

Washington: Court strikes down Seattle's new tax on the wealthy



David M. Kall | Thursday, November 30, 2017

In late July, the Seattle City Council passed a \$140 million revenue generator in the form of an [ordinance](#) that would have imposed an income tax on “high-income residents.” The measure would have subjected joint filers with income over \$500,000, and single filers with income over \$250,000, to a 2.25 percent income tax. Washington and six other states, Alaska, Florida, Nevada, South Dakota, Texas, and Wyoming, do not currently impose an income tax. New Hampshire and Tennessee tax only dividend and interest income.

The resulting litigation consisted of several different lawsuits, later consolidated, that all sought a court declaration invalidating the Seattle ordinance. During the months of September and October, both sides in each lawsuit sought summary judgment, and the court heard oral arguments on Nov. 17, 2017.

When we [described](#) the measure in July, we quoted the Tax Foundation, which [asserted](#) that the tax is “almost certainly illegal,” based on Washington state law, and its constitution. [State law](#) prohibits counties, cities, and city-counties from levying an income tax.

The court agreed, in a Nov. 22, 2017 [order](#) that struck down the Ordinance.

Taxing authority

The court first tackled Seattle’s position that “its personal income tax is ‘within the taxing authority delegated by the state.’” The city pointed to two provisions of the Washington Constitution:

- Article VII, section 9, which provides that “[f]or all corporate purposes, all municipal corporations may

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be vested with authority to assess and collect taxes.”

- Article XI, section 12, which authorizes the Legislature to grant municipalities the power to levy taxes for “county, city, town, or other municipal purposes.”

The court, however, opined that “[t]hese constitutional provisions are not self-executing,” citing case law establishing that “...neither cities nor counties may levy taxes which have not been expressly authorized by the Legislature. It is also clear that neither the broad police powers nor any other general grant of power to cities and counties encompass the power to tax.”

Seattle also argued that the levy is an excise tax, one “that is imposed on a taxpayer for voluntarily exercising a certain right or privilege,” which state lawmakers had authorized by way of two state statutes.

But the court concluded that “[t]o the extent that the Ordinance purports to impose a tax on the ‘privilege’ of receiving pay for labor, such a ‘privilege’ is not a valid basis for an excise tax.” The court pointed to authority establishing that the “right to earn a living by working for wages is not a ‘substantive privilege’ permitted by the state. It is ... one of those inalienable rights ... secured to all ... by the liberty, property, and happiness clauses of the national and state Constitutions.”

An alternative to this case theory that Seattle forwarded was that “[t]he tax is on the benefit of taking advantage of the city’s protections by being a Seattle resident...”

Once again, the court did not agree, quoting one set of plaintiffs’ responses: “[T]he right to live in the City and earn a livelihood does not constitute a voluntary or privileged activity for which an individual must obtain a license, nor is there any activity the city revokes if an individual fails to pay; violators are not banished, fired from the jobs or required to forfeit income...the City cannot license the right to live in the City.”

To Seattle’s contention that state law “shall have...all powers of taxation for local purposes except those which are expressly preempted,” the court answered that the “general description of code cities’ taxing power does not by itself authorize any particular type of tax.” But even if it did, the court stated, the state law’s prohibition on income taxes overrides that power.

There was jousting over what constitutes “income,” and whether this means, for instance, net or gross income. “In sum, the court conclude[d] that the City’s Ordinance imposes a tax on net income,” which runs afoul of state law.

Constitutional arguments

Finally, the court examined whether the ordinance violated the state’s constitutional prohibitions known as the Single-Subject Rule and the Subject-in-Title Rule, but found that it complied with both.

Other constitutional arguments against the tax were that it was “a graduated tax on property and thus violates the uniformity requirement that [the] Washington Constitution imposes on property taxes,” and that it violated equal protection under both the state and federal constitution.

The court did not consider either of these matters because it had resolved the case on statutory grounds. Under this circumstance, “the court will avoid deciding the issue on constitutional grounds.”

Reactions

The *Seattle Times* reported that the city plans to appeal to the Washington Supreme Court. Seattle’s goal is “to eliminate the state’s overreliance on regressive sales taxes and ensure the wealthy pay their fair share.”

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On the other hand, the paper quoted a lawyer for a number of the plaintiffs, who quarreled that Seattle “knowingly violated several laws in imposing this tax. This ruling is probably the worst scenario for the city and the best scenario for the opponents of the income tax.”



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