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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 93788-5

No. 336221 and 336239

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

CITY OF SPOKANE, a municipal corporation,

Respondents,

v.

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

Appellants,

and

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

Interested Party.

BRIEF OF APPELLANTS

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I. ASSIGNMENTS OF ERROR

1. The Court erred in ordering and issuing a Writ of Mandamus pursuant to RCW 7.16.060 because Appellants had no clear duty to implement the Ordinance, the Ordinance being in conflict with the express directive given by the Washington State Department of Revenue, specific provisions of State law, and the Washington State Constitution;
2. Mandamus was not proper because the City had adequate remedies in the ordinary course of law;
3. The City is not a beneficially interested party as required under RCW 7.16.160 and RCW 7.16.170; and
4. The Writ of Mandamus exceeds the clear language of the Ordinance.

II. STATEMENT OF THE CASE

The Spokane City Council passed a resolution authorizing a regular levy lid lift on property taxes for street improvements which placed upon the November 2014 ballot as Proposition 1 and passed by voters. CP 99.

A dispute arose between the City, Appellants, and the Washington State Department of Revenue (hereinafter "DOR") concerning the degree

to which senior citizens would be exempt from the tax imposed by Proposition 1. CP 99-101.

The City claimed that the levy lid lift was an excess tax levy and, therefore, would be 100% exempt from taxation on all properties qualifying for the senior citizen tax exemption under RCW 84.36.379 et seq. See RCW 84.36.381(5)(a). CP 99-100.

Conversely, the Appellants and the DOR, relying upon state law asserted that the levy lid lift was a regular tax levy. See, WAC 458-16A-100(15) (for purposes of the state senior citizen property tax exemption an excess levy "does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.") CP 99-100.

Therefore, the DOR concluded senior citizens would not be totally exempt from the levy lid lift. CP 102. See RCW 84.36.381(b).

On February 9, 2015, the City then created its own tax exemption by passing an emergency ordinance implementing this exemption (the "Ordinance"), which, contrary to state law, included a levy lid lift in the definition of "excess tax levies." CP 111-123.

On February 9, 2015, Appellants sent a letter to Kathy Beith, Assistant Director of the Property Tax Division of the DOR asking the DOR to issue an opinion on the Ordinance's exemption. CP 149.

In a directive dated February 17, 2015, the DOR stated that the Legislature has exclusive authority to create exemptions; that the Ordinance exceeded the City's authority and violated the Washington Constitution; and directed Appellants not to implement the Ordinance, stating: "Because the City's Ordinance creates an exemption that is not authorized under state law, it should not be implemented." CP 124-125.

Appellants indicated to the City that, pursuant to this directive, it would not implement the Ordinance. CP 127-128. The City then filed suit, requesting the Spokane County Superior Court issue a Writ of Mandamus, compelling Appellants to implement the Ordinance in question. CP 96-128.

On June 12, 2015, the Superior Court of Spokane County, Honorable Harold D. Clarke, III, entered an Order Granting the City's Petition for Writ of Mandamus Compelling Appellants to Implement Ordinance No. C-35231. CP 377-389. On the same date the Court entered a Writ of Mandamus to Appellants Horton and Chase requiring them to "take the following action without delay":

> 1. Implement City of Spokane Ordinance No. C-35231 by creating separate mill rates for the City's voted and non-voted regular property tax levies and applying the exemption set forth in Ordinance No C-35231 to the City's voted regular property tax levy effective with City property taxes levied and paid in 2015 and to the City's voted regular property tax levy in every succeeding year for so long as the exemption remains in

> effect; provided the exemption shall only be applied to the City's voted levy on eligible persons under Ordinance No. C-35231.
>
> 2. Issue and mail amended and corrected 2015 property tax statements (bills) to taxpayers eligible for the local senior citizen tax exemption, with eligibility for the exemption for tax year 2015 to be determined by reference to the roll of taxpayers authorized to receive the 2015 state senior citizen exemption under ch. 84.36 RCW and maintained by Spokane County Assessor Horton and Spokane County Treasurer Chase;.
>
> 3. Determine the amount by which any taxpayer eligible for the local senior citizen tax exemption has overpaid his or her 2015 property taxes as a result of having received a property tax statement (bill) which did not reflect the exemption and implement, through consultation with the City, a methodology to obtain funds already provided to the City, credit that amount toward the City's 2016 voted regular property tax levy, or issue refunds as appropriate when a 2016 tax bill credit is not feasible.
>
> CP 391-394.

Appellants challenge the issuance of the Writ of Mandamus.

III. ARGUMENT

The Writ of Mandamus issued by the trial court was issued in error for four reasons: (1) Appellants had no clear duty to implement the City adopted Ordinance No. C-35231; (2) The City had a plain, speedy and adequate remedy in the ordinary course of law; (3) the City is not a beneficially interested party, and (4) the Writ, even if it were properly issued, exceeds the express requirements of the Ordinance itself.

A writ of mandamus exists to "compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." RCW 7.16.160. "Mandamus is an extraordinary remedy." *Paxton v. City of Bellingham*, 129 Wn. App. 439, 444, 119 P.3d 373 (Div. I 2005) (citing *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)). A party seeking a writ of mandamus must show that (1) the party subject to the writ has a clear duty to act; (2) the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law; and (3) the petitioner is beneficially interested. *See* RCW 7.16.160, *see also* RCW 7.16.170.

"[T]he right to the writ of mandamus must be determined according to the duties devolving upon the officer at the time that the demand is made upon him for action, not according to what his duties may appear to be after the question is tried between the proper parties." *State v. Turner*, 113 Wn. 214, 219, 193 P. 715 (1920).

A. There was not clear duty to implement the City's Ordinance.

Mandamus is only available "to compel a state officer to undertake a clear duty." *Brown v. Owen*, 165 Wn.2d 706, 724, 206 P.3d 310 (2009). Further, even when a duty to act exists, "the duty to act must be ministerial in nature rather than discretionary" in order for a mandamus to be properly issued. *Id.* at 725 ("Directing the performance of a discretionary duty would usurp the coordinate branches of

government.") (Quotation omitted). "The determination of whether a statute specifies a duty that the person must perform is a question of law." *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001).

The Spokane County Treasurer is the "ex officio collector of city taxes of" the City of Spokane. RCW 36.29.100 and RCW 35A.84.030. The Spokane County Assessor is "the ex officio assessor" for the City. RCW 35A.84.020. Both Appellants are also required to comply with the provisions of Chapters 84.40 and 84.56 RCW in creating tax rolls and collecting taxes, as well as Chapter 84.36 RCW concerning exemptions. RCW 35A.84.010. Moreover, in performing these duties, the Appellants operate under the direct supervision of the DOR.

Appellants have a statutory duty to confer with the DOR "as to their duties under the law and the statutes of the state" which is what occurred here. *See* RCW 84.08.020(1). The DOR is required to "decide all questions that may arise in reference to the true construction or interpretation of [Title 84], or any part thereof, with reference to powers and duties of taxing district officers." RCW 84.08.080. The DOR's 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. Regarding the administration of taxation, RCW 84.08.010 states that the DOR shall:

> Exercise general supervision and control of the administration of the assessment and tax laws of the state… county treasurers and county auditors and all other county officers, in the performance of their duties relating to taxation, and perform any act or given any order or direction.

DOR's statutory duty is "clear and express." *State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 486-87, 423 P.2d 937 (1967) ("By prescribing the administrative standards of uniformity and equalization according to the provisions of law, the legislature properly delegated this supervisory power to the [DOR]" under RCW 84.08.010); *Ridder v. Dept. of Revenue*, 43 Wn. App. 21, 28, 714 P.2d 717 (Div. I 1986) ("It can hardly be questioned that in the sweeping language of RCW 84.08.010 and .060, the Legislature intended to authorized the [DOR] to take action consistent with the language of the taxing statutes."). The DOR acted in accordance with this duty when it received and opined upon the City's Ordinance. The DOR gave the Appellants the following specific directive: "Because the City's Ordinance creates an exemption that is not authorized under state law, it should not be implemented." Appellants were obligated to comply with the specific guidance received from the DOR. At the very least the City has failed to establish that the Appellants' duty to implement the Ordinance in question was clear.

The City erroneously argues under *State v. Turner* that the Treasurer is purely a subordinate ministerial officer with no discretion; and, thus he must be compelled to implement the ordinance in question. *Turner* is clearly distinguishable from the case at bar.

In *Turner*, the City of Tacoma levied a tax against a taxpayer's property in the amount of $45.98 and turned the tax roll over to the Pierce County Treasurer for collection. *State v. Turner*, 113 Wn. 214, 215, 193 P. 715 (1920). The taxpayer tendered the amount of $40.74 in full payment of the taxes, claiming the City had illegally levied the remaining $5.24 that was billed. *Id.* The County Treasurer refused tender of the partial payment; and, the taxpayer filed a mandamus action to compel the Treasurer to accept the partial payment. *Id.*

The Court found mandamus could not lie against the Treasurer for two reasons: (1) the taxpayer had a plain, speedy and adequate remedy by filing an injunction against the City to enjoin its illegal tax levy; and (2) mandamus could not lie to force the Treasurer to unilaterally amend the City's tax roll because the County Treasurer had no clear legal duty or authority to unilaterally correct the City's allegedly erroneous tax assessment. *Id.* at 217-18.

Unlike *Turner,* the City is not asking that the County implement a tax roll, but instead is asking that the County implement an exemption, the

authority for which is questioned, as is discussed below. In the case at hand, both the Assessor and the Treasurer were under a clear legal duty to not implement the city exemption as directed by the DOR, which found that the City ordinance was in violation of the state's constitution and laws.

Turner does correctly place the duty to lawfully impose a tax on the City, finding that, "the duty to keep tax within legal limits was a duty upon the City of Tacoma." *Id.* at 219.

i. The Ordinance exceeds the City's constitutional authority

Mandamus will not lie to compel a public officer to exceed his lawful authority. *See State v. Turner*, 113 Wn. 214, 214, 193 P. 715 (1920) (citing *Hindman v. Boyd*, 42 Wash 17, 87 P. 609 (1906)) wherein it states:

> In that case [*Hindman v. Boyd*] the defendants were allowed to raise a constitutional question in justification of their refusal to perform the duty. In other word, the court had to determine the question of law as to whether the duty existed or not before it could issue a writ.

The DOR contended, and Appellants concur, that the Ordinance in question violates the Washington State Constitution and exceeds the legislative authority vested in a municipality to assess and collect taxation. Requiring implementation of the Ordinance, as outlined in the Writ, in

turn compels Appellants to act in a manner that is not sanctioned by law, exceeding their statutory authority.

The City asserts that its authority to enact the subject tax exemptions is found under RCW 35A.11.020, which states: "Within constitutional limitations, legislative bodies of code cities shall have ... all powers of taxation for local purposes". CP 111-123., *see also* RCW 35A.11.020. DOR contends and Appellants concur that all powers of taxation for local purposes does not include the power to create tax exemptions, and is contrary to the Washington State Constitution and applicable statutes.

This analysis is, in part, a matter of statutory interpretation. A number of rules apply. (1) When interpreting a statute, the Court first looks to its plain language. *HomeStreet, Inc. v. State, Dept. of Revenue*, 166 Wn.2d 444, 451-52, 210 P.3d 297 (2009). (2) If the plain language is subject to only one interpretation, the Court's inquiry ends because plain language does not require construction. *Id.* (3) To determine the meaning of an undefined term, we may look to the dictionary. *Id.* (4) Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself. *Id.* (5) A statute is not ambiguous merely because different interpretations are conceivable. *Id.*

Here, the plain language of the statute provides only that a local municipality has "all powers of taxation for local purposes". The words of the statute contain no express authority to create exemption from taxes created.

Moreover, another provision of Title 35A RCW clearly demonstrates that the power to tax under RCW 35A.11.020 does not does not grant the City the authority to create its own senior citizen property tax exemption. RCW 35A.84.010 mandates that the City adhere to the general laws of the state with regard to property tax exemptions as set forth in Chapter 84.36 RCW:

> The taxation of property in code cities shall be governed by general provisions of the law including, but not limited to, the provisions of... (6) Chapter 84.36 RCW, relating to property subject to taxation and exemption therefrom...
>
> RCW 35A.84.010.

Because of the tendency of tax exemptions to create non-uniformity of taxation, the authority to create tax exemptions should only be found where the legislature utilizes only clear and explicit language. *Belas v. Kiga*, 135 Wn.2d 913, 933, 959 P.2d 1037 (1998).

Courts and recognized treatises concerning the issue of whether the power to tax includes the power to exempt uniformly conclude that it does not. *See* 16 McQuillin Mun. Corp. § 44:82 (3d. ed.) ("the delegation of power to tax does not include power to exempt from taxation."), *see*

also State v. Wooster, 163 Wn. 659, 665, 2 P.2d 653 (1931) (holding as distinct the Legislature's power to exempt property from taxation), RCW 35A.11.020 (which limits a municipality's authority in the area of taxation to that authority which can be exercised "within constitutional limitations").

Several other jurisdictions have recognized that the power to tax does not include the power to exempt. Specifically, in Florida, Mississippi, and New York, courts have expressly held these powers are separate and distinct. *See St. Lucie Estates v. Ashley*, 105 Fla. 534, 141 Sp. 738 (1932), *see also City of Jackson v. Pittman*, 484 So.2d 998 (Miss. 1986), *County of Sullivan v. Town of Tusten*, 899 N.Y.S.2d 455, 72 A.D.3d 1470 (N.Y. 2010) ("[a] municipality may not act in excess of the powers conferred upon it").

Under facts similar to the case at bar, the Court in *City of Jackson v. Pittman* stated "a municipality has no power to exempt from taxation property which by statute or its charter it is authorized to tax, since delegation of power to tax does not include power to exempt from taxation." *City of Jackson*, 484 So.2d at 1000. In *City of Jackson*, the City sought a declaratory judgment to validate a City-created ad valorem property tax rebate to elderly and disabled. *Id.* at 999. The trial court granted a declaratory judgment against the City, which the Supreme Court

of Mississippi affirmed, finding no express constitutional or legislative authority existed for the tax exemption the City sought to grant. *Id.*

Because the City lacks an inherent authority to tax, any such authority must be expressly granted by the legislature. *Pac. First Fed. Sav. & Loan Ass'n v. Pierce County*, 27 Wn.2d 347, 353, 178 P.2d 351 (1947); and *King County v. City of Algona*, 101 Wn.2d 789, 681 P.2d 1281 (1984) (Wash. Const. art. XI, § 12 is not self-executing and still requires express statutory authority to utilize this provision).

Article VII § 1 of the Washington Constitution prohibits the legislative surrender of the power of taxation, stating in relevant part,

> 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.

Wash. Const. art. VII, § 1.

However, Article VII § 9 grants two specific and limited exceptions to the prohibition in § 1, providing

> [1] 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[1] [and]
>
> [2] 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

[1] A special assessment or taxation is not at issue with this Ordinance.

> property within the jurisdiction of the body levying the same.

Wash. Const. art. VII, § 9. Neither exception grants any local municipality with the express authority to grant exemptions.

Additionally Article XI § 12 of the Washington Constitution provides that the legislature may "by general laws, vest in the corporate authorities [of a municipality], the power to assess and collect taxes." Wash. Const. art. XI, § 12. In a manner similar to Washington Constitution Article VII, §§ 1 and 9, this provision of the Constitution also does not grant the municipality with the authority to create or implement a tax exemption. *Id.* The limited authority granted by the Constitution is the authority provided to the legislature to invest powers into cities to "assess and collect" taxes, i.e. levy property taxes. *See* Wash. Const. art. VII, § 9.

Finally, Article VII, § 10 of the Washington Constitution vest authority in the Legislature to create property tax exemptions for elderly homeowners, which the Ordinance does, stating:

> 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.

Wash. Const. art. VII, § 10. The legislature, not municipalities or other local taxing authorities is granted this specific authority. There is no constitutional or statutory foundation or basis for the City's contention that this power was also delegated to a municipal organization.

The City argued below that the Court has sanctioned such a broad interpretation of Title 35A RCW in decision of *City of Wenatchee v. Chelan County Public Utility Dist. No. 1*, 181 Wn. App. 326, 325 P.3d 419 (Div. III 2014). *City of Wenatchee* is clearly distinguishable from the case at bar. It does not suggest that a municipality has the power to exempt, but only that cities have broad power to impose excise taxes on other municipalities for regulation or revenue.

In *City of Wenatchee*, the City implemented a utility tax on domestic water sales, which the Chelan County Public Utility District (PUD) paid for decades. *Id.* at 330. In 2012, the PUD concluded the City was without statutory authorization to impose this tax, and discontinued its payment. *Id.* The City successfully argued that RCW 35A.82.020, "which grants code cities like Wenatchee broad general authority to <u>impose excise taxes for regulation or revenue</u>, includes the authority to tax domestic water sales by another municipality" within city limits. *Id.* at 331.

The Court points out in *Wenatchee*, that Wash. Const. art. VII, § 9 and art. XI, § 12 are "permissive" in nature and "clearly show that the

municipal corporations are without any inherent power of taxation, being dependent upon legislative grant for their enjoyment of such power." *Id.* at 335. This is consistent with Appellants' argument, *supra*. The City of Spokane is dependent upon an express legislative grant of authority to impose any exemption, which it has not received. The City cannot point to any express language in the Constitution supporting its position and, thus "any effort to engraft language onto the state constitution must fail." *Id.* The power to exempt is a separate and distinct power that has not been granted to municipalities by the legislature. *See also,* RCW 35A.84.010 (City must utilize the exemptions as set forth in Chapter 84.36 RCW).

ii. The Ordinance fails to meet the constitutional requirement for "uniformity"

The Ordinance violates the Uniformity clauses of Article VII, §§1 and 9 of the Washington Constitution.

Article VII, § 1 of the Washington Constitution provides in part:

> "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax…"

Wash. Const. art. VII, § 1.

Similarly Const. Article VII, §9, permits the legislature to delegate authority to municipal corporations to assess and collect taxes, subject to the limitation that "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. *See also State ex rel. School Dist. 37 of Clark County v. Clark County,* 177 Wash. 314, 31 P.2d 897 (1934).

Uniformity is "the highest and most important of all requirements applicable to taxation under our system." *Inter Island Telephone Co., Inc. v. San Juan County,* 125 Wn.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 Wn.2d 913, 923, 959 P.2d 1037 (1998). If the basis of valuation is the true market value of the property, then that basis must be applied to all alike. If the basis is a certain per cent of the true market value, the same percentage must be applied to all alike. *Welch Foods, Inc. v. Benton County*, 136 Wn. App. 314, 326, 148 P.3d 1092 (Div. II 2006).

Property tax exemptions, including the state senior citizen tax exemption created under RCW 84.36.379 *et seq.*, generally create non-uniformity in taxation:

> It is widely recognized that tax exemptions create inequities in the distribution of the tax burden, even where the exempted property is being used for some function which it would be the duty of the state to perform if it were not performed by private individuals or organizations. This is so because rarely are the benefits of an exempted property conferred only upon those who must bear the increased tax burden . . . . Not only does the granting of exemptions result in an unequal distribution of the tax burden, but it also reduces the amount of revenue available to the

governing body through reduction of the tax base.

Belas v. Kiga, 135 Wn.2d at 933, 959 P.2d 1037 (citing *Pacific N.W. Annual Conference of the United Methodist Church v. Walla Walla County,* 82 Wn.2d 138, 140-41, 508 P.2d 1361 (1973)).

Accordingly, it is the long-standing rule in this state that property tax exemptions must be authorized by the legislature only through clear and explicit language. *Id.*

The state senior citizen property tax exemption enjoys a specific exclusion from the uniformity requirement under Article VII, §10 of the Washington Constitution, which provides:

> *Notwithstanding the provisions of Article VII, § 1 (Amendment 14), and Article VII, § 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 retire 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.

Wash. Const. art. VII, § 10 (emphasis added).

This provision excuses the legislature – and only the legislature – from the uniformity requirement in Article VII, § 1 by permitting the legislature to grant retired persons property tax relief in a manner which is

not equal to other real property. Cities and other local governments are not vested with similar authority under this provision.

Article VII, § 10 does not reference the Article VII, § 9 uniformity limitations applicable to municipalities. *See* Wash. Const. art. VII, § 10. Accordingly, the framers clearly intended that the City still be subject to uniformity under that provision.

Because the Ordinance treats property of the same class (i.e. real property) within the district unequally, the Ordinance is unconstitutional.

B. Alternative remedies existed for the City

When a party has at least one viable legal remedy, a writ should not be issued. *See Zapotocky v. Dalton*, 166 Wn. App. 697, 706 (Div. III 2012) (wherein the statutory process for contesting election results was found to be an adequate alternative remedy). Two alternative remedies existed under which the City could have sought redress.

i. The City did not seek redress under the Uniform Declaratory Judgments Act

The City's first nonexclusive legal remedy was to seek redress under Chapter 7.24 RCW, the Uniform Declaratory Judgments Act ("UDJA"). A declaratory judgment may be issued where any "person… whose rights, status, or other legal remedies are affected by a statute [or] municipal ordinance… may have determined any question of

construction or validity arising" thereby. RCW 7.24.020; *see also* RCW 7.24.130 ("Person" includes any "municipal or other corporation of any character whatsoever.").

The UDJA is an appropriate setting to determine the relative and controlling duties under state and local law. A similar situation is found in *Nollette v. Christianson*, wherein the court determined the authority of district court judges to act in the capacity of municipal court judges under the Spokane Municipal Code and state statute. *Nollette v. Christianson*, 115 Wn.2d 594, 604-606, 800 P.2d 359 (1990). Here, the City could have sought declaratory relief adjudging its ability to enact and enforce the Ordinance in question; this remedy could also be used to answer the constitutional concerns expressed by the DOR. *See 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").

It should be noted that the City initially sought declaratory relief then abandoned that argument when filing its Amended Complaint and sought relief only by way of a Writ of Mandamus. CP 3 ("3.3 A judgment declaring that the tax exemption granted to senior citizens in Ordinance No. C-35231 is valid"), *see also* CP 96-128.

ii. The DOR's directive was subject to a statutory appeals process that the City failed to utilize

The directive issued by the DOR was subject to a statutory appeal process under the State Administrative Procedure Act. In this case, the legislature has delegated the 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."). Because there is no express statutory process to appeal DOR guidance issued pursuant to RCW 84.08.080, chapter 34.05 RCW (hereinafter the "Administrative Procedure Act" or "APA") "establishes the *exclusive* means of judicial review of [this] agency action." RCW 34.05.510 (emphasis added); *Wells Fargo Bank, N.A. v. Dept. of Revenue*, 166 Wn. App. 342, 360-61, 271 P.3d 268 (Div. II 2006).

"Agency action" under the APA is broadly defined to include "the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits." RCW 34.05.010(3).

RCW 34.05.570 sets forth the grounds for appeal and judicial review of agency action such as rulemaking, orders in adjudicative proceedings, or "other agency action." RCW 34.05.570(4). As to "other agency action", the court has determined that a letter from the DOR denying or directing a specific course of action qualifies as "other agency action." *Wells Fargo Bank,* 166 Wn. App. at 360-61 (letter denying interest payment on DOR settlement was neither "agency rulemaking nor an order entered in an adjudicative proceeding; thus it was 'other agency action.").

Appellate courts have declined to hold that an adequate remedy does not exist when an adverse action is subject to a statutory appeal process like that in the APA. *State v. Abrahamson*, 98 Wn. 370, 376, 168 P. 3 (1917) ("Mandamus will not lie to compel action by the superior court where there is an adequate remedy by appeal."); *Torrance v. King Co.*, 136 Wn. 2d 783, 793, 966 P.2d 891 (1998) (Holding an adequate remedy existed and the constitutional writ of certiorari "is legally unavailable where a right to appeal exists and the failure to appeal is not excused.")

In *Torrance v. King County*, the plaintiff applied for a constitutional writ of certiorari (which utilizes the same adequate legal remedy standard as mandamus actions) challenging the Growth

Management Hearings Board's failure to adopt proposed changes to the zoning designation of his property. *Torrance*, 136 Wn.2d at 786. In determining that an adequate remedy at law existed, the court held that two statutes, including RCW 34.05.570, "provide[ ] an aggrieved party the opportunity for adequate and complete relief from" the agency action. *Id.* at 793. "[A]n appeal of the Board's decision to superior court would have provided Torrance with an opportunity to pursue the remedy he desired" by allowing him to argue the agency action was "arbitrary, capricious, and illegal," for which "a superior court could provide a remedy" if he were correct. *Id.*

The *Torrance* court's rationale applies equally here. Pursuant to RCW 34.05.570, the City was afforded a mechanism by which to obtain judicial review of the DOR's action in instructing Appellants to disregard its Ordinance. Failure to use this process does not render it any less effective of a legal remedy, instead the important consideration is that judicial review could have provided complete relief if the City was successful in its appeal.

Finally, to the extent any taxpayer had applied for the Ordinance's exemption but been denied, the Ordinance itself provides a specific appeal process. CP 111-123. No such action has been initiated.

The City is unable to demonstrate the statutory process for review and the appeal process created by its own Ordinance were insufficient legal remedies. Under these circumstances, mandamus was erroneously issued.

C. The City is not a beneficially interested party

The "beneficially interested" element of issuing a writ of mandamus involves the concept of standing. *Eugster v. City of Spokane*, 118 Wn. App. 383, 403, 76 P.3d 741 (Div. III 2003). The doctrine of standing generally prohibits a party from asserting another person's rights. *Bunting v. State*, 87 Wn. App. 647, 651, 943 P.2d 347 (Div. III 1997). "Standing will not arise unless the party seeking standing has a distinct personal interest in the outcome of the litigation and can show some benefit from the requested relief. *Saucier v. Employment Sec. Dept. of Wash.*, 90 Wn. App. 461, 466, 954 P.2d 285 (Div. III 1998). To prove a beneficial interest, a party must also demonstrate it "has an interest in the action beyond that shared in common with other citizens." *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 616, 62 P.3d 470 (2003).

In *Hoppe v. King County*, 95 Wn.2d 332, 622 P.2d 845 (1980), a county assessor attempted to bring an action challenging the validity of a property tax ordinance. Despite adding a taxpayer as a plaintiff, the Court found the assessor did not have standing. *Id.* at 337. In the case at hand, no

taxpayer has applied for the exemption contained in the Ordinance and in the case at hand, no taxpayer is a party to this lawsuit. The City is unable to demonstrate how it maintains any stake in how a taxpayer receives the exemption, and has no beneficial interest to advance.

D. The Issued Writ of Mandamus Exceeds the Ordinance's Scope of Authority

In the mandamus issued, the Court ordered Appellants to

> 1. Implement City of Spokane Ordinance No. C-35231 by creating separate mill rates for the City's voted and non-voted regular property tax levies and applying the exemption set forth in Ordinance No C-35231 to the City's voted regular property tax levy effective with City property taxes levied and paid in 2015 and to the City's voted regular property tax levy in every succeeding year for so long as the exemption remains in effect; provided the exemption shall only be applied to the City's voted levy on eligible persons under Ordinance No. C-35231.
>
> 2. Issue and mail amended and corrected 2015 property tax statements (bills) to taxpayers eligible for the local senior citizen tax exemption, with eligibility for the exemption for tax year 2015 to be determined by reference to the roll of taxpayers authorized to receive the 2015 state senior citizen exemption under ch. 84.36 RCW and maintained by Spokane County Assessor Horton and Spokane County Treasurer Chase;.
>
> Determine the amount by which any taxpayer eligible for the local senior citizen tax exemption has overpaid his or her 2015 property taxes as a result of having received a property tax statement (bill) which did not reflect the exemption and implement, through consultation with the City, a methodology to obtain funds already provided to the City, credit that amount

> toward the City's 2016 voted regular property tax levy, or issue refunds as appropriate when a 2016 tax bill credit is not feasible.
>
> CP 391-394.

In two specific areas, the writ exceeds the scope of authority granted by the Ordinance itself. First, there is no express language in the Ordinance that it would be imposed in 2015. Second, there is no express language in the Ordinance that the exemption to be received would be automatically granted without application or by using the statutory remedy for an error in taxes, which is a refund.

i. It is unclear when the Ordinance is to be implemented

The Writ requires Appellants to implement the Ordinance for 2015 taxes, stating "Implement [the Ordinance] ... effective with City's property taxes levied and paid in 2015..." CP 392. This direction is inconsistent with the language of the Ordinance which reads "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 118.

The Ordinance does not specify that it will be implemented in 2015, and according to the language, it appears it logistically could not be implemented until 2016. First, a taxpayer must make a claim, and the

exemption would apply *in the year following the year in which the claim is filed.* CP 118. Even if a taxpayer made a claim in 2015, it would not be implemented until 2016. The Writ requires the Ordinance be immediately implemented – the express language of the Ordinance does not.

ii. Taxpayers must apply for the Ordinance's exemption

The Writ requires Appellants to determine which taxpayers are eligible for the exemption "by reference to the roll of taxpayers authorized to receive the 2015 state … exemption." The Writ further requires Appellants to "issue and mail amended and corrected 2015 property tax statements." CP 392. The Ordinance in question requires a taxpayer file a claim for exemption and affirmatively apply for the exemption. CP 118-119.

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 118-119. This Section specifically puts the burden on the taxpayer to assert his or her claim under the Ordinance, not on Appellants. There is no clear duty to act under the Ordinance itself as requested by the Writ.

IV. CONCLUSION

Based upon the foregoing, Appellants respectfully request this court reverse the trial courts findings and issuance of a Writ of Mandamus, and remand for further proceedings in accordance with this Court's ruling.

RESPECTFULLY SUBMITTED this 4th day of January 2016.

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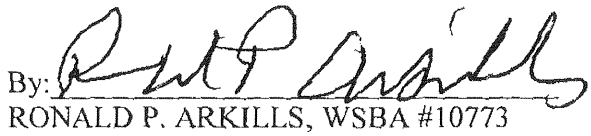
By: 

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DECLARATION OF SERVICE

I, Kristie 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 January 4, 2016, I caused to be served Brief of Appellants on the individual named below in the manner indicated.

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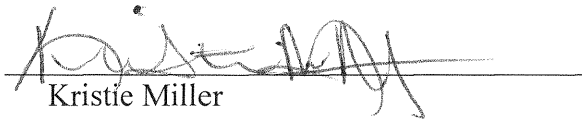
I declare under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 4th day of January 2016, at Spokane, Washington.



Kristie Miller