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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

S. MICHAEL KUNATH,  
  
Plaintiff,  
  
v.  
  
CITY OF SEATTLE,  
  
Defendant.

NO  
  
COMPLAINT FOR DECLARATORY  
RELIEF

**I. PARTIES**

- 1. Plaintiff s. Michael Kunath (“Kunath”) is a resident of King County, State of Washington.
- 2. Defendant City of Seattle (“the City”) is a chartered Washington State municipality in King County.

**II. JURISDICTION AND VENUE**

- 3. This Court has personal and subject matter jurisdiction, and venue in this Court is proper.

**III. FACTUAL ALLEGATIONS**

- 4. On July 10, 2017, the City Council adopted Council Bill 119002 (“the Bill”).
- 5. The Bill was amended by the Council at its July 10, 2017 meeting.
- 6. The Amendment is attached as the last page to Appendix 1 hereto.
- 7. Appendix 1 attached hereto, including the Amendment that is the last page thereof, is a true and correct statement of the Bill as passed by the Council and approved by the Mayor.

- 1 8. If enacted, the Bill would impose an income tax on high-income residents of the City.
- 2 9. On July 10, 2017, Seattle Mayor Ed Murray signed the Bill, and it became a Seattle
- 3 Ordinance (“the Ordinance”)
- 4 10. Pursuant to Section 4 of the Ordinance, it will take effect 30 days after its approval by
- 5 the Mayor on August 9, 2017.
- 6 11. Although the Ordinance was not being enforced when this action was commenced, the
- 7 Ordinance is subject to preenforcement review because the question presented is purely
- 8 legal, the decision is final, and no additional facts are necessary.
- 9 12. Under the Ordinance, the City imposed a tax of 2.25% on the “Total Income” in excess
- 10 of \$250,000 per year for “Resident Taxpayers” who file individual federal tax returns and
- 11 over \$500,000 per year for “Resident Taxpayers” who file “married filing jointly” federal
- 12 tax returns.
- 13 13. The amount to be used to determined whether a “Resident Taxpayer” is subject to the tax
- 14 and the amount of the Tax is the “Total Income” set forth on Line 22 of IRS Form 1040
- 15 or Line 15 of Form 1040A.
- 16 14. Plaintiff S. Michael Kunath has regularly reported more than \$250,000 on line 22 of his
- 17 IRS Form 1040, and expects to continue to do so.
- 18 15. A true and correct copy of the Form 1040 is attached hereto as Exhibit A and is hereby
- 19 incorporated by reference as an allegation.
- 20 16. Line 22 of IRS Form 1040 is the total of Lines 7 to 21 of Form 1040.
- 21 17. A true and correct copy of the IRS Instructions for Lines 7 to 21 of Form 1040 is attached
- 22 hereto as Exhibit B and is hereby incorporated by reference as an allegation.
- 23 18. Line 12 of Form 1040 is for Business income or (loss). Form 1040 requires a Schedule
- 24 C or a Schedule CE if business income or loss is reported.
- 25 19. A true and correct copy of Schedule C is attached hereto as Exhibit C and is hereby
- 26 incorporated by reference as an allegation.

- 1 20. Line 13 of Form 1040 is for Capital gain or (loss).
- 2 21. Line 14 of Form 1040 is for Other gains or (losses).
- 3 22. If Other gains of losses are reported on Line 14, a form 4797 is required.
- 4 23. A true and correct copy of Form 4797 is attached hereto as Exhibit D and is hereby  
5 incorporated by reference as an allegation.
- 6 24. Line 17 of Form 1040 is for Rental real estate, royalties, partnerships, S corporations,  
7 trusts, etc.
- 8 25. If income is reported on Line 17, a Schedule E is required.
- 9 26. A true and correct copy of Schedule E is attached hereto as Exhibit F and is hereby  
10 incorporated by reference as an allegation.
- 11 27. Line 18 of Form 1040 is for Farm profit or loss.
- 12 28. If income is reported on Line 18, a Schedule F is required.
- 13 29. A true and correct copy of Schedule F is attached hereto as Exhibit G and is hereby  
14 incorporated by reference as an allegation.
- 15 30. Line 21 of Form 1040 is for other income.
- 16 31. The amount stated in Line 22 of IRS Form 1040 is not the gross income of the Resident  
17 Taxpayer.
- 18 32. The other income reported on Line 21 of IRS Form 1040 is net income.
- 19 33. The amount stated in Line 22 of IRS Form 1040 is net of operating expenses under Line  
20 12, net of investment losses under Line 13, net of business expenses under Line 14, net  
21 of real estate expenses under Line 17, net of farm expenses under Line 18, and net of  
22 miscellaneous expenses under Line 21.
- 23 34. The tax levied by the Ordinance is not uniform.
- 24 35. The Ordinance treats all “total income” as a single class of property, but subjects income  
25 under \$250,000 per person per year to no tax and income about that threshold to a 2.25%  
26 tax.

1 36. Pursuant to Section 12 of Article XI of the Washington State Constitution, corporate  
2 authorities of counties, cities and towns may assess and collect such taxes as the  
3 legislature authorizes by general laws.

4 37. The legislature has not authorized cities to assess and/or collect taxes on income of any  
5 kind other than business and occupations taxes.

6 38. The legislature has expressly prohibited cities from assessing or collecting taxes on net  
7 income.

8 39. RCW 36.65.030 provides that “A county, city, or city-county shall not levy a tax on net  
9 income.”

10 40. The Ordinance levies a tax on net income in violation of RCW 36.65.030.

11 41. Section 1 of Article VII of the Washington State Constitution provides that “All taxes  
12 shall be uniform upon the same class of property within the territorial limits of the  
13 authority levying the tax and shall be levied and collected for public purposes only.”

14 42. Section 1 of Article VII of the Washington State Constitution further provides that “The  
15 word ‘property’ as used herein shall mean and include everything, whether tangible or  
16 intangible, subject to ownership.”

17 43. Income is subject to ownership and therefore is “property” for purposes of Section 1 of  
18 Article VII of the Washington State Constitution.

19 44. Income is a single class of property according to the Ordinance itself.

20 45. The tax levied by the Ordinance is not uniform upon the class of property that it taxes. It  
21 taxes some property while not taxing other property of the same class.

22 46. The Ordinance violates Section 1 of Article VII of the Washington State Constitution.

23 **IV. CLAIM FOR RELIEF**

24 ***Declaratory Judgment***

25 47. A justiciable controversy exists between Kunath and the City because Kunath will be  
26 subject to the tax levied by the Ordinance.

1 48. A claim under the Uniform Declaratory Judgment Act, RCWE Chapter 7.24, is an  
2 appropriate means to resolve a dispute over the validity of an ordinance.

3 49. The Ordinance is invalid because it violates the terms of RCW 36.65.030.

4 50. The Court should enter a declaratory judgment that the ordinance is invalid for violating  
5 RCW 36.65.030 and declare the Ordinance void.

6 51. If the Court does not determine that the Ordinance is void for violation of RCW  
7 36.65.030, it should rule that the Ordinance violates Section 1 of Article VII of the  
8 Washington State Constitution and is there invalid and void.

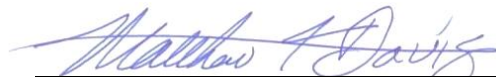
9 **V. RELIEF REQUESTED**

10 Plaintiff requests that the Court enter judgment as follows:

- 11 1. Declaring that the Ordinance violates RCW 36.65.030 on its face and is therefore invalid  
12 and void;
- 13 2. In the alternative, declaring that the Ordinance violates Section 1 of Article VII of the  
14 Washington State Constitution and is there invalid and void.
- 15 3. Awarding costs and attorney fees if and to the extent permitted by law; and
- 16 4. Awarding such additional relief as may be warranted.

17 DATED this 14<sup>th</sup> day of July, 2017.

18 DAVIS LEARY

19 

20 By Matthew F. Davis, WSBA No. 20939