Court of Appeals Nos. 336221 and 336239

Supreme Court No. 93788-5

IN THE SUPREME COURT
STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation,

Petitioner,

v.

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

and

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

Respondents.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF CASES & AUTHORITIES

State Cases

State Constitutional Provisions

State Statutes

State Rules

Other Authorities

I. IDENTITY OF PETITIONER

The Petitioner is the City of Spokane, Washington ("City"). The City was the respondent in the Court of Appeals below and the petitioner in the Superior Court mandamus proceedings.

II. COURT OF APPEALS DECISION

The City seeks review of the divided decision in *City of Spokane v. Vicki Horton, et al.*, filed September 22, 2016, by Division III of the Court of Appeals. A copy of the decision, published at --- P.3d ---, 2016 WL 5342591, is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in declaring that this Court's decision in *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907) , which allows municipalities to grant reasonable tax exemptions to low-income taxpayers under Article VII, Section 9 of the Washington Constitution, has been overruled sub silentio.

2. Whether first-class charter cities, which enjoy "all powers of taxation for local purposes," may grant a local exemption to a local property tax to senior citizens, disabled veterans and other low-income property owners under Article VII, Section 10 of the Washington Constitution.

IV. STATEMENT OF THE CASE

On November 4, 2014, voters in the City of Spokane approved a property tax in the form of a levy lid lift to fund street repairs over the next 20 years.[1] Acting on information provided by the Spokane County Assessor's Office, the City had promised voters that senior citizens, disabled veterans and other low-income taxpayers who qualify for a tax exemption at the state level under RCW 84.36.381 ("state exemption"), would continue to be exempted from a portion of the new levy just as they had been exempted from a portion of an expiring street bond that the levy was replacing.

After voters approved the levy, however, the Spokane County Assessor's Office reversed course and informed the City that those who qualified for the state exemption would *not* be exempt from a portion of the levy. In an effort to deliver the promised exemption, the City enacted Ordinance No. C-35231 (the "Ordinance").

In a nutshell, the Ordinance authorizes a local property tax exemption for everyone who qualifies for the state exemption—namely senior citizens, disabled veterans and taxpayers with an annual income of

[1] A "levy lid lift" is a means of collecting property taxes in excess of constitutional and statutory limits.

less than $35,000. The Ordinance was patterned after the state exemption and was drafted with the intent that anyone who applied for and received the state exemption would also receive the City's local exemption.

In a clear abdication of their ministerial duties,[2] Appellants Vicki Horton and Rob Chase (hereafter, the "County") refused to implement the Ordinance. They did so in purported reliance upon an opinion letter drafted by the Department of Revenue ("DOR"), which stated that the Ordinance "creates an exemption that is not authorized under state law."

Left with no other choice, the City filed the instant lawsuit seeking a writ of mandamus compelling the County to implement the Ordinance. The Spokane County Superior Court granted the petition and issued the writ, ruling that the Ordinance was constitutional and that the County breached its ministerial duty to implement it. The court also ordered DOR to pay a portion of the City's attorney's fees for needlessly complicating the litigation.

The County and DOR appealed to Division III of the Court of Appeals, which reversed in a 2-1 published decision. The two-judge

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[2] *See* RCW 36.29.100 (county treasurers are the "ex officio collector[s] of city taxes"); RCW 36.29.130 (county treasurer, "upon receipt of the tax roll, shall proceed to collect and receipt for the municipal taxes extended thereon"); *State v. Turner*, 113 Wash. 214, 218-19 (1920) (holding that county treasurers are "subordinate ministerial officers" with no discretion to reject taxes certified to them by a city).

majority held that the Ordinance violated Article VII, Section 9 of the Washington Constitution because it created a non-uniform tax. The majority further held that this Court's decision in *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907), had been overruled "sub silentio."[3]

In a lengthy dissent, Judge Fearing explained that *Tekoa*, which had not been "overruled or even criticized," compelled a ruling that the Ordinance is constitutional. Judge Fearing further noted that the Court of Appeals, as an intermediate appellate court, had no authority to abrogate a controlling decision of this Court.

V. ARGUMENT

The Court should accept review under RAP 13.4(b)(1) to reverse the Court of Appeals' erroneous abrogation of a municipality's right to grant reasonable tax exemptions under *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907). The Court should also accept review under RAP 13.4(b)(3) and (4) to clarify that first-class charter cities, which enjoy "all powers of taxation for local purposes," may grant a local property tax exemption to senior citizens, disabled veterans and other low-income property owners under Article VII, Section 10.

[3] The panel ordered the parties to address this question in supplemental briefing after the case had been argued. The order posed the following question: "Whether *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907) requires this Court to affirm the City's Ordinance C-35231, or whether that case has been overruled sub silentio by later authority."

A. The Court should accept review to restore the clear rule of law announced in *Town of Tekoa v. Reilly*: that municipalities may grant reasonable tax exemptions to low-income taxpayers.

The Court should accept review under RAP 13.4(b)(1) to correct the Court of Appeals' erroneous rejection of *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907). *Tekoa*, which should have controlled the outcome below, holds that municipalities may grant reasonable tax exemptions to low-income taxpayers. *Tekoa*, 47 Wash. at 205-09. The crux of the decision is that exemptions for low-income taxpayers, when "consistent with the general welfare of the people," do not violate the requirement in Article VII, Section 9 that municipal taxes must be "uniform in respect to persons and property." *Id.*

Tekoa rejects a standard of perfect uniformity under Article VII, Section 9. Its pronouncements on this subject could not be more clear:

- "Perfect uniformity and perfect equality of taxation, in all aspects the human mind can view it, is a baseless dream." *Id.* at 205.
- "[A]bsolute equality is not to be expected." *Id.* at 208.
- Municipal taxes need not be "as nearly equal as a mathematical calculation can make them, but [rather] as nearly equal as is consistent with the general welfare of the people." *Id.*
- Municipalities may deviate from "Procrustean standards" of uniformity to avoid "grievous and oppressive" burdens on low-income taxpayers. *Id.*

- "The Constitution does not require a theoretical equality at the expense of substantial equity." *Id.*

- "The people of this state in adopting a Constitution did not hope to attain the unattainable. They *did not propose to send the tax gatherer to the almshouse*, the orphan asylum, or the nursery[.]" *Id.* at 205 (emphasis added).

The Court of Appeals majority declined to follow *Tekoa*, holding that the case had been implicitly overruled by more "modern" precedent. *Horton*, --- P.3d ---, 2016 WL 5342591 at *3 n.3. In a footnote, the majority opined: "modern Washington jurisprudence has emphasized the importance of strict uniformity of property taxes. So, to the extent *Tekoa* might be applied broadly to property taxes, *Tekoa* conflicts with modern jurisprudence and has been overruled sub silentio." *Id.*

When the Washington Supreme Court has expressed a clear rule of law, it "will not—and should not—overrule it sub silentio." *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280 (2009). "A later holding overrules a prior holding sub silentio when it *directly contradicts* the earlier rule of law." *Id.* (emphasis added). The doctrine of stare decisis further requires a "clear showing" that the rule announced in the earlier-decided case is "incorrect and harmful." *Id.*

Inexplicably, the Court of Appeals majority did not cite a single example of the more "modern" cases that it felt favored a standard of strict

mathematical uniformity. Instead, the majority simply proclaimed that it "must follow modern precedent." *Horton*, --- P.3d ---, 2016 WL 5342591 at *3 n.3.

The majority's new rule of law—that Article VII, Section 9 requires "strict uniformity" in matters of municipal taxation—directly conflicts with *Tekoa*'s holding that that "absolute equality is not to be expected." *Tekoa*, 47 Wash. at 208. Moreover, the rule finds no support in any subsequent decision. If there was a case holding that Article VII, Section 9 commands perfect uniformity, or that the Constitution prohibits municipalities from granting local exemptions to local taxes, then it was incumbent upon the majority to have cited it. No such case exists.

The majority's error is laid bare in Judge Fearing's dissent. As Judge Fearing appropriately concluded, *Tekoa* is "directly controlling." *Horton*, --- P.3d ---, 2016 WL 5342591 at *4, *6, *7, *10 (Fearing, J., dissenting). The case has not been "overrule[d] or even criticize[d]" by any subsequent decision. *Id.* at *10 (Fearing, J., dissenting). Accordingly, the Court of Appeals was powerless to adopt conflicting rule:

> This appellate court remains bound by a decision of the Washington Supreme Court. An intermediate appellate court does not have the option of disregarding a higher state court's decisions that have not been overruled, no matter how old the precedent may be. . . .

> The state Supreme Court may wish to revisit and overturn *Tekoa*, but only the Supreme Court holds this prerogative. We must follow Supreme Court precedence, regardless of any personal disagreement with its premise or correctness. When the Court of Appeals fails to follow directly controlling authority by this court [sic], it errs.

Id. (Fearing, J., dissenting) (citations omitted).

This Court should accept review to correct the majority's error and to restore the rule of law announced in *Tekoa*: that municipalities may grant reasonable exemptions to low-income taxpayers when necessary to achieve an equitable distribution of the tax burden. As *Tekoa* pointedly explains, "[t]he Constitution does not require [] theoretical equality at the expense of substantial equity." *Tekoa*, 47 Wash. at 208. Yet theoretical equality (strict mathematical uniformity) is precisely what the decision below requires. If allowed to stand, the decision will force municipalities to impose perfectly uniform taxes—at the expense of those least able to pay.

At a broader level, the decision sets a dangerous precedent for judicial review of challenges to municipal legislation. Duly enacted city ordinances are presumed to be constitutional. *City of Pasco v. Shaw*, 161 Wn.2d 450, 462 (2007). To overcome the presumption, a challenging party must prove the ordinance unconstitutional "beyond a reasonable doubt." *City of Seattle v. Montana*, 129 Wn.2d 583, 589 (1996). This is a

"heavy burden." *Rabon v. City of Seattle*, 135 Wn.2d 278, 287 (1998). Thus, courts must uphold an ordinance "unless it appears unconstitutional beyond a reasonable doubt." *Convention Ctr. Coal. v. City of Seattle*, 107 Wn.2d 370, 378 (1986). "Every presumption will be in favor of constitutionality." *Lenci v. City of Seattle*, 63 Wn.2d 664, 667 (1964).

The Court of Appeals majority declared the City's Ordinance unconstitutional based upon its belief that a controlling decision of this Court had been silently overruled. It did so in a perfunctory footnote, without bothering to cite a single case. The Court should not condone this cavalier approach to declaring legislation unconstitutional. Regardless of the outcome, accepting review will send a message to lower courts that the presumption of constitutionality is not to be taken so lightly.

B. The Court should accept review to clarify that first-class charter cities, which enjoy "all powers of taxation for local purposes," may grant a local property tax exemption to senior citizens, disabled veterans and other low-income property owners under Article VII, Section 10.

The Court should accept review under RAP 13.4(b)(3) and (4) to decide a question of substantial public interest and notable constitutional importance: whether first-class charter cities may grant a local property

tax exemption to senior citizens, disabled veterans and other low-income property owners under Article VII, Section 10.[4]

First-class charter cities enjoy all powers granted to any city under state law.[5] The Legislature has granted code cities "all powers of taxation for local purposes" available under the Constitution. RCW 35A.11.020.[6] Accordingly, first-class charter cities enjoy the same authority.

The core question is whether this grant of "all powers of taxation" allows first-class charter cities to implement Article VII, Section 10 at the local level. The parties agree that the answer to this question hinges on whether the Constitution prohibits legislative bodies other than the state Legislature from granting property tax exemptions. Stated differently, the question is whether the Constitution allows the Legislature to confer its exemption authority (in this case, the authority arising under Article VII,

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[4] The Court need not address this question if it concludes that *Tekoa* remains good law. If *Tekoa* has not been overruled, the Court need only decide whether granting an exemption enshrined in the Constitution itself was a reasonable exercise of the City's legislative authority.

[5] RCW 35.22.195; RCW 35.22.570; RCW 35.22.900.

[6] This all-encompassing grant of "all powers of taxation" is far broader than the limited authority to assess and collect taxes granted to other legislative bodies. *Cf.*, *e.g.*, RCW 35.22.280(2) (first-class cities may "provide for the *levying and collecting* [of] taxes") (emphasis added); RCW 35.27.370(8) (towns may "*levy and collect*" annual property taxes).

Section 10), upon first-class charter cities for implementation at the local level.[7]

The County and DOR argue that Article VII vests the power to grant exemptions exclusively in the Legislature. In support of that claim, the County and DOR point to Article VII, Sections 1, 9 and 10. In their view, the fact that these provisions reference "the Legislature" means that *only the Legislature* may depart from the uniformity requirement by granting exemptions.

There is no support for this myopic reading of Article VII. Bare references to "the Legislature" do not suggest that first-class charter cities are structurally forbidden from wielding exemption power, especially where the Legislature has explicitly issued them a broad and inclusive grant of authority. The bottom line is that nothing in Article VII, Sections

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[7] The Court of Appeals held that the City's exemption is broader than Article VII, Section 10 allows. *See Horton*, --- P.3d ---, 2016 WL 5342591 at *3 n.3 ("Moreover, the exemptions enacted by the City are broader than section 10 permits even the legislature to enact."); *id.* at *4 ("The City's response also fails to justify the Ordinance to the extent it exempts persons beyond retired persons, the group designated in section 10.").

This holding calls the constitutionality of the state exemption into question. The City's Ordinance, which was patterned directly after the state exemption, exempts precisely the same persons who qualify for the exemption under RCW 84.36.381. If the City's Ordinance exceeds the permissible scope of Article VII, Section 10, so too does RCW 84.36.381.

1, 9 or 10, or any other constitutional provision, prohibits the Legislature from delegating its exemption power to local jurisdictions.

In fact, the case law confirms that Article VII *does not* prohibit the Legislature from delegating its exemption power. Once again, *Tekoa* is instructive. *Tekoa* involved a challenge to a local street poll tax[8] that specifically exempted women and men under the age of 21. 47 Wash. at 203. The plaintiff argued that the exemption granted to women and men under the age of 21 rendered the tax non-uniform in violation of Article VII, Section 9. *Id.* at 203-04. Importantly, the tax—and the exemption—were enacted pursuant to authority conferred upon third- and fourth-class cities by the Legislature. *Id.* (citing Laws 1905, p. 140, c. 75).

The Court began its analysis by noting that the Constitution "was not the beginning of law" in the State of Washington. *Id.* at 206. For decades before the Constitution was adopted, the Court explained, the territorial Legislature had allowed cities to assess local taxes, *and grant local exemptions*, under the authority of their city charters:

> At the time of [the Constitution's] adoption[,] Washington was an organized territory with a code of laws for the

[8] A poll tax is generally defined as "a tax on the person without regard to his or her property, income, or employment." 85 C.J.S. Taxation § 1801. Poll taxes and property taxes are subject to the same uniformity mandate under Article VII, Section 9. *See* Const. art. VII, § 9 (municipal taxes "shall be uniform in respect to *persons and property*.") (emphasis added).

> government of its people. Section 2863 of the Code of 1881 provided as follows: 'Every male inhabitant of this territory over twenty-one and under fifty years of age must be assessed and annually pay a poll tax of two dollars, except paupers, idiots and insane persons, and all active firemen who have been a member of any fire company in this territory for the period of one year preceding the assessment of taxes'; and nearly, if not all, the municipal charters granted by the territorial Legislature authorized the imposition of a street poll tax **with like exemptions.**

Id. at 206 (emphasis added).

The Court found it particularly significant that charter cities enjoyed the power to grant local exemptions at the time the Constitution was adopted. Had the framers intended to deprive cities of that power, the Court reasoned, they surely would have said so explicitly:

> Are all these charter provisions to be held for naught, simply because the Constitution contains the general altruistic declaration that taxes shall be uniform with respect to persons and property? Had the framers of the Constitution been dissatisfied with the existing order of things, would we not expect to find some more satisfactory evidence of their discontent?

Id. at 206-07. The Court thus held that granting the exemption was a proper exercise of the Town of Tekoa's authority under Article VII, Section 9. *Id.* at 208-09.

Tekoa forecloses any argument that property tax exemptions are the exclusive province of the Legislature. When it chooses to do so, the Legislature may confer its authority to grant exemptions upon local

legislative bodies. The Legislature took that step when it granted first-class charter cities "all powers of taxation" in RCW 35A.11.020. The caveat that such powers must be exercised "[w]ithin constitutional limitations" is of no moment; as this Court explained in *Tekoa*, Article VII, Section 9 does not prohibit cities from granting local exemptions when the Legislature has authorized them to do so.

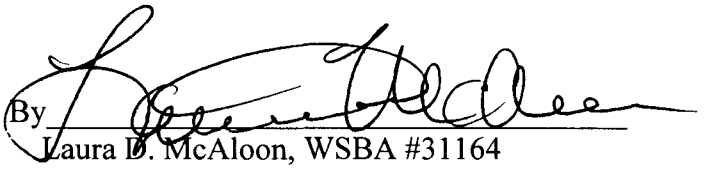
The Court should take this opportunity to clarify that first-class charter cities may apply the exemption referenced in Article VII, Section 10 at the local level. Making this clarification will provide needed relief to senior citizens, disabled veterans, and other low-income taxpayers who, despite having been granted an exemption by the Constitution itself, are currently forced to bear the same municipal tax burden as everyone else.

VI. CONCLUSION

For the reasons addressed above, the City respectfully requests that the Court accept review to (1) reverse the Court of Appeals' erroneous abrogation of a municipality's right to grant reasonable tax exemptions under *Town of Tekoa v. Reilly*; and (2) clarify that first-class charter cities may grant a local property tax exemption under Article VII, Section 10.

RESPECTFULLY SUBMITTED this 24th day of October, 2016.

WORKLAND & WITHERSPOON, PLLC

By 

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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 24th day of October 2016.

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APPENDIX

2016 WL 5342591
Only the Westlaw citation is currently available.
Court of Appeals of Washington,
Division 3.

City of Spokane, a municipal corporation
located in the County of Spokane,
State of Washington, Respondent,
v.
Vicki Horton, Spokane County Assessor, and Rob
Chase, Spokane County Treasurer, Appellants,
and
The State of Washington, by and
through the Department of Revenue,
as interested party, Appellant.

No. 33622–1–III (consolidated
with No. 33623–9–III)
|
FILED September 22, 2016

Synopsis

Background: City brought mandamus action against county assessor, county treasurer, and Department of Revenue (DOR), seeking to compel county to implement ordinance which would provide certain disabled or low-income citizens with real property tax exemption. The Spokane Superior Court, Harold D. Clarke, III, granted mandamus relief. Assessor, treasurer, and DOR appealed.

Holdings: The Court of Appeals, Lawrence-Berry, J., held that:

[1] section of state constitution allowing legislature to grant property tax exemption to retired property owners does not grant authority to legislature to confer authority on municipal corporations to grant same exception, and

[2] city's statutory power to assess and collect taxes did not provide authority for ordinance.

Reversed and vacated.

Fearing, C.J., filed dissenting opinion.

West Headnotes (4)

[1] **Appeal and Error**
Cases Triable in Appellate Court

Because constitutional challenges are questions of law, appellate review of those challenges is de novo.

Cases that cite this headnote

[2] **Taxation**
Discrimination as to rate or amount

Taxation
Discrimination as to mode of assessment or valuation

Tax uniformity, as required by constitution, requires both an equal tax rate and equality in valuing the property taxed. Wash. Const. art. 7, § 9.

Cases that cite this headnote

[3] **Taxation**
Power to exempt in general

Section of state constitution allowing legislature to grant real property tax exemption to retired property owners does not grant authority to legislature to confer authority on municipal corporations to grant same exception. Wash. Const. art. 7, § 10.

Cases that cite this headnote

[4] **Taxation**
Effect of requirement of equality and uniformity

City's statutory power to assess and collect taxes did not provide authority for city ordinance granting real property tax exemption to low-income seniors, persons with permanent disabilities, and disabled veterans; state constitution prohibited municipalities from assessing and collecting nonuniform taxes, and legislature explicitly qualified statutory taxing power with the

caveat that such power was subject to constitutional limitations. Wash. Const. art. 7, § 9; **Wash. Rev.** Code Ann. § 35A.11.020.

Cases that cite this headnote

Appeal from Spokane Superior Court, No. 15–2–00547–7, Honorable Harold D. Clarke, III.

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Opinion

Lawrence–Berry, J.

*1 ¶1 The City of Spokane (City) enacted Ordinance C–35231 (Ordinance) for the laudable purpose of providing some of its disadvantaged citizens with a property tax exemption. The Spokane County assessor and treasurer (collectively the County) refused to implement the Ordinance due to their belief it exceeded the City's statutory and constitutional authority. The Department of Revenue (DOR), also believing the Ordinance exceeded the City's statutory and constitutional authority, issued a directive to the county assessor not to implement the Ordinance.

¶2 In response, the City filed a complaint for a writ of mandamus to compel the County to implement the Ordinance. The trial court issued a writ of mandamus compelling the County to implement the Ordinance, in addition to related orders. The County and DOR appeal.

¶3 We conclude the Ordinance is unconstitutional because it violates **article VII, section 9** of the Washington Constitution, which requires all municipal property taxes to be uniform in respect to persons and property. We, therefore, reverse the trial court's writ of mandamus and vacate its orders relating thereto.

FACTS

¶4 In November 2014, the voters in the City approved a property tax "levy lid lift" for the improvement of streets throughout the City. Clerk's Papers (CP) at 26. A levy lid lift is a mechanism by which a city can assess a higher levy rate than otherwise would be permitted. The new levy was not intended to create any new tax burdens, and the City represented as much to the voters when it put forth the proposal. Prior to placing the levy on the ballot, the City conferred with the Spokane County assessor's office that assured it that the levy would not result in any increased tax burdens. But, in January 2015, the assessor's office informed the City that the new levy would in fact result in an increase in property taxes for seniors and disabled persons, a total of approximately 5,000 people.

¶5 The City first attempted to work with the assessor's office to resolve this issue. The assessor's office sought advice from DOR, and involved DOR in the discussions with the City. When it became apparent the discussions were futile, the City enacted its own fix and, on February 9, 2015, passed the Ordinance.

¶6 The Ordinance is a property tax exemption for specific citizens living in the City—low income seniors, persons with permanent disabilities, and disabled veterans. After the City passed the Ordinance, the assessor's office sought advice from DOR as to whether the Ordinance was constitutional and within the City's taxing authority. Before a reply was received from DOR, the assessor's office prepared property tax assessment statements that did not apply the exemption granted by the Ordinance. The assessor's office informed the City it planned to mail the assessments without applying the exemption.

The City requested that the assessor's office refrain from mailing the assessments without applying the exemption. The assessor's office replied that it could not do so until it received a response from DOR about the validity of the Ordinance. In response, the City filed a complaint seeking to enjoin the assessor's office from mailing any property tax assessments that did not apply the Ordinance. The Spokane County Superior Court granted the City's request and barred the assessor's office, via temporary restraining order, from mailing the property tax assessments until it received a response from DOR.

*2 ¶7 DOR responded to the inquiry from the assessor's office a few days later. DOR's letter stated its opinion that the Ordinance "creates an exemption that is not authorized under state law, [and] it should not be implemented." CP at 125. DOR informed the City that its letter was not binding on the assessor, and it was ultimately the assessor's decision whether the Ordinance should be implemented. Eventually, the City filed an amended complaint seeking a writ of mandamus to compel the County to implement the Ordinance.

¶8 The County answered the City's amended complaint, and also asserted that a writ of mandamus was not appropriate. The County's answer also named DOR as a necessary party, and sought to join DOR. DOR filed a memorandum opposing the County's joinder motion. The City replied to DOR's memorandum and to the County's answer. The trial court held a hearing on April 2, 2015, and issued a decision later that month.

¶9 The trial court issued a writ of mandamus, held that the Ordinance was constitutional, ordered DOR's letter to the contrary annulled, ordered the County to implement the Ordinance in accordance with the writ of mandamus, stated that the order was a final judgment, and directed the City to present a motion in support of its request for damages and costs within 30 days.

¶10 The parties asked the trial court to clarify whether it joined DOR as a party to the case. The trial court entered an order adding DOR as a party, but for purposes of appeal only. The County and DOR timely appealed.

ANALYSIS

[1] ¶11 DOR argues the Ordinance is unconstitutional. Specifically, DOR argues the Ordinance violates Washington Constitution article VII, section 9, which requires all municipal property taxes to be uniform in respect to persons and property. If the Ordinance is unconstitutional, we need not reach the issues raised by the County concerning whether the remedy of writ of mandamus was inappropriate. *See Caffall Bros. Forest Prods., Inc. v. State,* 79 Wash.2d 223, 229, 484 P.2d 912 (1971) ("[M]andamus will not lie to compel an illegal action."). Because constitutional challenges are questions of law, our review is de novo. *Amunrud v. Bd. of Appeals,* 158 Wash.2d 208, 215, 143 P.3d 571 (2006).

¶12 To answer whether the Ordinance is constitutional, we first examine Washington Constitution article VII, sections 1, 9, and 10.[1] We quote the pertinent portions of those sections below, and italicize phrases of particular significance to our decision:

> **SECTION 1 TAXATION**.... All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax....
>
> **SECTION 9 SPECIAL ASSESSMENTS OR TAXATION FOR LOCAL IMPROVEMENTS.** The legislature may vest the corporate authorities of cities ... 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.
>
> **SECTION 10 RETIRED PERSONS PROPERTY TAX EXEMPTION.** Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2[2] (Amendment 17), the following tax exemption shall be allowed as to real property:
>
> The *legislature shall have the power,* by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners.

CONST. art. VII, §§ 1, 9, 10 (emphasis added).

1 We shorten future references to sections 1, 9, and 10 by omitting article VII.

2 Article VII, section 2 sets a limit on tax levies for real and personal property.

*3 [2] ¶13 Section 1's emphasis on uniformity of taxes is " 'the highest and most important of all requirements applicable to taxation under our system.' " *Inter Island Tel. Co. v. San Juan County,* 125 Wash.2d 332, 334, 883 P.2d 1380 (1994) (quoting *Savage v. Pierce County,* 68 Wash. 623, 625, 123 P. 1088 (1912)). "Tax uniformity requires both an equal tax rate and equality in valuing the property taxed." *Belas v. Kiga,* 135 Wash.2d 913, 923, 959 P.2d 1037 (1998). "If equality is lacking in either area of tax spectrum (*i.e.,* either the rate of taxation or the assessment ratio), there will be a lack of uniformity in the tax burden." *Boeing Co. v. King County,* 75 Wash.2d 160, 165, 449 P.2d 404 (1969). [3]

3 The dissent cites *Town of Tekoa v. Reilly,* 47 Wash. 202, 91 P. 769 (1907) for the propositions that a municipality may enact reasonable property tax exemptions, and that strict uniformity of taxes is neither possible nor required under our constitution. We disagree that *Tekoa* requires us to affirm the City's Ordinance.

First, *Tekoa* involved a poll tax, not a property tax. Historically, these two types of taxes have been treated differently. *See* Alfred E. Harsch & George A. Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis,* 33 WASH. L. REV. 225, 263–64 (1958).

Second, in *Tekoa,* the legislature expressly authorized towns such as Tekoa to enact the poll tax enacted by the town. Here, neither section 10 nor the legislature expressly authorized cities to enact their own property tax exemptions. Moreover, the exemptions enacted by the City are broader than section 10 permits even the legislature to enact.

Third, modern Washington jurisprudence has emphasized the importance of strict uniformity of property taxes. So, to the extent *Tekoa* might be applied broadly to property taxes, *Tekoa* conflicts with modern jurisprudence and has been overruled sub silentio. Accordingly, we must follow modern precedent. *Matsyuk v. State Farm Fire & Cas. Co.,* 173 Wash.2d 643, 659, 272 P.3d 802 (2012).

¶14 DOR argues the Ordinance violates section 9's uniformity requirement by applying two different regular property tax rates to real property in the City *and* by creating different assessment ratios between real property owned by its exempted citizens and real property not owned by its exempted citizens. The City does not dispute DOR's arguments that its property tax exemption creates nonuniformity.

¶15 Instead, the City responds by mischaracterizing DOR's argument. The City responds that section 1's uniformity requirement is superseded to the extent section 10 allows nonuniform rates for residential property owned by retired persons. The City's response fails to address DOR's actual argument, which relates to section 9, not section 1. The City's response also fails to justify the Ordinance to the extent it exempts persons beyond retired persons, the group designated in section 10.

¶16 Section 10's prefatory language makes clear that it supersedes section 1. Therefore, section 10 allows the legislature, itself, to impose nonuniform taxes on residential property owned by retired persons. Section 10's prefatory language, however, does not expressly supersede section 9, the section that permits the legislature to vest corporate authorities with the power to assess and tax local improvements. Unless section 10 can be construed as impliedly superseding section 9's uniformity requirement, municipal corporations have no authority to impose nonuniform property taxes.

*4 [3] ¶17 The City argues section 10 grants the legislature authority to confer on municipal corporations the exemption expressed in that section. The City does not cite any authority for its argument. In fact, section 10 contradicts the City's argument. Section 10 states "[t]he *legislature shall have the power* ... to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners." (Emphasis added.) This clear language is not susceptible to allowing the legislature to "confer" section 10's authority on municipal corporations.

[4] ¶18 Finally, the City argues that the legislature, by enacting RCW 35A.11.020, gave code cities plenary power to assess and collect taxes, which includes enacting exemptions. We agree with DOR's two-fold response: First, section 9 prohibits municipalities from assessing and collecting nonuniform taxes, and the legislature cannot accomplish by statute what the Washington Constitution prohibits. *See State ex rel. Distilled Spirits Inst., Inc. v. Kinnear,* 80 Wash.2d 175, 180, 492 P.2d 1012 (1972) (the legislature has unrestrained power to enact reasonable laws except where prohibited by

the Washington Constitution). Second, the legislature explicitly qualified **RCW 35A.11.020** with the caveat, "[w]ithin constitutional limitations."

¶19 We conclude the Ordinance is unconstitutional because it violates the uniformity requirement of article VII, section 9 of the **Washington** Constitution. We reverse the trial court's writ of mandamus and vacate all orders relating thereto.

I CONCUR:

Korsmo, J.

Fearing, C.J. (dissenting)

¶20 This appeal asks whether a city's grant of exemptions to low-income disabled veterans and seniors violates the constitutional principle of property tax uniformity. Washington Supreme Court precedence, *Town of Tekoa v. Reilly,* 47 **Wash. 202, 91 P. 769** (1907), answers the question in the negative. Therefore, I respectively dissent.

¶21 On February 9, 2015, the Spokane City Council adopted City Ordinance C–35231. The ordinance authorizes an exemption for a limited number of property owners for city levies adopted pursuant to **RCW** 84.55.050. **RCW 84.55.050** allows a city, by majority vote of its populace, to increase property taxes beyond usual limitations. The vernacular for such a vote of approval is a levy lid lift. Months before adoption of City Ordinance C–35231, Spokane voters approved the levy lid lift in order to finance sorely needed road repairs.

¶22 After Spokane voters passed the levy lid lift, the Spokane City Council learned that low income senior citizens and disabled citizens, who receive exemptions from payment of state property taxes, would not receive an exemption from the extra taxes imposed by the levy lid lift. Therefore, the City Council adopted Ordinance C–35231.

¶23 Under Spokane City Ordinance C–35231, a person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular voted real property taxes levied pursuant to **RCW** 84.55.050 payable in the year following the year in which a claim is filed. Spokane Municipal Code (SMC) 8.18.020. A senior qualifies for the exemption if sixty-one years of age or older. SMC 8.18.020C. A United States military veteran qualifies if he or she receives compensation for a total disability or service-connected disability. SMC 8.18.020C. An otherwise qualified person must have a disposable income of $35,000 or less. SMC 8.18.020E. If the qualified individual receives income between $25,000 and $35,000, the individual is exempt from city property taxes on the greater of $50,000 or 35 percent of the valuation of his or her residence, but not to exceed $70,000 of the valuation of the residence. SMC 8.18.020E(1). If the qualified individual accrues income of less than $25,000, the individual is exempt from city property taxes on the greater of $60,000 or 60 percent of the valuation of the residence. SMC 8.18.020E(2).

5** ¶24 Obviously, the state legislature did not enact Spokane City Ordinance C–35231. Nevertheless, the legislative body of eastern Washington's largest city enacted the ordinance. The ordinance expresses the will of the people of Spokane, and a court should be reluctant to declare the ordinance unconstitutional. A reviewing court presumes that a challenged ordinance is constitutional. *City of Pasco v. Shaw,* 161 Wash.2d 450, 462, 166 P.3d 1157 (2007); *Cannabis Action Coal. v. City of Kent,* 180 **Wash.App.** 455, 482, 322 P.3d 1246 (2014), *Aff'd,* 183 **Wash.2d 219,** 351 P.3d 151 (2015). The party challenging the ordinance bears the burden to prove beyond a reasonable doubt that the ordinance is unconstitutional. ***Cannabis Action Coal. v. City of Kent, 180 Wash.App. **at 482,** 322 P.3d 1246. Absent a constitutional prohibition, the wisdom of exempting low income seniors and disabled citizens is left to the will of the people and their representatives, not this court.

¶25 State constitutions constrain taxing authorities, including local governments, within the state. Typically, a state constitution requires that property taxes be uniformly or equally assessed. Even the United States Constitution imposes a uniformity rule on all "duties, imposts, and excises." **Article 1, section** 8, clause 1 of the **United States Constitution.**

¶26 Washington **Constitution article** VII, section 9 imposes the uniformity principle on taxes levied by Washington municipal corporations, such as cities. The section declares:

> 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.

(Emphasis added.) Note that the uniformity requirement encompasses all taxation by a municipal corporation, not only property taxation. Washington adopted section 9 as part of its original constitution in 1889, and the section has not changed since. This appeal addresses whether Spokane City Ordinance C–35231 breaches article VII, section 9 of the **Washington Constitution**.

¶27 Washington **Constitution article VII**, section 1 imposes the same uniformity restriction on taxes imposed by the state legislature. The section reads, in relevant part:

> *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....*

(Emphasis added.) Some exceptions apply to article VII, section 1 **of the Washington** Constitution. A constitutional provision expressly permits the Washington Legislature to grant property tax relief to retired citizens. Article VII, section 10 declaims:

> Notwithstanding the provisions of Article 7, section 1 ... and Article 7, **section** 2 ..., the following tax exemption shall be allowed as to real property:
>
> The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements.

***6** Section 10 was adopted in 1966.

¶28 No constitutional provision, similar to article VII, section 10, authorizes a city to grant levy exemptions or tax relief to seniors or the disabled. The lack of a similar constitutional provision for municipal taxation constructs a compelling argument that a city may not grant such exemptions and begs the related contention that such an exemption authorized by a city violates the uniformity principle of article **VII, section 9**. As analyzed later, case law insists otherwise.

¶29 Spokane County argues that a city's grant of a tax exemption to any property owner, regardless of the income of the owner, creates a nonuniform tax. With a tax exemption, some property owners are given preferential treatment. Under Ordinance C–35231, some property owners pay less tax than other property owners whose property is valued identically.

¶30 Tax uniformity is the highest and most important of all requirements applicable to taxation under our state tax system. *Inter Island Tel. Co. v. San Juan County,* 125 Wash.2d 332, 334, 883 **P.2d 1380 (1994)**. Tax uniformity requires both an equal tax rate and equality in valuing the property taxed. ***Belas v. Kiga,*** 135 Wash.2d 913, 923, 959 P.2d 1037 (1998); ***Covell v. City of Seattle,*** 127 Wash.2d 874, 878, 905 **P.2d** 324 (1995). A difference in an assessment ratio causes a lack of uniformity in the tax burden. ***Belas v. Kiga,*** 135 Wash.2d at 923, 959 P.2d 1037; ***Univ. Vill. Ltd. Partners v. King County,*** 106 Wash.App. 321, 325, 23 **P.3d 1090 (2001)**. All real estate shall constitute one class. ***Covell v. City of Seattle,*** 127 Wash.2d at 878, 905 **P.2d** 324. These rules imply that municipalities may not grant exemptions to property owners, but none of these principles expressly or directly bar a taxing authority from bestowing exemptions or partial exemptions.

¶31 Cases forwarded by Spokane County do not involve express tax exemptions. ***Belas v. Kiga,*** 135 Wash.2d 913, 959 P.2d 1037 (1998), the case most analogous, entails a state referendum that limited the amount of an assessed valuation increase per year for rapidly appreciating property. The Supreme Court invalidated the referendum on the basis of **article VII, section 1**, the provision addressing state, not city, taxation. Rapidly appreciating property owners did not pay the same rate for assessed valuation as other property owners. Therefore, the burden

of taxation was shifted to owners of property that did not experience large value increases.

¶32 The Department of Revenue argued, in *Belas v. Kiga,* that value averaging was valid under the legislature's constitutional power to grant tax exemptions. Unlike article VII, section 9, **section 1** reads that "such property as the legislature may by general laws provide shall be exempt from taxation." The ***Belas*** court reviewed the history behind the state referendum and did not find any promotional material describing the referendum as creating a tax exemption. Therefore, the court concluded that the measure did not create an exemption. The *Belas* court noted that exemptions from taxation were permissible under **article VII, section 1**.

*7 ¶33 The City of Spokane, like any other taxing district, sets a levy amount each year. That amount must be raised from property taxes on property throughout the city. The proportion paid by each property owner depends on the value of his or her property. If senior citizens and disabled persons receive a tax exemption, other owners must pay more in taxes to compensate for the city's lost revenue resulting from the tax exemptions. For this reason, the purpose behind the uniformity principle is fulfilled by invalidating Ordinance C–35231. Nevertheless, a distinction lies between ***Belas v. Kigas*** and the case on appeal. The state referendum discriminated among property owners, whose property was taxed. Ordinance C–35231, in part, discriminates among taxpayers, since many seniors and disabled Spokane residents, even if qualifying for the exemption, still pay tax at an effectively lower rate, since a sum is deducted from the assessed value before applying the tax ratio. Nevertheless, some of those qualifying for the exemption will pay no taxes, if their property values deceeds a set sum. Under the latter circumstances, Ordinance C–35231 does not discriminate among tax payers, but removes some property owners altogether from the burden of paying taxes.

¶34 I now discuss two old, but critical, Washington Supreme Court decisions: ***State v. Ide,*** 35 Wash. 576, 77 P. 961 (1904), *overruled in part by* ***Town of Tekoa v. Reilly,*** 47 Wash. 202, 91 P. 769 **(1907)** and *Town of Tekoa v. Reilly,* 47 Wash. 202, **91 P. 769**. The latter case controls this appeal.

¶35 In *State v. Ide,* the city of Port Townsend levied an annual $2 city street poll tax, or per capita tax, on each male inhabitant between the ages of twenty-one and fifty years, except a volunteer firefighter. A statute authorized a city to impose the tax. C.W. Ide challenged the constitutionally of the ordinance imposing the tax. Ide argued that the tax was not uniform since females, males under twenty-one and over fifty, and volunteer firefighters did not pay. *Ide* relied on **article VII, section 9**, which requires uniformity as to both persons and property. The *Ide* court noted that the uniformity rule "does not preclude the legislature from selecting and classifying, in a proper and reasonable manner, the subjects of taxation." 35 Wash. at 586, 77 **P. 961**. Nevertheless, the court voided the ordinance, and the statute on which it rested, because the classification of persons taxed was arbitrary and capricious. The court wrote:

> The classification made in imposing this tax is based solely upon age and sex. It has no relation to the property of the persons to be taxed, *or to their ability to pay.* The persons selected to bear the burden are under no greater obligations to pay for keeping the streets in repair than others who are exempted from the payment of the tax. Does such classification, then, rest upon a reasonable difference between the persons taxed and others who are not taxed? It has been stated by our highest court that there is no precise application of the rule of reasonableness of classification, and that there cannot be an exact exclusion or inclusion of persons and things.
>
> Where exemptions from taxation are permissible, the reasonableness of the classification of subjects must therefore be determined from the facts and circumstances appearing in each particular case.

Ide, 35 Wash. at 587, 77 **P. 961** (citation omitted) (emphasis added). Note that the ***Ide*** court did not hold that all exemptions violate **article VII, section 9**, only unreasonable exemptions.

¶36 In *Town of Tekoa v. Reilly,* **47 Wash.** 202, 91 P. 769 (1907), the Supreme Court reviewed an 1890 law that authorized a city, through its city council, to impose an annual $2 poll tax on a male inhabitant between the ages of twenty-one and fifty years, provided that members of a volunteer fire company were exempted from the tax. The tax exempted the same four classes of persons exempted under the city of Port Townsend ordinance at issue in *Ide.* Nevertheless, the Tekoa tax was not imposed for the purposes of streets, as was the Port Townsend poll tax.

James Reilly challenged the 1890 law and the town poll tax as violating article **VII, section 9**. Reilly claimed the tax was not uniform.

¶37 Our Supreme Court, in ***Town of Tekoa v. Reilly,*** posed the profound philosophical question of what constitutes uniformity. The court wrote:

> ***8** The decision in the case hinges entirely upon the meaning of the phrase "Shall be uniform in respect to persons and property within the jurisdiction of the body levying the same." Uniformity and equality in taxation are relative terms. "Perfect uniformity and perfect equality of taxation, in all the aspects the human mind can view it, is a baseless dream." "Perfectly equal taxation will remain an unattainable good as long as laws and government and man are imperfect."
>
> The people of this state in adopting a constitution did not hope to attain the unattainable. *They did not propose to send the tax gatherer to the almshouse,* the orphan asylum or the nursery, nor did they propose to lay a tax on the inmates of these institutions. In other words, they fully understood that if a street or road poll tax should be imposed, certain classes of persons would of necessity be exempt from the imposition. This much was conceded in the *Ide* Case, for there the court said:
>
> > "It is conceded by counsel for appellant that the uniformity rule in taxation usually prescribed by law does not preclude the Legislature from selecting and classifying in a proper and reasonable manner the subjects of the tax, and that rule is so firmly established that the citation of cases in support of it is entirely unnecessary."
>
> If the legislature may select and classify the subjects of the tax in a reasonable and proper manner how is a court to determine the reasonableness or appropriateness of the classification made? If up to the time of the adoption of the constitution, a street or road poll tax had never been imposed on a female or a minor in the [t]erritory of Washington, or elsewhere (to our knowledge), would a reasonable and proper classification require their inclusion or exclusion? The constitution was not the beginning of law for this state. At the time of its adoption Washington was an organized territory with a code of laws for the government of its people. Section 2863 of the Code of 1881 provided as follows:
>
> "Every male inhabitant of this territory over twenty-one and under fifty years of age, must be assessed and annually pay a poll tax of two dollars, *except paupers,* idiotic and insane persons, and all active firemen who have been a member of any fire company in this territory for the period of one year preceding the assessment of taxes"; and nearly if not all the municipal charters granted by the territorial legislature authorized the imposition of a street poll tax with like exemptions.
>
> By [section] 2 of article 27 of the [c]onstitution, these laws and special charters were continued in force, unless repugnant to the constitution itself.

47 Wash. at 205–06, 91 P. 769 (citations omitted) (emphasis added).

¶38 Under *Town of Tekoa v. **Reilly,*** exemptions from a tax do not necessarily negate uniformity. Although the decision involved a poll, not a property tax, the same constitutional provision at issue in this appeal was used to challenge the state law in ***Town of Tekoa.*** Therefore, the majority's attempt to distinguish ***Town of Tekoa,*** because of the nature of the tax, rings hollow. Although a state statute was involved in ***Town of Tekoa,*** the Supreme Court addressed the statute under **article VII, section 9**, which limits powers of a municipality.

¶39 The Supreme Court further wrote, in *Town of Tekoa v. Reilly*:

> It must be apparent that a street poll tax imposed on minors or females, without regard to property or ability to pay, would be unjust and oppressive in the extreme. The burden of paying the tax for the entire household would ordinarily fall on the head of the family. Such a tax would lack both equality and uniformity and was never contemplated by the framers of the constitution.... After a full consideration of the question presented, we are satisfied that the uniformity rule of taxation does

> not forbid a proper classification of the subjects of the tax, that the classification complained of is reasonable and proper, is sanctioned by usage, and violates no provision of the state constitution.

*9 47 Wash. at 209, 91 P. 769. The ending phrase "and violates no provision of the state constitution" is misplaced because the question posed was whether the exemption violated the constitution.

¶40 *Town of Tekoa v. Reilly* expressly overruled *State v. Ide*. Nevertheless, the two decisions may be read consistently, such that *Ide* need not have been overruled. Both decisions stand for the proposition that a tax exemption does not violate the uniformity principle as long as the exemption is reasonable. The exemption in *Ide* was found unreasonable. The exemption in *Tekoa* was held to be reasonable. Both *Tekoa* and *Ide,* in dicta, imply that an exemption based on low income is reasonable and proper.

¶41 I recognize that *Town of Tekoa v. Reilly* concerns a full exemption, not a reduction in property value for purposes of assessing taxes. Nevertheless, I find this distinction unimportant in distinguishing *Town of Tekoa.* If a city may impart a full exemption to low income property owners, the city should enjoy the power to convey a partial exemption. A partial exemption is less harmful to other taxpayers.

¶42 The City of Spokane relies on **RCW** 35A.11.020, which reads, in pertinent part:

> Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes....

I agree with Spokane County that the statute helps the city none since the statute only allows taxation consistent with constitutional restrictions, and, even without the statutory language, the statute could not breach the state constitution. The city's reliance on **RCW** 35A.11.020 only returns us to the original question of whether city levy exemptions breach the constitutional principle of uniformity.

¶43 The Washington State Department of Revenue understandably litigates this appeal as aggressively as does Spokane County. The legislature granted the department authority to ensure equality of taxation and uniformity of administration in a tax structure fractionalized by thirty-nine counties. *Boeing Co. v. King County,* 75 **Wash.2d** 160, 165, 449 P.2d 404 (1969). The Department of Revenue argues that a city's grant of a property tax exemption to any classification of property owners conflicts with the equalization process the department conducts each year. The department may even argue that exemptions from city levies render its process difficult, if not impossible. The department must equalize tax assessments from county to county or across the state, just as county assessors must equalize assessments within a county. Therefore, the Department of Revenue integrally inserts itself into the county assessment process.

¶44 I find the Department of Revenue's argument unpersuasive. The county assessor and state Department of Revenue must already equalize assessments with state tax exemptions bestowed to disabled veterans and elderly. Extending the exemptions to city levies should not be impossible. The Department of Revenue employs astute analysists and uses competent computer technology to perform equalizations. At any rate, the department must follow the law, and Supreme Court precedence allows a city to grant exemptions on property levies.

*10 ¶45 A persuasive case bolsters my conclusion. In *Borough of Rochester v. Geary,* 30 **Pa.Cmwlth.** 493, 373 A.2d 1380 (1977), an ordinance exempted from a per capita tax, or poll tax, residents over sixty-two years of age with incomes less than $3,200 per annum. The court rejected a challenge to the constitutionality of the exemption under Pennsylvania's uniformity clause. The court wrote:

> As was stated in *Commonwealth v. Life Assurance Company of Pennsylvania,* 419 **Pa. 370, 376,** 214 A.2d 209, 214 (1965): "The only constitutional limitation placed upon the power of the Legislature to distinguish between various entities for purposes of taxation is that their basis for doing so be reasonable." (Citations omitted.) The burden of proving that a given classification is unreasonable and thus unconstitutional is a very heavy one. We feel that an exemption benefiting elderly residents of appellee with incomes of less than $3,200 per annum is not unreasonable.

Borough of Rochester v. Geary, 30 Pa.Cmwlth. at 499, 373 A.2d 1380.

¶46 Admittedly, the Supreme Court issued *Town of Tekoa v. Reilly* 109 years ago. Nevertheless, ***Tekoa*** has been cited in cases since: *Sch. Dists' All. for Adequate Funding of Special Educ. v. State,* 170 **Wash.2d 599, 618,** 244 P.3d 1 (2010) (Chambers, J., concurring in part/dissenting in part); *State v. McCollum,* 17 W.2d 85, 153, 136 P.2d 165, 141 P.2d 613 (1943) (Millard, J., dissenting on denial of reh'g); *Aberdeen Sav. & Loan Ass'n v. Chase,* 157 Wash. 351, 385, 289 P. 536 (1930); ***MacLaren v. Ferry County,*** 135 Wash. 517, 520, 238 P. 579 **(1925)**; ***Nipges v. Thornton,*** 119 Wash. 464, 470, 206 P. 17 **(1922)**; and ***State v. Superior Court of Whitman County,*** 92 **Wash. 360, 362,** 159 P. 383 (1916). No later Washington decision overrules or even criticizes the holding of *Tekoa.*

¶47 This appellate court remains bound by a decision of the Washington Supreme Court. ***State v. Hairston,*** 133 Wash.2d 534, 539, **946 P.2d 397 (1997)**; *State v. Gore,* 101 Wash.2d 481, 486–87, **681 P.2d** 227 (1984). An intermediate appellate court does not have the option of disregarding a higher state court's decisions that have not been overruled, no matter how old the precedent may be. *Johns Hopkins Hosp. v. Correia,* **174 Md.App.** 359, 382, 921 A.2d 837 (2007), *aff'd,* **405 Md. 509,** 954 A.2d 1073 (2008); *Haun v. Guar. Sec. Ins. Co.,* 61 Tenn.App. 137, 158, 453 S.W.2d 84 (1969); ***Dobbins v. Hardister,*** 242 Cal.App.2d 787, 792–93, 51 **Cal.Rptr. 866** (1966). In *State v. South Central Bell Telephone. Co.,* **619 So.**2d 749, 753 (La. App. 1993), the intermediate appellate court of Louisiana recognized the need to follow the ruling in a 94–year–old case.

¶48 Some of the reasoning in Supreme Court decisions succeeding *Town of Tekoa v. **Reilly*** may conflict with the holding in *Tekoa.* This presents no excuse for us to disregard *Tekoa.* The state Supreme Court may wish to revisit and overturn *Tekoa,* but only the Supreme Court holds this prerogative. We must follow Supreme Court precedence, regardless of any personal disagreement with its premise or correctness. ***1000 Virginia Ltd. P'ship v. Vertecs Corp.,*** 158 Wash.2d 566, 578, **146 P.3d** 423 (2006); *State v. Gore,* 101 **Wash.2d at 487, 681 P.2d** 227 (1984). When the Court of Appeals fails to follow directly controlling authority by this court, it errs. ***1000 Virginia Ltd. P'ship v. Vertecs Corp.,*** 158 **Wash.2d at 578, 146** P.3d 423 (2006); *State v. Gore,* 101 **Wash.2d at 487,** 681 P.2d 227. We should particularly follow precedence when to do otherwise would declare an ordinance unconstitutional and when the standard of unconstitutionality is beyond a reasonable doubt.

***11** ¶49 I respectfully dissent.

All Citations

--- P.3d ----, 2016 WL 5342591

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