Nos. 336221 and 336239

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

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.

RESPONDENT CITY OF SPOKANE'S RESPONSE TO APPELLANT'S STATE OF WASHINGTON, DEPARTMENT OF REVENUE 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 its city charter. 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 35A.11.020. Pursuant to that authority, the City adopted City of Spokane Ordinance No. C-35231 ("Ordinance") that granted an exemption from certain local property taxes 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* 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 and sent out property tax statements to homeowners that did not reflect the local exemption. 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 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.

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 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 the following.

The Legislature may delegate the authority to create tax exemptions, as those exemptions are authorized by the State Constitution. The Legislature has delegated to code and first class charter cities "all powers of taxation for local purposes" in RCW 35A.11.020. The Legislature's delegation of these powers is constitutional. The plain language of RCW 35A.11.020 includes the power to grant exemptions from taxation. RCW 35A.11.020 does not conflict with or violate Article VII, Section 9 or Article XI, Section 12 of the Washington State Constitution. The statute is presumed to be constitutional. DOR and Defendants have failed to make a showing to overcome that presumption.

* * *

The City is a first class charter city. As a first class charter city, the City is authorized to exercise all powers granted to code cities under Title 35A RCW. The City's enactment of the Ordinance and creation of a tax exemption is expressly authorized by RCW 35A.11.020 and is therefore lawful and a valid exercise of the City's statutory authority. The Ordinance does not violate the uniformity requirements set forth in Article VII, Section 1 and Article VII, Section 9 of the Washington Constitution. . . . DOR exceeded its statutory authority in directing the County not to implement the Ordinance based on DOR's analysis of the City's authority to enact a local tax exemption. DOR's authority to issue directives and orders is limited to deciding "questions that may arise in reference to the true construction or interpretation of [Title 84 RCW]." RCW 84.08.080. DOR's directive is not a construction or interpretation of Title 84 RCW. Because DOR's analysis relies upon its interpretation of the Washington Constitution and the statutory authority of a city to adopt legislation, its directive to Defendant Assessor is *ultra vires* and must be annulled. DOR's directive must be annulled for the additional and independent reason that the City was

> in fact authorized to implement a local property tax exemption . . . .

[CP 47-48]. For these same reasons, 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;[1] (2) Memorandum Decision dated June 12, 2015;[2] (3) Order Granting Plaintiff's Petition for Writ of Mandamus filed June 12, 2015;[3] and (4) Writ of Mandamus to Defendants Horton and Chase filed June 12, 2015. [CP 391-94]. Each is incorporated herein by reference. In addition, the City incorporates herein by reference its Response to Appellants' Horton and Chase Opening Brief.

On November 4, 2014, voters in the City of Spokane approved a property tax-levy-lid lift for $0.57 per $1,000 of assessed value to cover the cost of street repairs over the next twenty years. [CP 26]. Based upon

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

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 informed the City that persons who qualified for the state exemption would not in fact be exempt from a portion of the levy.[4] [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 the 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.*]

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[4]Contrary to the DOR's portrayal of the communication that occurred between the City and the DOR prior to the Ordinance's creation, the City never intended to seek a formal written DOR opinion. The pertinent portion of the Verbatim Report of Proceedings states, "[T]he city conducted a number of meetings and conference calls with both the county and the Department of Revenue representatives. And what they came to realize is that the county wasn't willing to work with them on a solution that was reasonable. So they set about to find their own solution." RP 9:13-19.

Rather than implementing the Ordinance as was her ministerial duty, Appellant Horton asked the DOR for an opinion about whether Washington law authorized the City to grant a local property tax exemption. [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]. The County interpreted this letter as a binding directive issued pursuant to RCW 84.08.080 and refused to implement the Ordinance. [CP 92-93].

The City then filed the instant lawsuit seeking a writ of mandamus compelling the County to 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. Standards of Review

1. Writ of Mandamus

The standards for review of a writ of mandamus are set forth and applied in the City's Response to Appellants' Horton and Chase Opening Brief and are herein incorporated by reference.

2. Statutory and Constitutional Interpretation

The appropriate standard of review for statutory interpretation is de novo. *State v. Kipp*, 179 Wn.2d 718, 728, 317 P.3d 1029, 1033 (2014). Likewise, "Interpretation of court rules, statutes, and the Constitution are

issues of law, subject to de novo review. *In re Talley*, 172 Wn.2d 642, 649, 260 P.3d 868, 872 (2011).

3. Annulment

Additionally, the trial court's decision to annul the DOR opinion letter should be reviewed under a de novo standard. *Washington State Hosp. Ass'n v. Washington State Dep't of Health*, 183 Wn.2d 590, 594-95, 353 P.3d 1285, 1288 (2015) (citing *Tapper v. Emp't Sec. Dep't*, 122 Wash.2d 397, 402, 858 P.2d 494 (1993) (holding that when reviewing an administrative decision, the court sits in the same position as the superior court).

B. The Washington Constitution does not prohibit the Legislature from delegating its exemption authority to cities.

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 DOR's assertions, it does not automatically follow that the Washington Constitution treats these powers differently in terms of which can be bestowed on local taxing jurisdictions.

The DOR points to Article VII, Section 9 as the source of the purported prohibition on local jurisdictions wielding exemption power. [Appellant DOR's Brief page 23.] 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.

The DOR wants the Court to infer an exclusive grant of exemption power to the Legislature from the fact that Article VII, Section 9 authorizes local jurisdictions to "assess and collect" taxes without mentioning the power to exempt. [*See* Appellant DOR's Brief page 21-24]. Such inference is foreclosed by the legislative history of this provision. As the Washington Supreme Court has repeatedly explained, Article VII, Section 9 is designed to *prohibit the Legislature from assessing and collecting local taxes*. Section 9 accomplishes that purpose by vesting local collection and assessment authority exclusively in local taxing jurisdictions—to the exclusion of the Legislature:

> 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).

In short, Article VII, Section 9 takes a certain power—the power to assess and collect local taxes—away from the Legislature. Article VII, Section 9 is 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). Article VII, Section 9 does 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 references 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 somehow

precludes local jurisdictions from doing anything *other* than "assessing and collecting" taxes. Once again, the DOR misses the mark.

The DOR cites *Carkonen v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280, 286 (1969), in support of its argument that "Section 9 requires uniformity and *expressly limits the powers in the second clause to levying and collection.*" [Appellant DOR's Brief at 23 (emphasis added)]. However, *Carkonen* does not support the DOR's limitation argument. Rather, the *Carkonen* court reasoned that Section 9 *permits*, not limits, the Legislature to grant levying and collecting authority to municipalities because municipalities do not have inherent taxation authority. There is no mention of the Legislature being limited to granting *only* levying and collecting power to a municipality. Such interpretation is patently erroneous. Further, the issue of tax-exemption authority was not before the *Carkonen* court.

> Const. art. 7, s 9, and art. 11, s 12, *permit* the state legislature to vest county and other municipal authorities with the power to levy and collect taxes for local purposes, subject to such conditions and limitations as the constitution or the legislature may prescribe.

Carkonen v. Williams, 76 Wn.2d 617, 627-28, 458 P.2d 280, 286 (1969) (emphasis added) (citing *State ex rel. School Dist. 37 of Clark County v. Clark County*, 177 Wash. 314, 31 P.2d 897 (1934)).

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 first-class charter cities like the City of Spokane. That is precisely what the Legislature did when it expressly granted "home rule" cities "all powers of taxation" in RCW 35A.11.020.[5]

C. The City had authority to grant a local exemption.

One of the main questions presented in this appeal is whether the legislative grant of "all powers of taxation for local purposes" to home-rule cities in RCW 35A.11.020 includes the power to grant local exemptions. As the trial court properly concluded, such question is easily answered in the affirmative.

The City, as a first-class charter city organized under its city charter and Title 35 RCW, 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, 82.36.440, 48.14.020, and 48.14.080.

[5]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 35A.11.020 (emphasis added). As a first-class charter city, Spokane is also granted all of the home-rule powers of a code city set forth in Title 35A RCW. The legislative grant of powers to a home-rule city is to 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 DOR argues that "all powers of taxation" means something other than what it says. [*See* Appellant DOR's Brief page 24-26]. The DOR 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 DOR 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.

1. By granting code 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 code cities "all powers of taxation for local purposes except those that are expressly preempted." RCW 35A.11.020. 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).

The plain meaning of RCW 35A.11.020 is that code 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 Assocs., 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).

The DOR ignores the plain-meaning rule of construction and argues that "all powers of taxation" means only the power to impose taxes. This is a tortured and unnatural reading of the statute. [*See* Appellant DOR's Brief page 23]. 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).

But 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 DOR's view that Article VII, Section 9 forbids 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 DOR'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 DOR's Brief page 23]. However, the DOR'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. But 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.

2. 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 Washington 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 to a code city, the question must be resolved in the city's favor. The DOR 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 code cities "all powers of taxation." This all-encompassing grant of authority given to code 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 code cities "all powers of taxation" shows that it really did intend for cities like 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 DOR contends, it would have said "levy and collect" as it has done on virtually every other occasion in this very same context.

3. Article VII, Section 9 is not a constitutional limitation on the Legislature's authority to delegate taxation powers to municipalities

Contrary to the DOR's assertions, Article VII, Section 9 is not—and must not be construed as—a constitutional limitation on the Legislature's authority to delegate taxation powers to municipalities. *City of Wenatchee v. Chelan Cnty. Pub. Utility Dist. No. 1*, 181 Wn. App. 326, 333-36, 325 P.3d 419, 423-24 (2014). As the Supreme Court has

explained, the purpose of this constitutional provision is to prohibit the Legislature from interfering in matters of local taxation by reserving the power to "assess and collect" local taxes exclusively to local governments. *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 757, 131 P.3d 892, 894 (2006) (quoting Const., Article VII, Section 9). This provision simply denies a certain power—the power to assess and collect local taxes—to the Legislature. *They* ***do not*** *define the full scope of taxation power available to local governments under the Washington Constitution as the DOR contends. See City of Wenatchee*, 181 Wn. App. at 333-36. Thus, by adopting a construction of RCW 35A.11.020 that gives full meaning to the Legislatures express grant of "all powers of taxation," the trial court fulfilled its duty to construe legislation to be in accord with the Washington Constitution. *See State ex rel. Morgan v. Kinnear*, 80 Wash.2d 400, 494 P.2d 1362 (1972) (citing *City of Spokane v. Vaux*, 83 Wn.2d 126, 129-30, 516 P.2d 209, 211 (1973)). Furthermore, the trial court's interpretation of RCW 35A.11.020 acknowledges the Legislature's authority to grant all taxation powers to municipalities provided such powers are not specifically prohibited to municipalities. Here, there is no express legislative act precluding the Legislature from granting the power of exemption to municipalities.

D. The Ordinance meets the uniformity requirement.

The DOR next contends that the Ordinance is unconstitutional because it violates the uniformity requirement set forth in Article VII, Section 1. [Appellant DOR's Brief page 26]. Despite the DOR's rather lengthy treatise covering the uniformity requirement, it misses a key factor in it analysis: the Washington Constitution specifically excludes tax exemptions for "retired property owners" from uniformity. *See* Const. art. VII, § 10. The Ordinance does nothing more than follow the "retired property owners" exemption already outlined in the Washington Constitution.

The Legislature granted code 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.

E. The Legislature could and did grant tax-exemption power to the City of Spokane

The DOR contends that the City argued below that the Legislature granted it plenary tax powers. [Appellant DOR's Brief page 32]. Such assumption is incorrect. The City has not argued, nor argues now, that the Legislature gave it plenary taxation powers. But the Legislature did grant the city "all powers of taxation."

1. The Legislature can grant the City exemption power and did so through its *express* grant of *all powers of taxation* in RCW 35A.11.020.

Although Article VII, Section 10 of the Washington Constitution vests the power to grant tax exemptions in "the legislature," nowhere does it forbid the Legislature from passing that authority along to local taxing jurisdictions. The DOR cites no authority to the contrary. Instead, the DOR attempts to argue from a distorted and incomplete reading of what Article VII, Section 1 actually says, which is:

> 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 DOR'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]. "If a statute is unambiguous, it is not subject to judicial construction and its meaning is to be derived from the language of the statute alone." *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374, 1377 (1997) (citing *Cherry v. Municipality of Metro. Seattle,* 116 Wash.2d 794, 799, 808 P.2d 746 (1991)).

The DOR 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 DOR's proposition, applying such case here supports the City's arguments. The Legislature was clear and explicit when it gave code 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 DOR attempts to advance.

The DOR 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 DOR'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 it sees fit. Second, *Pac. First Fed. Sav. & Loan Ass'n* involves the Port of

Tacoma's taxation powers, not all-encompassing taxation powers such as the City of Spokane possesses pursuant to RCW 35A.11.020. *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). Furthermore, unlike the plaintiff in *City of Spokane v. J-R Distributors, Inc.*, 90 Wn.2d 722, 726, 585 P.2d 784, 786 (1978), relied on by the DOR, the City *has* had an express grant of exemption power authority in the Legislature's grant of ***all*** *powers of taxation*. The DOR's cited cases fail to support the DOR's contentions. Instead they prove the City's arguments.

2. RCW 35A.11.020's grant of all powers of taxation to the City will *not* lead to unlikely and strained results.

The DOR opines that the Legislature did not intend to grant the City tax exemption authority because the results of such grant would be "unlikely" and "strained." [Appellant DOR's Brief page 36]. This argument is based on the DOR's own administrative hurdles, not the interpretation of the plain language of the statute. Further, the DOR's

superficial arguments fall flat when contrasted with the actual language of the Ordinance and the realities of the Ordinance's application.

a. Exempting retired persons from property tax would not be an untried and additional burden on Washington's tax system.

The DOR contends that if "the Legislature had intended to grant authority to cities to create tax exemptions, it would have provided guidelines on how cities should do that within the complex statutory framework of the property tax system." *Id.* However, the Ordinance does not create a new and untested exemption without guidelines or framework; it follows the state senior-citizen exemption that has long been Washington law. *See* RCW 84.36.379–.389; [CP 217] (Ordinance, § 8.18.010) ("Such exemption shall be determined on the basis of a retired person's ability to pay as determined by the retired person's disposable income as defined in RCW 84.36.383."). Thus, the Ordinance operates within the "complex statutory framework" that has existed since the senior-citizen exemption was created in 1980, and the guidelines for such exemption inform the operation of the exemption created by the Ordinance. Furthermore, the state tax system is already comprised of many different and separate taxing districts that are each responsible for managing its own taxes. Consequently, an Ordinance that follows an

already-established state tax exemption would hardly prove to be a burden on the state's "complex" tax system.

In short, the exemption in the Ordinance would not burden the tax system. The system would be managing an exemption that it already manages, and has managed since 1980, that applies across the entire state. There would be no "strained" or "unlikely" result because there is no conflict between the Ordinance language and the statutory tax system.

b. The Ordinance complies with the May 31st valuation deadline.

The DOR next argues that "[t]he City's Ordinance in sections § 8.18.010 and § 8.18.020(E) would require the Assessor to list and exempt property later in the process, after the regular levy is determined" on May 31st. [Appellant DOR's Brief page 39]. However, the DOR's assumption is incorrect.

First, § 8.18.010 has nothing to do with requiring the Assessor to list and exempt property. Section 8.18.010 states the purpose of the Ordinance:

> The purpose of this chapter is to provide a property tax exemption from City of Spokane property taxes levied with voter approval pursuant to RCW 84.55.050. Such exemption shall be determined on the basis of a retired person's ability to pay as determined by the retired person's disposable income as defined in RCW 84.36.383.

[CP 217]. Second, § 8.18.020(E) makes no mention of any time constraints, but merely discuses income thresholds for potential exemptees:

> A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less is exempt from all excess property taxes approved by the voters pursuant to either RCW 84.52.052 or 84.55.050; and 1. A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars Of thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or 2. A person who otherwise qualifies under this section and has a combined disposable Income of twenty-five thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence.

[CP 219-20].

On the other hand, § 8.18.020(F)(1) discusses property valuation and sets the deadline for property valuations at *January 1st*, well before the DOR's May 31st date: "For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence is the assessed value of the residence on *January 1st* of the assessment year the person first qualifies under this section." [CP 220] (emphasis added). Further, § 8.18.020(D)

shows an intent to comply with the May 31st deadline: "If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to *May 31* of the year following application." [CP 219] (emphasis added). In short, the DOR misreads and misapplies the Ordinance in an attempt to show a non-existent conflict between it and the statutory tax system.

c. The Ordinance does not create a conflicting dual system of appeals.

In an effort to once again misrepresent the language and import of the Ordinance, the DOR complains that the Ordinance "causes an unwieldy dual system of appeals." [Appellant DOR's Brief page 40]. As evidence of this supposed "duality," the DOR references Ordinance § 8.18.070 and RCW 82.03.130. The DOR, however, surprisingly omits the Ordinance's and statute's actual language. Upon review of the language contained in the Ordinance and in the statute, it is plain that rather than constitute conflicting appeals systems, § 8.18.070(C) and RCW 82.03.130(j) provide complimentary appeals avenues. Section 8.18.070(C) allows a property owner to appeal the exemption determination of *the City*, "The property owner may appear the determination by filing a notice of appeal with the city clerk within thirty days, specifying the factual and legal basis for the appeal."; whereas RCW 82.03.130(j) permits the

property owner to appeal a decision by the *Department of Revenue*: "Appeals from denial of tax exemption application by the *department of revenue* pursuant to RCW 84.36.850." (emphasis added). Apart from not understanding its own appeals procedures, the DOR seeks to remove a necessary remedy from property owners. In other words, if the DOR's contention is enforced, if the City, not the DOR, were to deny a property owner's exemption, the owner could not appeal under RCW 82.03.130(j) because the denial would not be a DOR denial, but there would be no other mechanism by which the property owner could appeal. Such would be an absurd result.[6]

d. Because it is conceivable that the Legislature intended for the City to have exemption authority, the results of the City exercising such authority cannot, by definition, be unlikely, absurd, or strained.

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

[6]The DOR also claims that the Ordinance is invalid because it sets the income threshold at thirty-five thousand dollars; while the Legislature recently increased the threshold to forty thousand dollars. [Appellant DOR's Brief page 40]. The Legislature's increase came into effect on January 1, 2016, during the current litigation. When the Ordinance was passed at the beginning of 2015—February 9th—the threshold limit was thirty-five thousand, and RCW 84.36.381 is not an *ex post facto* statute: "This act applies to taxes levied for collection *in 2016 and thereafter*." [2015 3rd sp.s. c 30 §] (emphasis added). Further, because the City's ordinances are frequently updated to maintain compliance with changing statutory authority, it is presumed that the Ordinance will be amended to meet the new forty-thousand-dollar limit.

legislature might have intended this result[;] [b]ecause it is conceivable, the result is not absurd."). Consequently, because it is well within the realm of conceivability that the Legislature intended to grant exemption authority to the City within the Legislature's grant of *all taxation powers*, contrary to the DOR's contention, the results of the City exercising such power *cannot* be unlikely, absurd, or strained.

F. The DOR's February 17, 2015, letter was an *ultra vires* opinion.

Appellants Vicki Horton and Rob Chase claim that they 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 Appellants Horton and Chase, they were given "binding guidance" not to implement the Ordinance. [*Id.* at 7]. In support of this assertion, the DOR claims that its 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." [*See* Appellant DOR's Brief page 41]. Such characterization of the DOR's opinion letter fails.

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 code 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.[7] It is the Court, rather than the

[7]The DOR states that in *State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 488, 423 P.2d 937, 941 (1967), the court found that the DOR "properly ordered compliance with the constitutional standard of uniformity required by Article VII, Section 1." [Appellant DOR's Brief pages 42-43]. However, the DOR is mistaken. Although the *Kinnear* court

DOR, that has plenary authority to construe and interpret anything outside of Title 84 RCW. Consequently, the DOR's February 7, 2015, opinion letter was *ultra vires*.

G. The issuance of a writ of mandamus was proper.

The DOR makes two last-ditch arguments at the close of its opening brief related to the propriety of mandamus relief for the City. [Appellant DOR's Brief page 43-44]. First, the DOR claims that "there is no clear legal duty because the trial court could not command County officials to perform an act the County had no legal duty to perform." [*Id.* at page 44]. Second, the DOR opines that because setting two different millage rates for regular property taxes is not uniform, the action required by the writ of mandamus is illegal. [*Id.*] Beyond these two bald assertions, the DOR makes no effort to support their arguments regarding the propriety of a writ of mandamus. These last two arguments were

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reasoned that the Tax Commission was correct in its direction to assess property uniformly, the court quickly followed such finding with a holding announcing that in attempting to enforce their direction, the Tax Commission *exceeded their legislatively-given authority*: "As held, earlier in this opinion, *the supervisory and control powers of the Tax Commission must be exercised in conformity with existing law, the commission having no power to act independently of the standards and guidelines established by the legislature*. By its order in this case, the Tax Commission disregarded the mandate of the seventeenth amendment and the provisions of RCW 84.40.030 and RCW 84.41.090, supra, requiring that the assessed valuation of all real and personal property shall be 50 per centum of the true and fair value. *The Tax Commission thereby acted beyond its authority and the order entered must be held invalid. State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 489, 423 P.2d 937, 942 (1967) (emphasis added).

seemingly tossed into the DOR's brief at the end as a half-hearted effort to appear in opposition to the writ of mandamus without actually believing in such opposition. That being said, the DOR's assertions merit an explanation as to why they are in error.

1. Appellants Horton and Chase had a clear duty to implement the City's Ordinance.

The DOR contends that Appellants Horton and Chase did not have a clear duty to implement the City's Ordinance. [*Id.*]. Yet, Appellants Horton and Chase are the *ex officio* collectors of the City taxes. *See* 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. *See 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.

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, Appellants Horton and Chase have one duty concerning the City's property-taxation scheme. They must implement it.

2. Uniformity does not apply to senior exemption.

Without providing any factual context and support or any supporting authority, the DOR makes the following statement at the end of its brief: "Setting two different millage rates for regular property taxes

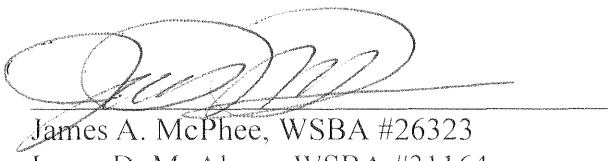
causes the City's regular property tax to be non-uniform. Because a non-uniform local levy manifestly violates the Constitution, the trial court could not validly order mandamus to require its implementation." [Appellant DOR's Brief page 44]. In responding to this assertion, the City presumes that the DOR is once again talking about the uniformity of the Ordinance in its application to senior-exempt and non-senior-exempt properties. The City has already responded to this argument. *See supra* Part D. However, it bears repeating that because the Ordinance is entirely in accord with Washington's senior exemption, to which constitutional uniformity does not apply, the Ordinance, and its implementation, is not illegally non-uniform.

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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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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