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KING COUNTY
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CASE NUMBER: 17-2-21032-3 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SUZIE BURKE, an individual; GENE BURRUS and LEAH BURRUS, as individuals and the marital community comprised thereof; PAIGE DAVIS, an individual; FAYE GARNEAU, an individual; KRISTI DALE HOOFFMAN, an individual; LEWIS M. HOROWITZ, an individual; TERESA JONES and NIGEL JONES, as individuals and the marital community comprised thereof; NICK LUCIO and JESSICA LUCIO, as individuals and the marital community comprised thereof; LINDA R. MITCHELL, an individual; ERIKA KRISTINA NAGY, an individual; DON ROOT, an individual; LISA STERRITT and BRENT STERRITT, as individuals and the marital community comprised thereof; and NORMA TSUBOI, an individual;

Plaintiffs,

v.

CITY OF SEATTLE, a municipality; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a department of the City of Seattle; and FRED PODESTA, Director of the Seattle Department Finance and Administrative Services, in his official capacity,

Defendant.

No. 17-2-21032-3 SEA

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1

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1 Plaintiffs, by and through their attorneys, allege the following Complaint for
2 Declaratory and Injunctive Relief against Defendants City of Seattle, the Seattle Department of
3 Finance and Administrative Services, and Fred Podesta, Director of the Seattle Department of
4 Finance and Administrative Services, in his official capacity:

5 **I. NATURE OF THE CASE**

6 1. On July 10, 2017, Defendant City of Seattle (“Seattle” or the “City”) enacted
7 Ordinance No. 125339, imposing an income tax on all residents of the City. Individuals who
8 earn over \$250,000 in total income per year, or married couples earning over \$500,000 in total
9 income per year, will be taxed at a rate of 2.25% while persons with incomes below those
10 amounts will be taxed at an initial rate of 0% (the “Ordinance”). The City’s income tax will
11 apply beginning in 2018, and require the filing of an annual return on or before April 15 of each
12 year. Failure to pay the City’s income tax will result in monetary penalties and is criminally
13 punishable as a gross misdemeanor.

14 2. Cities do not have inherent taxing authority. As creatures of the state, they only
15 have such taxing authority as is expressly granted to them by the state legislature. *City of Seattle*
16 *v. T-Mobile West Corp.*, __ Wn. App. __, 2017 WL 2229926 (Wn. App. (Div. I) May 22, 2017)
17 (“Municipalities must have express legislative authority to levy taxes”) (citing *King County v.*
18 *City of Algona*, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984)). The income tax imposed under
19 the Ordinance exceeds any express legislative authority granted to the City by state statute.

20 3. Not only does the income tax imposed under the Ordinance exceed any express
21 statutory taxing authority, it violates an express statutory prohibition against municipal income
22 taxes. RCW 36.65.030 (“A county, city, or city-county shall not levy a tax on net income.”).
23 The income tax imposed under the Ordinance purports to avoid this prohibition by imposing
24 the tax on the “total income” line of the federal tax return, but “total income” is determined
25 after reduction or exclusion of numerous items. Accordingly, the Ordinance imposes a net
26 income tax within the meaning of RCW 36.65.030, and is therefore prohibited by state law.

1 4. Even if the income tax imposed under the Ordinance was expressly authorized
2 by statute and was not an expressly prohibited net income tax, it violates statutory limitations
3 on municipal gross income taxes imposed by Ch. 35.102 RCW.

4 5. The purposes to which the funds are dedicated, including lowering the impact
5 of other taxes—such as state property taxes and sales taxes or as a “revenue tool” to “respond
6 to potential changes in federal policy”—are not valid purposes for which municipalities are
7 authorized to impose taxes.

8 6. Even if the income tax imposed under the Ordinance was authorized by statute
9 and/or not otherwise prohibited by state law, the City has no authority to impose the tax without
10 a vote of the people, because the power to impose an income tax is not among the powers
11 granted to the City’s council under the Charter of the City of Seattle.

12 7. Although one of the goals of the proponents of the City’s income tax was to seek
13 reversal of controlling Washington Supreme Court case law holding that progressive income
14 taxes violate the Uniformity Clause (Article VII, Section 1) of the Washington Constitution,
15 the doctrine of Constitutional Avoidance dictates that this Court should not consider any
16 constitutional issues because the invalidity of the Ordinance can be decided on the statutory and
17 city charter grounds plead above.

18 8. If the court were to reach any constitutional issues, the Ordinance’s compulsory
19 tax return reporting requirements violate the privacy rights of Washington citizens under Article
20 I, Section 7 of the Washington Constitution because they compel, pursuant to an
21 unconstitutional law, the disclosure of private affairs to the government.

22 9. In addition to violating City residents’ constitutional privacy rights, the
23 Ordinance imposes an unconstitutional non-uniform tax in violation of the Uniformity Clause,
24 Article VII, Section 1 of the Washington Constitution.

25 **II. PARTIES**

26 10. Plaintiffs are all Seattle residents who pay Seattle taxes, including sales taxes,
27 and will be subject to the new income tax at either the zero or 2.25% rate.

AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - 3

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1 1031 and 121, as well as expenses deducted on Schedules C and K-1 of an individual's federal
2 tax return.

3 20. The Ordinance does not impose tax at a uniform tax rate. Rather, tax is imposed
4 on the (non-preempted) total income of every resident taxpayer as follows:

Tax Filing Status	Total Income	Rate
Resident taxpayers whose Internal Revenue Service filing status was "single" or "married filing separately" for the tax year, including individuals making the election in subsection 5.65.040.A.1	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 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%

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13 The Ordinance states that the threshold total income amounts will adjust annually on January
14 1, 2019 and every year thereafter consistent with the rate of growth of the prior year's Consumer
15 Price Index for the Seattle-Tacoma-Bremerton area published by the U.S. Department of Labor.

16 21. The Ordinance requires every resident taxpayer whose total income is subject to
17 a rate above 0% to file an annual tax return, regardless of whether any tax is owed. The return
18 must be filed, and (absent an extension) all taxes due must be paid, on or before April 15 of the
19 following year (or, if April 15 falls on a weekend or holiday, the first business day thereafter).

20 22. Tax returns and taxes not submitted on or before the due date are subject to
21 interest and severe monetary and criminal penalties. The monetary penalty is equal to 1% of
22 the amount of the unpaid tax for each month it is overdue, not to exceed a total penalty of 25%;
23 but if underpayment is due to intentional disregard, an additional penalty of 10% of the total
24 amount of the deficiency may be added. If underpayment is due to fraudulent intent to evade
25 the tax, an additional penalty of 100% of the deficiency shall be added.

26 23. Moreover, the Ordinance declares that it shall be a crime for any person to,
27 among other things, violate or fail to comply with Chapter 5.65 or any implementing rule or

1 regulation adopted by Director Podesta. Each violation or failure to comply is punishable as a
2 gross misdemeanor under Seattle Municipal Code Section 12A.02.070, which permits as a
3 punishment by way of fines up to \$5,000 and imprisonment up to one year.

4 24. Plaintiffs have been and intend to remain full-time residents of the City and,
5 therefore, are resident taxpayers within the meaning of the Ordinance.

6 25. As residents of Seattle, all Plaintiffs pay Seattle taxes, including Seattle sales taxes.
7 Some of the plaintiffs have historically earned "total income," as that term is defined in the
8 Ordinance, in excess of the amounts necessary to be subject to the higher 2.25% rate of tax, and
9 expect to continue to earn total income sufficient to subject them to the higher 2.25% rate for tax
10 years beginning on and after January 1, 2018.

11 26. If the Ordinance is not invalidated, on or around April 15, 2019, Plaintiffs will be
12 required to file a tax return disclosing their private financial data and to pay the required income
13 tax, or else they will be subject to the foregoing civil and criminal penalties and punishments.

14 **V. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF BASED ON** 16 **STATUTORY LIMITS OF CITY TAXING AUTHORITY**

17 27. Plaintiffs repeat and reallege Paragraphs 1 through 26 as if fully set forth herein.

18 28. There is an actual, present and justiciable controversy between Plaintiffs and the
19 City concerning whether Defendants have legal authority under the statutes of the State of
20 Washington, to impose an income tax on individual and/or household income. A judicial
21 determination concerning the Ordinance's validity will conclusively terminate the parties'
22 dispute.

23 29. Plaintiffs are entitled, under RCW 7.24.020 and CR 57, to a declaration that:

24 a. The Ordinance exceeds the City's statutory taxing authority and,
25 therefore, is invalid;

26 b. The Ordinance violates applicable statutory limits on the City's taxing
27 authority and, therefore, is invalid; and

AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - 6

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1 c. Defendants may not enforce the Ordinance or collect any tax thereunder.

2 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF BASED ON**
3 **CITY CHARTER**

4 30. Plaintiffs repeat and reallege Paragraphs 1 through 29 as if fully set forth herein.

5 31. There is an actual, present and justiciable controversy between Plaintiffs and the
6 City concerning whether Defendants have legal authority under the Charter of the City of
7 Seattle to impose an income tax on individual and/or household income without a vote of the
8 people. A judicial determination concerning the Ordinance’s validity will conclusively
9 terminate the parties’ dispute.

10 32. Plaintiffs are entitled, under RCW 7.24.020 and CR 57, to a declaration that:

11 a. The Ordinance was enacted without a vote of the people exceeding the
12 authority granted to the city council by the people under the Charter of the City of Seattle and,
13 therefore, is invalid; and

14 b. Defendants may not enforce the Ordinance or collect any tax thereunder.

15 **THIRD CAUSE OF ACTION – DECLARATORY RELIEF BASED ON**
16 **CONSTITUTIONAL CLAIMS**

17 33. Plaintiffs repeat and reallege Paragraphs 1 through 32 as if fully set forth herein.

18 34. There is an actual, present and justiciable controversy between Plaintiffs and the
19 City concerning whether Defendants have legal authority under the Washington Constitution,
20 to impose an income tax on individual and/or household income. A judicial determination
21 concerning the Ordinance’s validity will conclusively terminate the parties’ dispute.

22 35. Plaintiffs are entitled, under RCW 7.24.020 and CR 57, to a declaration that:

23 a. The Ordinance violates Article I, Section 7 of the Washington
24 Constitution and therefore is invalid;

25 b. The Ordinance violates Article VII, Section 1 of the Washington
26 Constitution and, therefore, is invalid; and

27 c. Defendants may not enforce the Ordinance or collect any tax thereunder.

AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - 7

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1 **FOURTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

2 36. Plaintiffs repeat and reallege Paragraphs 1 through 35 as if fully set forth herein.

3 37. Plaintiffs’ right to be free from the imposition of an invalid tax is in jeopardy of
4 immediate invasion, and will cause actual and substantial injury without any adequate remedy
5 at law.

6 38. Plaintiffs are entitled, under RCW 7.40.020 and CR 65, to an order enjoining
7 Defendants from enforcing the Ordinance or collecting any tax thereunder.

8 **VI. REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs request that judgment be entered as follows:

- 10 a. Declaring that the Ordinance is invalid and, therefore, null and void.
- 11 b. Enjoining Defendants from administering or otherwise enforcing the Ordinance.
- 12 c. Awarding Plaintiffs fees, costs, and expenses as permitted by law or equity.
- 13 d. Awarding any additional or further relief that the Court finds appropriate,
14 equitable, or just.

15 DATED: August 9, 2017

16 LANE POWELL PC

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