

POLICY NOTE

Washington cities can promote their competitive advantage by banning a local income tax

By Jason Mercier, Director, Center for Government Reform

October 2020

Key Findings

1. In 1984 the legislature overwhelmingly passed a law making it explicitly clear that local governments in Washington state do not have the authority to impose an income tax.
2. The state Court of Appeals, however, in July 2019 issued a shocking ruling that the statewide ban on local income taxes, which has been in force for 36 years, is unconstitutional and violates single subject restrictions.
3. On April 2, 2020, the state Supreme Court announced that it would not review the Seattle income tax case, with the result that the Appeals Court's ruling was allowed to stand.
4. Earlier this year majority Democrats in the legislature refused to hear bi-partisan bills that would have re-instated that 36 year old law.
5. Based on the 2019 election results in Spokane and in a statewide poll, income taxes are unpopular in Washington state and voter opposition to a local income tax remains strong.
6. The 2019 Spokane 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 week later, followed in December by the city council in Granger.
7. By banning a local income tax, city officials would be honoring the clear message from voters, and would be respecting the popular local income tax ban as it has existed since 1984.

Introduction

In 1984 the legislature overwhelmingly passed a law making it explicitly clear that local governments in Washington state do not have the authority to impose an income tax. For decades this law remained in effect without question or controversy until elected officials in the City of Seattle attempted to impose an income tax in 2017. Subsequent court rulings challenging this action reaffirmed the longstanding constitutional prohibition on a graduated income tax. The state Court of Appeals, however, in July 2019 issued a shocking ruling that the statewide ban on local income taxes, which has been in force for 36 years, is unconstitutional and violates single subject restrictions.¹

The state Supreme Court then refused to hear the case on appeal earlier this year. The high Court's refusal left the Appeals Court ruling in place, seemingly opening the door to the enactment of flat local income taxes. Three cities have already acted to pass local income tax bans responding to the surprise court ruling, thus reaffirming their competitive advantage of no local income taxes.²

Local income tax ban overturned by courts

Separate from the clear constitutional prohibition against a graduated state income tax, a local income tax of any kind has long been prohibited under regular state law. First, local governments must be given a grant of tax authority from the legislature; local officials cannot simply create new taxing authority for themselves. The legislature has never given local governments permission to tax income.

Second, there are two statutory prohibitions against imposing a local income tax in state law. First, RCW 84.36.070 exempts "intangible personal property" from taxation (income is intangible personal

1 "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>.

2 "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>.

property) and, second, RCW 36.65.030 explicitly prohibits local governments from imposing a tax on “net income.”³

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 that authorized combined county-city governments.⁴

Local government officials have long understood that the legislature has not granted them the authority to impose an income tax. For example, in 2014 an Assistant City Attorney for Seattle wrote in an official opinion:⁵

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

The City of Spokane’s Hearings Examiner said the same thing in an official April 23, 2019 memo:⁶

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

As a result of the Seattle City Council’s effort in 2017 to impose a local income tax, however, the state Court of Appeals in July 2019, as noted, ruled that the 1984 law prohibiting a local income tax is unconstitutional. The Appeals Court also ruled that local governments already have the authority to tax income, despite the clear prohibition against taxing intangible personal property.⁷

On April 2, 2020, the state Supreme Court announced that it would not review the Seattle income tax case, with the result that the Appeals Court’s ruling was allowed to stand.⁸ While this decision once again affirms the state’s constitutional ban on a graduated income tax, it also means the Appeals Court’s bizarre decision to invalidate state law banning a local income tax remains in effect.⁹ Earlier this

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

4 “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>.

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

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

7 “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>.

8 “CITY OF SEATTLE, et al., v. S. MICHAEL KUNATH, et al.,” Washington State Supreme Court, No. 97863-8 Order, April 2, 2020, at <https://www.washingtonpolicy.org/library/docLib/courtincometax.pdf>.

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

year majority Democrats in the legislature refused to hear bi-partisan bills that would have re-instated that 36 year old law.¹⁰

Local income tax ban is popular

Based on the 2019 election results in Spokane and in a statewide poll, income taxes are unpopular in Washington state and voter opposition to a local income tax remains strong.¹¹

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 self-identified Republicans, Democrats and Independents. Even in Seattle, most voters said they oppose a local income tax, though sentiment was narrowly split; 43 percent said “Yes,” while 49 percent “No.”

The statewide poll findings echo the results of the vote on 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.¹² The income tax ban passed in every city precinct and with more than 72 percent of the vote. The city council of neighboring Spokane Valley unanimously passed a local income tax ban a few week later, followed in December by the city council in Granger.

Granger Mayor Trevino said this about why he proposed the local income tax ban:

“On several occasions the voters have sent a strong message to Olympia, by voting against a state income tax and I agree with them. We are taxed enough already.”

To Mayor Trevino’s point, Washington voters have already rejected income tax proposals ten times in a row, including six constitutional amendments.¹³

The following provision is from Granger’s local income tax ban:¹⁴

“The City Council hereby declares that the imposition of a local income tax on the businesses and residents of the City of Granger is prohibited. Such a tax would be in direct conflict with the high value the City places on promoting

10 “Time running out for lawmakers to act on bipartisan proposal to reaffirm local income tax ban,” by Jason Mercier, Washington Policy Center, blog, February 3, 2020, at <https://www.washingtonpolicy.org/publications/detail/time-running-out-for-lawmakers-to-act-on-bipartisan-proposal-to-reaffirm-local-income-tax-ban>.

11 “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>.

12 “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>.

13 “Income Tax Ballot Measures,” Washington Secretary of State, accessed September 10, 2020, at <https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>.

14 “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>.



Jason Mercier is the Director of the Center for Government Reform at Washington Policy Center and is based in the Tri-Cities. He has served on the boards of the Washington Coalition for Open Government and Verify More, and was an advisor to the 2002 Washington State Tax Structure Committee. Jason is an ex-officio member for the Tri-City Regional Chamber of Commerce and serves on the Chamber's government affairs committee. He worked with lawmakers in 2008 to create the state's renowned budget transparency website www.fiscal.wa.gov and has been a champion for many of the state's important budget reform tools including the four-year balanced budget requirement adopted in 2012. In 2010, former Governor Gregoire appointed Jason as WPC's representative on her Fiscal Responsibility and Reform Panel.

Washington Policy Center is an independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Published by
Washington Policy Center
© 2020

washingtonpolicy.org
206-937-9691

economic development through the attraction and expansion of financially healthy, family wage-paying employers.

“Small businesses are the backbone of our local, regional, state, and national economy and it is imperative that the City not put unnecessary hurdles in the way of their success. As such, the Granger City Council prohibits the imposition of a local income tax in the event a local income tax is determined legal and permissible the Washington State Supreme Court or the Washington State Legislature.”

Conclusion

The lack of a state or local tax on income has long been advertised by the state Department of Commerce as being a “competitive advantage” for Washington.¹⁵ State Treasurer Duane Davidson has also repeatedly explained why not having an income tax is good policy and a positive factor for Washington.

Washington voters have already rejected income tax proposals ten straight times, and a recent poll shows 72 percent are opposed to a local income tax. By banning a local income tax, city officials would be honoring the clear message from voters, and would be respecting the popular local income tax ban as it has existed since 1984.

¹⁵ “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>.