

New Seattle Personal Income Tax Ruled Illegal

The King County Superior Court held on November 17, 2017, that [Seattle's recently adopted city income tax](#) is illegal under Washington law. The case was resolved on two alternative statutory grounds.

Cities May Not Impose Income Taxes

First, the court concluded that Seattle's income tax was not an "excise tax" and, therefore, was not authorized by any state statute. Washington cities only have the taxing authority that is delegated to them by the state legislature. While state law authorizes cities to impose an excise tax on certain privileges, the superior court concluded that the right to live and earn a livelihood is not "privilege" for which the city may impose an excise. According to the court: "[T]he City's tax, which is labeled, "Income Tax," is exactly that. It cannot be restyled as an 'excise tax' on the alternate 'privileges' of receiving revenue in Seattle or choosing to live in Seattle."

Second, the court held that Seattle's income tax was preempted by state law prohibiting city and county taxes on "net income." RCW 36.65.030. The court looked to various definitions of "net income" and concluded that, "[r]egardless of which of these definitions one uses, the conclusion is the same: the City's income tax is a tax on net income."

Setback in Seattle's Effort to Advance a State Income Tax

Because the court resolved the case on statutory grounds, the court did not address whether Seattle's income tax was a property tax that violated the uniformity requirement of the Washington State Constitution. The superior court's approach complicates Seattle's strategy of using its city income tax as a vehicle to get the Washington Supreme Court to reconsider its precedent and permit a progressive state income tax. *See* City of Seattle Resolution No. 31747 (stating that "the City of Seattle can pioneer a legal pathway and build political momentum to enable the State of Washington and other local municipalities to put in place progressive tax systems [i.e., income taxes].").

Seattle's income tax, which was to take effect on January 1, 2018, is now indefinitely suspended unless the city prevails on an appeal. The city has indicated it will appeal the decision and the appeals process is likely to take months.

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