



Legal Summary by Former AG McKenna: The Unconstitutionality of the Legislature's Proposed Income Tax

The Short Version

Washington lawmakers are considering a new 9.9% tax on income over \$1 million. SSB 6346 is before the State Senate and has passed two legislative committees.

But under Washington's Constitution, this type of tax **is not allowed**—and passing it will trigger a lawsuit.

Why Is It Unconstitutional?

Washington's constitution treats income as “property.”

That matters because property taxes must follow two strict rules:

1. They must be uniform
 - a. The same type of property must be taxed at the same rate
2. They cannot exceed 1%
 - a. There is a hard constitutional cap on property tax rates

The proposed income tax breaks both rules.

- It taxes some people (over \$1M income) but not others, which is not uniform
- It sets a rate around 10%, which is far above the 1% limit

Has A State Income Tax Been Tested in Washington Before?

Yes—many times.

For nearly 100 years, applying the plain meaning of the state Constitution, Washington courts have consistently ruled that:

1. Income is property
2. Graduated income taxes are unconstitutional

Courts have struck down similar laws *over and over again.*

*Citizen Action Defense Fund is a non-profit organization and a designated 501(c)(3)

Even a recent case upholding a capital gains tax made a key distinction: that tax applied to specific transactions, not income as a whole.

What About the Will of the Voters?

Washington voters have repeatedly and emphatically rejected income taxes.

Ten ballot measures to create a state income tax have been voted down by wide margins: :

- Six proposed Constitutional amendments to allow income taxes have been rejected by voters
- Four initiatives to voters to create a state income tax have also failed at the ballot box

What Happens Next?

- If SSB 6346 moves forward, it will be challenged by the Citizen Action Defense Fund in court
- Binding legal precedents require it to be struck down in court

Why This Matters

This isn't just about tax policy—it's about following the law.

Lawmakers take an oath to uphold the constitution.

That means working within its limits—or changing it the right way.

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