

ALERT

September 2001

Washington Supreme Court Declares I-722 Unconstitutional

The Washington State Supreme Court has upheld the Thurston County Superior Court ruling that Initiative 722 (I-722) violates the State Constitution. In its decision filed on September 20, 2001, the Court ruled, in the case of *City of Burien v. Kiga*, that I-722 addressed two unrelated subjects and therefore violates the single subject clause of Wash. Const. art. II, sec. 19. The initiative is voided in its entirety.

The Court held that I-722 had two unrelated subjects: (1) nullifying and refunding a broad range of 1999 tax increases, and (2) seeking to change the method of assessing property taxes. The Court concluded that:

I-722 necessarily required the voters who supported one subject of the initiative to vote for an unrelated subject they might or might not have supported. For example, a person who desired systemic changes to future property tax assessments but did not want to fiscally burden cities with the refunding of 1999 tax increases was required to vote for both measures or neither. Similarly, a person who did not own a home or who was otherwise unconcerned with changing methods for assessing property taxes but did desire a refund of other fees was required to vote for both measures or neither...

I-722's Provisions No Longer Apply

Because I-722 is voided in its entirety, all of I-722's provisions no longer apply to taxing jurisdictions, including the following key provisions:

- Repealing and refunding taxes imposed or increased from July 2, 1999 through December 31, 1999 without voter approval.
- Reducing the "106% levy limitation" to 102%, by changing all references to "106" to "102" in RCW 84.55.005 and 84.55.0101. Chapter 84.55 RCW limits the total dollar amount of regular property taxes levied by a taxing district without voter approval to the highest amount of such taxes levied in the three most recent years (adjusted to account for new construction), multiplied by a limit factor.
- Repealing the statute that allowed a taxing district that has levied an amount less than the maximum allowed

under the 106% levy limitation to "bank" this capacity.

- Exempting from payment all annual individual property tax increases attributable to increases in assessed value of existing property greater than inflation or two percent (whichever is less).

As a result of the Court's decision, taxes imposed or increased during the last six months of 1999 are reinstated (in many cases, jurisdictions have already taken steps to reinstate these taxes). For most taxing districts, the limit factor applicable to annual increases in the dollar amount of property tax levies will continue to be the greater of (i) the lesser of 106% or 100% plus inflation or (ii) any percentage up to 106%, if approved by a supermajority vote of the governing body of the taxing district, upon a finding of substantial need. The ability of a taxing district to "bank" levy capacity is protected.

New Property Tax Initiative - I-747

The proponents of I-722 have filed a new property tax initiative for consideration by the State's voters. Initiative 747 (I-747) has qualified for the November 6, 2001 ballot. If approved by the State's voters and upheld by the State courts, I-747 would reduce the limit on the total dollar amount of regular property taxes that may be levied annually by a taxing district without a vote of its electors to 101% of the highest levy in the three previous years (excluding new construction, improvements, and State-assessed property). Because I-747's 101% limitation applies to the dollar amount levied rather than to levy rates, increases in the value of existing property exceeding one percent per year would result in decreasing tax levy rates.

For further information about Initiative 722, please consult any of the attorneys in our municipal practice:

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