

POLICY NOTE

Why a local income tax is illegal in Washington state

By Jason Mercier, Director, Center for Government Reform

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Key Findings:

1. According to the Washington State Supreme Court (1951): "It is no longer subject to question in this court that income is property."
2. For eight decades the Washington State Supreme Court has ruled that income is property and that a graduated income tax is unconstitutional in Washington state.
3. Local governments only have taxing authority by grant of legislative approval.
4. State law prohibits a local government from imposing a tax on net income.
5. These facts demonstrate that without a constitutional amendment and express legislative approval, a local income tax is illegal in our state.
6. The voters have been provided multiple opportunities to overturn the numerous rulings by the state Supreme Court declaring a graduated income tax unconstitutional. Each time, however, the voters have overwhelmingly rejected those constitutional amendments to allow a graduated income tax.

Introduction

Recently members of the Seattle City Council, in defiance of state law, imposed the first-ever local income tax in Washington state.¹ A group of citizens is suing the city on the grounds that city councilmembers are seeking to violate their constitutional rights.² This paper explains why local income taxes are illegal in Washington, based on past court rulings, state law, and the constitution.

For eight decades the Washington State Supreme Court has ruled that income is property and that a graduated income tax is unconstitutional in Washington state. In addition, a legal principle in Washington says that local governments only have taxing authority by grant of legislative approval. Local officials cannot invent their own taxing authority out of thin air. Finally, state law prohibits a local government from imposing a tax on net income. These three facts demonstrate that without a constitutional amendment and express legislative approval, a local income tax is illegal in our state.

State law prohibits local income tax

In order for a local government to impose any type of tax it must first have express authorization from the Legislature. This requirement was recently cited by the Court of Appeals in a unanimous May 22, 2017 ruling striking down a tax passed in the city of Seattle:³

"Municipalities must have express legislative authority to levy taxes . . . We affirm the hearing examiner's conclusion that the city lacked authority to tax roaming charge revenue, but like the superior court, we base that conclusion on the absence of specific statutory authority."

Not only has the Legislature not granted municipalities the authority to impose an income tax, lawmakers have passed a law expressly forbidding this type of tax. As stated in Revised Code of Washington 36.65.030:

- 1 "City of Seattle Ordinance 125339: Imposing an income tax on high-income residents," City of Seattle, July 10, 2017, at <http://seattle.legistar.com/ViewReport.aspx?M=R&N=Text&GID=393&ID=2834527&GUID=456E606A-307B-47C2-9107-94C4798E4913&Title=Legislation%20Text>
- 2 "More lawsuits filed against Seattle's illegal income tax," by Jason Mercier, Washington Policy Center, August 9, 2017, at <http://www.washingtonpolicy.org/publications/detail/more-lawsuits-filed-against-seattles-illegal-income-tax>
- 3 "City of Seattle v. T-Mobile West Corp," Opinion - Case No. 75423-8-1, Division 1, Washington State Court of Appeals, May 22, 2017 <http://www.courts.wa.gov/opinions/pdf/754238.pdf>

“Tax on net income prohibited. A county, city, or city-county shall not levy a tax on net income.”⁴

Though the phrase “net income” is used, the legislative history of this law makes it clear the Legislature was focused on prohibiting any type of local income tax. As noted by the bill report, lawmakers wanted to make it clear that cities and counties may not enact an income tax:⁵

“City-county consolidation was authorized by the voters in 1972 when they approved Amendment 52 to the State Constitution. An Attorney General’s Opinion in 1975 created some confusion over the powers possessed by a combined city-county. The Legislature had not enacted any statutes clarifying the constitutional authorization for combined city-counties. Summary: The following clarification are made . . . (2) A county, city, or combined city-county is prohibited from enacting an income tax . . .”

A graduated income tax is unconstitutional

According to the Washington State Supreme Court (1951): “It is no longer subject to question in this court that income is property.”⁶ This common-sense finding that income is property is important because it means an income tax would need to follow the constitutional restrictions imposed on property taxes. This means, as the state Supreme Court has repeatedly ruled, that a graduated income tax is unconstitutional because property must be taxed uniformly and at no more than one percent of its value.

Some critics say the state Supreme Court’s numerous rulings prohibiting a graduated income tax are “antiquated.” Former state Supreme Court Justice Phil Talmadge addressed this argument in a legal analysis written in 2010 on the constitutionality of Initiative 1098 (a state income tax ballot measure). Justice Talmadge said:⁷

“The proponents of a graduated net income tax in Washington have vociferously argued that these older cases are no longer viable . . . However, since 1993, the Washington Supreme Court has been confronted with cases in which the continuing validity of the ‘income as property’ cases was questioned and has rejected the argument articulated in the Spitzer law review article . . .

“Subsequently, in Washington Public Ports Association v. Dep’t of Revenue (2003), the Court re-again affirmed the continuing viability of the cases holding that a tax on income was a property tax.”

4 “RCW 36.65.030: Tax on net income prohibited,” Washington State Legislature at <http://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, May 9, 2017, at <http://www.washingtonpolicy.org/publications/detail/why-did-legislature-pass-1984-local-income-tax-ban>

6 “Power, Inc v. Huntley,” Opinion – Case No. 31825, Washington State Supreme Court, August 20, 1951, at <http://courts.mrsc.org/supreme/039wn2d/039wn2d0191.htm>

7 “Constitutionality of Initiative 1098, by Phil Talmadge, Washington Policy Center, August 19, 2010, at <http://www.washingtonpolicy.org/library/doclib/Talmadge-Letter-Initiative-1098.pdf>



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Washingtonians have repeatedly rejected an income tax

The voters have been provided multiple opportunities to overturn the numerous rulings by the state Supreme Court declaring a graduated income tax unconstitutional.

Each time, however, the voters have overwhelmingly rejected those constitutional amendments to allow a graduated income tax. The people voted down such proposals in 1934, 1936, 1938, 1942, 1970 and 1973.

Washington voters have also rejected multiple income tax initiatives (in 1944, 1975, 1982 and 2010. The most recent measure, Initiative 1098 in 2010, was rejected by a margin of nearly two to one.

In total, the people have made it clear on ten straight occasions they do not want an income tax.⁸ In addition, local voters in Olympia rejected a city-specific income tax proposal in 2016.

It is because of this consistent rejection at the ballot box that income tax proponents no longer are trying to amend the constitution and impose an unpopular state-wide income tax. Instead they are hoping that five justices will do what the voters won't and overturn eight decades of established case law, thus allowing a graduated income tax to be imposed by lawmakers without a constitutional amendment.

Conclusion

Court cases often involve complex legal issues. This legal question, however, is not complicated. An income tax at the local level is clearly illegal in Washington state, based on the obvious meaning of the constitution and laws passed by the people and their representatives.

In addition, a graduated income tax is unconstitutional. Those advocating for an income tax should not willfully violate state law and the constitution in hopes of five justices undoing eight decades of case law.

An income tax is not good public policy for Washington state, which is likely the reason the people have rejected it so many times. If income tax proponents persist, however, they should attempt to convince the Legislature and citizens to impose an income tax in the only way that is legally possible in Washington state – by passing a constitutional amendment.

⁸ "Income Tax Ballot Measures," Washington Secretary of State, accessed on August 23, 2017 at <https://www.sos.wa.gov/elections/research/Income-Tax-Ballot-Measures.aspx>