks — but not home sales — stock dividends, and interest) would still be highly progressive — those who earn less that $250,000 annually generally have very little unearned income and would pay a very small portion of this tax. If the proceeds were used to reduce the sales tax rate (Seattle's share of our 10.1% sales tax is 2.7%), those at the bottom of the income scale would pay a substantially smaller share of our overall tax burden than they

do today. Some calculations suggest this sort of tax would raise $40 million. Transferring a tax burden of that magnitude from the poor and middle class to the wealthy would be a real step towards making Seattle's tax structure fairer.

In contrast, the progressive tax on net income currently proposed would do nothing to make our tax system more equitable because it would never become law. It would even fail to achieve its more limited goal of forcing the Supreme Court to reconsider the constitutionality of a progressive income tax in Washington.

Gmail **Sally Bagshaw <sally1.bagshaw@gmail.com>**

A Short Memo on Tax authority

1 message

Bradley Bagshaw <bhbagshaw@gmail.com> Sun, Apr 30, 2017 at 5:06 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

Here is the memo on the statute limiting the city's income taxing authority.

--
Bradley H. Bagshaw
1107 1st Ave. #2003
Seattle, WA 98101
bhbagshaw@gmail.com

RCW Net Income.docx
105K

To: Sally Bagshaw
From: Bradley Bagshaw
Date: April 30, 2017
Re: City Authority to Tax Adjusted Gross Income

In 1984, the Washington legislature prohibited cities from taxing net income: "A county, city, or city-county shall not levy a tax on net income." RCW 36.65.030.

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If the City of Seattle imposes the tax on adjusted gross income being currently discussed, it would in all likelihood be held invalid under RCW 36.65.030 in any court challenge. If a court were to invalidate on this statutory basis, it would likely not reach the issue of whether an income tax is consistent with the Washington Constitution.

Appendix A

26 U.S.C. § 62

(a) General rule For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers The deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator—

(i)

by reason of the participation of the educator in professional development courses related to the curriculum in which the educator provides instruction or to the students for which the educator provides instruction, and

(ii)

in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education) , computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income) , and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c) (1), the deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

[(8) Repealed. Pub. L. 104–188, title I, § 1401(b) (4), Aug. 20, 1996**, 110 Stat. 1788]**

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292) .

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

[(14) Repealed. Pub. L. 113–295, div. A, title II, § 221(a) (34) (C), Dec. 19, 2014**, 128 Stat. 4042]**

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

(18) Higher education expenses

The deduction allowed by section 222.

(19) Health savings accounts

The deduction allowed by section 223.

(20) Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code [1] or a claim made under section 1862(b) (3) (A) of the Social Security Act (42 U.S.C. 1395y(b) (3) (A)) . The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) Attorneys fees relating to awards to whistleblowers

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers) . The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general For purposes of subsection (a) (2) (B), the term "qualified performing artist" means, with respect to any taxable year, any individual if—

(A)

such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B)

the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C)

the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1) In the case of a joint return—

(i)

paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii)

paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) Joint return

For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if—

(1)

such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2)

such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules

(1) Eligible educator

(A) In general

For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School

The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12 , as determined under State law.

(2) Coordination with exclusions

A deduction shall be allowed under subsection (a) (2) (D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c) (1), or 530(d) (2) for the taxable year.

(3) Inflation adjustment In the case of any taxable year beginning after 2015, the $250 amount in subsection (a) (2) (D) shall be increased by an amount equal to—

(A)

such dollar amount, multiplied by

(B)

the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2014" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $50.

(e) Unlawful discrimination defined For purposes of subsection (a)(20), the term "unlawful discrimination" means an act that is unlawful under any of the following:

(1)

Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202) .[2]

(2)

Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3)

The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4)

The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5)

Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

(6)

Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7)

Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8)

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9)

The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10)

The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11)

Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615) .

(12)

Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13)

Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14)

Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15)

Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

(16)

Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17)

Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i)

providing for the enforcement of civil rights, or

(ii)

regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

Gmail **Sally Bagshaw <sally1.bagshaw@gmail.com>**

Income Tax brief

3 messages

Sally Bagshaw <sally1.bagshaw@gmail.com> Thu, Apr 20, 2017 at 3:58 PM
To: Brad Bagshaw Gmail <bhbagshaw@gmail.com>

Would you please send it to me again? I think I brought a hard copy in the office but don't see an email from you.

xoxo -- S.

Bradley Bagshaw <bhbagshaw@gmail.com> Thu, Apr 20, 2017 at 4:03 PM
To: Sally Bagshaw <sally1.bagshaw@gmail.com>

Here you go.

Love B

On Thu, Apr 20, 2017 at 3:58 PM, Sally Bagshaw <sally1.bagshaw@gmail.com> wrote:

> Would you please send it to me again? I think I brought a hard copy in the office but don't see an email from you.
>
> xoxo -- S.

--
Bradley H. Bagshaw
1107 1st Ave. #2003
Seattle, WA 98101
bhbagshaw@gmail.com

Seattle proposed income tax.docx
145K

Sally Bagshaw <sally1.bagshaw@gmail.com> Thu, Apr 20, 2017 at 4:58 PM
To: Bradley Bagshaw <bhbagshaw@gmail.com>

xoxo -- Thank you. I used this to help me draft a response to the Stranger.
[Quoted text hidden]

February 23, 2017

Councilmember Bagshaw,

Thank you for asking me for my comments on the proposed Seattle tax on unearned income. Here they are:

1. The tax as proposed is unconstitutional under *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). In *Culliton*, the Supreme Court held in a 5-4 decision that progressive income taxes are unconstitutional because they are taxes on property, and the Constitution requires that all taxes on property must be uniform. *See Art. VII, Sec. 1, Washington Constitution.* The current proposal is unconstitutional under this reading because it is not uniform, the rate is zero for taxpayers earning less that $250,000 and 2.5% on unearned income for taxpayers earning more than $250,000.

Unless voted on and approved by sixty percent of the voters, the tax is also unconstitutional under *Art. VII, Sec. 2* of the Constitution because legislatively enacted taxes on property are limited to one percent of the value of the property.

However, *Culliton* is out of the mainstream and its reasoning that income is property is highly suspect. Years ago, Hugh Spitzer analyzed this in an excellent law review article. *See* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690311. In my opinion, *Culliton* is indeed archaic and would most certainly be decided differently today. However, that does not mean *Culliton* will be reversed. Sound legal principles argue that a Constitutional interpretation long relied upon is best changed by a Constitutional amendment, not by the Court. This argument may well have extra force in our fine state where income taxation is such a long running hot topic, and where Supreme Court judges are, as we and they well know, elected statewide.

2. If the proposed tax were limited to one percent and made uniform, there would be no legitimate argument as to its legality. This revised tax would still be quite progressive — those who earn less that $250,000 annually generally have very little unearned income and would pay a very small portion of this tax. And if coupled with a reduction in the sales tax rate, as I suggest below, it would result in those at the bottom of the income scale paying significantly less tax than they do today. True, it would raise only $40 million, but that is a not insignificant sum. And it is a sure thing, which may well be better than a bet that the Supreme Court will reverse long-standing precedent and face voter rage east of the mountains.

3. The position paper makes two main arguments for passage of the tax. First, it states that we must bolster city revenue because the federal government may withdraw all federal funding, to the tune of $85 million, because Seattle will refrain from helping the federal government identify and deport those who are in the country unlawfully. This argument is deceptive. The United States Constitution prohibits the federal government from withholding federal funds from a municipality to force the municipality to do its bidding. *See Printz v. United States*, 521 U.S. 898 (1997). At most, it could withhold

funds related to the role the municipality refuses to accept, policing in this instance. It is my understanding that the real risk is about $14 million related to law enforcement. Making wild claims ($85 million!) that are unsupported by the facts is the tool of trade of the Trump administration. I hope we will do better.

Second, the paper makes the point that Washington's tax system is highly regressive and this would be one step towards addressing that. Good point. I agree.

4. As far as the position paper reads, this is a tax without a mission. "Let's raise $100 million because we can!" is a poor argument that plays right into the Republicans long-standing criticism of the "tax and spend Democrats" except it's worse here — the Democrats don't even have a spending plan, just a tax plan. Instead, how about attacking the problem that the tax is designed to address by using the money raised to reduce the highly regressive sales tax. When the new Sound Transit tax kicks in this coming April, our sales tax rate in Seattle will be 10.1%, with 2.7% going to the City of Seattle. I suggest using the $100 hundred million (or the $40 million if we go for the sure thing) to reduce or eliminate that 2.7%. It would make our tax system substantially more progressive and help retailers attract business to Seattle. Win — win.

Your devoted constituent,

B