SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

S. MICHAEL KUNATH, Plaintiff, v. CITY OF SEATTLE, Defendant, and ECONOMIC OPPORTUNITY INSTITUTE, Intervenor-Defendant.	No. 17-2-18848-4 SEA ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT
SUZIE BURKE, *et al.,* Plaintiff, v. CITY OF SEATTLE, Defendant.	
DENA LEVINE, *et al.*, Plaintiff, v. CITY OF SEATTLE, Defendant.	
SCOTT SHOCK, *et al.,* Plaintiffs, v. CITY OF SEATTLE, Defendant.	

1. Introduction

On November 17, 2107, this matter came before the court for oral arguments on the following motions and cross-motions in this consolidated action:

- Defendant City of Seattle's Motion for Summary Judgment (Dkt. 47D).
- Intervenor-Defendant Economic Opportunity Institute's Motion for Summary Judgment (Dkt. 47A)
- Plaintiff Kunath's Cross-Motion for Summary Judgment (Dkt. 57)
- Burke/Levine Plaintiffs' Cross-Motion for Summary Judgment (Dkt. 56J)
- Shock Plaintiffs' Cross-Motion for Summary Judgment (Dkt. 56B)

For the reasons explained below, the court will deny the Defendants' Motions for Summary Judgment and grant the Plaintiffs' Motions for Summary Judgment.

2. Parties and Counsel

Plaintiff Kunath. Plaintiff S. Michael Kunath ("**Kunath**") is represented by Matthew F. Davis of Davis Leary.

Burke Plaintiffs. Plaintiffs Suzie Burke, Gene Burrus and Leah Burrus, Paige Davis, Faye Garneau, Kristi Dale Hoofman, Lewis M. Horowitz, Theresa Jones and Nigel Jones, Nick Lucio and Jessica Lucio, Linda R. Mitchell, Erika Kristina Nagy, Don Root, Lisa Sterritt and Brent Sterritt, and Norma Tsuboi (the "**Burke Plaintiffs**") are represented by Scott M. Edwards and Ryan P. McBride of Lane Powell PC and David Dewhirst of The Freedom Foundation.

Levine Plaintiffs. Plaintiffs Dena Levine, Christopher Rufo, Martin Tobias, Nicholas Kerr, Chris McKenzie, Alisa Artis, Lien Dang, Kerry Lebel, and Dorothy M. Sale (the "**Levine Plaintiffs**"), are represented by Robert M. McKenna, Daniel J. Dunne, Jr. and Adam Tabor of Orrick, Herrington & Sutcliffe LLP; Gerry L. Alexander of Bean, Gentry, Wheeler & Peternell, PLLC; and Philip A. Talmadge of Talmadge Fitzpatrick Tribe PLLC.

Shock Plaintiffs. Plaintiffs Scott Shock, Sally Oljar, Steve Davies and John Palmer (the "**Shock Plaintiffs**") are represented by Brian T. Hodges and Ethan W. Blevins of the Pacific Legal Foundation.

Defendant City of Seattle. Defendant City of Seattle (the "**City**") is represented by Seattle City Attorney Peter S. Holmes and Kent Meyer, Assistant City Attorney; Paul J. Lawrence, Gregory J. Wong and Jamie L. Lisagor of Pacifica Law Group LLP; and Hugh D. Spitzer.

Defendant Economic Opportunity Institute. Defendant Economic Opportunity Institute ("**EOI**") is represented by Knoll Lowney and Claire E. Tonry of Smith & Lowney, PLLC.

Amicus Curiae Rental Housing Association of Washington. Amicus Curiae Rental Housing Association of Washington ("RHA") is represented by Katherine A. George of Johnston George LLP.

3. Documents Considered

The Court has considered the pleadings and other documents filed by the parties, and in particular the following items, including their attachments, totaling approximately 1,200 pages:

Pleadings By Defendant City of Seattle	**Dkt. No.**
Defendant City of Seattle's Motion for Summary Judgment	47D
Declaration of Gregory J. Wong in Support of Defendant City of Seattle's Motion for Summary Judgment	47E
City of Seattle's Combined Reply in support of Its Motion for Summary Judgment and Opposition to Plaintiffs' Cross-Motions for Summary Judgment	67
Second Declaration of Gregory J. Wong in Support of Defendant City of Seattle's Motion for Summary Judgment	68

Pleadings By Defendant City of Seattle	Dkt. No.
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Pleadings by Intervenor-Defendant Economic Opportunity Institute	Dkt. No.
Intervenor-Defendant Economic Opportunity Institute's Motion for Summary Judgment	47A
Declaration of Claire Tonry in Support of Economic Opportunity Institute's Motion for Summary Judgment	47B
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Economic Opportunity Institute's Reply to Levine and Burke Plaintiffs' Untimely Opposition Brief	81

Pleadings By Plaintiff Kunath	Dkt. No.
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Plaintiff Kunath's Response to EOI's Motion for Summary Judgment and Cross-Motion for Summary Judgment	58
Declaration of Matthew Davis in Opposition re: Motions for Summary Judgment	59
Kunath's Reply to Seattle's Response to Cross-Motion for Summary Judgment	74
Kunath's Reply to Economic Opportunity Institute's Response re: Cross-Motion for Summary Judgment	75
Declaration of Matthew F. Davis in Support of Reply on Cross-Motion for Summary Judgment Against Economic Opportunity Institute	76
Corrected Declaration of Matthew Davis in Opposition re: Motions for Summary Judgment	78

Pleadings By Burke/Levine Plaintiffs	Dkt. No.
[Burke/Levine] Plaintiffs' Motion for Summary Judgment and Opposition to City's Motion for Summary Judgment	56J
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Burke/Levine Plaintiffs' Opposition to Economic Opportunity Institute's Motion for Summary Judgment	70
Declaration of Daniel J. Dunne in Support of Burke/Levine Plaintiffs' Opposition to Economic Opportunity Institute's Motion for Summary Judgment	71
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Pleadings By Shock Plaintiffs	Dkt. No.
Shock Plaintiffs' Response to Motions for Summary Judgment Filed by the City and Defendant-Intervenor and Cross-Motion for Summary Judgment	56B
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Pleadings By Rental Housing Association of Washington	Dkt. No.
Amicus Curiae Memorandum of Rental Housing Association of Washington	56E

4. Background

A. City's Ordinance

On July 10, 2017, the Seattle City Council unanimously passed Council Bill 119002 (the "**Bill**"). The Bill's title describes its purpose:

> AN ORDINANCE imposing an income tax on high-income residents; providing solutions for lowering the property tax burden and the impact of other regressive taxes, replacing federal funding potentially lost through federal budget cuts, providing public services, including housing, education, and transit, and creating green jobs and meeting carbon reduction goals, and adding a new Chapter 5.65 to the Seattle Municipal Code.

Council Bill 119002, July 10, 2017 (Declaration of Gregory J. Wong in Support of Defendant City of Seattle's Motion for Summary Judgment, Ex. A (Dkt. 47E).

On July 14, 2017, Seattle Mayor Ed Murray signed the Bill, and it became Seattle Ordinance No. 125339 (the "**Ordinance**"). The Ordinance is codified as Chapter 5.65 of the Seattle Municipal Code and is entitled, "Chapter 5.65 - INCOME TAX ON HIGH-INCOME RESIDENTS." *Ibid.*

The Ordinance imposes an income tax on the "total income" of resident taxpayers (with certain credits for income tax paid to another state or local government) as follows:

Resident taxpayers whose Internal Revenue Service filing status was "single," "head of household," qualifying widow(er) with dependent child," or "married filing separately" for the tax year, including individuals making the election ins subsection [SMC] 5.65.040.A.1, or a trust	Total income in the tax year up to $250,000	0%
	Amount of total income in the tax year in excess of $250,000	2.25%

Resident taxpayers whose Internal Revenue Service filing status was "married filing jointly" for the tax year and not calculating total income based on "married filing separately" status as provided for under subsection [SMC] 5.65.040.A.1	Total income in the tax year up to $500,000	0%
	Amount of total income in the tax year in excess of $500,000	2.25%

SMC 5.65.030.B. *See also* SMC 5.65.020 and SMC 5.65.060.

The term, "total income," is defined at SMC 5.65.020.G:

> "Total income" means the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return for the tax year, listed as "total income" on line 22 of Internal Revenue Service Form 1040, "total income" on line 15 of Internal Revenue Service Form 1040A, "total income" on line 9 of Internal Revenue Service Form 1041, or the equivalent on any form issued by the Internal Revenue Service that is not reported on Schedule K-1 for a beneficiary.

The City estimates that "[t]hose who would be subject to the [City's income] tax have incomes in the top three percent of all Seattle households." Declaration of Gregory J. Wong, Exhibit C, at 3 ("Seattle Income Tax Threshold Information Sheet,") (Dkt. 47E).

B. Plaintiff Kunath's Suit

On July 14, 2017, the same day the Mayor signed the Ordinance, Plaintiff Kunath filed a Complaint for Declaratory Relief (Dkt. 1) On August 8, 2017, Plaintiff Kunath filed his First Amended Complaint (Dkt. 10) (the "**Kunath Amended Complaint**").

Plaintiff Kunath seeks a judgment declaring the Ordinance to be void on the following grounds:

- The Ordinance taxes "net income," not "gross income," and thus violates RCW 36.65.030, (which provides, "A county, city, or city-county shall not levy a tax on net income."). Kunath Amended Complaint, at ¶¶ 10-36, 47-49, 59.

- The Ordinance taxes "net income," not "gross income," and thus violates art. XI, § 12 of the Washington Constitution (which prohibits cities from assessing taxes not authorized by the legislature). *Id.*, at ¶¶ 10-36, 44-46, 60.
- The tax levied by the Ordinance is a tax on "property" that "is not uniform" because it imposes tax on the "property" of only some residents and not others, and thus violates art. VII, § 1 of the Washington Constitution (which provides, in part, that "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax…" *Id.*, at ¶¶ 37-40, 50-56, 61.
- The tax levied by the Ordinance exceeds one percent of the value of income per year, in violation of art. VII, § 2 of the Washington Constitution. *Id.*, at ¶¶ 41, 57-58, 62.

C. Burke Plaintiffs' Suit

On August 9, 2017, the Burke Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in in Case No. 17-2-21032-3. Later that same day, they filed an Amended Complaint for Declaratory and Injunctive Relief (the "**Burke Amended Complaint**") in that case. On August 17, 2017, the court consolidated the Burke Plaintiffs' suit with the Kunath suit (Dkt. 16).

The Burke Plaintiffs seek a judgment declaring the Ordinance to be void and an injunction preventing the City from enforcing the Ordinance on the following grounds:

- The Ordinance exceeds the City's statutory taxing authority (Burke Amended Complaint, at ¶¶ 2, 29(a)).
- The Ordinance violates the prohibition against net income taxes stated in RCW 36.65.030. *Id.*, at ¶¶ 3, 18-19, 29(b).
- The Ordinance "violates statutory limitations on Municipal gross income taxes imposed by Ch. 35.102 RCW" because "the purposes to which the funds

are dedicated … are not valid purposes for which municipalities are authorized to impose taxes." *Id*., at ¶ 4; *see also* ¶ 5.

- The Ordinance "was enacted without a vote of the people exceeding the authority granted to the city council by the people under the Charter of the City of Seattle, and, therefore, is invalid." *Id*., at ¶ 32(a); ¶ 6; *see also* ¶¶ 6, 31.
- The Ordinance "violates the privacy rights of Washington Citizens under art. I, Section 7 of the Washington Constitution because [it compels] the disclosure of private affairs to the government." *Id*., at ¶ 8; *see also* ¶ 35(a).
- The Ordinance "imposes an unconstitutional non-uniform tax in violation of the Uniformity Clause, art. VII, Section 1 of the Washington Constitution." *Id*., at ¶ 9; *see also* ¶¶ 20, 35(b).

D. Levine Plaintiffs' Suit

On August 9, 2017, the Levine Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in in Case No. 17-2-21076-5. On August 17, 2017, the court consolidated the Burke Plaintiffs' suit with the Kunath suit (Dkt. 16). On August 31, 2017, the Levine Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief (the "**Levine Amended Complaint**") in this consolidated case (Dkt. 26).

The Levine Plaintiffs seek a judgment declaring the Ordinance to be void and an injunction preventing the City from enforcing the Ordinance on the following grounds:

- "The Legislature has not authorized [the City] to tax personal income, and has not specifically authorized [the City] to tax "total income" in particular." Levine Amended Complaint, at ¶ 56; *see also* ¶¶ 53-55)
- "[T]he Legislature prohibits [the City] from taxing personal income" pursuant to RCW 36.65.030. *Id*., at ¶ 57.

- "Seattle lacks the power to tax income under the City Charter, which does not confer the power to tax personal income on the City [and the] City has not placed a Charter Amendment before the voters of Seattle that would empower it to tax income." *Id*., at ¶ 58.
- The Ordinance "imposes a non-uniform tax on personal income" in violation of the Uniformity Clause, art. VII, Section 1 of the Washington Constitution. *Id*., at ¶ 59.

E. Shock Plaintiff's Suit

On August 30, 2017, the Shock Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in in Case No. 17-2-22917-2 (the "**Shock Complaint**"). On November 13, 2107, the court consolidated the Shock Plaintiffs' suit with the Kunath suit (Dkt. 77).

The Shock Plaintiffs seek a summary judgment declaring the Ordinance to be void and an injunction preventing the City from enforcing the Ordinance on the following grounds:

- The Ordinance impermissibly imposes a tax on "net income" in violation of RCW 36.65.030." Shock Complaint, at ¶ 20; *see also* ¶¶ 35-36.
- The Ordinance exceeds the City's statutory taxing authority. *Id*., at ¶¶ 33-36 .
- "The City Charter does not grant the City the authority to levy a tax on income." *Id*., at ¶¶ 37.
- "The Ordinance does not impose the tax at a uniform tax rate as required by art. VII, Section 1 of the Washington State Constitution." *Id*., at ¶¶ 21; *see also* ¶¶ 22, 42-43.
- The Ordinance violates the Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution and art. I, Section 12 of the Washington State Constitution. *Id.*, at ¶¶ 49-50.

F. Defendant-Intervenor Economic Opportunity Institute's Suit

By order dated September 20, 2017, the court allowed EOI to intervene as an additional Defendant in this case.

On September 21, 2017, EOI filed a Complaint in Intervention (Dkt. 47) ("**EOI's Complaint**"), requesting the court to issue a judgment declaring that "RCW 36.65.030 is unconstitutional and void and that the [Ordinance] is valid." EOI's Complaint, at ¶ 2.

EOI argues that RCW 36.65.030 violates art. II, § 19 of the Washington Constitution, which prohibits legislative bills from addressing more than one subject (the "**Single-Subject Rule**") and from having a subject that is not expressed in the title of the bill (the "S**ubject-in-Title Rule**"). *Id.,* at ¶¶ 46-48.

5. Parties' Cross Motions for Summary Judgment

A. Defendant City's Motion

The City urges the court to issue a declaratory judgment upholding the Ordinance. The City argues:

- RCW 36.65.030 (which prohibits taxes on net income) is inapplicable to the Ordinance because the Ordinance taxes "total income," a figure derived from resident taxpayers' federal personal income tax returns.
- The Ordinance, despite its title describing the tax as an "income tax," actually imposes an "excise tax" that the City is authorized to impose pursuant to RCW 35A.82.020 and RCW 35.22.280(32).
- Regardless of how the tax is labeled, the City is authorized to impose it pursuant to RCW 35A.11.020, a 2007 statute that provides that "Within constitutional limitations … [the City has] all powers of taxation for local purposes."
- It is time to reverse a long line of Washington Supreme Court decisions, all of which hold that income taxes are "property taxes" and thus subject to the

"uniformity" restrictions that art. VII, § 1 of the Washington Constitution applies to property taxes.

B. Defendant EOI's Motion

Intervenor-Defendant Economic Opportunity Institute ("**EOI**") echoes the City's arguments, and additionally urges the court to conclude that even if RCW 36.65.030 otherwise would be applicable to the Ordinance, violates art. II, § 19 of the Washington Constitution because it violates the "Single-Title Rule" and the "Subject-in-Title Rule."

C. Plaintiffs' Cross-Motions

In their cross-motions, the Plaintiffs generally oppose each of the Defendants' legal arguments summarized above, and they urge the court to issue a declaratory judgment in their favor, invalidating the Ordinance.

6. Discussion

A. Summary Judgment Standard

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dean v. Fishing Co. of Alaska*, 177 Wn.2d 399, 405, 300 P.3d 815 (2013). When determining whether summary judgment is appropriate, the court must consider the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Shoffner v. State*, 172 Wn.App. 866, 871–72, 294 P.3d 739 (2013).

All parties agree that there is no dispute of any material fact and that the court may rule on the parties' cross-motions for summary judgment. The court has considered all admissible evidence included in the approximately 1,200 pages of materials submitted by the parties and the court has disregarded any inadmissible evidence.

B. Legislature Must Expressly Delegate Specific Taxing Authority to Municipalities

The City argues that its personal income tax is "within the taxing authority delegated by the state" (City's Motion, at 2), citing to the Washington Constitution, art. VII, § 9, which provides that "[f]or all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes;" and art. XI, § 12, which authorizes the Legislature to grant municipalities the power to levy taxes for "county, city, town, or other municipal purposes;" *Id.*, at 5-8.

In *Watson v. City of Seattle,* 189 Wn.2d 149, 401 P.3d 1 (2017), the Washington Supreme Court summarized the limitations on the taxing authority of municipalities:

> The Washington State Constitution generally vests taxing power in the state legislature. *See* WASH. CONST. art. I, § 1. Municipal corporations have no inherent power to tax. *See Arborwood Idaho, LLC,* 151 Wn.2d [359] at 365-66, 89 P.3d 217 (2004); 16 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 44.5 (3d ed. 2013). … [A]rticle VII permits the legislature to delegate tax powers to cities and towns. See WASH. CONST. art. VII, § 9 ("For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes."). …

189 Wn.2d at 165, 401 P.3d 1. *See also* Washington Constitution art. XI, § 12 ("[T]he legislature *may*, by general laws, vest in the corporate authorities [of counties, cities, towns, or other municipal corporations] the power to assess and collect taxes for such purposes." [Emphasis added]).

These constitutional provisions are not self-executing. In *King County v. City of Algona,* 101 Wn.2d 789, 791, 681 P.2d 1281 (1984), the Washington Supreme Court stated, "We have consistently held that municipalities must have *express* authority, either constitutional or legislative, to levy taxes." [Emphasis added]. *See also Arborwood Idaho LLC v. City of Kennewick,* 151 Wn.2d 359, 366, 89 P.3d 217 (2004); *Rivett v. City of Tacoma,* 123 Wn.2d 573, 584, 870 P.2d 299 (1994) ("It is clear 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.").

Unless the City can identify a statute that specifically authorizes it to impose the type of tax described in the Ordinance, the Ordinance cannot withstand the Plaintiffs' challenge.

C. The City's Income Tax is Not an "Excise Tax" Authorized by RCW 35.22.280(32) and RCW 35A.82.020

Despite the fact that the Ordinance is entitled, "Income Tax on High-Income Residents," the City characterizes its tax as excise tax that the Legislature has authorized by reason of RCW 35.22.280(32) and/or RCW 35A.82.020. City's Motion, at 20-21 (Dkt. 47D); City's Reply, at pp 27-29.

An excise tax is a tax that is imposed on a taxpayer for voluntarily exercising a certain right or privilege. *Tesoro Refining and Marketing Co. v. State Dept. of Revenue,* 135 Wn.App. 411, 418, 144 P.3d 368 (2006).

RCW 35.22.280(32) allows a city to impose an excise tax for the privilege of being licensed to do business in the city:

> Any city of the first class shall have power:
>
> * * *
>
> (32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement.

RCW 35A.82.020 provides that a city may issue business licenses for up to one year at a time for purposes of "regulation or revenue:"

> A code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or

> revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity…
>
> No such license shall be granted to continue for longer than a period of one year.

The City asserts that Seattle residents enjoy a taxable "privilege," and it argues that RCW 35.22.280(32) and RCW 35A.82.020 authorize the tax that the Ordinance imposes – namely, an annual license fee (excise tax) upon high-income residents based on those residents' "total income."

The City offers alternate descriptions of the "privilege" that it is taxing. Initially, the City argues that "The Ordinance imposes 'excises for … revenue … upon [the] lawful activity' of resident taxpayers' receipt of income within Seattle." City's Motion, at 21.

To 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. *See Cary v. City of Bellingham,* 41 Wn.2d 468, 250 P.2d 114 (1952) [Held, city's purported "excise tax" on 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."]; *see also Jensen v Henneford,* 185 Wash. 209, 217-219 (1936) [rejecting the Washington State Tax Commission's argument that the "Personal Net Income Tax Act of 1935" could be characterized as an excise tax on "the privilege of receiving income."].

In its reply brief, the City puts forth an alternate argument, that "[c]hoosing to live in Seattle is a 'lawful activity' that is subject to the City's excise tax authority" (City's Reply, at 28 (Dkt. 67)); and that

> [t]he tax is on the benefit of taking advantage of the city's protections by being a Seattle resident (the incident), imposed on personal total income above the thresholds (the measure), at a rate of 2.25% for any amount over the threshold (the rate).

Id., at 29.

The court disagrees. Although RCW 35.22.280(32) grants the City broad authority to impose excise taxes on businesses for the privilege of doing business within city limits, *Watson v. City of Seattle,* 189 Wn.2d 149, 170, 401 P.3d 1 (2017), the City's right to impose excise taxes under that statute may be levied only "upon the right to do business, not upon the right to exist…" *Id.,* at 168, 401 P.3d 1 (2017), citing *Pac. Tel. &Tel. Co.,* 172 Wash.649, 654, 21 P.2d 721 (1933). The court agrees with the Burke/Levine Plaintiffs' response to the City's argument:

> [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. *Margola Assocs. v. City of Seattle,* [121 Wn.2d 625,] 641[, 854 P.2d 23 (1993)] ("violation of a traditional licensing ordinance leads to a revocation of the license and a cessation of the licensed activity"). RCW 35.22.280(32)'s licensing authority does not apply, because the City cannot license the right to live in the City.

Burke/Levine's Motion, at 17 (Dkt. 56J).

In short, the 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.

D. RCW 35A.11.020 Does Not Authorize the City's Tax as an Income Tax or as a "*Sui Generis*" Tax

The City argues RCW 35A.11.020 authorizes it to impose the tax described in the Ordinance. That statute provides, in relevant part:

> Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in [certain statutes referring to liquor, motor fuel excise, and insurance premiums, none of which is relevant here].

This general description of code cities' taxing power does not by itself authorize any particular type of tax. In *King County v City of Algona,* 101 Wn.2d 789, 681 P.2d 1281 (1984), the Washington Supreme Court rejected the City of Algona's claim that RCW 35A.11.020's "general grant of taxing power" gave it the authority to levy a tax on another municipality. The court stated:

> The general grant of taxation power on which Algona relies in RCW 35A.11.020 contains no *express* authority to levy a tax on the state or another municipality. To allow the City to impose the tax in this case would violate the established rule that municipalities must have specific legislative authority to levy a particular tax. *Citizens for Financially Responsible Gov't v. Spokane,* [99 Wn.2d 339, 343, 662 P.2d 845 (1983)]*; Hillis Homes, Inc. v. Snohomish Cy.,* [97 Wn.2d 804, 809, 650 p.2d 193 (1982)]. [Emphasis in original]

101 Wn.2d 789, 793, 681 P.2d 1281; *see also City of Port Angeles v. Our Water-Our Choice!,* 170 Wn.2d 1, 14 n.7, 239 P.3d 589 (2010).

Citing an out-of-state case and two scholarly articles, the City argues that its income tax "also could be appropriately characterized as *sui generis*, for which the legislature has also granted the city authority." City's Motion, at p. 21 (Dkt. 47D); *see also* City's Reply, at 32-34 (Dkt. 67). Regardless of what label one may choose in classifying the City's tax, the requirement remains that the Legislature must specifically authorize the tax. The City has not identified any specific statutory authorization for its tax.

To summarize, the general grant of taxing power recited in RCW 35A.11.020, standing alone, confers no specific authority on the City to impose any tax, let alone the specific authority to impose an income tax or a "*sui generis"* tax. Moreover, whatever effect RCW 35A.11.020 otherwise might have in this case is overridden by RCW 36.65.030's prohibition on net income taxes, discussed immediately below.

E. RCW 36.65.030 Prohibits the City's Tax on Net Income

In 1984, the Legislature passed Substitute Senate Bill No. 4313, which was approved by the Governor and codified as RCW 36.65.030. The statute provides, "A county, city, or city-county shall not levy a tax on net income." The applicability of this statute in this case turns on the definition of "net income."

In interpreting RCW 36.65.030, the court first must attempt to discern the statute's "plain meaning." If a term in the statute is undefined, then the court may look to standard dictionary definitions to determine the term's plain and ordinary meaning. *State v. Watson,* 146 Wn.2d 947, 954, 51 P.3d 66 (2002); *Audit & Adjustment Co. v. Earl,* 165 Wn.App. 497, 502-503, 267 P.3d 441 (2011).

The City relies on Black's Law Dictionary's definition of "net income" ("[t]otal income from all sources minus deductions, exemptions, and other tax reductions." [Black's Law Dictionary (10th ed. 2014]). City's Motion, at 7 (Dkt. 47D).

The City also relies on the Webster's Dictionary definition of "net income" ("the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period." [Webster's Third New Int'l Dict. 1520 (1993]). *Id*.

The City additionally cites to the *Audit & Adjustment Co. v. Earl* case, in which the court treated "net earnings" and "net income" as equivalent terms, based on Black's Law Dictionary and Webster's Dictionary:

> The ordinary meaning of "earnings" is "the balance of revenue for a specific period that remains after deducting related costs and expenses incurred—compare profit." Webster's Third New Int'l Dictionary, at 714 (2002). ***"Net earnings" is equivalent to "net income"*** and means "the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period." Webster's, *supra,* at 1520; *see also* Black's Law Dictionary, at 832, 1139 (9th ed. 2009). [Emphasis added]

Audit & Adjustment Co. v. Earl, 165 Wn.App. at 503, 267 P.3d 441 (2011); *see also* City's Motion, at 5-6 (Dkt. 47D).

Plaintiff Kunath quotes the edition of Black's Law Dictionary that was current in 1984, when RCW 36.65.030 was enacted:

> Net Income. Income subject to taxation after allowable deductions and exemptions have been subtracted from gross or total income. The excess of all revenues and gains for a period over all expenses and losses of the period.
>
> Net income for income tax purposes is **what remains out of gross income after subtracting ordinary and necessary expenses** incurred in efforts to obtain or to keep it. Walling's Estate v. Commissioner of Internal Revenue, C.A.Pa, 373 F.2d 190, 193. [Emphasis added]

Corrected Declaration of Matthew Davis in Opposition re: Motions for Summary Judgment, Ex. 8 (Dkt. 78) (quoting Black's Law Dictionary, Special Deluxe Fifth Edition (1979)); *see also* Kunath Motion, at 4-8 (Dkt. 57).

The Levine/Burke Plaintiffs quote the Multistate Tax Compact, adopted by the Washington Legislature as part of Chapter 82.56 RCW. That statute defines "income tax" as a tax that inherently requires a netting process:

> 4. "***Income tax***" means a tax imposed on or measured by ***net income*** including any tax imposed on or measured by an amount arrived at by ***deducting expenses from gross income***, one or more forms of which expenses are not specifically and directly related to particular transactions. [Emphasis added]

RCW 82.56.010(4); Burke/Levine Motion, at 21 (Dkt. 56J).

Regardless of which of these definitions one uses, the conclusion is the same: the City's income tax is a tax on net income.

The City disagrees, and argues that its income tax instead is imposed on "total income," which SMC 5.65.020.G defines as the amount

> reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return

> for the tax year, listed as "total income" on line 22 of Internal Revenue Service Form 1040, "total income" on line 15 of Internal Revenue Service Form 1040A, "total income" on line 9 of Internal Revenue Service Form 1041, or the equivalent on any form issued by the Internal Revenue Service that is not reported on Schedule K-1 for a beneficiary.

City's Motion, at 6-7 (Dkt. 47D). Although the amount is labeled "total income" on the respective IRS forms, it is not a gross figure, but rather a net figure, because it is the sum of net figures.

Stated another way, the "total income" figure on each IRS form is a sum comprising several income sources, each of which is listed on that form, and each of which is determined after deduction of allowable expenses and losses related to that income source, including net income from pass-through business entities, sole proprietorships, and disregarded entities; net capital gain income; net rental income; and net royalty income.

The City concedes that the "total income" amount comprises net figures, but argues that

> although netting occurs, the netting only reflects that the taxpayer pays personal income taxes solely on actual profits, dividends, or other gain received. And the City taxes that total amount of such profits, dividends, or other gain as income without deductions or exemptions.

City's Motion, at 8. This argument does not change the fact that the sum of several net figures necessarily is a net figure. Additionally, although the lines below line 22 of Form 1040 allow a taxpayer to subtract additional deductions and credits and make other adjustments, that does not change the fact that the figure on line 22 is already a net amount.

The City cites to the *Audit & Adjustment Co.* case in support of its argument that "total personal income" may be analogous to "net proceeds" from a transaction, and so cannot be considered "net income." City's Motion, at 8, citing *Audit & Adjustment Co. v. Earl,* 165 Wn.App., at 503, 267 P.3d 441 (2011). In that case, the court distinguished

between the term "net income" ("'the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period.'" [quoting Black's Law Dictionary, 9th ed., at 832, 1139 (9th ed. 2009)], versus "net proceeds" ("'[t]he amount received in a transaction minus the costs of the transaction (such as expenses and commissions).'" [citing Black's, *supra*, at 1325].

The City's argument is not persuasive. Although it is true that "net proceeds" is not synonymous with "net income," a "total income" figure that includes "net proceeds" necessarily reflects the result of a netting process, and thus is "net income."

In sum, the court concludes that the City's Ordinance imposes a tax on net income.

F. RCW 36.65.030 Does Not Violate Washington Constitution Art. II § 19

In its Motion for Summary Judgment, Intervenor-Defendant EOI repeats the arguments raised by the City, and additionally requests the court to grant a judgment declaring that the Ordinance "is not prohibited by RCW 36.65.030, and that RCW 36.65.030 is unconstitutional and void." EOI's Motion, at 2 (Dkt. 47A).

EOI argues that RCW 36.65.030 violates article II, § 19 of the Washington Constitution because it violates Single-Subject Rule and the Subject-in-Title Rule. For the reasons explained below, the court concludes that RCW 36.65.030 does not violate those rules.

1. Washington Constitution Article II, § 19

Article II, § 19 of the Washington Constitution provides, "No bill shall embrace more than one subject, and that shall be expressed in the title." This provision is to be liberally construed in favor of legislation. *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 206, 11 P.3d 762, 27 P.3d 608 (2000); *Wash. Fed'n of State Emps. v. State* , 127 Wash.2d 544, 555, 901 P.2d 1028 (1995). However, the Supreme Court has held that "when laws are enacted in violation of this constitutional mandate, the courts will not hesitate to declare them void." S*tate ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wash.2d 13, 24, 200

P.2d 467 (1948). *See Washington Ass'n for Substance Abuse and Violence Prevention v. State*, 174 Wn.2d 642, 654, 278 P.3d 632 (2012).

The purposes of art. II § 19 are to prevent "logrolling," or pushing legislation through by attaching it to other necessary or desirable legislation; and to assure that the members of the Legislature and the public are generally aware of what is contained in new laws. *Lee v. State,* 185 Wn.2d 608, 620, 374 P.3d 157 (2016); *Patrice v. Murphy,* 136 Wn.2d 845, 854-855, 966 P.2d 1271 (1998).

The court must presume that RCW 36.65.030 is constitutional unless EOI proves beyond a reasonable doubt that the statute is unconstitutional. *In re Welfare of A.W.,* 182 Wn.2d 689, 701, 344 P.3d 1186 (2015); *Island County v. State,* 135 Wn.2d 141, 147, 955 P.2d 377 (1998).

2. RCW 36.65.030 Does Not Violate the Single-Subject Rule

EOI argues that RCW 36.65.030 violates the Single Subject Rule. EOI Motion, at 8-12 (Dkt. 47A). EOI urges the court to look at the title that the Code Reviser gave to the act after it was signed by the Governor, which is "Combined City and County Municipal Corporations." Chap. 36.65 RCW. EOI argues that RCW 36.65.030 violates the Single-Subject Rule because it includes a restriction upon cities and counties in a chapter of the Revised Code that concerns only combined city and county municipal corporations. The court disagrees for the reasons explained below.

The first step in applying the Single Subject Rule is determining whether a bill's title is general or restrictive. "A restrictive title 'is one where a particular part of branch of a subject is carved out and selected as the subject of the legislation.'" *State v. Broadaway,* 133 Wn.2d 118, 127, 942 P.2d 363 (1997). If a title is general, the court must determine whether there is "a rational unity between the operative provisions themselves as well as the general topic." *Lee v. State,* 185 Wn.2d at 620-621, 374 P.3d 157. "Rational unity exists when the matters within the body of the [legislation] are germane to the general title and to one

another." *Filo Foods, LLC v. City of SeaTac,* 183 Wn.2d 70, 782-783, 357 P.3d 1040 (2015). If the title is restrictive, it "limits the scope of the act to that expressed in the title." *State v. Broadaway,* 133 Wn.2d at 127, 942 P.2d 363.

In *Mount Spokane Skiing Corp. v. Spokane County,* 86 Wn.App. 165, 181-183, 936 P.2d 1148 (1997), the court concluded that the title, "AN ACT Relating to local government: amending RCW 35.21.730, 35.21.756 … 35.21.755 … and repealing RCW 35.21.725" was a general title. The court explained:

> It is well established that the title of an act need not be an index to the contents, nor express every detail contained therein. Rourke v. *Department of Labor & Indus*., 41 Wn.2d 310, 312, 249 P.2d 236 (1952). The test of sufficiency is whether the title gives notice of its object so as to lead to a reasonable inquiry of the content. *State v. Lounsbery*, 74 Wn.2d 659, 664, 445 P.2d 1017 (1968). "All that is required is that there be some 'rational unity' between the general subject and the incidental subdivisions. If this nexus can be found, the act will survive the light of constitutional inspection." *Kueckelhan v. Federal Old Line Ins. Co.,* 69 Wn.2d 392, 403, 418 P.2d 443 (1966). The Laws of 1985, ch. 332 describe the legislation as relating to local government. While the subdivisions within the act deal with different aspects of the power of local government, all sections relate to the general subject matter of local government as it pertains to cities and towns. Because the contents of the bill are encompassed within the general subject matter of the title, the act does not violate the prohibition against multiple subjects. RCW 35.21.730 is constitutional

86 Wn.App. at 182-183, 936 P.2d 1148.

Here, Substitute Senate Bill 4313 was the 1984 legislative bill that included what later was codified as RCW 36.65.030. Declaration of Daniel J. Dunne, Ex. A (Dkt. 71); *see also* Declaration of Matthew Davis, Ex. 16 (Dkt. 78). The title of SSB 4313 is, "AN ACT Relating to local government; and adding a new chapter to Title 36 RCW." The court must consider this title, rather than the chapter title that the Code Reviser added later, because the title of the bill is what the legislators saw and relied upon when they voted on the bill. *See Zenner v. Graham,* 34 Wash. 81, 83, 74 Pac. 1058 (1904).

The title of the bill is general because it refers generally to "local government." *See Mount Spokane Skiing Corp. v. Spokane County,* 86 Wn.App. at 181-183, 936 P.2d 1148; *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 209-210, 11 P.3d 762, 27 P.3d 608 (2000). There is a rational unity between the general subject stated in the title - "local government," and the general subject of subsection 3 of the bill - a prohibition against local governments levying net income taxes. *See Gruen v. State Tax Commission,* 35 Wn.2d 1, 22-23, 211 P.2d 651 (1949).

EOI argues that regardless of the title of the bill, the court should find a violation of the Single-Subject Rule because "different types of local government are different subjects," (EOI's Reply, at 4 (Dkt. 81)), and "the Legislature cannot bury substantive restrictions on one form of government in a bill or statute chapter that is otherwise about another form of government." *Ibid.* But the Plaintiffs point out that nothing was "buried" in the bill; that Section 3 (which became RCW 36.65.030) was part of the original version of the bill; and that the legislators were aware that in order to restrict combined city-counties from imposing income taxes, it was necessary to restrict cities and counties as well, pursuant to Washington Constitution, art. XI, § 16. The Plaintiffs cite to a December 2, 1983 Senate Local Government Committee memorandum regarding the bill, which states, in part:

> Sec. 3 Tax on Net Income. Prohibits a city-county from levying a tax on net income. Note: This section also includes cities and counties because there can be no legislative prohibition or restriction on a city-county unless such prohibition or restriction applies equally to every other city, county, and city-county.

Declaration of Matthew J. Davis, Ex. 18 (Dkt. 59); *see also* Corrected Declaration of Matthew J. Davis, Ex. 18 (Dkt.78). In other words, there was no "logrolling." SSB 4313 was drafted to effectuate the constitutional requirement to restrict the powers these local governments equally.

3. RCW 36.65.030 Does Not Violate Subject-in-Title Rule

EOI argues that RCW 36.65.030 violates the Subject-in-Title Rule. EOI's Motion, at 12-13. The court disagrees. The statute complies with the Subject-in-Title Rule just as it complies with the Single-Subject Rule, and for the same reasons. The title of the bill is "An Act relating to local government." There is rational unity because the subject stated in the title, "local government," is naturally and reasonably connected to the subject of Section 3 of the bill, which became RCW 36.65.030, namely, taxing authority of cities, counties and city-counties.

To summarize, EOI has not proved beyond a reasonable doubt that RCW 36.65.030 violates article II, § 19 of the Washington Constitution. The court therefore must give full effect to RCW 36.65.030, which squarely prohibits the net income tax that the Ordinance imposes.

G. Plaintiffs' Alternate Claims That Ordinance Violates Constitution Art. VII, § 1

The Plaintiffs request the court to issue a judgment invalidating the Ordinance on grounds that the income tax is a graduated tax on property and thus violates the uniformity requirement that Washington Constitution art. VII, § 1 imposes on property taxes. Shock Plaintiffs' Motion, at 10-14 (Dkt. 56B); Burke/Levine Plaintiffs' Motion, at 24-32 (Dkt. 56J); Kunath Motion, at 10-18 (Dkt. 57).

The court declines to address this constitutional issue. "Where an issue may be resolved on statutory grounds, the court will avoid deciding the issue on constitutional grounds." *Tunstall v. Bergeson,* 141 Wn.2d 201, 210, 5 P.3d 691 (2000); *Sinear v. Daily Journal-American,* 97 Wn.2d 148, 152, 641 P.2d 1180 (1982); *see also Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass'n,* 156 Wn.2 253, 277 n. 19 (2006).

The court has determined that no statute authorizes the City's net income tax and that RCW 36.65.030 prohibits the tax. The Ordinance being invalid on statutory grounds, it is unnecessary to consider the art. VII § 1 issue.

H. Shock Plaintiffs' Claim That Ordinance Violates Equal Protection

The Shock Plaintiffs request the court to issue a judgment invalidating the Ordinance on grounds that it violates the equal-protection provisions of Washington Constitution art. 1, § 12 and the U.S. Constitution amendment 14, §1. Shock Motion, at 14-18.

It is unnecessary for the court to reach this issue because the court has determined that the Ordinance is invalid on statutory grounds. *Tunstall v. Bergeson,* 141 Wn.2d at 210, 5 P.3d 691; *Sinear v. Daily Journal-American,* 97 Wn.2d at 152, 641 P.2d 1180.

7. Order

To summarize, the Defendants' motions will be denied and the Plaintiffs' motions will be granted because the City's tax is not an "excise tax" and thus is not authorized by RCW 35A.82.020 and RCW 35.22.280(32); the City's tax is not authorized by RCW 35A.11.020; the City's tax is not otherwise authorized by any other statute; and RCW 35.65.030 prohibits the tax.

For the reasons stated above, the court:

1. Denies Defendant City of Seattle's Motion for Summary Judgment (Dkt. 47D);
2. Denies Intervenor-Defendant Economic Opportunity Institute's Motion for Summary Judgment (Dkt. 47A);
3. Grants Plaintiff Kunath's Cross-Motion for Summary Judgment (Dkt. 57);
4. Grants the Burke/Levine Plaintiffs' Cross-Motion for Summary Judgment (Dkt. 56J); and
5. Grants the Shock Plaintiffs' Cross-Motion for Summary Judgment (Dkt. 56B).

Date: November 22, 2017.

s/ John R. Ruhl
John R. Ruhl, Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-18848-4
Case Title: KUNATH ET AL VS CITY OF SEATTLE

Document Title: ORDER ON CROSS-MOTIONS FOR S.J.

Signed by: John Ruhl
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