

SB 6462 and HB 2479, to affirm the prohibition on imposing a local income tax

By Jason Mercier, Director, Center for Government Reform

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Key Findings

1. Both Senate Bill 6462 and House Bill 2479 would prohibit the imposition of a local income tax.
2. Local government officials have long understood that the Legislature has not granted them the authority to impose an income tax.
3. As a result of the City of Seattle's effort in 2017 to impose a local income tax, the Court of Appeals in July 2019 shockingly ruled that the 1984 law prohibiting a local income tax is unconstitutional.
4. Washington voters have already rejected 10 straight income tax proposals and a recent poll shows 72 percent are opposed to a local income tax.
5. In passing either SB 6462 or HB 2479, lawmakers will be honoring the clear message from voters by simply reinstating the popular local income tax ban as it has existed since 1984.

Introduction

Two bills have been proposed that would affirm the state's longstanding prohibition on imposing a local income tax. Both Senate Bill 6462 and House Bill 2479 would prohibit the imposition of a local income tax.¹ House Bill 2479 is sponsored by 18 Republican Representatives, while Senate Bill 6462 is sponsored by 15 Republican and four Democratic Senators.

The bills are in response to the disturbing July 2019 decision by the state Court of Appeals saying a 1984 law that explicitly prohibits a local income tax, and which has been in force for 36 years, is unconstitutional and violates single subject restrictions.² That ruling is awaiting possible review by the state Supreme Court. In the meantime, several cities have already acted to pass local income tax bans responding to the surprise court ruling.³

Local income tax ban called into question by court ruling

Separate from the constitutional prohibition against a graduated state income tax, a local income tax of any kind has long been prevented under state law. First, local governments must be given a grant of tax authority from the Legislature; local officials

1 "HB 2479 - Reaffirming the prohibition of the imposition of a local income tax," Washington State Legislature, introduced January 15, 2020, at <https://apps.leg.wa.gov/billssummary?BillNumber=2479&Initiative=false&Year=2019> and "SB 6462 - Reaffirming the prohibition of the imposition of a local income tax," Washington State Legislature, introduced January 17, 2020, at <https://app.leg.wa.gov/billssummary?BillNumber=6462&Initiative=false&Year=2019>

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

3 "Granger becomes third city to ban local income tax," by Jason Mercier, Washington Policy Center, blog, December 11 2019, at <https://www.washingtonpolicy.org/publications/detail/granger-becomes-third-city-to-ban-local-income-tax>

cannot grant new taxing authority to themselves. The Legislature has never given local governments permission to tax income.

Second, there are two statutory prohibitions against a local income tax. RCW 84.36.070 exempts “intangible personal property” from taxation (income is intangible personal property) and RCW 36.65.030 prohibits local governments from imposing a tax on “net income.”⁴

That second explicit prohibition on a local income tax was passed by lawmakers in 1984 by a vote of 43-5 in the Senate and 94-1 in the House to clear up any confusion resulting from the passage of a 1972 constitutional amendment.⁵

Local government officials have long understood that the Legislature has not granted them the authority to impose an income tax. For example, a 2014 City of Seattle Attorney’s Opinion noted:⁶

“...cities must have express authorization from the legislature to impose a tax. The legislature has not authorized cities to impose an income tax...”

Spokane’s Hearings Examiner said much the same thing in an April 23, 2019 memo:⁷

“The state legislature has not granted the city the power to adopt a local income tax.”

As a result of the City of Seattle’s effort in 2017 to impose a local income tax, however,

4 “RCW 84.36.070 - Intangible personal property—Appraisal,” Washington State Legislature, accessed on February 3, 2020, at <https://app.leg.wa.gov/RCW/default.aspx?cite=84.36.070> and “RCW 36.65.030 - Tax on net income prohibited,” Washington State Legislature, accessed on February 3, 2020, at <https://app.leg.wa.gov/rcw/default.aspx?cite=36.65.030>

5 “Why did legislature pass 1984 local income tax ban?,” by Jason Mercier, Washington Policy Center, blog, May 9, 2017, at <https://www.washingtonpolicy.org/publications/detail/why-did-legislature-pass-1984-local-income-tax-ban>

6 “Income tax and mansion tax legal memo,” Kent Meyer, City of Seattle, November 10, 2014, at <https://www.washingtonpolicy.org/library/docLib/Memo-to-CM-Licata-re-income-tax.pdf>

7 “Initiative No. 2019-2 memo, Brian T. McGinn, City of Spokane, April 23, 2019, at <https://www.washingtonpolicy.org/library/docLib/spokaneincomelegal.pdf>

the Court of Appeals in July 2019 shockingly ruled that the 1984 law prohibiting a local income tax is unconstitutional. The Court also ruled that local governments already have the authority to tax income, despite the clear prohibition against taxing intangible personal property.⁸

The state Supreme Court has not announced yet whether it will accept this case for review. This means that under the Court of Appeals ruling, local governments appear to have the authority to impose a flat local income tax, unless the Legislature takes action to reinstate the prohibition.

Text of SB 6462 and HB 2479

Though not identical text, both SB 6462 and HB 2479 seek to affirm the local income tax ban called into question by the Court of Appeals. For example, according to SB 6462 (in-part):⁹

“... to ensure that the will of the legislature expressed in SSB 4313 remains the law of the state and to confirm that no locality may impose a tax on income, the legislature restates its refusal to delegate to a city, county, or city-county, as a whole or as a governing body, the power to enact a tax on the personal income of individuals or households.

“This act must be liberally construed to effectuate these purposes . . . A county, city, or city-county shall not levy a tax on net or gross income, except that this section does not prohibit the imposition of gross receipts taxes on businesses as otherwise allowed by state law.”

Very simply, these bills confirm state law as it has existed since 1984.

8 “Seattle argues income isn’t money,” by Jason Mercier, Washington Policy Center, blog, September 24, 2019, at <https://www.washingtonpolicy.org/publications/detail/seattle-argues-income-isnt-money>

9 “SB 6462 - Reaffirming the prohibition of the imposition of a local income tax,” Washington State Legislature, introduced January 17, 2020, at <https://app.leg.wa.gov/billsummary?BillNumber=6462&Initiative=false&Year=2019>

Local income tax ban is popular

Based on the recent election results in Spokane and a new statewide poll, voter opposition to an income tax remains strong.¹⁰

In response to the poll question, “In your opinion, should local governments be allowed to impose an income tax?” 72 percent of Washington voters said “no.” Opposition to local income taxes was reflected by large majorities of Republicans, Democrats and Independents. Even in Seattle, voters opposed a local income tax, though sentiment was split 43 percent yes, 49 percent no.

The poll findings echo the results of Spokane’s Proposition 2, which in November 2019 offered the city’s voters a chance to prohibit the city government from imposing a local income tax.¹¹ The income tax ban passed with more than 72 percent of the vote. The city council of neighboring Spokane Valley unanimously passed a local income tax ban a few weeks later, followed in December in Granger by the Granger City Council.

Conclusion

The lack of an income tax has long been advertised by the State Department of Commerce as being a “competitive advantage” for Washington.¹² State Treasurer Duane Davidson has also repeatedly stated why not having an income tax is positive for Washington.

Washington voters have already rejected 10 straight income tax proposals and a recent poll shows 72 percent are opposed to a local

income tax. By passing either SB 6462 or HB 2479, lawmakers will be honoring the clear message from voters by simply reinstating the popular local income tax ban as it has existed since 1984.

Jason Mercier is the director of Washington Policy Center’s Center for Government Reform.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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10 “New Poll: 72 percent of Washington voters favor ban on local income taxes,” by David Boze, Washington Policy Center, press release, January 9, 2020, at <https://www.washingtonpolicy.org/publications/detail/new-poll-72-percent-of-washington-voters-favor-ban-on-local-income-taxes>

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

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