

Washington Supreme Court Confirms Cities' Broad Excise Tax Authority

In a recent decision upholding the City of Seattle's Firearms and Ammunition Tax, the Washington State Supreme Court confirmed the broad powers of cities to tax businesses. The decision provides guidance for other municipalities to raise revenue from local business taxes, even in contexts where the State has preempted local regulations.

Among the powers granted to first-class cities, second-class cities and code cities is the power to impose excise taxes on local businesses. [Watson v. City of Seattle, Wn.2d , No. 93723-1 \(August 10, 2017\)](#), at *17, *21 n.8. In approving Seattle's excise tax on "the business of making retail sales of firearms or ammunition," the *Watson* decision evaluated the State constitutional provisions impacting municipal taxing authority and determined that they reflect the concept of "home rule"—the principle that cities have autonomy in local affairs. Based on the application of home rule principles as applied to municipal taxation, the Court held that legislative grants of power to cities should be liberally construed. *Id.* at 17. The Court then held that the city's excise tax power was broad enough to impose a tax on a particular type of business (sellers of guns and ammunition) in addition to the traditional B&O taxes city businesses pay. *Id.* at 18-19. The Court had not specifically considered the validity of a business-specific excise tax in the modern B&O era.

Also at issue in *Watson* was whether Seattle's tax was, in fact, a regulatory fee. If so, then it would be preempted by a State law that expressly preempts all local gun regulations. RCW 9.41.290. To answer this question, the Court applied the three-factor test used to distinguish a tax from a fee in *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995). *Watson*, at *8. The *Covell* test considers (1) most importantly, whether the ordinance's primary purpose is to raise revenue or to regulate a given activity; (2) whether revenues go to the general fund or are allocated only to advance the regulatory purpose; and (3) whether the amount of revenue generated is *not* related to the social cost or benefit of the activity (indicating a tax) or, alternatively, whether the amount of revenue is directly related to the burden created by or benefit received from the activity (indicating regulation). Using this analysis, the Court held that the gun and ammunition charge was exactly what it claimed to be: a tax. Significantly, the *Watson* decision answered this question by examining the text of the ordinance itself. The Court declined to consider individual city councilmembers' statements in favor of gun control as evidence of a regulatory purpose. *Id.* at *10-12.

The *Watson* decision clarifies that cities may exercise their excise tax authority broadly and in addition to other excise taxes they may impose. Pacifica Law Group assisted the City of Seattle in drafting its Firearms and Ammunition Tax ordinance and is prepared to advise our public clients in the development of new revenue measures and other legislation.