

## POLICY NOTE

# Citizens' Guide to Spokane Proposition 2, to prohibit imposition of a local income tax

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### Key Findings

1. Proposition 2 is a city of Spokane ballot measure. A "Yes" vote would ban Spokane officials from imposing a city income tax, regardless of any possible future changes in state law. A "No" vote would give the Spokane City Council the green light to impose a local income.
2. Imposing local income taxes has long been understood to be against state law.
3. However, a surprising July 2019 decision by the Court of Appeals appears to authorize local income taxes. That decision is expected to be appealed to the state Supreme Court.
4. Meanwhile, some state legislators have proposed legislation to maintain the ban on local income taxes. Other state legislators have introduced bills to allow cities to impose a local income tax.
5. These income tax efforts are occurring even though Washington voters have rejected a state income tax 10 times.
6. Greater Spokane Incorporated, the Washington Department of Commerce and State Treasurer Davidson say having no income tax gives our state an important competitive advantage.

### Introduction

This November, voters in the city of Spokane will consider ballot measure Proposition 2, a charter amendment that would prohibit city officials from imposing a local income tax. The Washington Policy Center has long recommended avoiding the imposition of an income tax.

Even though imposing local income taxes has historically been understood to be against state law, local officials in at least one city (Seattle) have tried to impose an income tax illegally in hopes of getting a court ruling that would allow it. This has resulted in a lawsuit by citizens seeking to protect themselves from illegal taxation.

A surprising July 2019 decision by the Court of Appeals appears to have opened the door to some type of local income tax. That decision is now expected to be appealed to the state Supreme Court with a possible ruling in the near future. Some state legislators are also now proposing statewide legislation to prohibit local income taxes in response to the ruling.<sup>1</sup>

Other state legislators, however, have introduced bills attempting to give local governments the authority to impose local income taxes. These income tax efforts are occurring even though statewide voters have rejected ten straight income tax ballot measures.<sup>2</sup> In 2016, voters in Olympia also rejected a local income tax.<sup>3</sup>

Despite any future changes by the courts or by the legislature to the local income tax ban, Initiative No. 2019-2 if passed, would ensure that no local income tax could be imposed in Spokane.

### Text of Spokane Initiative 2019-2 and comments from sponsors

Here is the official ballot title for Proposition 2:<sup>4</sup>

- 1 "Sen. O'Ban to pre-file bill banning local income taxes," by Emily Boerger, Washington State Wire, July 18, 2019, at <https://washingtonstatewire.com/sen-oban-to-pre-file-bill-banning-local-income-taxes/>.
- 2 "Income Tax Ballot Measures," Washington State Secretary of State's Office, at <https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>.
- 3 "Olympia voters rejecting Initiative 1 to fund college tuition with income tax," by Andy Hobbs, The Olympian, November 8, 2016, at <https://www.theolympian.com/news/politics-government/election/article113515583.html>.
- 4 "Initiative Petition To The Citizens Of The City Of Spokane Initiative No. 2019 - 2," at <https://www.washingtonpolicy.org/library/docLib/Initiative-Re-Local-Income-Tax.pdf>.

## Ballot Title

“Shall the Spokane City Charter be amended to prohibit the City of Spokane from imposing an income tax on wages, salaries, investments, the sale of goods or services, or any other income source?

Proposition 2 is sponsored by a citizen group called Better Spokane. Discussing why the group proposed this charter amendment, Better Spokane said in a press release:

“A Yes vote on Proposition 2 protects taxpayers and ensures future regional competitiveness by prohibiting the City from following Seattle’s lead and going it alone in adopting a city income tax or even a city business and occupation tax. Despite repeated rejection by voters, the state’s largest city and state legislators have attempted to give local governments the authority to adopt their own income taxes.”<sup>5</sup>

Better Spokane is not alone in calling the lack of an income tax a competitive advantage and a benefit to Spokane residents. For years, the Washington Department of Commerce has made the state’s lack of an income tax a major selling point for its “Choose Washington” jobs promotion campaign. According to Commerce Department officials:

“We offer businesses some competitive advantages found in few other states. This includes no personal or corporate income tax.”<sup>6</sup>

Illustrating this point the *Spokane Journal of Business* recently wrote:

“Economic development organizations, including Greater Spokane Incorporated here, and the statewide agencies, such as the Department of Commerce and its Choose Washington initiative, cite Washington’s lack of income tax as a major selling point. And businesses looking to locate operations here, one recent example being, California-based Mullen Technologies Inc., have mentioned Washington’s lack of an income tax as a factor in their decisions.”<sup>7</sup>

Washington State Treasurer Duane Davidson also agrees the lack of an income tax is an important advantage to the people of the state. At Washington Policy Center’s May 2019 Solutions Summit held in Spokane, Treasurer Davidson made an impassioned speech on the need to avoid an income tax and explained why not having one is a positive policy for Washington.<sup>8</sup>

5 “Better Spokane’s Smart Reform Initiatives Qualify For The Ballot,” by Michael Cathcart, June 28, 2019, at <https://www.washingtonpolicy.org/library/docLib/spokanep.pdf>.

6 “WA Department of Commerce: No state income tax ‘is great marketing’ for Washington,” by Jason Mercier, blogpost, Washington Policy Center, September 21, 2018, at <https://www.washingtonpolicy.org/publications/detail/wa-department-of-commerce-no-state-income-tax-is-great-marketing-for-washington>.

7 “Income tax ruling turning eyes to Prop 2 measure,” editorial, Spokane Journal of Business, August 1, 2019, at <https://www.spokanejournal.com/local-news/the-journals-view-income-tax-ruling-turning-eyes-to-prop-2-measure/>.

8 “No Income Taxes: The WA advantage (2019 Solutions Summit),” presentation by Washington State Treasurer Duane Davidson, Spokane, Washington, Washington Policy Center conference, May 14, 2019, at <https://www.youtube.com/watch?v=68hVb4UCU8Y>.

## Spokane Hearing Examiner's analysis of Proposition 2

An April 23, 2019 analysis issued by the City of Spokane Hearing Examiner found no legal problems with the proposed text of Proposition 2. The Hearing Examiner wrote (in-part):

“The proposed initiative, if enacted, would add a new provision to the Charter prohibiting the City of Spokane from enacting a local income tax . . . The Hearing Examiner concludes that the city government currently does not have the authority to adopt a local income tax, either under the state constitution or pursuant to state statute.

“Thus, the proposed initiative does not impinge upon any existing authority vested in the city government . . . In the Hearing Examiner's view, the proposed initiative is consistent with the state statute [prohibiting a local income tax]. If anything, the measure incorporates the statutory prohibition of a local income tax into the Charter.”<sup>9</sup>

This analysis is not surprising considering that the City Attorney of Seattle reported in a 2014 legal analysis that cities do not have the authority to impose a local income tax.<sup>10</sup> This reflects the clear meaning of state law in RCW 36.65.030, “Tax on net income prohibited.”<sup>11</sup> This income tax restriction was recently ruled unconstitutional by the Court of Appeals, however, possibly opening the door to local income taxes.<sup>12</sup> Review of that shocking decision by the state Supreme Court is expected soon.

## Efforts to violate the local income tax prohibition

Despite the clear prohibition in state law against imposing a local income tax, in 2017 the Seattle City Council enacted one anyway, in hopes of persuading the courts to ignore their prior rulings and allow a local income tax.<sup>13</sup> As expected, a King County Superior Court judge immediately invalidated Seattle's income tax saying it was clearly illegal under state law.<sup>14</sup> The Court of Appeals, however, issued a surprising decision on July 15, 2019 in this case.

The Court of Appeals unanimously ruled that Seattle's graduated income tax was unconstitutional based on the numerous rulings previously issued by the state Supreme Court. In a major surprise, however, the Court also invalidated

9 “Memorandum – Initiative 2019-2,” by Brian T. McGinn, Spokane Hearing Examiner, April 23, 2019, at <https://www.washingtonpolicy.org/library/docLib/spokaneincomelegal.pdf>.

10 “City of Seattle Attorney in 2014: ‘The legislature has not granted cities the authority to impose an income tax,’” by Jason Mercier, blogpost, Washington Policy Center, April 18, 2019, at <https://www.washingtonpolicy.org/publications/detail/city-of-seattle-attorney-in-2014-the-legislature-has-not-granted-cities-the-authority-to-impose-an-income-tax>.

11 “Revised Code of Washington 36.65.030 (Tax on net income prohibited),” Washington State Legislature, at <https://app.leg.wa.gov/rcw/default.aspx?cite=36.65.030>.

12 “Good news, bad news on local income taxes” by Jason Mercier, blogpost, Washington Policy Center, July 16, 2019, at <https://www.washingtonpolicy.org/publications/detail/good-news-bad-news-on-local-income-taxes>.

13 “Timeless advice from WA Supreme Court on income taxes,” by Jason Mercier, blogpost, Washington Policy Center, September 6, 2017, at <https://www.washingtonpolicy.org/publications/detail/timeless-advice-from-wa-supreme-court-on-income-taxes>.

14 “Judge rules Seattle income tax illegal,” by Jason Mercier, blogpost, Washington Policy Center, November 22, 2017, at <https://www.washingtonpolicy.org/publications/detail/judge-rules-seattle-income-tax-illegal>.



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the statutory prohibitions on local governments from imposing a flat income tax. This ruling means officials in cities like Spokane may be able to impose a flat local income tax pending review by the state Supreme Court.

Aside from income tax proponent's efforts in the courts, there is also the possibility the Legislature could enact a change in state law. One such bill was proposed this year by Sen. Bob Hasegawa (D-Seattle). SB 5928, "Eliminating the prohibition on local net income taxes," however, did not receive a public hearing.<sup>15</sup>

In sponsoring Proposition 2, members of Better Spokane are asking voters to ensure that, no matter what happens with these legal cases or with bills in the Legislature, a local income tax cannot be imposed in Spokane.

## Conclusion

A "Yes" vote on Proposition 2 would prohibit officials in the city of Spokane from being able to impose an income tax, regardless of any changes to the state law concerning a local income tax. Adoption of the measure would also signal to citizens and businesses that Spokane's competitive advantage of having no local income tax will be safeguarded and can be depended upon.

<sup>15</sup> "SB 5928 - Eliminating the prohibition on local net income taxes," Washington State Legislature, February 15, 2019, at <https://app.leg.wa.gov/bills/summary?BillNumber=5928&Year=2019&Initiative=False>.