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JUDGE MARY E. ROBERTS

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GREATER SEATTLE CHAMBER OF
COMMERCE d/b/a SEATTLE
METROPOLITAN CHAMBER OF
COMMERCE,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

NO. 20-2-17576-5 SEA

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

Clerk's Action Required

This matter came before the court upon the parties' motions for summary judgment testing the constitutionality of City of Seattle Ordinance 126108 (CB 119810)'s payroll expense tax. This tax applies to businesses that spend \$7 million or more on payroll in the City of Seattle. The court concludes that the payroll expense tax is constitutionally permissible.

The court considered the following written submissions of the parties:

1. Seattle Chamber's Motion for Summary Judgment;

- 1 2. Declaration of Robert L. Mahon in Support of the Seattle Chamber’s Motion for
2 Summary Judgment;
- 3 3. Defendant City of Seattle’s Memorandum in Opposition to Plaintiff’s Motion for
4 Summary Judgment;
- 5 4. Declaration of Kent Meyer in Support of Defendant City’s Memorandum in Opposition
6 to Plaintiff’s Motion;
- 7 5. Seattle Chamber’s Reply Memorandum in Support of its Motion for Summary
8 Judgment;
- 9 6. Defendant City of Seattle’s Motion for Summary Judgment;
- 10 7. Declaration of Kent Meyer in Support of Defendant City’s Motion for Summary
11 Judgment;
- 12 8. Seattle Chamber’s Opposition to the City of Seattle’s Motion for Summary Judgment;
13 and
14 9. Defendant City of Seattle’s Reply Brief in Support of Motion for Summary Judgment.

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17 The court also considered oral argument at a hearing on May 28, 2021, from James F.
18 Williams on behalf of plaintiff Greater Seattle Chamber of Commerce d/b/a Seattle
19 Metropolitan Chamber of Commerce (“Seattle Chamber”), and from Kent C. Meyer on behalf
20 of the City of Seattle (“the City”). Counsel appeared at the hearing remotely, via Zoom. The
21 court was physically present in the open court room.
22

23 The City on July 6, 2020 passed Ordinance No. 126108 (CB 119810) (“payroll expense
24 tax”), imposing a payroll expense tax on certain entities engaged in business in the City of
25

1 Seattle. Ordinance 126109 was passed the same day, establishing a spending plan for the
2 proceeds generated by the payroll expense tax. The City Council made extensive findings
3 related to current health, fiscal, and social crises to support the ordinances.

4 The payroll expense tax applies to every business entity “engaging in business within
5 Seattle.” SMC 5.38.030.A.¹ It is based on each covered business’s “payroll expense,” which
6 is defined as “compensation paid in Seattle to employees.” SMC 5.38.030. “Compensation,”
7 includes all remuneration as defined in RCW 50A.05.010 for the Washington Family and
8 Medical Leave Act “earned for services rendered or work performed.” SMC 5.38.020.

9
10 Businesses with payroll expense in the prior calendar year of less than \$7 million are
11 exempt from the tax. SMC 5.38.040A. A variety of specifically named types of businesses are
12 also exempt. The tax has a progressive rate structure, in that it has three tiers that increase as a
13 business’s payroll expense in Seattle increases.

14
15 Finally, and importantly, the tax is levied on the business entity, not the employee;
16 taxpayers “may not make any deductions from the employees’ compensation to pay” for the
17 tax. SMC 5.38.030.C.

18 The City asserts that the payroll expense tax is a constitutionally permissible excise tax
19 on the privilege of doing business. The Seattle Chamber asserts that the payroll expense tax is
20 a tax on employers’ payment of compensation to employees, and therefore a constitutionally
21 impermissible tax on an employee’s act of earning a living.

22
23 The payroll expense tax ordinance is “presumed to be valid and constitutional.”
24
25

1 | *Watson v. City of Seattle*, 189 Wn.2d 149, (2017). The Seattle Chamber, as the challenging
2 | party, “has the burden of showing unconstitutionality.” *Id.*

3 | Cities have extensive taxing authority under the Washington State Constitution. *Id.* at
4 | 170. The court is to liberally construe this taxing authority. *Id.* at 166.

5 | The Washington State Attorney General in 1951 issued an opinion in response to the
6 | question of whether a city could impose a payroll expense tax on businesses, stating that, “[a]
7 | city may impose a tax for general revenue purposes upon employers based on payrolls for
8 | persons employed within the city.” 1949-51 Wash. Att’y Gen. Op. No. 469 (1951). That
9 | opinion approved the imposition of taxes upon city employers measured by payroll for persons
10 | employed within the city.
11 |

12 | The City and the Seattle Chamber each rely heavily on a Washington State Supreme
13 | Court case from 1952. In *Cary v. City of Bellingham*, 41 Wn.2d 468 (1952), the court struck
14 | down a tax imposed on all employees. The ordinance at issue required “that all employees
15 | within the City of Bellingham secure a yearly license.” *Id.*, at 468. The court held that “[t]he
16 | right to earn a living by working for wages is not a ‘substantive privilege granted or permitted
17 | by the state.’” *Id.* at 472 (*quoting Inc. v. Huntley*, 39 Wn.2d 191 (1951) (holding a corporate
18 | net income tax unconstitutional as a property tax because taxpayers were liable by nature of
19 | receiving net income, not by nature of operating a business)).
20 |
21 |

22 | Here, the payroll expense is levied on businesses based on their aggregate payroll
23 | expense; businesses are expressly prohibited from passing the expense of the tax on to

24 | ¹ SMC sh. 5.38, which imposes the payroll expense tax, is set forth in Ordinance 126108.
25 |

1 employees in the form of wage deductions. Unlike in *Cary*, there is no burden on employees’
2 “right to earn a living by working for wages.”

3 Finally, this court is not here to rule on the wisdom of the policy behind the City’s
4 decision to impose the payroll expense tax.

5 The City has authority to tax all business activities in the City. The payroll expense tax
6 is an excise tax measured by payroll expenses and paid by businesses that engage in business
7 with employees in the City. Employees do not pay the tax. The court concludes that the
8 payroll expense tax is a permissible tax on the privilege of doing business.

9 The court rules, as a matter of law, that the City’s payroll expense tax is a valid excise
10 tax on business under the taxing authority granted to cities by the Washington State
11 Constitution and statutes.

12 The Seattle Chamber’s motion for summary judgment finding the tax unconstitutional
13 is DENIED.

14 The City’s motion for summary judgment finding the tax to be constitutional is
15 GRANTED.

16 The court ORDERS that the Plaintiff’s complaint for declaratory judgment and all of
17 the Plaintiff’s claims are DISMISSED WITH PREJUDICE.

18 DATED this 4th day of June, 2021.

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23 See digital signature
24 JUDGE MARY E. ROBERTS
25

King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-17576-5
Case Title: GREATER SEATTLE CHAMBER OF COMMERCE VS SEATTLE
CITY OF
Document Title: ORDER RE ON SUMMARY JUDGMENT

Signed By: Mary Roberts
Date: June 07, 2021



Judge: Mary Roberts

This document is signed in accordance with the provisions in GR 30.

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