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THE HONORABLE CATHERINE SHAFFER

SUPERIOR COURT OF THE STATE 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

COMPLAINT FOR DECLARATORY
RELIEF

Plaintiff Greater Seattle Chamber of Commerce, d.b.a. Seattle Metropolitan Chamber of Commerce (the “Seattle Metro Chamber”), in and for its Complaint for Declaratory Relief against Defendant City of Seattle (the “City” or “Seattle”), alleges as follows:

NATURE OF THE CASE

1. This case is about the City unlawfully imposing an unconstitutional tax on the right to earn a living.

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2. Amid one of the most severe financial crises the City has ever experienced, and while Seattle businesses reel from the havoc wreaked by the COVID-19 pandemic, the Seattle City Council (the “Council”) passed Council Bill No. CB 119810 (the “Bill”) on July 6, 2020. The Bill was returned to the Council unsigned by the mayor and became Ordinance 126109 (the “Ordinance”). The Ordinance imposes a “payroll tax” on employing workers in the City.

3. The Ordinance’s drafters carefully avoided the word “wages” in nominally characterizing the Ordinance as imposing a tax on “every person engaging in business within Seattle.” But the Ordinance’s provisions governing the payroll tax’s application and measurement—both of which rise and fall with the amount a Seattle business pays in wages—tell a different story. Significantly, the payroll tax only applies to businesses that spend a specified amount as compensation to employees. Likewise, the extent to which a business is taxed depends on the amount it pays to its employees. In substance and in truth, the Ordinance’s taxable incident is the right to earn a living—which the Washington Supreme Court has already ruled cities may not do. See Cary v. City of Bellingham, 41 Wn.2d 468, 250 P.2d 114 (1952).

4. The Seattle Metro Chamber respectfully seeks a judgment from this Court declaring the Ordinance unlawful, invalid, and unconstitutionally void.

PARTIES

5. The Seattle Metro Chamber is a resident of Seattle, King County, Washington. Founded in 1882, the Seattle Metro Chamber is the largest and most diverse business association in the Puget Sound region. It is an independent organization that represents over 2,600 companies. The Seattle Metro Chamber’s vision is to “seek an economically vibrant

1 and globally competitive region where businesses of all sizes flourish and prosperity is
2 shared.”
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5 6. Seattle is a city organized and existing under the laws of the State of
6 Washington.
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8 **JURISDICTION AND VENUE**

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10 7. Article IV, Section 6 of the Washington Constitution and RCW 2.08.010 vest
11 this Court with jurisdiction over this action, which involves “the legality of any tax, impost,
12 assessment, toll or municipal fine.” The Uniform Declaratory Judgment Act, RCW 7.24.010,
13 provides the Court with an independent basis of jurisdiction “to declare rights, status and other
14 legal relations whether or not further relief is or could be claimed.” The Court therefore has
15 jurisdiction to find the Ordinance unconstitutional and issue a judgment declaring the
16 Ordinance void.
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18 8. Venue is proper in this Court pursuant to RCW 4.12.025(1).
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20 **THE SEATTLE METRO CHAMBER’S STANDING TO BRING SUIT**

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22 9. The Seattle Metro Chamber has associational standing to challenge the
23 Ordinance’s constitutionality on behalf of its members. First, the Seattle Metro Chamber’s
24 members fall within the Ordinance’s definition of “business” because they engage in
25 “activities . . . with the object of gain, benefit, or advantage to the taxpayer,” as that term is
26 used in SMC 5.30.020, and because they employ “individual[s] who perform[] work, labor,
27 or personal services of any nature for compensation paid” Thus, the Seattle Metro
28 Chamber’s members would be subject to the Ordinance’s payroll tax and would have standing
29 to sue in their own right. Second, through this action, the Seattle Metro Chamber seeks to
30 protect the economic interests of its constituent members, which is germane to its purpose of
31 promoting economic prosperity within the Puget Sound region and helping its members thrive
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1 in an equitable and inclusive regional economy. Third, neither the Seattle Metro Chamber's
2 asserted claim nor its requested relief requires the participation of the Seattle Metro
3 Chamber's individual members. The relief that the Seattle Metro Chamber requests directly
4 inures to the benefit of its members, who will actually be injured by the Ordinance, without
5 requiring individualized proof. Through this action, the Court can and should declare the
6 Ordinance facially unconstitutional.
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12 **FACT ALLEGATIONS**

13 **I. Background of the Unconstitutional Payroll Tax**

14 10. More than 200 stores and businesses have shut down permanently and tens-of-
15 thousands of jobs have been lost due to the pandemic. Adding a new tax on jobs creates
16 another headwind that could prove fatal to the recovery of downtown Seattle and the local
17 business community.
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23 11. Instead of carefully evaluating the City's spending and its \$1 billion-plus
24 general fund, the Council rushed to pass a new illegal tax devoid of any spending
25 accountability. The Council offered no viable plan to deliver results with the funding they
26 already have, and the spending outline offered for the new funding fails to clarify the
27 objectives or expected results. The tax is illegal, punitive, and fails to address the most
28 pressing issues facing the City.
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35 12. The Ordinance is the third tax the Council has passed in the past four years that
36 has resulted in a lawsuit. The Council overstepped its authority by passing this payroll tax,
37 knowing that its actions would be vulnerable to yet another a legal challenge. By recklessly
38 moving ahead with it, the Council is actually hindering solutions to the issues at the heart of
39 rebuilding our economy.
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1 13. The City cannot shape a recovery using an unstable source of revenue. The
2 mounting legal questions surrounding this tax demand a new approach from our Council to
3 seek legal, regional, and sustainable sources of revenue that are targeted to clearly defined
4 outcomes. The Seattle Metro Chamber is challenging the Council’s tax so that our region can
5 move forward together on legal and equitable solutions to our economic and community
6 needs.
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12 14. Rather than build a long-term strategy to move the City forward, the Council
13 is producing backwards policies like this tax that could delay or derail Seattle’s development
14 into a city of the future. As long-term structural pressures such as increased remote work
15 change the way we sustain employment in the City, especially in the downtown core, the
16 Council is pursuing a punishment-driven strategy that discourages investment in one of the
17 most diverse economies in the world instead of creating plans to help our economy recover.
18 Its efforts are unconstitutional.
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26 **II. Structure of the Unconstitutional Payroll Tax**
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28 15. Beginning January 1, 2021, the Ordinance will, subject to certain exemptions,
29 impose a new payroll expense tax on “every person engaging in business in Seattle.” The
30 Ordinance adds “a new Chapter 5.38 to the Seattle Municipal Code” that contains the
31 operative provisions of the payroll tax.¹
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36 16. A combination of exemptions and the rate structure limits the payroll tax to
37 businesses that (a) have more than \$7,000,000 in payroll expenses in Seattle, see SMC §
38 5.38.040(A)(1); and (b) pay at least one employee in Seattle more than \$150,000 in annual
39 compensation, see SMC §§ 5.38.030(B), 5.38.040(A)(1).
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46 ¹ For ease of reference, this Complaint cites to the proposed Chapter 5.38, as it does for existing
47 chapters of the Seattle Municipal Code, using the “SMC” prefix.

1 17. The payroll tax is measured by multiplying “the payroll expense of the
2 business” times a rate that depends on the business’s (a) total Seattle payroll expense, and
3 (b) the compensation paid in Seattle to each employee whose annual compensation is
4 \$150,000 or greater. SMC § 5.38.030(B). The Ordinance defines “employee” to include “any
5 individual who performs work, labor, or personal services of any nature for compensation.”
6 SMC § 5.38.020.
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12 18. The extent to which a business is subject to the payroll tax depends on its
13 “payroll expense.” SMC § 5.38.030(A), (B). Significantly, the Ordinance defines “payroll
14 expense” as “the compensation paid in Seattle to employees.” SMC § 5.38.020.
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18 **III. Unconstitutionality of the Payroll Tax**
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20 19. A tax levied upon the privilege of doing business is an excise tax. A tax levied
21 upon the privilege of employing workers for compensation is not. Although the City
22 possesses the general authority to impose excise taxes to raise revenues, its authority is not
23 limitless. An excise tax must be “in truth, levied for the exercise of substantive privilege
24 granted or permitted” by the City. Jensen v. Henneford, 185 Wn. 209, 218, 53 P.2d 607
25 (1936). For an excise tax to be valid, it must, in substance, be imposed as a condition for the
26 exercise of a taxable privilege. See, e.g., Samish Land Co. v. City of Soap Land, 143 Wn.2d
27 798, 806, 23 P.2d 477 (2001) (en banc) (holding that, in assessing the constitutionality of a
28 tax, courts must “look beyond the charge’s official designation and analyze its core nature by
29 focusing on its purpose, design and function in the real world”).
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40 20. The Court (and not the Council) determines the true nature of an excise tax.
41 See, e.g., Power Inc. v. Huntley, 39 Wn.2d 191, 195–96, 235 P.2d 173 (1951) (observing that
42 “a tax is not necessarily an excise tax because the legislature has so labeled it” and finding
43 unconstitutional “a mere property tax masquerading as in excise”). Going past the label of a
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1 tax affixed by the legislative body, Washington courts assess the constitutionality of a tax by
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3 looking at its subject matter and incidents. Harbour Village Apts. v. City of Mukilteo, 139
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5 Wn.2d 604, 607, 989 P.2d 542 (1999) (citations omitted) (holding that residential dwelling
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7 unit fee was unconstitutional property tax); Jensen, 185 Wn. at 218–20 (purported tax upon
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9 the “privilege of receiving income” was unconstitutional); Cary, 41 Wn.2d at 472 (affirming
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11 permanent injunction enjoining the City of Bellingham from enforcing an ordinance against
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13 any persons receiving compensation within the City). If the taxable incident is not truly a
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15 privilege that the City has authority to tax, the tax is not a valid excise. See id.

16 **IV. In Substance and Truth, the Ordinance Taxes the Right to Earn a Living**

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18 21. For decades the City has imposed a business and occupation (“B&O”) tax on
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20 the privilege of engaging in business—the same privilege the City purports to tax again with
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22 the Ordinance’s payroll tax. The B&O Tax is a lawful excise tax because, in truth and
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24 substance, it is imposed on the privilege of doing business in Seattle and measured by the
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26 extent of that business.

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28 22. The Ordinance’s payroll tax, in contrast, is a tax on the right to earn a living.
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30 Both the applicability and measure of the payroll tax depends on the extent to which a Seattle
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32 business pays “compensation,” which the Ordinance carefully avoids defining as “wages”
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34 and, instead, describes as the amounts “**earned for services rendered or work performed.**”
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36 SMC § 5.38.020 (emphasis added). Put differently, if a business does not pay individuals for
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38 services rendered or work performed, it is not subject to the payroll tax regardless of the extent
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40 it does business in the City. By its own definitions, the Ordinance is a tax on the right to earn
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42 a living.

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44 23. Whether the payroll tax applies to a business depends on (a) how much that
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46 business spends on payroll expenses; and (b) how many employees receive a specified amount
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1 of compensation. SMC §§ 5.38.030(B), 5.38.040(A)(1). In other words, if a business does
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3 not pay a set amount of compensation to a specified number of workers, it is exempt from the
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5 Ordinance’s payroll tax regardless of the extent it does business in the City. By its own
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7 exemption structure, the Ordinance is a tax on the right to earn a living.

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9 24. The extent to which a nonexempt business must pay the payroll tax depends
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11 on the total payroll expense it pays to its workers and the amount of compensation it pays to
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13 its workers. Stated otherwise, a business is taxed at a lower rate by paying less compensation
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15 to its workers. By its own rate structure, the Ordinance is a tax on the right to earn a living.

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17 25. Going beyond its nominal label, and examining how the tax is applied and
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19 measured, demonstrates that the Ordinance is, in substance and in truth, a tax on the privilege
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21 to earn a living. “The right to earn a living by working for wages is not a substantive privilege
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23 granted or permitted by [the City].” Cary, 41 Wn.2d at 472 (citing Power Inc., 39 Wn.2d at
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25 197). The Ordinance is therefore unconstitutional.

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27 **FIRST CAUSE OF ACTION**
28 **DECLARATORY JUDGMENT THAT THE ORDINANCE IS**
29 **UNCONSTITUTIONAL**

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31 26. The Seattle Metro Chamber realleges and incorporates by reference, as if fully
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33 set forth herein, the allegations in the paragraphs above.

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35 27. An actual, present, and justifiable controversy exists as to whether the
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37 Ordinance is an unconstitutional tax on the right to earn a living by working for wages.

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39 28. The Seattle Metro Chamber reserves the right to raise any other legal bases
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41 under Washington law to challenge the constitutionality, legality, or enforceability of the
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43 Ordinance.

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PRAYER FOR RELIEF

WHEREFORE, the Seattle Metro Chamber prays this Court enter a judgment in favor of the Seattle Metro Chamber and against the City as follows:

A. Declaring that the Ordinance is illegal, invalid, and unenforceable in its entirety;

B. Declaring that the City has no authority to impose or enforce the Ordinance’s proposed payroll tax;

C. Awarding the Seattle Metro Chamber’s costs of suit, including its reasonable attorneys’ fees; and

D. For such other relief as the Court may deem just and proper.

DATED this 8th day of December, 2020.

s/ James F. Williams

s/ Robert L. Mahon

s/ Zachary E. Davison

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