

## POLICY NOTE

# Citizens' Guide to Proposition 3, to prohibit imposition of an income tax in the City of Yakima

By Jason Mercier, Director, Center for Government Reform

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### Key Findings

1. Seven Washington cities have already acted to ban a local income tax including Battle Ground, Granger, Kennewick, Moses Lake, Spokane, Spokane Valley and Union Gap. The city council is asking Yakima voters via Proposition 3 to make theirs the eighth city to ban a local income tax.
2. Despite striking down Seattle's specific graduated income tax, a surprising July 2019 decision by the Court of Appeals opened the door to some type of local income tax.
3. The Legislature this year also narrowly adopted a capital gains income tax (with no local pre-emption) with the stated goal from supporters of using the courts to bring Washington a broad-based income tax without a constitutional amendment.
4. The proposed exception included in Proposition 3 for a tax on real property is unnecessary for an income tax ban but it doesn't change the meaning or intent of the ballot measure.
5. For years the Washington Department of Commerce has made the state's no-income-tax policy a major selling point for its "Choose Washington" jobs promotion campaign.
6. A "No" vote on Proposition 3 would retain the ability of future local officials, under current court rulings, to impose a flat income tax on Yakima residents and businesses.
7. A "Yes" vote on Proposition 3 would prohibit officials in the city of Yakima from imposing an income tax without a vote of the people.

### Introduction

This November voters in the city of Yakima will consider ballot measure Proposition 3, a charter amendment that would prohibit city officials from imposing a local income tax. The effort comes as state lawmakers this year enacted Washington's first statewide income tax, on capital gains income, a bill whose constitutionality is being challenged in the courts.

Other cities have already acted to prevent a local income tax. A similar charter amendment was adopted by 72% of Spokane voters in 2019.<sup>1</sup> Officials in Battle Ground, Granger, Kennewick, Moses Lake, Spokane Valley and Union Gap have adopted resolutions opposed to a local income tax.<sup>2</sup> The Washington Policy Center has long recommended avoiding the imposition of an income tax at the state or local level.

Even though imposing local income taxes has long been understood to be against state law, local officials in at least one city (Seattle) have tried to impose one illegally in hopes of getting a court ruling that would allow a local income tax.

Despite striking down Seattle's specific graduated income tax, a surprising July 2019 decision by the Court of Appeals opened the door to some type of local income tax.<sup>3</sup> That decision is now effective law in Washington because the State Supreme Court declined hearing the case, leaving the Court of Appeals ruling in place.

The Legislature this year also narrowly adopted a capital gains income tax (with no local pre-emption) with the stated goal from supporters of using the courts to bring Washington a broad-based income tax without a constitutional amendment. These income tax efforts are occurring

1 "Income tax bans pass big in Spokane and Texas," by Jason Mercier, blogpost, Washington Policy Center, November 6, 2019, at <https://www.washingtonpolicy.org/publications/detail/income-tax-bans-pass-big-in-spokane-and-texas>.

2 "Union Gap latest city to ban local income tax," by Jason Mercier, blogpost, Washington Policy Center, August 10, 2021, at <https://www.washingtonpolicy.org/publications/detail/union-gap-latest-city-to-ban-local-income-tax>.

3 "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>.

even though statewide voters have rejected income tax ballot measures ten straight times.<sup>4</sup> In 2016, voters in Olympia also rejected a local income tax.<sup>5</sup>

Despite these statewide income tax efforts, Proposition 3 if passed, would ensure that no local income tax could be imposed in Yakima without voter approval.

### **Text of Yakima Proposition 3**

Here is the official ballot title for Proposition 3:

#### **Ballot Title**

“PROPOSITION NO. 3 concerns an amendment to the City of Yakima Charter. This measure amends Article VII (Limitation of Taxation) of the Yakima City Charter to add a provision stating the City Council may not enact a local income tax on residents of the City, with exceptions. Should this proposition be approved?”<sup>6</sup>

#### **Full Text of Income Tax Ban Charter Amendment**

“The City Council may not impose an income tax on the residents of the City on wages, salaries, investments, or the sale of goods or services. Nothing in this section shall prohibit the imposition of a tax on real property, or the increase of a tax on real property through a levy lid lift procedure or other lawful procedure.”<sup>7</sup>

The exception for a tax on real property is unnecessary for an income tax ban but it doesn’t change the meaning or intent of Proposition 3. Inclusion of this clause indicates some confusion on the clear meaning in state law between real and intangible property and the extensive caselaw surrounding these definitions.

According to RCW 84.04.090 (in-part):

“The term ‘real property’ for the purposes of taxation shall be held and construed to mean and include the land itself, whether laid out in town lots or otherwise, and all buildings, structures or improvements or other fixtures of whatsoever kind thereon...”<sup>8</sup>

Income, however, is defined in state law as intangible property (not real) as noted by RCW 84.36.070 (in-part):

4 “Income Tax Ballot Measures,” Washington State Secretary of State’s Office, at <https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>.

5 “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>.

6 E-mail to the author from Kathy Fisher, Elections Manager, Yakima County, August 17, 2021, copy available on request.

7 Ibid.

8 “RCW 84.04.090 - Real property,” Washington State Legislature, accessed August 17, 2021, at <https://app.leg.wa.gov/rcw/default.aspx?cite=84.04.090>.

“(2) ‘Intangible personal property’ means: (a) All moneys and credits including mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county and municipal bonds and warrants and bonds and warrants of other taxing districts, bonds of the United States and of foreign countries or political subdivisions thereof and the bonds, stocks, or shares of private corporations...”<sup>9</sup>

Notwithstanding the inclusion of this real property clause, the stated goal and text of Proposition 3 would prohibit any form of local income tax from being imposed in Yakima without a vote of the people.

### **Greater Yakima Chamber of Commerce endorses local income tax ban**

Testifying in favor of the Yakima income tax ban before the city council in August, Greater Yakima Chamber of Commerce CEO/President Verlynn Best said:

“It allows us to have a competitive edge in the future of development and business. If we fail placing this in our charter to serve our citizens, it’s safe to say this council will be telling our community it is open to a local income tax in the future.”<sup>10</sup>

Discussing why she proposed the income tax ban charter amendment, Yakima Mayor Patricia Byers said:

“Our businesses are trying to rebuild in the community. To even say that we’re open to having an income tax would be a deterrent to other businesses looking to come into the community.”<sup>11</sup>

After the successful council vote to place the charter amendment on this year’s ballot, Mayor Byers told me:

“Washington State voters have made it very clear over the years that they oppose any type of an income tax. And it has given us a competitive edge in attracting businesses statewide.”<sup>12</sup>

The Greater Yakima Chamber of Commerce and Mayor Byers are not alone in calling the absence of an income tax a competitive advantage and a benefit to Yakima residents. For years the Washington Department of Commerce has made the state’s no-income-tax policy a major selling point for its “Choose Washington” jobs promotion campaign. According to Commerce Department officials:<sup>13</sup>

9 “RCW 84.36.070 - Intangible personal property—Appraisal,” Washington State Legislature, accessed August 17, 2021, at <https://app.leg.wa.gov/RCW/default.aspx?cite=84.36.070>.

10 “Ban on local income taxes gaining traction,” by TJ Martinell, The Lens, August 11, 2021, at <https://thelens.news/2021/08/11/ban-on-local-income-taxes-gaining-traction/>.

11 Ibid.

12 “Yakima City Council advances local income tax ban charter amendment to voters,” by Jason Mercier, blogpost, Washington Policy Center, August 3, 2021, at <https://www.washingtonpolicy.org/publications/detail/yakima-city-council-advances-local-income-tax-ban-charter-amendment-to-voters>.

13 “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>.

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

Former Washington State Treasurer Duane Davidson also agrees that having no 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 described the importance of avoiding an income tax and explained why not having one is a positive policy for Washington.<sup>14</sup>

## Ongoing efforts to impose an income tax in Washington

Despite a prior 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 past rulings and allow a local income tax.<sup>15</sup> As expected, a King County Superior Court judge immediately invalidated Seattle’s income tax saying it was clearly illegal under state law.<sup>16</sup> The Court of Appeals, however, issued a surprising decision on July 15, 2019, in this case.

The Court unanimously ruled that Seattle’s graduated income tax was unconstitutional based on the numerous rulings previously issued by the state Supreme Court. However, the Court also invalidated statutory prohibitions on local governments from imposing a flat income tax. The Court of Appeals ruling means officials in cities like Yakima could impose a flat local income tax.

Earlier this year the legislature adopted an unconstitutional capital gains income tax (while refusing to stop cities from imposing a local version)<sup>17</sup> with the stated goal of using the courts to open the door to graduated income taxes across the state.<sup>18</sup> The capital gains income tax is currently being challenged in court. The legislature also funded budget studies in an effort to convince Washingtonians to support an income tax, with a taxpayer-funded commission now traveling the state to do the same.<sup>19</sup>

As these political efforts to impose an income tax show, a local income tax ban is not a “red herring” or “waste of time” as critics claim. It is instead a reasonable and popular response to stop ongoing efforts to impose an income tax in Washington.

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14 “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>.

15 “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>.

16 “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>.

17 “UW Tax Law Professor on new capital gains income tax: ‘It’s going to be found unconstitutional,’” by Jason Mercier, blogpost, Washington Policy Center, July 22, 2021, at <https://www.washingtonpolicy.org/publications/detail/uw-tax-law-professor-on-new-capital-gains-income-tax-its-going-to-be-found-unconstitutional>.

18 “Lawmaker’s emails confirm goal for capital gains proposal is broad income tax,” by Jason Mercier, blogpost, Washington Policy Center, March 26, 2020, at <https://www.washingtonpolicy.org/publications/detail/lawmakers-emails-confirm-goal-for-capital-gains-proposal-is-broad-income-tax>.

19 “The Washington State Tax Structure Work Group,” accessed August 17, 2021, at <https://taxworkgroup.org/>.



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## Conclusion

Seven Washington cities have already acted to ban a local income tax including Battle Ground, Granger, Kennewick, Moses Lake, Spokane, Spokane Valley and Union Gap. The city council is asking Yakima voters to make theirs the eighth city to ban a local income tax.

A "No" vote on Proposition 3 would retain the ability of future local officials, under current court rulings, to impose a flat income tax on Yakima residents and businesses.

A "Yes" vote on Proposition 3 would prohibit officials in the city of Yakima from imposing an income tax without a vote of the people. Adoption of the measure would also signal to citizens and businesses that Yakima's competitive advantage of not having a local income tax will be safeguarded and can be depended upon.