



## Legal Summary by Former AG McKenna: The Unconstitutionality of SSB 6346-S (Proposed Income Tax)

### Issue Presented

Whether SSB 6346-S, which imposes a graduated 9.9% tax on income above \$1 million, violates the Washington State Constitution.

### Short Answer

Yes. Under binding Washington Supreme Court precedent applying the plain meaning of our state Constitution, income is classified as property, and any tax on income must comply with constitutional requirements governing property taxes. SSB 6346-S violates both the uniformity requirement (Article VII, Section 1) and the 1% rate limitation (Article VII, Section 2).

### Governing Constitutional Provisions

#### *Article VII, Section 1 - Uniformity Clause*

- The Washington state constitution requires that taxes be uniform within the same class of property
- Defines "property" broadly to include "everything, whether tangible or intangible, subject to ownership," including income

#### *Article VII, Section 2 - 1% Cap*

- Limits aggregate property tax rates to 1% annually

### Controlling Case Law

Washington courts have consistently held for nearly a century (the most recent ruling was issued by the Washington State Supreme Court in 2023 in *Quinn v. State*):

- Income is property under the state constitution
- Property must be taxed uniformly and at no higher than 1% per year
- Taxes on income are therefore property taxes
- Graduated (non-uniform) income taxes are unconstitutional

### Key cases include, among others:

- *Culliton v. Chase* (1933)
  - Established that income is property and subject to uniformity requirements
- *Jensen v. Henneford* (1936)
  - Rejected attempts to label income taxes as "excise taxes"
- *Power, Inc. v. Huntley* (1951)
  - Held broad income taxes are property taxes "masquerading" as excise taxes
- Subsequent cases (through 2019)
  - Reaffirm that non-uniform income taxes violate Article VII

This principle remains settled law.

## Recent Supreme Court Guidance (2023)

In upholding Washington's capital gains tax (*Quinn v. State*), the Washington State Supreme Court:

- Distinguished transaction-based excise taxes from taxes on income itself
- Reaffirmed that broad taxes on income remain unconstitutional

*This distinction is critical:*

SSB 6346-S taxes **income broadly**, not specific transactions.

## Application to SSB 6346-S

The proposed law is unconstitutional for two independent reasons:

1. Violation of Uniformity (Art. VII, §1)
  - Exempts income below \$1 million
  - Imposes a 9.90% tax above that threshold
  - Creates multiple tax rates within the same class of property (income)

*This is precisely the type of graduated tax structure rejected in Culliton and subsequent cases*

2. Violation of the 1% Cap (Art. VII, § 2)
  - Imposes a tax rate far exceeding the constitutional 1% limit on property taxes
3. Broad-Based Income Tax Structure
  - Applies to "Washington taxable income" derived from federal AGI
  - Captures income from virtually all sources

*Courts have repeatedly held that such broad income taxes are unconstitutional*

## Voter Intent and Constitutional History

- Voters have rejected all six proposed constitutional amendments that would have allowed income taxes by excluding "income" from the Constitution's definition of property
- Ballot initiatives imposing income taxes without amending the state Constitution have also failed all four times that have been sent to Washington voters

This reinforces both the legal interpretation and the public understanding of the Constitution's Article VII.

## Proper Legal Path

If policymakers wish to implement a graduated income tax, the only lawful way in which to do that is to amend the Washington State Constitution *with voter approval*.

Absent such an amendment, any attempt to implement a broad income tax is blatantly unconstitutional.

## Conclusion

As former AG McKenna's memo explains, under controlling constitutional text, binding precedent, and longstanding voter intent, **SSB 6346-S is highly likely to be found unconstitutional** if enacted. Any attempt to enforce such a tax would invite immediate legal challenge.

For more information, contact Jackson Maynard, Executive Director and Counsel for CADF, at (850) 519-3495 or [jackson@citizenactiondefense.org](mailto:jackson@citizenactiondefense.org)