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

DENA LEVINE, AN INDIVIDUAL;
CHRISTOPHER RUFO, AN INDIVIDUAL;
MARTIN TOBIAS, AN INDIVIDUAL;
NICHOLAS KERR, AN INDIVIDUAL;
CHRIS McKENZIE, AN INDIVIDUAL;

PLAINTIFFS,

v.

CITY OF SEATTLE, A MUNICIPAL
CORPORATION;

DEFENDANT.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs allege:

I. NATURE OF ACTION

1. Plaintiffs seek a declaratory judgment that City of Seattle Ordinance 125339, “an ordinance imposing an income tax on high-income residents,” is unlawful and invalid because the City lacks the authority and power under Washington law and under its charter to levy this Seattle Income Tax. Among other reasons, the Legislature has never granted Washington cities and municipalities the authority to tax personal income, and Washington law expressly prohibits any city from imposing any tax on net income. As a result, Plaintiff seeks preliminary and permanent injunctions against any steps to impose the Seattle Income Tax.

2. This lawsuit is intended to invalidate an unlawful income tax promoted to Seattle citizens under the false pretense that it will tax only the “wealthiest residents” to satisfy a populist

1 proposal to “tax the rich.” However, the illegal tax is already targeted at, and certain to injure,
2 numerous current and future residents who are nothing more than hard-working middle class
3 citizens, as the following hypothetical examples illustrate:

4 a. Julia could be a recent widower living on social security and her deceased
5 husband’s modest pension. She and her husband bought their house in the
6 1960’s, and it will sell in 2018 for a gain of more than \$850,000, enough to
7 support Julia for her expected remaining life in a senior living community.
8 Julia thinks taxing the rich is fair, but is surprised when her real estate
9 agent informs her that, in addition to the excise tax of 1.78% on the sale
10 price, she will pay an additional 2.25% in income tax on the amount by
11 which her sales price, social security and pension for the year exceed
12 \$250,000. In other words, Julia is “rich.” She had no idea that her nest
13 egg, for which she already paid property taxes every year over 50 years,
14 was targeted by the City’s illegal Income Tax.

15 b. Charles and Lynn could be first-generation residents of Seattle. Through
16 hard work and ambition, they scrimped and eventually saved enough
17 money to start their own small business. After more than 20 years of
18 personal sacrifice, taking just enough in salaries to live on, they are ready
19 to sell their business to fund their retirement, but with a gain of more than
20 \$500,000, and the City of Seattle will take a 2.25% cut. Regrettably,
21 Charles and Lynn must sell their home in the International District and
22 move to avoid Seattle’s illegal tax on the sale of their business.

23 c. Devin could have an advanced degree from one of the world’s finest
24 institutes of technology, and work for anywhere he chooses. With
25 aspirations to found his own technology company eventually, Seattle
26 would have been at the top of Devin’s list, until the City Income Tax. The
27 Seattle area has nurtured a many of the world’s leading companies, in part
28 because Washington has no income tax, but Devin thinks the City has

1 turned inhospitable to new entrepreneurs and is focusing his search on
2 emerging technology centers in income tax-free cities like Austin, Texas.

3 d. Levon and Madison live on the Eastside but work in Seattle, commuting
4 across I-90 in separate cars. Concerned about traffic and climate change,
5 they began searching for a house in the City with access to light rail. After
6 the City imposed its 2.25% income tax they canceled the search and
7 resigned themselves to their commute. Levon and Madison will not be
8 doing their part to alleviate traffic congestion or climate change.

9 e. Anna, a recently divorced parent, is selling her house in 2017 to move to
10 the Eastside to avoid the new City Income Tax. Anna's not alone. Some
11 of her neighbors who have lived in their neighborhood for several decades
12 are accelerating plans to sell before the City tax becomes effective in 2018.
13 The neighborhood will be different after losing some of its longtime
14 residents.

15 3. Contrary to its billing, the Seattle Income Tax is not a tax solely on “the wealthiest
16 citizens,” but reaches well into Seattle’s middle class in unexpected ways, upending longstanding
17 expectations of families, homeowners, property owners and business owners. Seattle has enjoyed
18 remarkable revenue growth—more than \$1.4 billion in just the last four years—so the Tax is not
19 needed. And in many cases—particularly with traffic congestion, affordable housing, and
20 climate change—the Income Tax will directly undermine the very objectives its proponents claim
21 it will solve. In short, as this lawsuit will prove, the Seattle Income Tax does not just tax “the
22 wealthiest citizens,” it is not necessary, and it is illegal.

23 II. PARTIES

24 4. Plaintiff Dena Levine moved to Seattle in 1989 to be part of a great community
25 that values entrepreneurial spirit. A Seattle resident, homeowner, small business owner and
26 member of the Greater Seattle Business Alliance, Ms. Levine is the chief executive officer of an
27 independent insurance brokerage firm. She reports the net income from her S Corp as personal
28 income on the federal income tax return she files jointly with her spouse. Her small business

1 with four employees already pays business license fees and business and occupation taxes to the
2 City, and Ms. Levine is concerned about double taxation on her business income in the future.
3 Ms. Levine has planned to use the proceeds from the sale of her business to help fund her
4 retirement, but a 2.25% tax on net proceeds over \$500,000 will force her to consider leaving
5 Seattle when she sells. Moreover, Ms. Levine purchased her current home in 1993 for \$116,000,
6 and having paid City property taxes every year, is opposed to an additional City income tax her
7 middle income family would have to pay when they eventually sell. Although Ms. Levine
8 considers herself solidly middle class, she is generally concerned that Seattle's Income Tax will
9 push some wealthy citizens out of the City and deter others from moving into the City, which
10 means they will not be spending and contributing locally as they have, injuring the local
11 economy. Ms. Levine has an interest in fighting bad tax policy and preventing illegal tax
12 liabilities. Ms. Levine pays sales and property taxes in Seattle.

13 5. Plaintiff Christopher Rufo is a Seattle resident, homeowner, documentary
14 filmmaker and executive director of the Documentary Foundation. Mr. Rufo is producing a film
15 for the Public Broadcast System about the struggles of families in three "forgotten American
16 cities." A former California resident, Mr. Rufo moved to Seattle with his family and business to
17 take advantage of the dynamic economy, lower taxes, and a cheaper cost of living. Since moving
18 to Seattle he has saved hundreds of dollars a month in taxes, started building savings for the
19 future, and was able to purchase his first home. As the executive director of the Documentary
20 Foundation, he hires many freelancers in the Seattle area for his films. Mr. Rufo opposes the
21 Seattle Income Tax because it undermines Seattle's simple and successful formula of economic
22 growth. Mr. Rufo pays sales and real property taxes in the City.

23 6. Plaintiff Martin Tobias is a Seattle resident, entrepreneur, business owner and
24 venture capital investor who has invested in approximately 75 companies. Mr. Tobias has been
25 the chief executive officer of three high-growth companies that hired over 2,500 employees and
26 raised over \$500 million in the Seattle area, contributing directly and indirectly to Seattle's
27 thriving economy. Mr. Tobias has observed the significant economic benefits of having no
28 income tax. He believes the Seattle Income Tax will cause current residents of Seattle to become

1 resident in jurisdictions without an income tax, harming the City. As an investor and CEO,
2 Mr. Tobias has observed that the Seattle Income Tax has already negatively impacted investment
3 and business expansion. Mr. Tobias believes that the Seattle Income Tax will decrease the pool
4 of highly talented people willing to live and work in Seattle and contribute to local communities.
5 He wishes to preserve the benefits of Seattle's unique business and economic climate for current
6 and future residents. Mr. Tobias pays sales and property taxes in Seattle.

7 7. Plaintiff Nicholas Kerr is a Seattle resident and homeowner who manages a team
8 of contractors providing marketing services to a Washington-based technology company. After
9 receiving his undergraduate education in New Zealand, Mr. Kerr obtained his MBA in the United
10 States. He was recruited to Seattle in 2005 by a Washington-based telecommunications
11 company. Mr. Kerr opposes the City Income Tax because it will make it harder for him and
12 others to hire highly talented people. Mr. Kerr is concerned that the Seattle Income Tax will
13 make Seattle less affordable for low and middle income workers, and that an additional tax on
14 gains from sales of real estate will make Seattle housing even less affordable. He and his wife
15 file jointly and their income combined with the capital gains on their house will subject them to
16 the Income Tax when they decide to sell. Nicholas pays property taxes on his family residence
17 and sales tax on purchases within the City.

18 8. Chris McKenzie is a Seattle resident, homeowner and software engineer.
19 Mr. McKenzie moved to Seattle six years ago to be in a city attractive to innovative technology
20 companies and world-class talent. Mr. McKenzie opposes the Seattle Income Tax because it
21 hurts Seattle's ability to compete for the best companies and talent, and because he is concerned
22 that the City of Seattle will tax the personal income of middle income residents. Mr. McKenzie
23 pays sales and property taxes in Seattle.

24 9. Each of the Plaintiffs has an interest in invalidating the Seattle Income Tax and
25 preserving substantial reliance interests in Washington's long-standing prohibition on graduated
26 personal income taxes.

1 10. Defendant City of Seattle is a municipal corporation chartered under authority
2 conferred by the Constitution of the state of Washington, with powers to levy taxes as granted
3 and limited by the Legislature.

4 III. STANDING

5 11. Plaintiffs have standing to challenge the Seattle Income Tax's legality because
6 each plaintiff is a taxpayer who resides in Seattle, Washington.

7 12. On July 21, 2017, certain Plaintiffs made a demand upon Attorney General Bob
8 Ferguson to investigate the Tax's illegality, and to file suit on behalf of all Seattle taxpayers
9 specifically and Washington taxpayers generally to enjoin the imposition of the Tax and to obtain
10 a judgment declaring it to be unlawful under state statute and the Washington Constitution. A
11 copy of this demand is attached as Appendix A.

12 13. On August 3, 2017, Attorney General Ferguson declined to investigate the Tax
13 and challenge its legality in court. A copy of Attorney General Ferguson's declination letter is
14 attached as Appendix B.

15 14. The Court may also hear this action, because it involves a controversy (1) of
16 substantial public importance concerning the authority of cities to levy taxes on the personal
17 income of individuals within their jurisdiction, (2) that immediately affects significant segments
18 of the population, including income earners and small business owners who live in the most
19 populous city in Washington, and (3) that has a direct bearing on commerce, finance, labor,
20 industry, or agriculture, because a personal income tax directly or indirectly affects each of these
21 areas of the economy.

22 IV. JURISDICTION AND VENUE

23 15. This Court has jurisdiction over this matter pursuant to RCW 2.08.010 (original
24 jurisdiction over, among other things, suits in equity); Ch. 7.24 (authority to render declaratory
25 judgments); and Ch. 7.40 (superior court authority to grant injunctions).

26 16. Venue is proper in King County Superior Court pursuant to RCW 4.12.025,
27 because the plaintiffs and the defendant reside in King County.

1 V. ALLEGATIONS OF FACTS

2 *Washington Voters Have Overwhelmingly Rejected an Income Tax Nine Times*

3 17. In 1932, the voters of Washington passed an initiative instituting the payment of a
4 graduated income tax for the purpose of funding public schools, and reducing or eliminating
5 annual taxes on general property which were believed to impose disproportionate tax burdens on
6 farmers to the benefit of citizens whose wealth was derived from non-agricultural sources like
7 investments.

8 18. That initiative was ruled unconstitutional in 1933, and similar legislative efforts
9 were ruled unconstitutional in 1935 and 1936, as the Washington Supreme Court reiterated with
10 no uncertainty that any graduated tax on personal or corporate net income taxes violates the
11 “uniformity” clause of the Washington Constitution. Article VII, Section 1 (Amendment 14)
12 requires that “all taxes shall be uniform upon the same class or property.” The Constitution goes
13 on to define “property” in the broadest possible terms “to mean and include . . . everything,
14 whether tangible or intangible, subject to ownership.” By reason of this definition, the
15 Washington Supreme Court has on every occasion declared both individual and corporate income
16 to constitute a class of property subject to this constitutional requirement of uniformity. *See,*
17 *Power Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951); *Jensen v. Henneford*, 185 Wash. 209,
18 53 P.2d 607 (1936); and *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933). In consequence,
19 the court in each of these cases struck down as unconstitutional the laws seeking to impose
20 graduated (“progressive”) income tax laws.

21 19. Since then, Washington voters have been asked at least nine times to approve the
22 imposition of a statewide income tax, and each time, the voters have resoundingly voted “no,”
23 including most recently in 2010 when 64% of voters rejected I-1098, a measure to levy a tax on
24 “adjusted gross incomes” above \$200,000 for individuals and \$400,000 for joint filers. The
25 citizens of Washington have consistently recognized the substantial economic benefits of living
26 in a state that does not tax individual income, and have without fail voted against each and every
27 attempt to change this fundamental feature of Washington’s tax structure.

1 ***Tax Advocates Seek to Use Cities to End-Run Popular Opposition***

2 20. Faced with unwavering opposition at the voting polls, a small group of income tax
3 advocates recently shifted to a strategy of using local politics to circumvent the will of
4 Washington voters that their State not levy a graduated income tax. In 2016, they succeeded in
5 placing a proposal to tax household incomes over \$200,000 on the ballot in the City of Olympia,
6 with the goal of creating a test case to see if the state Supreme Court will overturn more than 80
7 years of case law banning graduated income taxes in Washington. Jason Mercier, *History of*
8 *Income Tax Votes in Washington*, Washington Policy Center (Oct. 17, 2016). The voters of
9 Olympia rejected that income tax measure. Andy Hobbs, *Tax-friendly Olympia votes defy*
10 *expectations by rejecting initiative*, The Olympian (Dec. 20, 2016).

11 21. Having been defeated in Olympia, advocates for a statewide income tax concluded
12 they would “need to pass an income tax somewhere” as a basis to have the Supreme Court
13 reconsider its precedent that such taxes violate the state constitution, “[a]nd that somewhere,”
14 according to advocates, was Seattle. Goldy, *The Road to a State Income Tax Runs Through*
15 *Seattle*, the Stranger (Nov. 5, 2013). Specifically, “progressive” Seattle, in income tax advocates’
16 minds, would again need to “drag the rest of the state with it. . . .” *Id.* The Seattle City Council
17 willingly adopted this political strategy as City policy, resolving to pursue a city income tax on
18 Seattle’s so-called “wealthiest citizens” so that “the City of Seattle can pioneer a legal pathway
19 and build political momentum to enable the State of Washington and other local municipalities to
20 put in place progressive tax systems [i.e., income taxes].”). City of Seattle Resolution No. 31747.
21 In other words, without seeking authority from the Legislature to levy a graduated tax on personal
22 income, or an amendment to the City Charter to ask the citizens of Seattle to grant it the power to
23 tax personal income, the City Council resolved to create a test case to change tax policy
24 throughout the State of Washington.

25 22. Income tax advocates found their justification for an income tax following the
26 Trump inauguration in January 2017. Activists calling themselves “Trump-Proof Seattle” took
27 full advantage of the strong local sentiment against President Trump. They proposed to
28 safeguard Seattle against a possible future decrease in federal funds (that has never materialized)

1 by enacting a 2.5% tax on unearned income (i.e., income from capital gains, interest, and
2 dividends) for households with adjusted gross income exceeding \$250,000. *See* Daniel Beekman,
3 “*Trump Proof*” *Seattle with income tax*, Seattle Times (Feb. 28, 2017). The political movement
4 to “Trump-Proof” Seattle and to “Tax the Rich” then quickly took hold among Seattle’s elected
5 politicians.

6 23. In April 2017, Mayor Ed Murray announced that he would propose a city income
7 tax on the wealthy. Shortly thereafter, on May 1 the City Council passed a resolution of intent
8 “to adopt a progressive income tax targeting high-income households.” Seattle City Res. 31747,
9 at 1 (May 1, 2017).

10 24. The City Budget Office projected that the Income Tax will raise \$125 million
11 annually. CBO Fiscal Note. The City’s projected 2017 annual budget already stands at \$5.4
12 billion, an increase of more than \$1.4 billion just in the last four years, so the projected tax
13 revenue represents an increase of less than 3% in annual revenues. Nevertheless, reflecting the
14 political nature of their action, the City Council touted in its summary of the ordinance that the
15 relatively small increase in its annual revenues of \$5.4 billion from “an income tax on high-
16 income residents” would “provid[e] solutions” for a panoply of politically popular issues,
17 including “lowering the property tax burden and the impact of other regressive taxes, replacing
18 federal funding potentially lost through federal budget cuts, providing public services, including
19 housing, education, and transit, and creating green jobs and meeting carbon reduction goals.”

20 *The City Enacts a Graduated Income Tax*

21 25. The City accomplished its goal of “imposing an income tax on high-income
22 residents” a little more than two months after the first “Tax the Rich” rallies were organized by
23 the Trump-Proof Seattle coalition following the inauguration. Mindful of the uniform history of
24 defeats over the last 80 years, including the statewide defeat in 2010 and the 2016 defeat in
25 Olympia, the City Council did not take the risk of putting the income tax to a popular referendum
26 before Seattle voters, or seeking a Charter Amendment to obtain the power to tax income from its
27 citizens. On July 10, 2017, the City Council passed City of Seattle CB 119002 to create and
28 direct the implementation of a city-wide income tax.

1 26. Immediately before the vote, City Council member Kshama Sawant convened a
2 rally of supporters outside City Hall. Acknowledging the inevitability of legal challenges in the
3 courts to the income tax levy, she said more public pressure may be needed, and asked her
4 supporters, “If we need to pack the courts, will you be there with me?” Beekman, *City Income*
5 *Tax on Wealthy*, Seattle Times A1 (July 11, 2017).

6 27. Mayor Ed Murray signed City of Seattle Ordinance 125339 into law on July 14,
7 2017.

8 ***Key Provisions of Seattle Income Tax, Ordinance 125339***

9 28. At the Seattle Income Tax’s core, it imposes a graduated tax on personal income at
10 non-uniform rates. Ordinance 125339 taxes the “total income” of every “resident taxpayer” in
11 excess of \$250,000 at 2.25%. SMC 5.65.030. The Ordinance taxes the “total income” in excess
12 of \$500,000 at 2.25% if a resident taxpayer’s federal filing status for a tax year is “married filing
13 jointly.” *Id.* Any resident with a “total income” amount at or below the Ordinance’s income
14 thresholds is taxed at 0%. *Id.* These thresholds are to adjust annually for inflation based on
15 certain measures of the Consumer Price Index. *Id.*

16 29. “Total income” is defined as income before any adjustments, deductions, or
17 credits on a resident taxpayer’s United States individual income tax return for the tax year, listed
18 as “total income” on line 22 of Internal Revenue Service Form 1040, “total income” on line 15 of
19 Internal Revenue Service Form 1040A, “total income” on line 9 of Internal Revenue Service
20 Form 1041, or the equivalent on any form issued by the Internal Revenue Service that is not
21 reported on Schedule K-1 for a beneficiary.

22 30. Seattle’s Income Tax applies to all persons who reside in Seattle for at least half of
23 the year. SMC 5.65.020. The total tax due is the resident(s)’s total income multiplied by the
24 applicable tax rate, less certain credits for any income tax paid to another state or local
25 government. SMC 5.65.020, 5.65.030, 5.65.060.

26 31. Seattle residents subject to the 2.25% tax rate must file a tax return with the City
27 on or before April 15 each year. SMC 5.65.070. Failure to file a tax return, or filing a tax return
28 with incomplete or incorrect information, is grounds for a penalty of at least \$500 and up to

1 \$1,250. SMC 5.65.130. Seattle may determine the tax amount due for any resident who fails to
2 file a return and notify the resident of the tax amount, along with penalty and interest, which is
3 then immediately due and payable. SMC 5.65.070.

4 32. An intentional deficiency is subject to a penalty of 1% per month, plus up to 10%
5 of the deficiency, where the deficiency was without intent to defraud, or 100% of the deficiency,
6 if the deficiency was fraudulent. SMC 5.65.130.

7 33. Citizens who violate provisions of the Ordinance may be subject to criminal
8 penalties. SMC 5.65.250. Willful violations constitute gross misdemeanors, SMC 5.65.250,
9 which are punishable by a fine not to exceed \$5,000, or by imprisonment of less than a year, or
10 both, SMC 12A.02.070.

11 ***The Current Favorable Tax Environment Promotes Opportunity for All in Seattle***

12 34. As the Ordinance states, “Seattle is a growing and prosperous city that can offer
13 great schools, good jobs, and healthy communities for all.” Ordinance 125339, at 1. Seattle’s
14 unique combination of dynamic companies that are among the handful of global leaders, a vibrant
15 entrepreneurial environment, unparalleled access to a stunning natural environment, world-class
16 educational and health institutions, and quality of life have made it the fastest growing city in the
17 United States. As the Seattle Times remarked in May 2017, “For the first time, Seattle is adding
18 more people on average each year than during the post-Gold-Rush boom years. We’ve never
19 grown this fast, and we’ve never been this populous.” Gene Balk, *Seattle once again nation’s*
20 *fastest-growing big city; population exceeds 700,000*, Seattle Times (May 25, 2017).

21 35. The robust economic environment has created opportunities for all citizens in
22 Seattle. The Ordinance recognizes that, “Seattle’s robust economic growth has created
23 significant opportunity and wealth.” It is no accident that the founders of a disproportionate share
24 of the world’s greatest companies—Boeing, Nordstrom, Microsoft, Costco, Starbucks, Amazon,
25 just to name several of the dozens that are headquartered in the Puget Sound region—have
26 located to and found the talented employees to flourish in a region that, until now, has been free
27 of state and local taxes on personal income. The presence of so many thriving industries and
28 businesses in this region has, undeniably, been the most important factor in the “robust economic

1 growth [that] has created significant opportunity and wealth.” These businesses and their well-
2 paid employees have made immense direct financial contributions to state and local government,
3 through property taxes, Business and Occupation taxes, business licenses and fees, sales taxes,
4 and numerous other fees and taxes by which they fund the operations of government.

5 36. The Washington State Department of Commerce has touted the fact that
6 Washington has no income taxes as a significant competitive advantage in its promotional
7 materials to attract businesses and citizens to locate in Washington.
8 <http://choosewashingtonstate.com/selectusa/> (“Washington State does not have a personal or
9 corporate income tax.”); [http://choosewashingtonstate.com/i-need-help-with/foreign-domestic-
10 investment/taxes/](http://choosewashingtonstate.com/i-need-help-with/foreign-domestic-investment/taxes/) (“Washington State offers business many tax advantages, including no personal
11 or corporate income tax”); [http://choosewashingtonstate.com/why-washington/our-
12 strengths/pro-business/](http://choosewashingtonstate.com/why-washington/our-strengths/pro-business/) (“We offer businesses some competitive advantages found in few other
13 states. This includes no personal or corporate income tax.”). Businesses and institutions in
14 Seattle recruit talent from other parts of the country and the world, and they have been highly
15 successful in attracting the nation’s finest talent as they flee states with income taxes like New
16 York, Oregon, California and Massachusetts. The Income Tax would undermine this significant
17 local advantage, and erode the exceptional economic benefits it has helped realize. In other
18 words, in direct refutation of the false claim that Washington’s current income tax policies create
19 inequality and benefit only the wealthy, these statistics demonstrate the opposite—that the
20 absence of an income tax in Seattle and Washington has led to broadly shared financial benefits
21 for the entire community of citizens.

22 37. These thriving companies have continued to grow and prosper in large part
23 because these same attributes have made this region highly attractive to the most skilled human
24 talent in the world, coming from many different nations, states and cities. Here again, Seattle has
25 enjoyed a significant competitive advantage over other regions because it is free of state and local
26 income taxes. The absence of personal income taxes is often cited as a factor by highly skilled
27 individuals to move to Seattle from high-tax jurisdictions. In addition to major businesses
28

1 located within the City, a large percentage of Seattle residents enjoy the quality of life in a vibrant
2 urban setting while commuting to their jobs outside the City.

3 38. Employment in Seattle has been soaring. Over the last year, the area's
4 unemployment rate dropped 1.4 percentage points, from 5.3% in February 2016 to 3.9% in
5 February 2017. Seattle has been creating job opportunities at twice the national average.

6 39. The City's robust economy has enabled employees in Seattle to enjoy significant
7 wage gains as well. Workers in a range of fields make more per hour than their national
8 counterparts, from computer programmers and human resources managers to cashiers and fast
9 food cooks. As of January 2017, according to the Bureau of Labor Statistics, Seattle's
10 employment cost index, a measure of the cost to employers of total wages and benefits, was also
11 increasing at double the national rate, approximately 4% annually compared to approximately 2%
12 nationally.

13 40. Seattle's vibrant economy has buoyed an exceptionally high standard of living
14 across the board and unusually strong growth in per capita household income. As wages have
15 increased, Seattle's median household income—one of the most commonly used indicators of
16 general household wealth—has outpaced gains across the nation. According to the most recent
17 data from the U.S. Census, Seattle's median household income increased by nearly \$10,000 from
18 2014 to 2015, when it reached more than \$80,000 per year. This was the largest increase of the
19 50 most populous cities in the country. The second largest increase in 2015, in San Francisco,
20 lagged behind Seattle by more than \$2,000 per household. Over the ten years from 2006 to 2015,
21 a period renowned nationally for wage stagnation, the Washington Bureau of Economic Analysis
22 reported that per capita personal income in the Seattle metropolitan division had increase from
23 \$52,000 to more than \$65,800—an increase of more than 25%.

24 41. Seattle's high incomes are not concentrated in a tiny minority of households—
25 more than one in five Seattle households enjoyed income greater than \$150,000. The 2016
26 census also showed that median income has risen for whites, Asians, blacks and multiracial
27 people, with African Americans showing particularly strong gains in median income. The gender
28 pay gap has also decreased. Gene Balk, *\$80,000 median: Income gain in Seattle far outpaces*

1 *other cities*, Seattle Times (Sept. 15, 2016). Seattle’s unique economy is distributing financial
2 benefits across its diverse population.

3 42. Rather than ease the high cost of housing in Seattle, the 2.25% tax will have the
4 directly opposite effect—buyers will pass a portion of the cost of the tax to prospective
5 purchasers in the form of a higher purchase price. Landlords will increase rents because the tax
6 directly impacts their costs of acquiring and selling rental housing and apartments, reducing their
7 profits.

8 43. And most destructive, a percentage of the talented individuals who would have
9 moved to Seattle to contribute to local employers and the local economy will excuse themselves
10 from exposure to the annual 2.25% tax on annual incomes above the \$250,000/\$500,000
11 thresholds.

12 44. Particularly for many who contemplate selling a house they have owned for many
13 years, a family business, or an ownership stake in a business that would result in a significant
14 one-time gain, basic financial common sense will push many to move to a residence outside the
15 City before selling their home, business or ownership stake.

16 ***With Economic Prosperity, the City of Seattle Has Enjoyed Record Increases in Tax and***
17 ***General Revenues***

18 45. As its businesses have flourished and its citizens have prospered, the City of
19 Seattle’s revenues have ballooned. Just in the last four years, the City’s total revenues have
20 grown more than 33%, from approximately \$4.1 billion in 2013 to a projected \$5.4 billion in
21 2017, an increase of more than \$1.3 billion. The City’s General Fund revenues have nearly
22 matched this substantial growth, growing from \$947 million in 2013 to a projected \$1.19 billion
23 in 2017 adopted budget, a nearly 25% increase in General Fund revenues.

24 46. Seattle has benefitted directly and indirectly from its robust technology and
25 business communities, fueled by access to the world’s best talent. Seattle has grown and the
26 incomes of Seattle residents have increase at rates much faster than other major cities. With more
27 disposable income to spend, the City of Seattle benefits from higher sales tax revenues on goods
28 and services.

1 47. Of course, the increased sales tax revenues reflect the economic multiplier that
2 comes from spending of numerous high wage earners, and the increased indirect opportunities for
3 other residents to create and grow the businesses that provide goods and services, from waiters in
4 restaurants to carpenters in home remodels to ironworkers in new high rises, and the many
5 employees needed to manage and operate new hotels, offices, apartment and condo buildings.
6 *See e.g., Can you believe it?! 40 more restaurant openings in Seattle and on the Eastside, Seattle*
7 *Times* (July 31, 2017). Sustaining a thriving business and economic climate creates and enhances
8 opportunities for residents of all incomes and skill levels.

9 VI. DECLARATORY JUDGMENT THAT CITY OF SEATTLE ORDINANCE 125339 IS
10 INVALID

11 48. Plaintiffs rely on the allegations of Paragraphs 1 through 46.

12 49. There is an actual, present and justiciable controversy as to whether the City of
13 Seattle possesses the legal authority and power under the Washington Constitution, the laws of
14 Washington, and the City Charter, to levy a tax on the personal income of its residents in the form
15 of the Ordinance. A judicial determination on the illegality, invalidity, and enforceability of the
16 Ordinance will conclusively resolve these issues of substantial public concern and the parties’
17 dispute.

18 50. Washington cities, including charter cities such as Seattle, are creatures of the
19 state, and are “subject to and controlled by general laws.” *State ex rel. Bowen v. Kruegel*, 67
20 Wn.2d 673, 676 (1965); *see* Wash. Const. art. 11 § 10.

21 51. Cities lack inherent taxing authority. Article 7, section 9 of the Washington State
22 Constitution provides that “municipal corporations may be vested with authority to assess and
23 collect taxes.” Further, Article 11, section 12 grants the Legislature authority “by general laws to
24 vest ... the power to assess and collect taxes” in counties, cities, towns, or other municipal
25 corporations. These constitutional provisions that grant tax authority to cities are not self-
26 executing but require specific grants of legislative authority. *Carkonen v. Williams*, 76 Wn.2d
27 617 (1969).
28

1 52. There exists no general plenary authority for a city to levy taxes it deems
2 desirable. Cities must receive express authority from the legislature to levy taxes, including
3 “specific legislative authority to levy a particular tax.” *King Cty. v. City of Algona*, 101 Wn.2d
4 789, 791-93 (1984); *see also Hillis Homes, Inc. v. Snohomish Cty.*, 97 Wn.2d 804 (1982); *City of*
5 *Seattle v. T-Mobile West Corp.*, Case No. 75423-8-I, — P.3d —, 2017 WL 2229926 (May 22,
6 2017) (reversing city’s tax assessments on interstate charges “in the absence of specific statutory
7 authority”). The legislature has not granted cities express and specific authority to tax any
8 measure of personal income.

9 53. The Legislature has not authorized cities to tax personal income, and has not
10 specifically authorized cities to tax “total income” in particular. Without an express and specific
11 grant of authority from the Legislature to cities to tax income, the City of Seattle lacks the
12 authority and power to impose the taxes on income under Ordinance 125339.

13 54. To the contrary, the Legislature prohibits cities from taxing personal income: “A
14 county, city, or city-county shall not levy a tax on net income.” RCW 36.65.030. The City
15 attempts to evade this prohibition simply by using different terminology, characterizing its tax as
16 a tax on “total income.” The City’s efforts to disguise its tax fail because, as defined in the
17 Ordinance, all “total income” is “net income.” In addition, “total income” is based on and
18 includes certain income expressly defined as net income under applicable law (i.e., net income as
19 calculated by subtracting allowable deductions and exclusions from total income revenues for S-
20 Corporations and any other business entities that pass net income through IRS Schedule D to line
21 22 of IRS Form 1040, which the City uses as the basis for its Income Tax for most taxpayers). In
22 consequence, Ordinance 125339 is a tax on “net income” that has been expressly prohibited by
23 the Legislature.

24 55. Seattle lacks the power to tax income under the City Charter, which does not
25 confer the power to tax personal income on the City. The City has not placed a Charter
26 amendment before the voters of Seattle that would empower it to tax income.

27 56. Applying principles of constitutional avoidance, and in the event that the Court
28 does not first rule the statute to be invalid under Washington statutes and the City Charter, Article

1 VII, Section 1 (Amendment 14) of the Washington Constitution requires that “all taxes shall be
2 uniform upon the same class or property...” The Ordinance imposes a non-uniform tax on
3 personal income in violation of more than 80 years of Washington Supreme Court precedent
4 interpreting the “uniformity” clause of the Washington Constitution.

5 57. Plaintiffs reserve the right to raise any and all legal bases under Washington law to
6 challenge the constitutionality, legality, validity or enforceability of the Ordinance.

7 VII. PRAYER FOR RELIEF

8 1. **Declaratory Relief.** For a declaratory judgment that Ordinance 125339 is illegal,
9 invalid and unenforceable in its entirety.

10 2. **Injunctive Relief.** Plaintiff’s rights to be free of the burdens of an illegal tax is in
11 jeopardy of immediate invasion, which will cause Plaintiffs to suffer substantial injury. Plaintiffs
12 pray for preliminary and permanent injunctions staying and restraining the City from taking any
13 steps to implement, collect, or enforce collection of any tax purportedly authorized by Ordinance
14 125339.

15 3. **Attorneys’ Fees and Cost of Suit.** For attorneys’ fees and the costs of bringing
16 this suit, to the extent permitted by law.

17 4. **Other Relief.** For such other and further relief as the Court deems just, proper,
18 and equitable.

19 DATED this 9th day of August, 2017.

20 ORRICK, HERRINGTON & SUTCLIFFE LLP

21 By: s/Robert M. McKenna

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APPENDIX A



July 21, 2017

The Honorable Bob Ferguson
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Re: Request for the Attorney General to challenge the constitutionality of the Seattle Income Tax, Seattle City Ord. 125339, signed into law on July 14, 2017

Dear Attorney General Ferguson:

We represent a group of Washington taxpayers who are Seattle residents, including Ms. Dena Levine, Mr. Khoa Pham, Mr. Christopher Rufo, and Mr. Martin Tobias. We ask that your office investigate and challenge the legality of Seattle's recently enacted city-wide income tax, specifically Seattle City Ord. 125339 (July 14, 2017) (the "Seattle Income Tax").¹

On May 1, 2017, the Seattle City Council passed a resolution of intent "to adopt a progressive income tax targeting high-income households." Seattle City Res. 31747, at 1 (May 1, 2017). On July 10, 2017, the City Council passed an ordinance to create and direct the implementation of a city-wide income tax.

At the Seattle Income Tax's core, it taxes that portion of the "total income" of every "resident taxpayer"² in excess of \$250,000 at 2.25%. The Ordinance taxes that portion of the "total income" of every "resident taxpayer" in excess of \$500,000 at 2.25% if a resident taxpayer's federal filing status for a tax year is "married filing jointly."³ Any "total income" amount at or below the ordinance's income thresholds is taxed at 0%. Efforts to create and implement graduated personal income taxes in Washington are not new. *See, e.g.*, 1935 Wash. Laws 178; 1933 Wash. Laws 5. Those taxes are, however, illegal, including the Seattle Income Tax.

First, Washington cities – including charter cities such as Seattle – are creatures of the state, and are "subject to and controlled by general laws." *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676 (1965); *see* Wash. Const. art. 11 § 10. The Supreme Court has "consistently held that municipalities must have

¹ We attach a copy of Ordinance No. 125339 for your convenience. The ordinance adds a new chapter to the Seattle Municipal Code ("SMC") – Chapter 5.65.

² SMC 5.65.020.A, .C.-E, and .G define the Seattle Income Tax's operative terms.

³ If a resident taxpayer is married to a non-resident of Seattle, "total income" can be calculated by treating both spouses as residents of Seattle

The Honorable Bob Ferguson
Attorney General of Washington
July 21, 2017
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express authority, either constitutional or legislative, to levy taxes.” *King Cty. v. City of Algona*, 101 Wn.2d 789, 791 (1984). Moreover, “municipalities must have specific legislative authority to levy a particular tax.” *Id.* at 793. The state legislature has not authorized cities generally, or Seattle specifically, to tax personal income.

Second, the state legislature has forbidden cities from taxing personal income. Over 30 years ago, the state legislature prohibited cities from levying a tax like the Seattle Income Tax: “A county, city, or city-county shall not levy a tax on net income.” RCW 36.65.030. The City attempts to evade this longstanding prohibition simply by using different terminology⁴ but that effort fails because “total income,” as it is defined by the Ordinance, is “net income.” If no deductions and exemptions are allowed, as with the Seattle Income Tax, then total income equals, and is, net income.

“Net income” is also a phrase that our state supreme court and our state legislature have used interchangeably with the concept of “personal income,” in both judicial decisions and legislative deliberations. Accordingly, the Seattle Income Tax’s incidence on “total income” is in fact a tax on “net income.” And our state Supreme Court has stated: “The character of a tax is determined by its incidents, not by its name.” *Power, Inc. v. Huntley*, 39 Wn.2d 191, 196 (1951) (collecting cases). Because the state legislature has not authorized and, indeed, prohibits cities’ taxation of “net income,” the Seattle Income Tax is an unconstitutional ordinance which also violates the controlling state statute, and we ask that your office challenge the Seattle Income Tax’s legality in court.

Third, Article VII, Section 1 of the Washington Constitution requires that “All taxes shall be uniform upon the same class of property . . .” The Seattle Income Tax violates the State Constitution because the Seattle Income Tax is a non-uniform property tax. Any question whether an income tax is a tax on property was long ago put to rest. “It has been definitely decided in this state that an income tax is a property tax. . . .” *Power, Inc.*, 39 Wn.2d at 195 (citing *Aberdeen Sav. & Loan Ass’n v. Chase*, 157 Wash. 351 (1930)). Because an income tax is a tax on property, an income tax must be “uniform upon the same class of property.” Const. Art. VII § 1. However, a 0% tax on that portion of annual income between \$0 and \$250,000 and a 2.25% tax on that portion of income above \$250,000 is obviously not uniform. Just as a property tax that applies different rates to land parcels of different acreages based on size or amount of property would be non-uniform, see *Culliton v. Chase*, 174 Wash. 363, 380-82 (1933) (Mitchell, J., concurring), so too a tax that applies different rates to different levels of personal income is non-uniform. Gross income or net income is unitary. This is amply demonstrated by the fact that it is defined in Ordinance 125339 to be a single sum. SMC 5.65.020.G. This is non-uniform.

Ordinance 125339 states that its intention is to shift a greater portion of the city tax burden to the “wealthy.” It is precisely such efforts to tax the same classification of property at different rates – by

⁴ What’s in a name? that which we call a rose
By any other name would smell as sweet.
William Shakespeare, *Romeo and Juliet*, Act II, Scene 2

The Honorable Bob Ferguson
Attorney General of Washington
July 21, 2017
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singling out certain groups of citizens for unfavorable treatment, whatever the rationale or nomenclature that the Washington Constitution prohibits. It could not be more self-evident that the Constitution's uniformity provision was intended to prohibit *precisely* what the City has set out to do in its Ordinance 125339.

The Seattle Income Tax is the latest attempt by a local government to enact an illegal, local income tax. The State has not authorized the City to tax personal income. Moreover, the Seattle Income Tax is precluded by statute. In addition to these statutory barriers, the Seattle Income Tax is also a non-uniform property tax, which violates Article VII § 1 of the state constitution. The Attorney General should act now to ensure that one city's illegal tax policy does not embolden other local governments to enact similarly illegal taxes. We ask that you pursue immediate measures to address the illegal Seattle Income Tax.

Please let us know at your earliest convenience whether your office will initiate legal proceedings against the Seattle Income Tax.

Sincerely yours,

Orrick, Herrington & Sutcliffe LLP

A handwritten signature in blue ink that reads "Robert M. McKenna". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Robert M. McKenna

A handwritten signature in blue ink that reads "Daniel J. Dunne". The signature is highly stylized and cursive, with a long horizontal flourish extending to the right.

Daniel J. Dunne

cc: Hon. Gerry L. Alexander

APPENDIX B



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
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August 1, 2017

Robert M. McKenna
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Re: Request for Attorney General to challenge the constitutionality of Seattle City
Ordinance 125339

R.B.

Dear Mr. McKenna and Mr. Dunne:

I write in response to your letter of July 21, 2017, concerning an ordinance recently adopted by the City of Seattle imposing a tax on a portion of the gross income of Seattle residents. Your letter explains that you represent several individuals who oppose the ordinance. You explain that you believe the ordinance to be unconstitutional on the basis of several arguments that you outline. You ask that our office challenge the constitutionality of the ordinance.

We consider litigation at the request of taxpayers to be appropriate where the action we are asked to challenge is clearly contrary to law, the litigation ultimately would benefit taxpayers in their capacity as taxpayers, and the potential recovery likely exceeds the cost to taxpayers of bringing the action. As you no doubt remember, this standard is rarely met: I cannot recall a challenge we have filed based on a taxpayer demand letter in my many years with the Attorney General's Office. And based upon the information you provided, I cannot conclude that these criteria are met here. For that reason, our office will not take the action requested in your letter.

To the extent your request is made as a prerequisite to asserting taxpayer standing, please understand that this letter expresses no view as to whether the requirements for taxpayer standing would be met.

Sincerely,

JEFFREY T. EVEN

Deputy Solicitor General