

Miscellaneous:

Washington Appellate Court Denies Business Group's Claims and Affirms Seattle Payroll Tax Validity

Case No. 828304, Wash. Ct. App., Division 1 (6/21/22). In a lawsuit filed by a local business group seeking to declare the City of Seattle, Washington's (City) payroll expense tax on certain employers engaging in business within the City "unlawful, invalid, and unconstitutionally void" [see Council Bill No. 119811, passed with veto-proof margin by City Council on 7/6/20, and returned unsigned by mayor 7/17/20, and previously issued Multistate Tax Alert, for more details on this tax], a Washington Court of Appeals (Court) held that such "excise tax" is validly imposed under powers vested in the City by the state legislature and the state constitution. In doing so, the Court reasoned that:

URL: <https://www.courts.wa.gov/opinions/pdf/828304.pdf>

URL: <https://seattle.legistar.com/LegislationDetail.aspx?ID=4576782&GUID=88DA4466-D6B8-4BDF-8572-994FB5E98933>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/city-of-seattle-city-council-approves-the-payroll-expense-tax.html?id=us:2em:3na:stm:awa:tax:062422&sfid=7015Y000003bKCVQA2>

- Engaging in business is a substantial privilege on which the City may properly levy taxes;
- The use of a business's payroll expense is an appropriate measure of that taxable incident; and
- The City's payroll expense tax is not a tax on employee income or the right to work for wages.

Accordingly, the Court concluded that the lower court's summary judgment in favor of the City was appropriate [see Case No. 20-2-17576-5 SEA, Wash. Super. Ct., King County (6/7/21) and *State Tax Matters*, Issue 2021-23, for more details on the lower court's ruling]. Among other claims, the local business group unsuccessfully argued that "in substance and in truth" the underlying ordinance's taxable incident is the right to earn a living, which the Washington Supreme Court has already ruled cities may not tax. Please contact us with any questions.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210611_4.html

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