

SJR 8206 and HJR 4205, to repeal the uniformity clause to allow discriminatory property taxes and allow a graduated state income tax

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Key Findings

1. SJR 8204, SJR 8206, and HJR 4205 are proposed constitutional amendments structured to help provide property tax relief.
2. SJR 8206 and HJR 4205, however, also propose to repeal the state constitution's uniformity clause for property taxes.
3. Supporters of SJR 8206 stated in public testimony that removing the uniformity clause is necessary so that lawmakers can "disincentiviz(e) certain types of property ownership."
4. Repealing the uniformity clause would not only allow discriminatory property taxes but it would also open the door to a graduated state income tax.
5. As shown by SJR 8204, property tax relief is possible without repealing the uniformity clause.
6. Lawmakers should focus property tax relief on proposals that do not repeal the constitution's uniformity clause.

Introduction

Not only does Washington's constitution have the broadest definition of property in the country, but it also requires that taxes imposed on property be uniform and at rate of no more than one percent.¹ Since income has long been recognized as property by our state's court jurisprudence, a graduated income tax is prohibited unless the constitution is amended.

1 "Washington's constitution has broadest definition of property in the country," by Jason Mercier, Washington Policy Center, August 29, 2022, at <https://www.washingtonpolicy.org/publications/detail/washingtons-constitution-has-broadest-definition-of-property-in-the-country>

State income tax supporters have tried this in the past, but the voters have rejected six constitutional amendments on this topic.²

Two constitutional amendments introduced by Democratic lawmakers during the 2023 Legislative Session, SJR 8206 and the companion measure HJR 4205, propose to repeal the state constitution's uniformity clause for property taxes.³ Not only would this allow discriminatory property taxes (such as a split roll between residential and commercial property), but it would also open the door to a graduated state income tax.

These constitutional amendments are advertised as providing property tax relief. This type of tax relief can be achieved, however, without repealing the uniformity clause and allowing the legislature to impose discriminatory property taxes. An example of a simple way to provide this type of property tax relief is SJR 8204 (Concerning property tax relief).⁴ This measure would provide property owners with direct tax relief without weakening the protections of the uniformity clause, as explained in the next section.

Comparison of SJR 8204 and SJR 8206/HJR 4205

Here is how Washington's constitution currently restricts the taxation of property:

- 2 "Income Tax Ballot Measures," Washington Secretary of State Office, accessed on March 3, 2023, at <https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>
- 3 "SJR 8206: Concerning property tax rebates," Washington State Legislature, January 20, 2023, at <https://app.leg.wa.gov/billsummary/?BillNumber=8206&Year=2023&Initiative=false>
- 4 "SJR 8204: Concerning property tax relief," Washington State Legislature, January 16, 2023, at <https://app.leg.wa.gov/billsummary/?BillNumber=8204&Year=2023&Initiative=false>

“All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word ‘property’ as used herein shall mean and include everything, whether tangible or intangible, subject to ownership.”⁵

As explained by non-partisan committee staff in the bill report for SJR 8206:

“Background: Uniformity Clause. The Washington State Constitution requires that state and local property taxes be uniform within each class of property. Real property constitutes a single class of property under the Constitution. Uniformity requires both an equal rate of tax and equality in valuing the property. Based on the uniformity requirement, differential treatment of different types of real property is disallowed. Under the Constitution, the Legislature may, by general laws, exempt property from taxation.”⁶

SJR 8204, SJR 8206, and HJR 4205 are proposed constitutional amendments structured to help provide property tax relief. Here is the summary from the bill report for SJR 8204:

“The State Constitution is amended to authorize the Legislature to create a homestead property tax exemption for state property taxes. The homestead property tax exemption may be up to \$250,000 of assessed value on a taxpayer’s principal place of residence. The state levy must be reduced as necessary to prevent the exempted value from increasing the state property tax rate for other property owners. The Legislature may also provide a similar benefit through a renter’s credit to residential tenants.”⁷

SJR 8204 provides property tax relief without repealing the uniformity clause, and it

provides tax relief without shifting higher taxes onto other property owners.

SJR 8206/HJR 4205, however, would also repeal the uniformity clause in the constitution that requires property to be taxed the same. Supporters of SJR 8206 stated in public testimony that removing the uniformity clause is necessary so that lawmakers can “disincentiviz(e) certain types of property ownership.”⁸

Discriminatory property taxes are the goal of SJR 8206/HJR 4205

Here is a summary from the bill report of the testimony provided by Sen. Noel Frame (D-36), a co-sponsor of SJR 8206:

“The constitutional amendment differs from the other Senate proposal in that it repeals the uniformity clause. The uniformity clause is a relic of the past. A person’s primary residence is not just property, it is not just an asset, it is their home. The uniformity clause forces lawmakers to treat a person’s home the same a large skyscraper commercial property. The uniformity clause prevents the Legislature from disincentivizing certain types of property ownership. Repealing uniformity will allow lawmakers to narrowly tailor the exemption so that it reaches those who need it most.”⁹

Sen. Frame also acknowledged during questions on the bill that repealing the uniformity clause would allow the legislature to impose a graduated income tax (15:00 min mark of hearing).¹⁰

Of note, Washington voters have rejected 10 straight income tax proposals, including six proposed constitutional amendments.¹¹

- 5 “Constitution of the State of Washington, Washington State Legislature, accessed on March 3, 2023, at <https://leg.wa.gov/CodeReviser/Documents/WAConstitution.pdf>
- 6 “Senate Bill Report - SJR 8206,” Washington State Legislature, January 24, 2023, at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/8206%20SBR%20WM%20TA%2023.pdf?q=20230207134012>
- 7 “Senate Bill Report - SJR 8204,” Washington State Legislature, January 24, 2023, at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/8204%20SBR%20WM%20TA%2023.pdf?q=20230302124104>

- 8 “Senate Bill Report - SJR 8206,” Washington State Legislature, January 24, 2023, at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/8206%20SBR%20WM%20TA%2023.pdf?q=20230207134012>
- 9 “SJR 8206: Concerning property tax rebates,” Washington State Legislature, January 20, 2023, at <https://app.leg.wa.gov/billsummary/?BillNumber=8206&Year=2023&Initiative=false>
- 10 “Senate Ways & Means public hearing,” TVW, January 24, 2023, at <https://tvw.org/video/senate-ways-means-2023011469/?eventID=2023011469&startStreamAt=900>
- 11 “Income Tax Ballot Measures,” Washington Secretary of State Office, accessed on March 3, 2023, at <https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>

Though not discussed during the public hearing, the uniformity clause is also a legal obstacle to the proposals for a separate “wealth” tax.¹² According to the state Department of Revenue:

“There is litigation risk that the courts would invalidate the wealth tax on the grounds that it is a property tax that conflicts with the uniformity provisions of Article VII, Section 1 of the Washington Constitution.”¹³

Conclusion

As shown by SJR 8204, property tax relief is possible without repealing the uniformity clause. Removing this important tax protection for property owners from the constitution (as proposed by SJR 8206/HJR 4205) would open the door not only to a graduated income tax and wealth tax, it would also allow a split roll and other types of discriminatory tax policy that treats taxpayers and property differently instead of uniformly. That means lawmakers could pick winner and losers among property owners instead of taxing everyone at one uniform rate.

Lawmakers should focus property tax relief on proposals that do not repeal the constitution’s uniformity clause and avoid putting the state on the path for discriminatory property taxes.

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12 “Dozens of Democratic lawmakers propose wealth tax for Washington,” by Jason Mercier, Washington Policy Center, January 19, 2023, at <https://www.washingtonpolicy.org/publications/detail/dozens-of-democratic-lawmakers-propose-wealth-tax-for-washington>

13 “Tax Structure Work Group - Wealth Tax @ 1% with \$100/\$250/\$500 million exemption,” Washington Department of Revenue, October 28, 2022, at https://static1.squarespace.com/static/5fc92c4eb6a6dd36b144ba73/t/636d29d0ec82fb6c9d3f6837/1668098512764/E0236-1+Wealth+Tax+%40+1%25_11092022.pdf