

NO. 93788-5

IN THE SUPREME COURT
THE STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation,

Appellant,

v.

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

and

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

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS SPOKANE COUNTY

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I. INTRODUCTION

The Respondents are Vicki Horton, the Spokane County Assessor, and Rob Chase, the Spokane County Treasurer (hereinafter collectively referred to as “Spokane County”). Spokane County was the Petitioner in the Court of Appeals below, and the Respondent in the Superior Court mandamus proceedings. The City of Spokane (“the City”) has asked this Court to review the decision of the Court of Appeals, which found that the Ordinance adopted by the City was in violation of the uniformity provisions of the Washington Constitution, Article VII, Section 9. The Court of Appeals also overturned the Writ of Mandamus, as mandamus will not lie to compel an illegal act. The Court of Appeals did not address Spokane County’s additional challenges to the Writ of Mandamus; those issues remain before this Court for determination, if necessary.

II. ASSIGNMENT OF ERROR

The City of Spokane petitioned for review, stating the following issues:

1. Whether the Court of Appeals erred in declaring that this Court’s decision in *Town of Tekoa v. Reilly*, 47 Wn. 202, 91 P. 769 (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 cities may grant a local exemption to a local property tax to senior citizens under Article VII, Section 10 of the Washington Constitution?

The issues presented by the City ignore, in part, the lower court's ruling and fail to fully address the issues before this Court. Specifically, issue one should include a consideration of whether the City's reliance on *Town of Tekoa v. Reilly*, 47 Wn. 202, 91 P. 769 (1907) is unfounded, not requiring that it be overruled *sub silentio*; and issue two should include whether the Court of Appeals correctly decided that the City's Ordinance violates Article VII, Section 9 of the Washington State Constitution, which provides "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." WASH. CONST. art. VII, § 9.

Spokane County has further asked this Court, if review was accepted, to consider additional issues concerning mandamus, specifically raised by Spokane County, but not considered by the Court of Appeals, namely:

- a. Whether the City's interpretation of Spokane County's ministerial duties is overbroad;
- b. Whether Spokane County had a clear duty to implement the ordinance;
- c. Whether the City had a plain, speedy and adequate remedy in the ordinary course of law; or
- d. Whether the Writ, even if it were properly issued, exceeded the express requirements of the Ordinance itself?

Each issue is discussed below.

III. STATEMENT OF THE CASE

The City chose to refer a levy lid lift proposition to its voters to allow the City to exceed the limitations on the City's regular levy, instead of retiring prior debt using additional years of excess levies. CP 26-27. After its passage, the City determined that, contrary to its earlier belief, those claiming a senior citizen exemption under chapter 84.36 RCW would not be exempt, though under an excess levy they would have been. CP 28. Instead of challenging the position of the Department of Revenue, the City sought to correct the problem by passing Ordinance No. C-35231 ("the Ordinance") to create an exemption that the passed levy would not, by including levy lid lifts within the definition of "excess levies" when WAC 458-16A-100(15) and WAC 458-19-005(2)(h) clearly do not. CP 9-22; *see also* Dep't of Revenue's COA Br. at 11-16. It is this Ordinance that the Court of Appeals found to be unconstitutional.

IV. ARGUMENT

A. THERE IS NO CONSTITUTIONAL AUTHORITY TO CREATE AN EXEMPTION FOR PROPERTY TAXES

Pertinent Constitutional restrictions are found in the Washington Constitution, specifically Article VII, Sections 1, 9 and 10. *See* WASH. CONST. art. VII, §§ 1, 9, and 10.

Section 1 applies generally to all taxes imposed on personal or real

property with real estate being considered “one class”. *See* WASH. CONST. art. VII, § 1. It grants the *legislature* the authority to create property tax exemptions. *See id.* Section 1 also states in part that, “All taxes shall be uniform upon the same class of property with the territorial limits of the authority levying the tax” *Id.*

Section 9, “Special Assessments or Taxation for Local Improvements”, states in part:

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.

WASH. CONST. art. VII, § 9 (emphasis added). Section 9 allows the legislature to vest municipalities with the authority to assess and collect taxes and imposes a separate requirement of uniformity. *See id.* It does not grant municipalities the authority to create property tax exemptions. *Id.*

Section 10, “Retired Persons Property Tax Exemption”, states:

Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 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.

WASH. CONST. art. VII, § 10 (emphasis added). Section 10 concerns the state legislature's ability to grant a specific exemption to senior citizens. *See id.* It expressly negates the uniformity requirements of Section 1. *See id.* It does not negate the uniformity provisions of Section 9 presumably because it concerns a tax established by the legislature not any taxing act by a municipal organization. *See id.*

As the Court of Appeals stated, "Therefore, Section 10 allows the legislature, itself, to impose non-uniform taxes on residential property owned by retired persons." *City of Spokane v. Horton*, 196 Wn. App. 85, 92, 380 P.3d 1278 (2016). The legislature has done so pursuant to RCW 84.36.381 *et seq.*

There is no similar constitutional exception to the uniformity requirement contained in Section 9 and applicable to the taxing powers of municipalities, or legislation that allows the exercise of the same, as is now asserted by the City.

Further, as recognized by the Court of Appeals, even if existing legislation could be construed as granting such authority to municipalities (as urged by the City) the legislature may not by statute accomplish what the Constitution itself (Article 9) prohibits. *See State ex. rel. Distilled*

Spirits Inst., Inc. v. Kinnear, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972).

The rational basis equal protection standard applied in *Town of Tekoa v. Reilly*, 47 Wn. 202, 91 P. 769 (1907) to poll taxes is clearly at odds with the accepted strict uniformity standard applied to property taxes. *See Belas v. Kiga*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998).

The City argues that the constitutional authority for municipalities to create such an exemption is also found in Section 10, despite its failure to reference Section 9 or municipalities. *See City's Petition for Review* at 9-10. Further, the City argues that legislative authority (if we conclude the legislature is able to delegate this constitutional authority) is found in the specific language of RCW 35A.11.020. *Id.* at 10. Neither position is supported by the language of the Constitution or statute. *See WASH. CONST.* art. VII, § 10; *see also* RCW 35A.11.020. The City appears to rely upon three arguments:

- (1) Municipal organizations have the independent power to create property tax exemptions, relying upon *Town of Tekoa v. Reilly*, 47 Wn. 202, 91 P. 769 (1907);
- (2) The creation of a non-uniform property tax exemption is not in conflict with the provisions of Article VII, Section 9, again relying upon *Tekoa v. Reilly*; and
- (3) The enactment of the Title 35A, and specifically RCW 35A.11.020, impliedly created municipal authority to adopt a non-uniform property tax exemption.

The City argues that "*Tekoa* stands for the proposition that

municipalities may grant reasonable tax exemptions to low-income taxpayers. *Tekoa*, 47 Wn. at 205-209.” See City’s Petition for Review at 5. Actually, the cited pages and pages preceding those identified discussed the constitutionality of a statute passed by the legislature in 1905 which authorized cities to impose a poll tax exempting all females and males not of age. See *Tekoa*, 47 Wn. at 205-209. The court examined only “the validity of the legislative act under which the tax was imposed.” *Id.* at 203. The *Tekoa* court addressed the constitutional limitations on the legislature’s discretion to adopt legislation that allows cities the ability to impose a poll tax exempting all females and males not of age, under Article VII, Section 9, not a City’s authority to create tax exemptions. See generally *id.*

The *Tekoa* court only concluded as follows:

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.

Tekoa, 47 Wn. at 209. The *Tekoa* court did not recognize a city’s authority to create exemptions without legislative direction— in *Tekoa* the legislature provided the express authority for such a tax and exceptions to that tax — or that its analysis was applicable outside of the context of a poll tax.

B. A NON-UNIFORM TAX IS DIRECTLY IN CONFLICT WITH WASH. CONST. ART. VII, SECTION 9

Town of Tekoa v. Reilly, 47 Wn. 202, 91 P. 769 (1907) did not find that property taxes or exemptions need not be strictly uniform under Article VII section 9. *Tekoa* is limited to the unique tax commonly imposed prior to, and in the early formative years of statehood, i.e. a poll tax, a tax on persons not property. *See generally id.* The Court of Appeals recognized that these two types of taxes have historically been treated differently. *See City of Spokane v. Horton*, 196 Wn. App. 85, 91, n. 3, 380 P.3d 1278 (2016) (citing Alfred E. Harsch & George A. Shipman, The Constitutional Aspects of Washington's Fiscal Crisis, 33 WASH. L. REV. 225, 263-264 (1958)).

Decisions from other jurisdictions following *Tekoa* have applied its broader test only when determining the constitutionality of poll taxes, and never to property taxes such as is at issue here. For example see *Shane v. City of Hutchinson*, 88 Kan. 188, 127 P. 606 (1912) (poll tax, distinguishing property taxes); *Salt Lake City v. Wilson*, 46 Utah 60, 148 P. 1104 (1915) (poll tax); and *Pohl v. Chicago, M & St. P. Ry. Co.*, 52 Mont. 572, 160 P. 515 (1916) (distinguishing poll and property taxes).

This Court's decisions have consistently made the same distinction. Even in *Thurston Cty. v. Tenino Stone Quarries, Inc.*, 44 Wn. 351, 354-

356, 87 P. 634 (1906), a decision predating *Tekoa* and cited by *Tekoa*, the Court concluded:

It is suggested by appellants, and conceded by respondent that Section 9 of Article 7 does not apply to the case at bar, and further there is no provision in the state Constitution requiring a poll tax to be uniform as to persons. ...

The character and value of the property of each has no bearing upon the question. The underlying nature and purpose of a poll tax are disassociated entirely from any consideration of property.

In *Nippes v. Thornton*, 119 Wn. 464, 470, 206 P. 17 (1922), the court considered the validity of a poll tax and specifically whether chapter 174 of the Laws of 1921 (known as the "Poll Tax Law") was constitutional. The court concluded Article VII, Sections 1 and 2 requiring uniformity were applicable to property taxes but not the poll tax in question. *See id.*

See also *MacLaren v. Ferry Cty.*, 135 Wn. 517, 520, 238 P. 579 (1925), where the court considered the constitutionality of legislation concerning the taxation of property for mining purposes. The court discussed the principle of uniformity in the following manner:

What is meant by the words of the Constitution, "a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money ..." cannot be other than what the words imply.

MacLaren, 135 Wn. at 520-21, 238 P. 579. *Tekoa* does not stand for the proposition that a city may, on its own initiative create property tax exemptions that are clearly inconsistent with the uniformity provisions of

Article VII, Section 9.

C. THE ENACTMENT OF THE TITLE 35A, AND SPECIFICALLY RCW 35A.11.020, DOES NOT IMPLIEDLY CREATE MUNICIPAL AUTHORITY TO ADOPT A NON-UNIFORM PROPERTY TAX EXEMPTION

The City's contention that the legislature has delegated this authority to municipalities rests upon the City's interpretation of RCW 35A.11.020. The powers enumerated in Title 35A were intended to ensure that code cities would have all powers available to cities under the constitution and general law. *See* RCW 35A.01.010.

While RCW 35A.01.010 is clearly a broad grant of power, it does not create the right to act in a manner inconsistent with the constitution. Court decisions have found that such authority includes: the authority of a City to impose a minimum wage on a port district, (*see Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 788, 357 P.3d 770 (2015)); the authority to contract for garbage service without a public bid, (*see Shaw Disposal, Inc. v. City of Auburn*, 15 Wn. App. 65, 546 P.2d 1236 (1976)); and the authority to contract where there was no express provision prohibiting the contract, (*Burns v. City of Seattle*, 161 Wn.2d 129, 164 P.3d 475 (2007)), but limited this authority by existing law. *See City of Wenatchee v. Owens*, 145 Wn. App. 196, 202-203, 185 P.3d 1218 (2008) (addressing the

statutory requirement that an ordinance be attested to by the city clerk¹).

The City also fails to provide any basis for its assertion that the particular language of RCW 35A.11.020 creates a new independent right to carve out a non-uniform property tax exemption. Essentially the City is arguing that this provision was intended to grant code cities, and apparently by virtue of RCW 35.22.195, first class cities, additional taxing authority not heretofore available, including the power to create non-uniform property tax exemptions at a local level.

The City, in support of its interpretation, relies in part upon the earlier decisions of *City of Bellevue v. Painter*, 58 Wn. App. 839, 843, 795 P. 2d 174 (1990), *City of Wenatchee v. Chelan Cty. Pub. Util. Dist. 1*, 181 Wn. App. 326, 337, 325 P.3d 419 (2014), and *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 757, 131 P. 3d 892 (2006), none of which support this conclusion. *See* City's Response to Spokane County's COA Brief at 17, 22-26. The Court of Appeals did not attempt to apply "the limiting doctrine of *eiusdem generis*." *See Painter*, 58 Wn. App. at 843. The Court of Appeals correctly concluded that: (1) the Constitution prohibits the actions of the City, and (2) the statute confers the power to tax, not to exempt certain properties in a manner that violates the uniformity requirements of the Constitution.

¹ The court ultimately held the clerk's failure to attest did not invalidate the ordinance. *See City of Wenatchee v. Owens*, 145 Wn. App. 196, 185 P.3d 1218 (2008).

In *City of Wenatchee*, the court found that this broad grant of power was held to include the authority to impose the subject utility tax. *See City of Wenatchee*, 181 Wn. App. at 337. There was no constitutional prohibition to that tax.

In *Larson*, the court found that the constitution provided the legislature the power to vest in the municipality the right to tax and the legislature in RCW 35.95A.020 did so. *See Larson*, 156 Wn.2d at 757. A circumstance again different from that at issue here.

The fact that that specific words found in Article VII, Section 9 initially granting the legislature to authority to grant municipalities the authority to “access and collect” taxes was not repeated in the grant of power found in RCW 35A.11.020 (i.e. “all powers of taxation for local purposes”) is not indicative of the grant of additional powers, but simply a recognition that code cities were provided all powers granted to all other classification of cities under both the Constitution and general law. This is consistent with the earlier language in this section and the provision of RCW 35A.01.010 discussed *supra*.

D. THE CITY’S INTERPRETATION OF SPOKANE COUNTY’S MINISTERIAL DUTIES IS OVERBROAD

The prerequisite for issuance of an order of mandamus is the existence of a clear duty to act. *Brown v. Owen*, 165 Wn.2d 706, 724, 206 P.3d 310

(2009). The City asserts that upon passage of the Ordinance in question, Spokane County had only one statutory obligation – to implement the ordinance. *See* City’s Response to Spokane County’s COA Brief at 9-13. This is an overbroad reading of applicable case law. Spokane County recognizes that the County Treasurer is the “ex officio collector of city taxes” and that the County Treasurer “upon receipt of the tax roll shall proceed and collect.” *See* RCW 36.29.100, .130. There is not, however, a categorical statutory requirement that Spokane County officials must implement any ordinance the City passes, especially when to do so would cause those officials to act in violation of law and in violation of a clear directive by the DOR, issued pursuant to RCW 84.08.080 to not act.

The City of Spokane relies upon *State v. Turner*, 113 Wn. 214, 193 P. 715 (1920) and *State ex. rel. Mason Cty. Logging Co. v. Wiley*, 177 Wn. 65, 75, 31 P.2d 539 (1934), both of which discuss circumstances significantly different from those at hand. *Turner* dealt solely with the question of whether the county had the authority to refuse tender of a partial tax where the levied amount was determined to be in error. *Turner*, 113 Wn. at 215. The mandamus action was brought to force the acceptance of the correct amount. *Id.* The Court found that mandamus could not lie to force the treasurer to accept an amount different from that certified by the City. *See id.* The treasurer had no authority to do so at the

time the demand was made. *See id.* Here, the City seeks to use mandamus not to simply collect an amount certified by the City, but to implement an Ordinance far exceeding any ministerial duties and conflicting with statutory obligations. In *Mason County Logging*, mandamus was found to be proper where compliance was required by an express statutory mandate, again a circumstance dissimilar to that at hand. *See State ex. rel Mason Cty. Logging Co.*, 177 Wn. at 75.

E. COUNTY HAD NO CLEAR DUTY TO IMPLEMENT THE ORDINANCE

The Ordinance in question went far beyond simply establishing a tax roll for the County to collect on its behalf. CP 9-22. The issued writ of mandamus required the County to take specific actions. CP 391-394. All of these actions are prohibited or specifically prescribed by state law. For example, correcting tax statement errors is done in the following year as addressed in RCW 84.52.085; crediting and refund tax amounts overpaid to the City is discussed in Chapter 84.69 RCW; and uniformity requirements are discussed at length *supra*.

Mandamus was contrary to the officials' requirement to comply with provisions of Chapters 84.40 and 84.56 RCW in establishing tax rolls and collecting taxes; provisions of Chapter 84.36 RCW concerning exemptions; provisions of RCW 84.55.100 requiring the Assessor and Treasurer to ensure that the law is followed and be subject to audit for

compliance with the same; and RCW 84.08.010, which provides DOR with general supervision and control over the administration of property taxes as well as the county officials in the performance of their duties.²

Here, the County officials were instructed by mandamus to simply ignore all of these statutory requirements governing their behavior. There was no clear duty to act.

F. THE CITY HAD OTHER AVAILABLE PLAIN, SPEEDY, AND ADEQUATE REMEDIES IN THE ORDINARY COURSE OF LAW.

The City sought mandamus despite having other plain, speedy, and adequate remedies at law. *See* RCW 7.16.170. Mandamus will not lie “when a party has at least one viable legal remedy.” *See Zapotocky v. Dalton*, 166 Wn. App. 697, 706, 271 P.3d 326 (2012). Further, the issuance of a writ of mandamus is an extraordinary legal remedy. *See Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003).

One remedy available to the City was through the Uniform Declaratory Judgment Act (“UDJA”), Chapter 7.24 RCW, which the City originally sought, specifically requesting the issuance of “[a] judgment declaring that the tax exemption granted to senior citizens in Ordinance No. C-35231 is valid.” CP 1-6. The City then chose to amend its complaint, dropping its request for a declaratory judgment, and

² These specific duties and restraints are discussed in detail by the Dep’t of Revenue. *See* Dep’t of Revenue’s COA Br. at 6-10.

substituting it for a request for a writ of mandamus. CP 61-93. It is unclear, and the City does not provide insight, as to why a declaratory judgment was suddenly an unavailable or nonviable remedy, particularly given the substantive issues.

The Court in *Seattle School Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 490, 585 P.2d 71 (1978), stated “declaratory procedure is peculiarly well suited to the judicial determination of controversies concerning constitutional rights and ... the constitutionality of legislative action.” See also *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 418, 27 P.3d 1149 (2001). Questions of constitutionality are generally resolved under the UDJA. See *Nolette v. Christianson*, 115 Wn.2d 594, 604-606, 800 P.2d 359 (1990) (The UDJA is an appropriate setting to determine the relative and controlling duties under state and local law); see also *State ex rel. Distilled Spirits Institute, Inc. v. Kinnear*, 80 Wn.2d 175, 178, 492 P.2d 1012 (1972) (“court may exercise its discretion and render a declaratory judgment to resolve a question of constitutional interpretation”).

For the assertion that writs of mandamus and declaratory judgments are “not mutually exclusive” remedies, no authority is cited. In fact, in *Scannell v. City of Seattle*, 97 Wn.2d 701, 703, 648 P.2d 435 (1982), a city-wide class action seeking fringe benefits for intermittent City employees, the Court specifically stated:

“We are not persuaded ... that mandamus is the appellants’ exclusive remedy in compelling the City to compensate the appellants for vacation time. Mandamus exists to provide a remedy where there is no plain, speedy, adequate remedy at law. The appellants in the present case *have a civil action for a declaratory judgment*, an injunction ... and a money judgment [available].”

See also Seattle Times Co. v. Serko, 170 Wn.2d 581, 243 P.3d 919 (2010).

In many cases where both remedies are pled, the Court (when it does not dismiss both), typically grants relief under one theory based on the facts and circumstances of the particular case. *See e.g. Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994) (action for declaratory relief sought ‘as incidental’ to the writ of mandamus, both actions dismissed); *Crown Cascade v. O’Neal*, 100 Wn.2d 256, 668 P.2d 585 (1983) (action for declaratory judgment and writ of mandamus, only a writ of mandamus was issued). In addition to UDJA, the City chose not to appeal the directive issued by the Department of Revenue. The City was apparently in direct communication with DOR concerning the same. CP 277.

Here, the legislature specifically delegates administration, oversight, and enforcement of Washington’s tax code to the DOR, who “has the authority to interpret it.” *Ass’n of Wash. Bus. v. State, Dept. of Revenue*, 155 Wn.2d 430, 440, 120 P.3d 46 (2005); *see also* RCW 84.08.080 (DOR shall decide all questions regarding construction of Title 84 RCW and the “powers and duties of taxing district officers.”). Despite its assertion to

the contrary, the City could have utilized the Administrative Procedures Act, specifically RCW 34.05.530, to appeal the DOR's directive.

The directive constitutes "agency action." *See Wells Fargo Bank N.A. v. Dep't of Revenue*, 166 Wn. App. 342, 360-61, 271 P.3d 268 (2006). Courts have refused to find when such an adverse action is subject to a statutory appeal process such as the APA that an adequate remedy does not exist. *See State v. Abrahamson*, 98 Wn. 370, 376, 168 P. 3 (1917); *see also Torrance v. King Co.*, 136 Wn. 2d 783, 793, 966 P. 2d 891 (1998).

G. THE WRIT EXCEEDS THE LANGUAGE AND REQUIREMENTS OF THE ORDINANCE

The writ exceeds the scope of authority granted by the Ordinance itself in two specific areas:

- i. The Ordinance does not call for implementation in tax year 2015

The Ordinance specifically states: "[a] claim for exemption...may be made and filed at any time during the year for exemptions from taxes payable the following year and thereafter..." CP 9-22. However, the writ of mandamus required the County to take specific steps to implement the Ordinance immediately, an action which appears to be in direct conflict with the Ordinance's own language. *See id.*; *see also* CP 391-394. The Ordinance also requires a taxpayer to apply for the exemption and then the exemption is actually applied *in the year following the year in which the*

claim is filed. See id. Thus, even if a claim was made in 2015, it would not be implemented until 2016. The writ and Ordinance are in conflict with one another.

- ii. The Ordinance requires a taxpayer to affirmatively apply for the exemption, while the Writ requires automatic application of the exemption by Spokane County

Section 8.18.040 of the Ordinance states “a claim for exemption under this Chapter as now or hereafter amended, may be made and filed at any time during the year for exemption from taxes payable the following year and thereafter solely upon the forms as prescribed and furnished by the Spokane County Assessor’s Office ...” CP 9-22. This Section specifically puts the burden on the taxpayer to assert his or her claim under the Ordinance. *See id.*

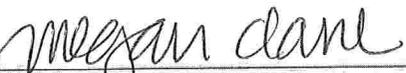
The writ requires Spokane County to determine which taxpayers are eligible for the exemption “by reference to the roll of taxpayers authorized to receive the 2015 state ... exemption.” CP 391-394. The writ further requires Spokane County to “issue and mail amended and corrected 2015 property tax statements.” *Id.* This goes against the language of the Ordinance itself, which requires a taxpayer to affirmatively apply for the City’s exemption. CP 9-22. Any automatic application by the County is not expressly set forth in the Ordinance. *See id.* There is no clear duty to act under the Ordinance itself, as ordered by the writ of mandamus.

V. CONCLUSION

Spokane County respectfully requests this Court affirm the decision of the Court of Appeals. In the event the court finds the ordinance at issue to be lawful, Spokane County requests that the court find that mandamus was not proper for the reasons set forth above.

RESPECTFULLY SUBMITTED this 14th day of April, 2017.

ETTER, M^oMAHON, LAMBERSON,
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DECLARATION OF SERVICE

I, Kristie M. Miller, declare and say as follows:

1. I am a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 618 W. Riverside Ave., Ste. 210, Spokane, Washington 99201-5048, and telephone number is 509-747-9100.

2. On April 14, 2017, I caused to be served the forgoing on the individuals named below in the manner indicated.

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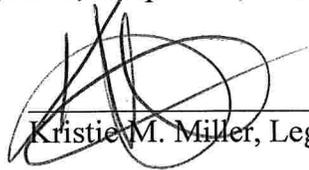
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I declare under the penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

Dated this 14th day of April, 2017, at Spokane, Washington.



Kristie M. Miller, Legal Assistant