

## Seattle High-Income Resident Income Tax Enacted

### Overview

On July 10, 2017, the Seattle City Council unanimously approved Council Bill (“CB”) 119002, a city ordinance imposing an income tax on high-income Seattle residents.<sup>1</sup> Seattle Mayor, Ed Murray, signed the ordinance into law on July 14, 2017, which includes the following provisions:

- Levies a 2.25% tax on individual and trust total income in excess of \$250,000 (\$500,000 for married individuals filing jointly).
- Provides a credit for income taxes paid to another state or local government.
- Persons who do not have a domicile in the city or persons who maintain a permanent place of abode in the city but spend 183 days (or partial days) of the tax year in the city or less, are not subject to the Seattle income tax.<sup>2</sup>
- The tax will apply to Seattle resident individual and trust income received after January 1, 2018. The ordinance provides that payments are due on April 15 of the year following the tax year, and there are no provisions requiring withholding or estimated payments.
- Imposes a penalty of \$250 for failure to file a tax return by the due date and a penalty of 1% of the remaining tax balance per month, or fraction of a month, for failure to pay all owed taxes by the due date.

This Tax Alert provides an overview of CB 119002 as well as pending legal challenges.

### Overview of Council Bill 119002

CB 119002 imposes a 2.25% tax on city resident individual and trust total income in excess of \$250,000 (\$500,000 for married individuals filing jointly).<sup>3</sup> The bill, defines a “resident” as anyone who either “has a domicile in the City for the entire tax year; or [...] maintains a permanent place of abode and spends in aggregate more than 183 days or any part of the day of the tax year in the City.”<sup>4</sup> In addition, “‘total income’ means the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer’s U.S. individual tax return for the tax year, listed as ‘total income’ on line 22 of [IRS] Form 1040, [or] ‘total income’ on line 9 of [IRS] Form 1041, [...]”<sup>5</sup>

CB 119002 provides that a credit may be taken for income taxes paid to another state or local government as a result of income earned from activities outside the city. Activities performed or rendered outside of Seattle for which a credit is available for income taxes paid to another jurisdiction include conducting a business or profession, performing services, and renting or selling real or tangible personal property.<sup>6</sup> In addition, if a taxpayer has a domicile in Seattle for the entire tax year, taxes paid to another jurisdiction on income earned from intangible property also result in offsetting tax credits.<sup>7</sup>

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<sup>1</sup> Seattle City Council Bill 119002, ch. 5.65 (2017), available [here](#).

<sup>2</sup> Seattle City Council Bill 119002, 5.65.020(D) (2017).

<sup>3</sup> Seattle City Council Bill 119002, 5.65.030(B) (2017).

<sup>4</sup> Seattle City Council Bill 119002, 5.65.020(D) (2017).

<sup>5</sup> *Id.* at 5.65.020(G). The CB 119002 definition of “total income” also includes ‘total income’ on line 15 of IRS Form 1040A as well as “the equivalent on any form issued by the [IRS] that is not reported on Schedule K-1 for a beneficiary.” *Id.*

<sup>6</sup> Seattle City Council Bill 119002, 5.65.060(A), (B) (2017).

<sup>7</sup> *Id.*

### Potential Constitutional Issues

Potential questions exist as to the constitutionality of CB 119002. The Washington state constitution provides that “all taxes shall be uniform upon the same class of property, and the word ‘property’ as used herein shall mean and include everything, whether tangible or intangible, subject to ownership.”<sup>8</sup> In *Culliton v. Chase*, the graduated income tax element of a state income tax law (approved by more than 70% of voters in a state-wide initiative) was held to be unconstitutional, the court concluding that the Washington constitution’s comprehensive definition of property included income.<sup>9</sup> In light of the “uniform upon the same class of property” provision of the Washington State constitution and the incorporation of “income” in the term “property”, CB 119002 may be challengeable because the tax is levied only upon high income taxpayers, and thus is not uniform upon the same class of property.

### Potential Statutory Issues

In addition to questions of constitutionality, CB 119002 may potentially conflict with Wash. Rev. Code. 36.65.030 which expressly states that “a county, city, or city-county shall not levy a tax on net income.”<sup>10</sup> Opponents of CB 119002 cite legislative history in asserting that this statute was passed in response to a 1972 Constitutional Amendment to ensure that an individual income tax provision could not be enacted by a county, city, or city-county.<sup>11</sup> However, proponents of the bill contend that “net income” is distinct from “total income,” and thus, the limitation imposed by the state statute does not apply to the enacted Seattle income tax.<sup>12</sup>

### Considerations

Although the Seattle City Council already approved, and Mayor Murray signed CB 119002 into law, the Seattle city income tax faces legal challenges (some already filed) that may be considered by state courts in the coming year. Affected taxpayers should be prepared to comply with the Seattle city income tax when it takes effect on January 1, 2018, though taxpayers and their advisors should closely monitor the pending litigation. In addition, only resident individuals and trusts earning income in the city are subject to the tax.

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<sup>8</sup> Wash. Const. art. VII, § 1.

<sup>9</sup> See *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933).

<sup>10</sup> Wash. Rev. Code. 36.65.030.

<sup>11</sup> Jason Mercier, *Why did legislature pass 1984 local income tax ban?*, (May 9, 2017), available [here](#) (last visited July 27, 2017).

<sup>12</sup> Jason Mercier, *Seattle Council considers local income tax*, (June 14, 2017), available [here](#) (last visited July 27, 2017).

## External Multistate Tax Alert

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