No. 93788-5

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

Nos. 336221 and 336239

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

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VICKI HORTON, Spokane County Assessor, ROB CHASE, Spokane County Treasurer

and

THE STATE OF WASHINGTON, by and through the Department of Revenue,

Appellants,

v.

CITY OF SPOKANE, a municipal corporation,

Respondent.

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# RESPONDENT CITY OF SPOKANE'S RESPONSE TO APPELLANTS' HORTON AND CHASE OPENING BRIEF

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## I. INTRODUCTION

Respondent City of Spokane ("City") is a first-class charter city organized under Title 35 RCW and the City charter.[1] As a first-class charter city, the City enjoys all powers granted to any city under state law, including "all powers of taxation for local purposes." *See* RCW 35.22.195; RCW 35.22.570; RCW 35.22.900. Pursuant to the broad authority granted in RCW 35A.11.020, the City adopted City of Spokane Ordinance No. C-35231 ("Ordinance") that authorized a local exemption from voter-approved local property taxes levied with voter approval pursuant to RCW 84.55.050. [CP 9-22]; Spokane Municipal Code 8.18.010. The local exemption is only available to citizens who qualify for and are authorized to receive the state of Washington's property-tax exemption for senior citizens and disabled veterans with limited incomes under RCW 84.36.381 *et seq*. [CP 9-22].

Appellants Vicki Horton, Spokane County Assessor, and Rob Chase, Spokane County Treasurer, (collectively, "County") are the *ex officio* collectors of the City's property taxes and act as "subordinate ministerial officers" of the City in fulfilling their tax-collector duties. *See*

[1]Spokane city is a "home rule" city. Because a first-class city has adopted a charter, it has all the powers of a code city by virtue of such adoption. The charter includes Title 35A powers. RCW 35.22.195.

RCW 36.29.100; RCW 36.29.130; RCW 84.36.005; *State v. Turner*, 113 Wash. 214, 218-19, 193 P. 715, 717 (1920). Despite the statutory mandate on the County to perform the purely ministerial duties of the City in assessing and collecting local property taxes, the County repeatedly refused to implement the City's local property tax exemption for the City's local taxes. The County's justification for its refusal to implement the City's local property-tax exemption is the County's opinion that the City's ordinance creating the local property-tax exemption program is unconstitutional, a decision based on a February 17, 2015 opinion letter from Appellant State of Washington, by and through the Department of Revenue ("DOR") to Spokane County. However, enacted ordinances are presumed constitutional unless and until proven otherwise by a party with standing to challenge them. *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 804, 23 P.3d 477, 481 (2001); *Weden v. San Juan Cty.*, 135 Wn.2d 678, 690, 958 P.2d 273, 279 (1998); *Commonwealth Title Ins. Co. v. City of Tacoma*, 81 Wn.2d 391, 395, 502 P.2d 1024, 1026 (1972). The County refused to fulfill its statutory tax assessment and collection duties, forcing the City to bring a petition for a writ of mandamus seeking to compel Spokane County's ministerial officers to perform their duties. The trial court granted the City's petition, issued a writ of mandamus, and

rejected the County's arguments that the City lacked authority to grant a local exemption and that the Ordinance is unconstitutional.

In its June 12, 2015, Order, the trial court correctly concluded that "Defendants Horton and Chase have a clear duty to act under Chapter 36.21 RCW and Chapter 36.29 RCW to implement the Ordinance"; "[t]he City lacks a plain, speedy and adequate remedy in the ordinary course of law"; "[t]he City has a beneficial interest in having the Ordinance implemented"; and the "City is entitled to a writ of mandamus compelling Defendants [Horton and Chase] to implement the Ordinance forthwith . . . ." [CP 440-50]. The trial court also found that the "DOR's directive [wa]s not a construction or interpretation of Title 84 RCW" and thus was *ultra vires* and had to be annulled. [*Id.*]. This Court should affirm the Superior Court's decisions granting the City's Petition, issuing a writ of mandamus, and annulling the DOR's directive to Spokane County.

## II. STATEMENT OF THE CASE

The facts and procedural history relevant to this motion are set forth in the following decisions and orders issued by the trial court: (1) Memorandum Decision dated April 24, 2015;[2] (2) Memorandum Decision dated June 12, 2015;[3] (3) Order Granting Plaintiff's Petition for Writ of Mandamus filed June 12, 2015;[4] and (4) Writ of Mandamus to Defendants Horton and Chase filed June 12, 2015. [CP 391-94]. Each is incorporated herein by reference.

On November 4, 2014, voters in the City of Spokane approved a property tax-levy-lid lift in the amount of $0.57 per $1,000 of assessed value to cover the cost of street repairs over the next twenty years. [CP 26]. Based upon information obtained from Appellant Horton's office, the City had previously informed the public that citizens who qualified for the state property tax exemption for limited-income senior citizens and disabled veterans set forth in RCW 84.36.381 ("state exemption") would automatically be exempt from a portion of the new levy just as they had been under an expiring street bond that the new levy replaced. [CP 27]. After voters approved the levy-lid lift, however, Appellant Horton's office

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[2] Clerks Papers ("CP") 318-22.
[3] CP 375-76.
[4] CP 377-89.

informed the City that persons who qualified for the state exemption would not in fact be exempt from a portion of the levy. [CP 28].

In an effort to deliver the promised exemption, the Spokane City Council passed Ordinance No. C-35231 on February 9, 2015. [CP 9-22]. The Ordinance authorizes a local property-tax exemption from a local voter-approved levy for low-income senior citizens, citizens with permanent disabilities, and disabled military veterans. [*Id.*] The Ordinance was patterned after the state exemption and was drafted in such a manner that anyone who applied for and received the state exemption would also qualify to receive the City's local exemption. [*Id.*] The Ordinance did not have any impact on the state exemption.

Rather than implement the Ordinance, as was her ministerial duty, Appellant Horton asked the DOR for an opinion about whether Washington law authorized the City to amend the state property-tax exemption statute. [CP 47]. In a letter dated February 17, 2015, the DOR responded that the Ordinance "creates an exemption that is not authorized under state law, [and] should not be implemented." [CP 89-90]. Although the DOR did not characterize its letter as an order or ruling, the County interpreted this letter as a prohibition against the implementation of the Ordinance. [CP 92-93].

Based on the County's refusal, the City filed the instant lawsuit seeking a writ of mandamus compelling the County to fulfill its ministerial duties and implement the Ordinance. The County defended against the mandamus claim primarily on the ground that they could not implement the Ordinance unless and until DOR's directive was formally annulled. The DOR, without moving to intervene as a party or otherwise requesting permission to be heard, filed extensive briefing arguing that the City lacked statutory authority to grant a local property-tax exemption and that the Ordinance violated various provisions of the Washington Constitution.

On April 24, 2015, the trial court issued a Memorandum Decision ruling that the City was entitled to a writ of mandamus compelling the County to implement the Ordinance. The trial court subsequently entered an order (1) annulling DOR's February 17, 2015, letter; (2) ruling that "[t]he City's enactment of the Ordinance and creation of a [local] tax exemption is expressly authorized by RCW 35A.11.020 and is therefore lawful and a valid exercise of the City's statutory authority"; (3) finding that neither the Ordinance nor RCW 35A.11.020 violates Article VII or Article XI of the Washington Constitution; (4) finding that the County has a "clear duty" under Chapters 36.21 RCW and Chapter 36.29 RCW to

implement the Ordinance; and (5) ordering the County to "implement the ordinance forthwith." [CP 377-89].

## III. ARGUMENT

### A. Writ of Mandamus standard.

"Writs of mandamus are subject to two separate standards of review, depending on the question reviewed." *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 648-49, 310 P.3d 804, 812 (2013). First, like all questions of law, "we review de novo the question whether a statute specifies a duty such that mandamus may issue." *Id.* "But '[w]hether there is a plain, speedy, and adequate remedy in the ordinary course of the law is a question left to the discretion of the court in which the proceeding is instituted." *Id.* (quoting *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001)). "We reverse discretionary decisions of the trial court only if 'the superior court's discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id.* (quoting *River Park Square, LLC*, 143 Wn.2d at 76). "Therefore, to sum up, if the question raised is whether a statute prescribes a duty that will support issuance of a writ of mandamus, our review is de novo." *Id.* "But if the question raised is whether there existed an adequate remedy at law that precludes issuance

of mandamus, we review the trial court's decision for abuse of discretion." *Id.* Furthermore, like the question of adequate remedy, whether a party is beneficially interested is also left up to the discretion of the trial court.

The County does not dispute its statutory duty. The County's first, second, and third, assignments of error are reviewed for abuse of discretion because the County challenged the trial court's decisions as to whether the County was excused from its ministerial duties because the DOR said the Ordinance was unconstitutional; the City had other "plain, speedy, and adequate remedies"; and the City was not beneficially interested in the implementation of its own law. The fourth assignment of error contends that the trial court's writ exceeds the requirements of the Ordinance, an issue of law reviewed de novo.

A writ of mandamus may be issued to "'compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station.' RCW 7.16.160. 'The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested' RCW 7.16.170." *Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741, 752 (2003). Thus, there are three elements to a petition for a writ of mandamus: "(1) the party subject

to the writ is under a clear duty to act, RCW 7.16.160; (2) the applicant has no 'plan, speedy and adequate remedy in the ordinary course of law,' RCW 7.16.170; and (3) the application is 'beneficially interested.' RCW 7.16.170." *Id.*

**B. <u>Appellants Horton and Chase had a clear duty to implement the City's Ordinance.</u>**

The County contends that it did not have a clear duty to implement the City's Ordinance. [Appellant County's Brief page 5]. This argument is not based on the statutes that define the duties of their offices. Appellants Horton and Chase do not dispute that they are the *ex officio* collectors of the City taxes. RCW 36.29.100. As the County Treasurer and Assessor, respectively, Appellant Horton and Appellant Chase are required to collect and receipt all municipal taxes. *See* RCW 36.29.130. All property within the City is subject to assessment by the City, except as exempted from taxation by law. RCW 84.36.005.

Appellants Horton and Chase are subordinate "ministerial officers" when collecting taxes on the city's behalf. *State v. Turner*, 113 Wash. at 218-19 (holding that "the treasurer of a county in which there is a city of the first class is made ex officio collector of city taxes for such city, and as such collector he is *a subordinate ministerial officer, who has no*

*discretion*, but must perform the duty of collecting taxes as they are certified to him by the assessment . . . ." (emphasis added)). Under these circumstances, Appellant Horton's and Chase's singular duty here vis-à-vis the City is to act as the *ex officio* collectors of property taxes certified by the City. *See id* at 218. Despite this statutory duty, the County officials claim they had no duty to implement the Ordinance because the DOR claimed it was unconstitutional. Neither the DOR nor the County officials took any legal steps to obtain a judicial ruling on the validity of the City's Ordinance. They simply refused to implement it, forcing the City to institute its action for a writ.

**1. The DOR's February 17, 2015, letter was an opinion that the County had no duty to follow.**

The County claims that it could not implement the City's Ordinance because the DOR issued an opinion letter advising against it. [Appellant County's Brief page 6]. According to the County, it was given "binding guidance" not to implement the Ordinance. [*Id.* at 7]. In support of this assertion, the County claims that the DOR's February 17, 2015, letter was a "legal interpretation" issued pursuant to RCW 84.08.080 that carries the force and effect of law that the County is obligated to follow "until modified or annulled by the judgment or decree of a court of

competent jurisdiction." [*Id.* at 6]. This characterization of the DOR's opinion letter fails for two basic reasons.

First, the DOR's letter does not claim to be a binding "legal interpretation" issued pursuant to RCW 84.08.080. Indeed, the letter does not purport to bind the County at all. The only portion of the letter that could arguably be construed as "binding guidance" is the following: "Because the City's ordinance creates an exemption that is not authorized under state law, it should not be implemented." [CP 89-90]. The County apparently believes that the second half of this sentence means "shall not be implemented" or "must not be implemented."

But that is not what the DOR said. Nor is it what the DOR meant. In fact, the DOR expressly disclaimed any intent to issue a binding directive. On the day the letter was issued, the DOR advised the City that (1) its opinion was *not* binding on the County; (2) the decision whether to implement the Ordinance rested with the Spokane County Prosecutor; and (3) the DOR did not have standing to initiate a legal or constitutional challenge to the Ordinance, but would likely move to intervene if someone with standing filed such a challenge. [CP 277]. Given that the DOR does not consider its opinion binding, the trial court properly rejected the County's assertion that it had no choice but to follow it.

Even if the DOR had intended to issue a binding directive, its letter could not have had that effect. RCW 84.08.020(1) directs the DOR to "confer with, advise and direct" county assessors and county treasurers "as to their duties under the law and statutes of the state, relating to taxation." RCW 84.08.080, in turn, authorizes the DOR to issue authoritative legal interpretations of the powers and duties of these officers—but only as to questions requiring an interpretation of *Title 84 RCW*:

> The department of revenue shall, with the advice of the attorney general, decide all questions that may arise in reference to the *true construction or interpretation of this title*, or any part thereof, with reference to the powers and duties of taxing district officers, and such decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.

RCW 84.08.080 (emphasis added).

The DOR's opinion that the City "exceeded its authority" in granting a local tax exemption to low-income senior citizens hinges on its belief that (1) the Washington Constitution vests the authority to grant tax exemptions exclusively in the Legislature; and (2) even if the Legislature could share that authority with local taxing jurisdictions, it did not do so when it granted "all powers of taxation" to cities in RCW 35A.11.020. This opinion does not involve a "construction or interpretation" of a statute in Title 84 RCW. Accordingly, the DOR has absolutely no

authority to order or direct the County not to implement the Ordinance on the basis of this opinion. It is the Court, rather than the DOR, that has plenary authority to construe and interpret anything outside of Title 84 RCW and specifically to rule on the authority of a first-class charter city under Title 35, the City's charter, and the state constitution. The Court should therefore reject the County's argument that they are bound by the DOR's opinion and find that the County had a clear legal duty to implement the Ordinance.

### 2. *State v. Turner* is not distinguishable

The County attempts to distinguish *Turner* on the fact that the action in *Turner* was to implement a tax roll; whereas here, the City's Ordinance implements an exemption. However, a solitary factual difference does not distinguish *Turner* from the instant case. Even if they believe the City's taxation scheme is unlawful, which it is not, Appellants Horton and Chase have neither the authority nor the discretion to refuse to perform their tax-collection duties. *See id.* at 223 ("It is not within the county treasurer's power to exercise any judicial functions and to determine the question of law as to whether the levy made by the city was illegal. His sworn duty was to collect the amount of taxes . . . ."); *State ex rel. Mason Cty. Logging Co. v. Wiley*, 177 Wash. 65, 75, 31 P.2d 539, 544

(1934) (granting writ of mandamus compelling county assessor and county treasurer to perform the "ministerial act" of applying preferential reduction in property tax rate for reforestation lands pursuant to legislative mandate). In short, the County has one duty concerning the City's property-taxation scheme. The County must implement it.

### 3. The City had authority to grant a local exemption.

Two of the main issues presented in this appeal are (1) whether the legislative grant of "all powers of taxation for local purposes" in RCW 35A.11.020 includes the power to grant local exemptions; and (2) if so, whether that grant of local exemption authority comports with Article VII and Article XI of the Washington Constitution. As the trial court properly concluded, both questions are easily answered in the affirmative.

The City, as a first-class charter city organized under its City Charter and possessing all of the powers granted to *any* city, including those set forth in Title 35A RCW for code cities, is vested with "all powers of taxation" not specifically withheld by the Legislature:

> Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits *all powers of taxation for local purposes except those which are expressly preempted by the state* as provided in RCW 66.08.120**Error! Bookmark not defined.**, 82.36.440, 48.14.020, and 48.14.080.

RCW 35A.11.020 (emphasis added). Because code cities have "the broadest powers of local self-government consistent with the Constitution," this grant of taxation authority must be "liberally construed in favor of the [City]." RCW 35A.01.010; *City of Bellevue v. Painter*, 58 Wn. App. 839, 843, 795 P.2d 174, 176 (1990) (noting that code cities "enjoy[] the broadest powers available under the Constitution unless expressly denied by statute.").

The County argues that "all powers of taxation" means something other than what it says. [*See* Appellant County's Brief page 10-11]. The County contends that all powers of taxation" actually means "only the power to assess and collect taxes—and not the power to grant exemptions. *Id.* In support of this contention, the County advances two arguments: (1) the power to impose taxes and the power to grant exemptions are separate powers, and the Washington Constitution vests the latter exclusively in the Legislature; and (2) even if the Legislature were free to delegate its exemption power, it did not express a clear intent to do so in RCW 35A.11.020. These contentions are unpersuasive and unsupported by the clear language of both the Washington Constitution and the statutes.

**i. <u>The Washington Constitution does not prohibit the Legislature from delegating its exemption authority to cities.</u>**

As a threshold matter, the City does not dispute that the power to impose taxes and the power to grant exemptions can be conceptually distinct powers subject to independent delegation requirements. 16 *McQuillin Mun. Corp.* § 44:82 (3d ed.). However, contrary to the County's assertions, it does not automatically follow that the Washington Constitution prohibits the delegation of exemption power to local taxing jurisdictions. The crux of the County's argument is that Article VII, Section 1 grants exemption authority to the Legislature—*and only to the Legislature*. But that is a distorted and incomplete reading of what Section 1 actually says:

> The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: Provided, that the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. *Such property as the legislature may by general laws provide shall be exempt from taxation.* Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of fifteen thousand ($15,000.00) dollars for each head of a family liable to

> assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner.

Const. art. VII, § 1 (emphasis added). Section 1 is the Washington Constitution's broad enumeration of all of the powers of taxation that may be exercised within the state of Washington. The County's suggestion that this provision somehow vests the power to exempt exclusively in the Legislature is unsupported by the constitutional text. [*See* Appellant County's Brief page 13-15].

The County next points to Article VII, Section 9 and Article XI, Section 12 as the source of the purported prohibition on local jurisdictions wielding exemption power. [*Id.*] But those provisions say nothing whatsoever about the power to exempt. Article VII, Section 9 states:

> The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

Const. art. VII, § 9. Similarly, Article XI, Section 12 provides:

> The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general

> laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

Const. art. XI, § 12.

The County wants the Court to infer an exclusive grant of exemption power to the Legislature from the fact that Article VII, Section 9 and Article XI, Section 12 authorize local jurisdictions to "assess and collect" taxes without mentioning the power to exempt. [*See* Appellant County's Brief page 13-15]. Such inference is foreclosed by the legislative history of these provisions. As the Washington Supreme Court has repeatedly explained, Article VII, Section 9 and Article XI, Section 12 are designed to *prohibit the Legislature from assessing and collecting local taxes*. They accomplish that purpose by vesting local collection and assessment authority exclusively in local taxing jurisdictions—to the exclusion of the Legislature:

> The objective of article XI, section 12, frequently called the "home-rule provision," restricting direct legislative action as to local taxing matters, *was to bar the state legislators, whose members come from all parts of the state, from dictating local taxing policy and instead to allow municipalities to control local taxation for local purposes.*
>
> * * *
>
> Article VII, section 9, similar to article XI, section 12, allows the legislature to delegate taxing power to all municipal corporations (e.g., cities, towns, counties, special diking districts, and other local municipal corporations).

*Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 756 n.3 & n.4, 131 P.3d 892, 894 (2006) (emphasis added); *see also, e.g.*, *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 346, 662 P.2d 845, 849 (1983) ("The focus of article 11, section 12 is to restrict the *State* from imposing taxes on municipal corporations or inhabitants or property therein, for municipal purposes."); *State v. Redd*, 166 Wash. 132, 139, 6 P.2d 619, 622 (1932), *modified on other grounds by Carkonen v. Williams*, 76 Wn.2d 617, 625, 458 P.2d 280, 285 (1969) ("[Article XI, Section 12] is a limitation upon the power of the Legislature to delegate the right of local taxation *to any other than* the local authorities of the county, city, town, or other municipal corporation concerned.") (emphasis added).

In short, Article VII, Section 9 and Article XI, Section 12 take a certain power—the power to assess and collect local taxes—away from the Legislature. They are not a limitation on the Legislature's authority to delegate *other* taxation powers to municipalities. *City of Wenatchee v. Chelan Cty. Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 334-37, 325 P.3d 419, 423-24 (2014). *They do not define the full scope of taxation power available to local governments under the Washington Constitution. Id.*

Viewed in this proper context, the fact that Article VII, Section 9 and Article XI, Section 12 reference the power to "assess and collect" taxes without mentioning the power to exempt is wholly unremarkable. These provisions state that *only* local jurisdictions may assess and collect taxes for local purposes. It defies logic to suggest that by expressly reserving the power to "assess and collect" local taxes to local jurisdictions, Article VII, Section 9 and Article XI, Section 12 somehow preclude local jurisdictions from doing anything *other* than "assessing and collecting" taxes. Once again, the County misses the mark.

In the final analysis, the Washington Constitution does not purport to vest the power to grant exemptions exclusively in the Legislature. Accordingly, the Legislature is free to share its unquestioned authority in this area with cities like the City of Spokane. As discussed below, that is precisely what the Legislature did when it granted certain cities, like Spokane, "all powers of taxation" in RCW 35A.11.020.

**ii. By granting cities "all powers of taxation" in RCW 35A.11.020, the Legislature delegated every power of "Taxation" authorized in the Washington Constitution.**

This is a case of simple statutory construction. The Legislature has granted "all powers of taxation for local purposes except those which are expressly preempted." RCW 35A.11.020. As a first-class charter city,

Spokane has all of the powers of code cities. Title 35 RCW. When construing any statute, a court must give effect to the legislature's intent. *City of Wenatchee*, 181 Wn. App. at 337. "If the statute's meaning is plain on its face, then [the court] must give effect to that plain meaning as an expression of legislative intent." *Id.* Here, the question is whether the meaning of "all powers" is plain on its face.

Further, there are special rules of construction that apply to statutes codified in Title 35A RCW. Specifically, the Legislature has directed that any statute that contains a grant of legislative authority under Title 35A RCW must be construed liberally in favor of the municipality such that the municipality receives the full extent of power authorized by the Washington Constitution. RCW 35A.01.010 ("All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality."); RCW 35A.11.020 ("The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law."); *Painter*, 58 Wn. App. at 843 (noting that code cities "enjoy[] the broadest powers available under the Constitution unless expressly denied by statute"); *City of Wenatchee*, 181

Wn. App. at 337 (explaining that grants of taxation authority under Title 35A RCW must be "liberally construed to carry out the objectives of the cities.") (quotation and citation omitted).

a. The meaning of "all powers of taxation" is clear on its face.

The plain meaning of RCW 35A.11.020 is that certain cities enjoy all powers relating to matters of taxation except those powers that the Legislature has specifically reserved for itself. When discerning plain meaning, the court may look to "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228, 232 (2007). If the meaning of the statute is plain on its face, the court's inquiry is complete. *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 433, 228 P.3d 1260, 1265 (2010). Only when a court cannot ascertain legislative intent from a statute's plain language, may it "resort to statutory construction, legislative history, and relevant case law for assistance." *Christen*, 162 Wn.2d at 373. In expanding its search for statutory meaning, a court must avoid interpretations that produce "unlikely, absurd or strained" results. *Broughton Lumber Co. v. BNSF Ry. Co.*, 174 Wn.2d 619, 635, 278 P.3d 173, 181 (2012). For a

result to qualify as "unlikely, absurd or strained," it must not be conceivable that the legislature intended it. *See State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354, 358 (2010) ("It is conceivable the legislature might have intended this result[;] [b]ecause it is conceivable, the result is not absurd.").

The County ignores the plain-meaning rule of construction and argues that the grant of "all powers of taxation" is actually a grant of only the power to impose taxes. This is a tortured and unnatural reading of the statute. [*See* Appellant County's Brief page 14]. For one thing, the use of "all powers" in the *plural* signals intent to grant a universe of multiple powers rather than a single power. In that regard, it bears noting that the Washington Constitution describes the power to "assess and collect" taxes as a single power. *See* Const. art. XI, § 12 (Legislature may vest in the corporate authorities of counties, cities, towns or other municipal corporations "*the power* to assess and collect taxes.") (emphasis added).

However, even more importantly, had the Legislature intended to grant code cities only the power to "assess and collect" taxes, it could easily have said so. Here again, a comparison to the language of the Washington Constitution is instructive. Both Article VII, Section 9 and Article XI, Section 12 use the phrase "assess and collect" to describe a

taxation power that can be delegated to municipal government entities. If the Legislature had intended to delegate that power—and *only* that power—to code cities, it stands to reason that it would have copied such limiting language verbatim. Indeed, the fact that the Legislature used broader language is clear evidence that it would reject the County's view that Article VII, Section 9 and Article XI, Section 12 forbid it from delegating anything *other* than the power to "assess and collect" taxes.

By the same token, had the Legislature intended to reserve its constitutional power to grant exemptions to itself exclusively, it could have used language to that effect. For example, it could have granted code cities "all powers of taxation, except the power to grant exemptions." Or it could have listed "Chapter 84.36 RCW" among the other statutes through which the Legislature has expressly reserved a power of taxation for itself. It did neither, reflecting intent to bestow upon code cities *every* power ("*all powers*") of taxation available under the Washington Constitution—including the power to exempt expressly set forth in Article VII, Section 1 - "Taxation."

The County's response to this more natural reading of the statute is to claim that the Washington Constitution grants to the Legislature a limited authority to invest cities with only the power to assess and collect

taxes. [Appellant County's Brief page 14]. However, the County's contention is incorrect. The Washington Constitution does not so limit the Legislature. When the Legislature desires to grant only the power to assess and collect taxes, it does. *See, generally*, RCW 35.22.280; RCW 35.27.370; RCW 52.12.021; RCW 53.08.010; RCW 54.16.080. However, where, as here, the grant of authority is not so narrowly restricted, the power to exempt is generally presumed to be included. *See Betts v. Zeller*, 263 A.2d 290, 296 (Del. 1970) ("Necessarily implied in the broad delegation of taxing power was the power to determine . . . the amount of taxes to be raised, the rate of taxation, and all other necessary and essential elements of the power to tax, *including the power to carve out reasonable and proper exemptions* as will best promote the public welfare.") (quotation and citation omitted). "Subject to constitutional restrictions, [a] legislature may delegate to municipalities the power to exempt certain property from municipal taxation." 16 *McQuillin Mun. Corp.* § 44:82.

The County relies on *Belas v. Kiga*, 135 Wn.2d 913, 933, 959 P.2d 1037 (1998), for the proposition that the authority to create tax exemptions should be found only where the legislature utilizes clear and explicit language. Yet, contrary to the County's proposition, applying the *Belas* case here supports the City's arguments. The Legislature was clear and

explicit when it gave certain cities "*all* powers of taxation." Furthermore, the *Belas* court's exemption analysis was focused solely on the ambiguity of the language of the involved referendum, attempting to determine if the referendum actually intended an exemption. Here, unlike in *Belas*, the City's Ordinance language unquestionably intends an exemption—that has never been disputed. Thus, *Belas* does not stand for the proposition that the County attempts to advance.[5]

The County also cites *Pac. First Fed. Sav. & Loan Ass'n v. Pierce Cty.*, 27 Wn.2d 347, 353, 178 P.2d 351, 354 (1947), and *King Cty. v. City of Algona*, 101 Wn.2d 789, 791, 681 P.2d 1281, 1282 (1984), for the implied conclusion that because the City has no *inherent* power to exempt, the Legislature would have to expressly grant such power to the City. The County's reliance is misplaced.

First, the City is not arguing that it *inherently* has taxation powers. By receiving an express grant of *all powers of taxation* from the Legislature, the City can act under such grant to assess, tax, and exempt as

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[5]Additionally, the County's extra-jurisdictional case *St. Lucie Estates v. Ashley*, 105 Fla. 534, 536, 141 So. 738, 738 (1932), likewise support the City's arguments. "The power to tax, to exempt from taxation, to remit taxes wrongfully collected, or to compromise taxes, may be delegated to municipality . . . ." Also, in *Cty. of Sullivan v. Town of Tusten*, 72 A.D.3d 1470, 1471, 899 N.Y.S.2d 455, 457 (N.Y. App. Div. 2010), "[t]he state ha[d] delegated to local municipalities the authority to make initial decisions regarding the value of real property for purposes of taxation, *including determining which property is exempt*." (emphasis added).

it sees fit. Second, *Pac. First Fed. Sav. & Loan Ass'n* involves the Port of Tacoma's taxation powers, not a first-class charter city's all-encompassing taxation powers such as the City of Spokane possesses. *Pac. First Fed. Sav. & Loan Ass'n* is distinguishable. Additionally, the court's reasoning in *King Cty. v. City of Algona* bolsters the City's argument by holding that the City of Algona had a general grant of taxing powers comprising "*all powers of taxation* for local purposes . . . ." 101 Wn.2d at 792 (emphasis added) (quoting RCW 35A.11.020). The County's cited cases prove the City's arguments.

b. Assuming arguendo that the phrase "all powers of taxation" is ambiguous, the Court must follow the Legislature's directive to construe the statute liberally such that it conveys the broadest possible taxation power authorized by the Constitution.

Even if the Court were to conclude that the meaning of "all powers of taxation" is somehow not clear on its face, it still must construe the statute liberally in favor of the broadest possible grant of power authorized by the Washington Constitution. Any narrower construction would directly contravene the Legislature's expressed intent in enacting Title 35A RCW:

> The purpose and policy of this title is to confer upon two optional classes of cities created hereby *the broadest powers of local self-government consistent with the Constitution of this state*. Any specific enumeration of

> municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. *All grants of municipal power* to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, *shall be liberally construed in favor of the municipality.*

RCW 35A.01.010 (emphasis added). The Legislature could not have been clearer: if a question arises concerning the scope of authority granted by the Legislature in Title 35A, the question must be resolved in the city's favor. The County again misses the mark and proffers a statutory analysis based on its erroneous reliance on case law applicable only to non-code cities and towns—case law expressly made inapplicable to code cities by the Legislature's broad grant of "home rule" type powers under Chapter 35A RCW.

Moreover, the Legislature fully understood the implications of granting certain cities "all powers of taxation." This all-encompassing grant of authority given to certain cities stands in sharp contrast to the much narrower grants of authority given to other forms of local government. Second-class cities, for example, are only authorized to "provide for the *levying and collecting* [of] taxes on real and personal property." RCW 35.22.280(2), RCW 35.23.440(46) (emphasis added).

Towns are only authorized to "*levy and collect* annually a property tax." RCW 35.27.370(8) (emphasis added). Unclassified cities are likewise only permitted to "*levy and collect*" an annual property tax. RCW 35.30.010(3) (emphasis added). Fire protection districts can only "*levy and enforce* the collection of assessments and special taxes" and only "in the manner and subject to the limitations provided in [Title 52 RCW]." RCW 52.12.021 (emphasis added). Port districts only have authority to "*levy and collect* assessments upon property for the payment of all damages and compensation." RCW 53.08.010 (emphasis added). Public utility districts are only allowed to "*levy* . . . an annual tax on all taxable property within the district." RCW 54.16.080 (emphasis added). The list goes on.

As the above examples illustrate, the Legislature is very adept at granting only the power to *impose* taxes when that is what it intends. The fact that the Legislature departed from the well-worn "levy and collect" mantra in granting cities "all powers of taxation" in RCW 35A.11.020 shows that it really did intend for cities such as the City of Spokane to have each and every power of taxation available under the Washington Constitution. *See Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791, 795 (1998) ("It is well settled that where the Legislature uses certain language in one instance but different, dissimilar language in another, a difference

in legislative intent is presumed."); *Koker v. Armstrong Cork, Inc.*, 60 Wn. App. 466, 470-71, 804 P.2d 659, 663 (1991) ("The Legislature is presumed to know the meaning of the words used in writing its enactments. An elementary rule of statutory construction is that where the Legislature uses certain statutory language in one instance and different language in another, there is a difference in legislative intent.") (internal citation omitted).

In sum, the Legislature meant what it said in RCW 35A.11.020: "all powers of taxation" really does mean *all* powers of taxation. Any narrower construction would undermine the Legislature's plain expression of its intent. Had the Legislature intended to grant only the power to *impose* taxes as the County contends, it would have said "levy and collect" as it has done on virtually every other occasion in this very same context.

#### iii. *City of Wenatchee v. Chelan Cnty. Pub. Util. Dist. No. 1* is not distinguishable

The County attempts to distinguish *City of Wenatchee v. Chelan Cnty. Pub. Util. Dist. No. 1* by arguing that the case suggests "only that cities have broad power to impose excise taxes on other municipalities for regulation or revenue." [Appellant County's Brief page 15]. The County's narrow interpretation of the case misses *City of Wenatchee*'s broad application to the case at bar. Although the factual background may not be

identical to the circumstances here, the City uses the case to put forward three rules of law that are applicable and precedential to the instant matter. First, as shown above, *City of Wenatchee* stands for the rule that Article VII, Section 9 and Article XI, Section 12 do not define the full scope of taxation power available to local governments under the Washington Constitution. Second, the case states that a court must give weight to the state legislature's intent when interpreting a statute. Third, *City of Wenatchee* explains that grants of taxation authority must be liberally construed. Each of the three points is germane to the Court's determination. *City of Wenatchee* cannot be ignored simply because the underlying facts differ slightly from the current suit. The case is not distinguishable.

4. The Ordinance meets the uniformity requirement.

The County next contends that the Ordinance is unconstitutional because it violates the uniformity requirement set forth in Article VII, Section 1. [Appellant County's Brief page 16]. The County concedes that the Washington Constitution specifically excludes tax exemptions for "retired property owners" from this uniformity requirement, *see* Const. art. VII, § 10, but argues that "only the Legislature" may grant such

exemptions without violating Section 1. [Appellant County's Brief pages 17-18]. This argument fails.

Although Section 10 vests the power to grant such exemptions in "the legislature," nowhere does it forbid the Legislature from passing that authority along to local taxing jurisdictions. The County cites no authority to the contrary.

The Legislature granted cities "all powers of taxation." RCW 35A.11.020. This broad grant of authority includes the power to exempt set forth generally in Article VI, Section 1, and expressly for "retired persons" in Article VII, Section 10—and wherever else in the Washington Constitution it might be found. RCW 35A.01.010; RCW 35A.11.020. The fact that the Ordinance results in non-uniform taxation is of no concern because Article VII, Section 10 expressly authorizes the Legislature to grant non-uniform exemptions to senior citizens, and the Legislature has passed that authority to code cities through RCW 35A.11.020. The Legislature can grant non-uniform exemptions of this type throughout the state of Washington, and so too can the City within its boundaries and for its own purposes. *See* Const. art. XI, § 12.

### C. <u>The City has no adequate remedy at law.</u>

The County asserts that mandamus relief should be denied because (1) the City failed to exercise its nonexclusive legal remedy to seek redress under Chapter 7.24 RCW, the Uniform Declaratory Judgment Act ("UDJA"); and (2) the City could have "appealed" the DOR's opinion. [Appellant County's Brief pages 19-21].

The County argues that the City should have pursued declaratory relief instead of a writ of mandamus. [*Id.* at 20]. Yet, this would not have been an adequate remedy at law. The County's argument overlooks the well-settled principle that the Ordinance is presumed constitutional unless and until proven otherwise by a party with standing to challenge it. *Commonwealth Title Ins. Co. v. City of Tacoma*, 81 Wn.2d 391, 395, 502 P.2d 1024, 1026 (1972); *Weden v. San Juan Cty.*, 135 Wn.2d 678, 690, 958 P.2d 273, 279 (1998); *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d at 804. If the Court were to deny mandamus relief on the ground that the City had an adequate legal remedy in the form of a declaratory judgment, it would literally be requiring the City to prove the constitutionality of its own legislation. That would be an extraordinary result by any measure.[6]

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[6]Although the City initially contemplated seeking relief under the UDJA as it sought an emergency order from the Court, upon further research and analysis, the City amended its complaint to seek a writ of mandamus.

The County also argues that mandamus is inappropriate because the City did not "appeal" through the Administrative Procedure Act. [Appellant County's Brief page 21]. Even accepting the County's dubious assertion that the DOR's opinion letter amounts to "other agency action," the fact of the matter is that the City was not a party to the action. The opinion was requested by and issued to Appellant Horton without notice to the City. The City played no role in initiating the alleged agency action, nor was it afforded an opportunity to be heard. In short, any agency action was between the DOR and Appellant Horton. As a stranger to these proceedings, the City could hardly have been expected to appeal a letter of which it had no notice until it was raised as a defense. Indeed, had the City attempted to seek administrative review, its appeal would invariably have been dismissed for lack of standing.[7]

**D. <u>The City is a beneficially-interested party.</u>**

The City has a beneficial interest in the relief requested and thus has standing to bring its mandamus action. The same standing prerequisites that apply to individual taxpayers also apply to municipalities to bring an action for a writ of mandamus. *See City of*

[7]The County's passing argument that because a taxpayer could appeal an exemption denial under the Ordinance's own appeal process is inapposite to the Court's determination whether *the City* had other available legal remedies apart from a writ of mandamus. [Appellant County's Brief pages 23-24]. The writ-of-mandamus elements apply to the City, not an individual taxpayer.

*Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114, 115-16 (1975) (holding that the individual taxpayer standing requirements to request a writ of mandamus to challenge the act of a public official apply equally to a county, municipality, or other governmental entity).

"Standing is not an insurmountable barrier to municipal corporations . . . ." *City of Seattle v. State*, 103 Wn.2d 663, 668, 694 P.2d 641, 645 (1985) (citing *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 493, 585 P.2d 71, 81 (1978)). "Where a controversy is of serious public importance the requirements for standing are applied more liberally." *Id.* (citing *Washington Natural Gas Co. v. Public Util. Dist. 1 of Snohomish Cy.,* 77 Wash.2d 94, 96, 459 P.2d 633 (1969)). "The basic test for standing is 'whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Id.* (citing *Seattle Sch. Dist. 1,* 90 Wash.2d at 493, 585 P.2d 71).

Contrary to the County's assertions, this suit is not solely about the right of taxpayers to receive the local senior-citizen exemption. At its most basic level, this case is about the City's right to govern. By refusing to implement the Ordinance, the County has exercised a *de facto* veto over the City's legislation. The County is treading on the City's sovereignty,

and the City does not have to wait on the sidelines and hope that one of its citizens will eventually stand up for its right to govern while the County officials refuse to either implement the Ordinance or challenge its validity in a court of law. Furthermore, the County's argument would lead to the absurd result, and would set a dangerous precedent, that any county could constructively veto any city law by simply refusing to implement the law because the county did not agree with it. The City has a beneficial interest in seeing the County implement the Ordinance.

### E. <u>The Writ of Mandamus is within the Ordinance's scope of authority.</u>

The County contends that that the writ of mandamus issued below is invalid because it asks the County to perform actions outside of the scope of the Ordinance. [Appellant County's Brief page 26]. Specifically, the County opines that "there is no express language in the Ordinance that it would be imposed in 2015" and "there is no express language in the Ordinance that the exemption to be received would be automatically granted without application or by using the statutory remedy for an error in taxes, which is a refund." [*Id.*] The County is once again incorrect.

#### 1. The Ordinance was to be implemented starting in 2015.

As the County well knows, the Ordinance was adopted as an emergency measure in early February 2015, so affected property owners could receive the benefit of the local senior-citizen exemption in tax year 2015. The City took this action after Appellant Horton's office revised its pre-election advice to the City that the state senior-citizen exemption would apply to the voted street-tax levy in the same manner as it had to the voted street-bond levies. Any suggestion that the City did not intend for its exemption to be applied in tax year 2015 is completely disingenuous. Notably, the Ordinance specifically recites that it was enacted as an emergency measure for the *immediate* benefit of those property owners entitled to the exemption:

> The City Council declares that an emergency exists in order that there be *no delay in implementation of this ordinance* for the immediate support of city government and its existing public institutions *and the setting of the annual tax levy relief for the affected taxpayers*. Therefore, this ordinance shall be in full force and effect immediately upon its passage by the City Council.

[CP 12] (emphasis added). This is a clear expression of legislative intent that should resolve any purported ambiguity as to when the exemption became available.

Furthermore, the Ordinance expressly authorizes the County to use existing state senior-citizen-exemption applications when applying the

City's local exemption. The language to this effect was added at the County's request as a convenience measure, so the County would not have to process two separate sets of applications. [CP 83]. This addition was also designed to ensure that the County could immediately apply the City's exemption using an existing list of property owners who had applied for and received the state exemption. The County maintains this list in a Microsoft Excel spreadsheet that can be quickly sorted by parcel number to identify the names and addresses of those entitled to the City exemption. [CP 274]. At the time the Ordinance was drafted and reviewed by the County, it was well known to all parties that the City expected the County to immediately implement the Ordinance and apply the exemption during the 2015 tax year.

### 2. The Ordinance's exemption must be applied automatically.

Appellants' second contention is that the writ of mandamus "exceeds the scope of authority granted by the Ordinance itself." [Appellant County's Brief page 26]. The crux of this argument is that Appellants cannot be compelled to issue amended property tax statements because the only remedy for "an error in taxes" is a tax refund. [*See id.*]. This argument fails for the simple reason that there was no *error* in the

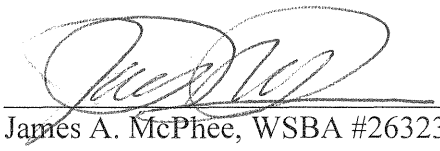
collection of the City's property taxes. Rather, Appellants made a conscious decision to print statements that did not reflect the local exemption authorized by the Ordinance (this decision was made before Appellants received DOR's directive not to implement the Ordinance). As a result, citizens who were entitled to the exemption did not receive it. These citizens should not be put through the burden of formally applying for a tax refund. The appropriate remedy is to require Appellants to issue amended and corrected tax statements.

## IV. CONCLUSION

Based on the foregoing, Respondent City of Spokane asks that the Court affirm the Superior Court's grant of the City's Petition for a Writ of Mandamus; uphold the Superior Court's issuance of a writ of mandamus requiring the County to implement the City's Ordinance; affirm the Superior Court's annulment of the February 17, 2015, DOR letter; and award the City its attorney fees and costs incurred in this appeal.

RESPECTFULLY SUBMITTED this 17th day of February, 2016.

WORKLAND & WITHERSPOON, PLLC



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## CERTIFICATE OF SERVICE

I, Veronica J. Clayton, hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 17th day of February 2016.

| | |
|---|---|
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