

Taxes!

What to know.

Head taxes , wealth and income taxes

Debra E. Casparian
Deputy City Attorney

City of Tacoma

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Agenda

Kinds of Taxes

Element of a Tax

Authority to Impose Excise and
Income taxes

Excise taxes

Income taxes

Resources

THREE kinds of taxes

Property
taxes

Income
taxes

Excise
taxes



Property taxes

- Governed by state law– RCW Chapter 84
 - Strict limitations
 - Generally, on real and personal property*
 - If you own real property, you pay property tax
 - Since 1930, *article VII, section 1 of our state constitution* has required that “[a]ll taxes shall be **uniform upon the same class of property**.... The word ‘property’ as used herein shall mean and include everything, whether tangible or intangible, subject to ownership.”

* “Personal property” is defined to include goods, chattels, stocks, money etc. But not notes, accounts, certificates of deposits, etc. RCW 84.04.080



Excise tax examples

Business & Occupation tax

Utility tax

Retail sales and use tax

- - Washington has never had an income tax

Until maybe now



Tax structure in
Washington
really hasn't
changed since
The Revenue
Act of 1935

Business & Occupation tax

Property tax

Sales and use tax

Other excise taxes

PARTS OF A TAX

1. *Incidence* of the tax
2. *Measure* of the tax
3. *Tax rate*

Courts have explained that any tax statute has three basic elements: (1) the “taxable incident,” or the activity that triggers the tax, (2) the tax measure, or the “base that represents the value of the taxable incident,” (3) and the tax rate, which, “when multiplied by the tax measure, determines ‘the amount of tax due.’” *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 39, 156 P.3d 185 (2007) (quoting 1B KELLY KUNSCH ET AL., WASHINGTON PRACTICE: METHODS OF PRACTICE § 72.3, at 449 (1997)).

1. The “incidence” of the tax.

What is the taxable event? What action or privilege is the tax imposed upon?

- **EXAMPLES:** The incidence of the tax is....
 - For retail sales tax—the retail sale.
 - For B&O tax—the privilege of engaging in business.
 - For real estate excise tax—the sale of real property.

2. The “measure” of the tax.

What dollar amount or revenue are you taxing? It’s the “measure upon which the assessment or determination of tax liability is based.”

- **EXAMPLES:** The “measure of the tax is”....
 - For retail sale tax, the measure is the selling price of each sale.
 - For B&O tax, the measure is the gross income of the business.
 - For property tax, the measure is assessed value of the property.

3. The “tax rate.”

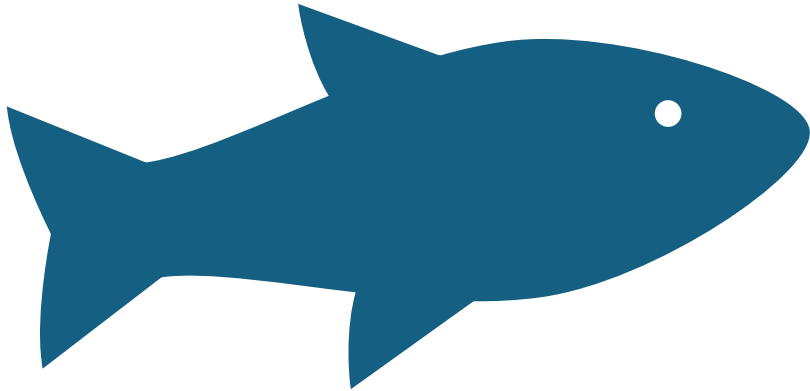
This one is easier.

It is the percentage or dollar amount at which the person is taxed. (E.g., 1% of gross income, or \$.05/bullet sold).



An example (or a test really)

RCW 82.27—Enhanced food fish tax



- (1) ...there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed...
- (3) The measure of the tax is the value of the enhanced food fish at the point of landing.
- (4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:
 - (a) Puget Sound Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

Taxing authority generally

- The Washington Constitution generally vests **taxing power in the state legislature**. CONST. art. I, § 1.
 - Municipal corporations have **no inherent right to levy taxes**. *State ex rel. King County v. State Tax Comm'n*, 174 Wash. 668, 671, 26 P.2d 80 (1933).
 - Article VII permits the **legislature to delegate tax powers** to municipal corporations. CONST. art. VII, § 9 and CONST. art. XI, § 12.
 - Not self-executing. **Legislature must grant the authority**. *Carkonen v. Williams*, 76 Wn2d 617 (1969).
-

Statutory Authority for Municipal EXCISE TAXES

FIRST CLASS CITIES: RCW 35.22.280(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.”

- Been interpreted to issue licenses for regulation AND revenue.

SECOND CLASS CITIES: RCW 35.23.440(8)-- “License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified.”

TOWNS: RCW 35.27.370(9)– “To license, for purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town.”

CODE CITIES: RCW 35A.82.020– “[T]o 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.” See also RCW 35A.11.020

Statutory Authority for Municipal PROPERTY TAXES

FIRST CLASS CITIES: RCW 35.22.280(2)—To provide for levying and collecting taxes on real and personal property

SECOND CLASS CITIES: RCW 35.23.470—may assess a certain amount of assessed valuation of the taxable property in the city.

TOWNS: RCW 35.27.370(8)—Power to levy and collect annually a property tax

CODE CITIES: RCW 35A.84.010—Procedures and rules relating to ad valorem taxes; RCW 35A.11.020 (general grant of taxing power” to raise revenue for local purposes).

Excise Taxes

Broad taxing authority. Watson v. City of Seattle, 189 Wn.2d 149 (2017) (unless otherwise preempted or restricted)

Examples:

B&O tax

Retail Sales
tax

Admissions
tax

Utility tax

Head Tax —What kind of tax is it?

An excise tax. (often implemented as a license fee, which is really a revenue generating excise tax)

Examples—fee for Full Time Employee (FTE):

- Richland: additional license fee for each FTE employee
- Bothell: same
- Redmond: same
- Lynnwood: fee depends on hours worked

Another way to do a “head tax”—using tiers

Mill Creek—tiers set for license fees (e.g., 0-3 employees, 4-8, etc.)

Ellensburg—same (e.g., 0-5 employees, 6-12, etc.)

Broad
authority,
so think
creatively

(unless preempted
by state or federal law,
or otherwise restricted)

- Seattle's **gun and bullet tax**. *Watson v. City of Seattle*, 189 Wn.2d 149 (2017)
- Tacoma's **per drink/plate of food tax** at our publicly owned event centers.
- Britain: 1712: **Soap tax**
- Ancient Rome (and in 18th Century England): **Bachelor tax**
- Ancient Rome: **Urine tax**

Excise tax on capital gains (aka “wealth”)? Yes.

Quinn v. Dept of Revenue, 1 Wn.3d 453 (2023). (Vote was 7-2)

Tax “imposed on the sale or exchange of long-term capital assets”.

Measured by “Washington capital gains”, which is an “individual’s adjusted capital gain.”

Quinn, cont'd

- “This tax is wholly unlike the broad-based net income taxes we previously invalidated under Culliton.”
- It “specifically targets an activity long recognized as subject to excise taxation—the sale or exchange of property.”
- “The taxable incident is the transaction.” So it’s an excise tax.
- **Discussion re: “incident” versus “measure.”**
- Dissent—appears to be tax on net income

Excise Tax v. Property Tax

“A steady line of cases beginning with Culliton defines a “property tax” as a tax on the mere ownership of property, while an “excise tax” applies to the exercise of rights in and to property or the exercise of a privilege.” Quinn v. Dept of Revenue, 1 Wn.3d 453 (2023).

“This court once remarked there is no ‘precise line’ separating property and excise taxes. But over the course of decades, that line has sharpened.” Id.



Income Tax—a bit of history: 1933

- Culliton v. Chase, 174 Wash. 363 (1933) –plurality opinion
 - “There shall be assessed, levied, collected and paid annually, a tax on all net income as hereinafter provided, by every person residing within the state of Washington”
 - Graduated rates
 - “Income is either property under [*article VII, section 1*], or no one owns it.”
 - Violates uniformity requirement.
 - **DISSENT:** how is this different from B&O tax on gross income?
 - **SAME DAY:** State v. Yelle—one justice changed sides. Tax on gross income is an excise tax and is valid.

Another try: 1936

- Jensen v. Henneford, 185 Wash. 209 (1936) –plurality opinion
 - “There shall be levied, collected and paid to the state for each income year by every resident of the State of Washington for the privilege of receiving income therein while enjoying the protection of its laws.”
 - Different tax rates depending on income.
 - **“The character of a tax is determined by its incidents, not by its name.”**
 - Really a tax on income. **“But the mere right to own and hold property cannot be made the subject of an excise tax, because to tax by reason of ownership of property is to tax the property itself.”**
 - Not uniform, so unlawful.
 - **DISSENT:** how different from B&O tax on gross income?

**Table 4-3: Attempts to Impose Income Taxes in Washington
1929-2010**

Year	Type of Measure	Measure Number	Type of Tax Authorized	Outcome
1929	Legislative Bill	Ch. 151	National Banks	Unconstitutional
1930	Constitutional Adm.	14 th Amendment	Allows Differential Property Taxes (1)	Voter Approved 322,919 to 136,983
1931	Legislative Bill	SB 26, SB 27	Personal & Corporate	Vetoed
1932	Citizens' Initiative	I-69	Personal & Corporate	Unconstitutional
1934	Constitutional Adm.	HJR 12	Allow Graduated Income Tax	Voters Reject 134,908 to 176,154
1935	Legislative Bill	Ch. 178	Personal Graduated	Unconstitutional
1935	Legislative Bill	Ch. 140	Corporate	Unconstitutional
1936	Constitutional Adm.	SJR 7	Allow Graduated Income Tax	Voters Reject 93,598 to 328,675
1938	Constitutional Adm.	SJR 5	Allow Graduated Income Tax	Voters Reject 141,375 to 285,946
1942	Constitutional Adm.	HJR 4	Allow Graduated Income Tax	Voters Reject 89,453 to 176,332
1951	Legislative Bill	Ch. 5	Corporate	Unconstitutional
1959	Legislative bill	Ch. 5	Real Property Gross Rental Income	Unconstitutional
1970	Constitutional Adm.	HJR 42	See Text	Voters Reject 309,882 to 672,446
1973	Constitutional Adm.	HJR 37	See Text	Voters Reject 228,823 to 770,033
1975	Citizens' Initiative	I-314	12% Corporate	Voters Reject 323,831 to 672,178
1982	Citizens' Initiative	I-435	10% Corporate (2)	Voters Reject 453,221 to 889,091
2010	Citizens' Initiative	I-1098	Income tax on higher incomes and reductions in property and B&O tax	Voters Reject 65% to 35%

Fast forward to 2019: Kunath v. City of Seattle

Tax on every resident in the amount of their total income multiplied by the applicable rates as follows:

SINGLE

MARRIED

Total Income	Rate
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%
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%



Municipal authority to impose income taxes

“RCW 35.22.280(2) explicitly grants first-class cities authority to levy a property tax on real or personal property for municipal needs. Under Culliton and its progeny, an income tax is a property tax. Thus, Seattle's income tax was authorized by RCW 35.22.280(2)”.

See slide 15 for other authorities for property taxes

Kunath, cont'd

- ✓ **Two classes of taxpayers**—individuals and married couples
- ✓ **Different tax rates**—0% or 2.25%
- ✓ **Measured by “total income”**—on line 22 of Internal Revenue Service Form 1040.

Not the central holding but important:

- Court said it was tax on net income.
- Prohibited by RCW 36.65.030: “A county, city, or city-county shall not levy a tax on net income.”
- **BUT**, that RCW violates the single subject rule and is unconstitutional.

Seattle's income tax not uniform: holding was 3-0

Two classes

Taxed at different rates (0% v. 2.25%)

Unconstitutional

Seattle's apparent goal: to overturn Culliton and Jensen.

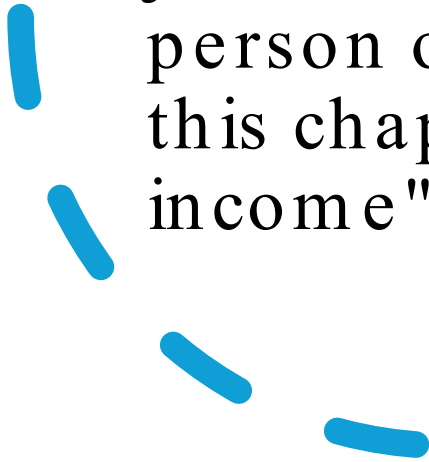
- Argued weak analysis in Culliton and misplaced reliance on earlier cases



All good..until: Initiative 2111 (2024)—
approved by the legislature

Now codified in RCW 1.90.100:

Personal income tax prohibition.



Neither the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual person on any form of personal income. For the purposes of this chapter, "income" has the same meaning as "gross income" in 26 U.S.C. Sec. 61.

New state
income
tax—ESSB
6346(2026)
“Millionaires
tax”

Section 201: A “tax is imposed on the receipt of Washington taxable income.”

(“Washington taxable income” equals federal adjusted gross income with additions and deductions.”)

Section 314: \$1 million standard deduction.

Is it uniform? Maybe. Tax is imposed on everyone (so maybe uniform) but then \$1 million deduction (so maybe not uniform).

The millionaires tax also amends RCW 1.90.100

(2) Subsection (1) of this section does not apply to the tax authorized in chapter 82A.--- RCW (the new chapter created in section 1203 of this act) so long as the standard deduction is at least \$1,000,000 for a household.

What's the take-away?

Can't tax personal "gross income" per RCW 1.90.100

Can't tax net income per Culliton and progeny

There will almost certainly be litigation on the millionaire's tax

If Culliton overturned, perhaps can impose a net income tax

Where does that leave us?

Broad authority to impose excise taxes, including probably a capital gains tax

No authority to impose income taxes...yet

Excellent resources

- Excise Taxes in the State of Washington, (2011) by Michael F. Connelly and Robert Beaumier
- A Revenue Guide for Washington Cities and Towns, (2024), by MRSC.
- Local Tax Reference Guide, Washington State Department of Revenue
- A Washington State Income Tax—Again?, Hugh Spitzer, 516 University of Puget Sound Law Review, Vol. 16 (1993)
- The Economics and Politics of Washington's Taxes: From Statehood to 2013, Don Burrows, University of Washington School of Law (2013)

