
SENATE BILL 5111

State of Washington

65th Legislature

2017 Regular Session

By Senators Braun and Ranker; by request of Office of Financial Management

1 AN ACT Relating to enacting an excise tax on capital gains to
2 improve the fairness of Washington's tax system and provide funding
3 for the education legacy trust account; adding a new section to
4 chapter 82.04 RCW; adding a new chapter to Title 82 RCW; creating a
5 new section; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Adjusted capital gain" means federal net long-term capital
11 gain:

12 (a) Plus any loss from a sale or exchange that is exempt from the
13 tax imposed in this chapter, to the extent such loss was included in
14 calculating federal net long-term capital gain; and

15 (b) Less any gain from a sale or exchange that is exempt from the
16 tax imposed in this chapter, to the extent such gain was included in
17 calculating federal net long-term capital gain.

18 (2) "Capital asset" has the same meaning as provided by Title 26
19 U.S.C. Sec. 1221 of the internal revenue code and also includes any
20 other property if the sale or exchange of the property results in a

1 gain that is treated as a long-term capital gain under Title 26
2 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

3 (3) "Federal net long-term capital gain" means the net long-term
4 capital gain reportable for federal income tax purposes.

5 (4) "Individual" means a natural person.

6 (5) "Internal revenue code" means the United States internal
7 revenue code of 1986, as amended, as of the effective date of this
8 section, or such subsequent date as the department may provide by
9 rule consistent with the purpose of this chapter.

10 (6) "Long-term capital asset" means a capital asset that is held
11 for more than one year.

12 (7)(a) "Resident" means an individual:

13 (i) Who is domiciled in this state during the taxable year,
14 unless the individual (A) maintained no permanent place of abode in
15 this state during the entire taxable year, (B) maintained a permanent
16 place of abode outside of this state during the entire taxable year,
17 and (C) spent in the aggregate not more than thirty days of the
18 taxable year in this state; or

19 (ii) Who is not domiciled in this state during the taxable year
20 but maintained a place of abode and was physically present in this
21 state for more than one hundred eighty-three days during the taxable
22 year.

23 (b) For purposes of this subsection, "day" includes any portion
24 of a day, except that a continuous period of twenty-four hours or
25 less may not constitute more than one day.

26 (c) An individual who is a resident under (a) of this subsection
27 is a resident for that portion of a taxable year in which the
28 individual was domiciled in this state or maintained a place of abode
29 in this state.

30 (8) "Taxable year" means the taxpayer's taxable year as
31 determined under the internal revenue code.

32 (9) "Taxpayer" means an individual subject to tax under this
33 chapter.

34 (10) "Washington capital gains" means an individual's adjusted
35 capital gains allocated to this state as provided in section 106 of
36 this act, less:

37 (a) Twenty-five thousand dollars; or

38 (b) Fifty thousand dollars for individuals filing joint returns
39 under this chapter.

1 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2018, a tax is
2 imposed on all individuals for the privilege of selling or exchanging
3 long-term capital assets, or receiving Washington capital gains. The
4 tax equals seven and nine-tenths percent multiplied by the
5 individual's Washington capital gains.

6 (2) If an individual's Washington capital gains are less than
7 zero for a taxable year, no tax is due under this section. No such
8 losses may be carried back or carried forward to another taxable
9 year.

10 (3)(a) The tax imposed in this section applies to (i) the sale or
11 exchange of long-term capital assets owned by the taxpayer, whether
12 the taxpayer was the legal or a beneficial owner of such assets at
13 the time of the sale or exchange, or (ii) Washington capital gains
14 otherwise realized by the taxpayer.

15 (b) For purposes of this chapter, an individual is a beneficial
16 owner of long-term capital assets held by an entity that is a pass-
17 through or disregarded entity for federal tax purposes, such as a
18 partnership, limited liability company, S-corporation, or trust, to
19 the extent of the individual's ownership interest in the entity as
20 reported for federal income tax purposes.

21 NEW SECTION. **Sec. 3.** This chapter does not apply to the sale or
22 exchange of:

23 (1) Any residential dwelling, which means property consisting
24 solely of a single-family residence, a residential condominium unit,
25 a residential cooperative unit, or a floating home as defined in RCW
26 82.45.032;

27 (2) Assets held under a retirement savings account under Title 26
28 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
29 annuity or a custodial account described in Title 26 U.S.C. Sec.
30 403(b) of the internal revenue code, a deferred compensation plan
31 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
32 individual retirement account or an individual retirement annuity
33 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
34 Roth individual retirement account described in Title 26 U.S.C. Sec.
35 408A of the internal revenue code, an employee defined contribution
36 program, an employee defined benefit plan, or a similar retirement
37 savings vehicle;

1 (3) Assets pursuant to or under imminent threat of condemnation
2 proceedings by the United States, the state or any of its political
3 subdivisions, or a municipal corporation;

4 (4) Cattle, horses, or breeding livestock held for more than
5 twelve months if for the taxable year of the sale or exchange, more
6 than fifty percent of the taxpayer's gross income for the taxable
7 year, including from the sale or exchange of capital assets, is from
8 farming or ranching;

9 (5) Agricultural land by an individual who has regular,
10 continuous, and substantial involvement in the operation of the
11 agricultural land that meets the criteria for material participation
12 in an activity under Title 26 U.S.C. Sec. 469(h) of the internal
13 revenue code for the ten years prior to the date of the sale or
14 exchange of the agricultural land;

15 (6) Property used in a trade or business if the property
16 qualifies for an income tax deduction under Title 26 U.S.C. Sec. 167
17 or 179 of the internal revenue code; and

18 (7) Timber, or the receipt of Washington capital gains as
19 dividends and distributions from real estate investment trusts
20 derived from gains from the sale or exchange of timber. "Timber"
21 means forest trees, standing or down, on privately or publicly owned
22 land, and includes Christmas trees and short-rotation hardwoods. The
23 sale or exchange of timber includes the cutting or disposal of timber
24 qualifying for capital gains treatment under Title 26 U.S.C. Sec.
25 631(a) or (b) of the internal revenue code.

26 NEW SECTION. **Sec. 4.** The tax imposed under this chapter is in
27 addition to any other taxes imposed by the state or any of its
28 political subdivisions, or a municipal corporation, with respect to
29 the same sale or exchange, including the taxes imposed in or under
30 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
31 RCW.

32 NEW SECTION. **Sec. 5.** In computing tax, there may be deducted
33 from the measure of tax amounts that the state is prohibited from
34 taxing under the Constitution of this state or the Constitution or
35 laws of the United States.

36 NEW SECTION. **Sec. 6.** (1) For purposes of the tax imposed under
37 this chapter, adjusted capital gains are allocated as follows:

1 (a) Adjusted capital gains from the sale or exchange of real
2 property are allocated to this state if the real property is located
3 in this state or a majority of the fair market value of the real
4 property is located in this state.

5 (b) Adjusted capital gains from the sale or exchange of tangible
6 personal property are allocated to this state if the property was
7 located in this state at the time of the sale or exchange. Adjusted
8 capital gains from the sale or exchange of tangible personal property
9 are also allocated to this state even though the property was not
10 located in this state at the time of the sale or exchange if:

11 (i) The property was located in the state at any time during the
12 taxable year in which the sale or exchange occurred or the
13 immediately preceding taxable year;

14 (ii) The taxpayer was a resident at the time the sale or exchange
15 occurred; and

16 (iii) The taxpayer is not subject to the payment of an income or
17 excise tax legally imposed on the adjusted capital gain by another
18 taxing jurisdiction.

19 (c) Adjusted capital gains derived from intangible personal
20 property are allocated to this state if the taxpayer was domiciled in
21 this state at the time the sale or exchange occurred.

22 (2)(a) A credit is allowed against the tax imposed in section 102
23 of this act equal to the amount of any legally imposed income or
24 excise tax paid by the taxpayer to another taxing jurisdiction on
25 capital gains derived from capital assets within the other taxing
26 jurisdiction to the extent such capital gains are included in the
27 taxpayer's Washington capital gains. The amount of credit under this
28 subsection may not exceed the total amount of tax due under this
29 chapter, and there is no carryback or carryforward of any unused
30 credits.

31 (b) As used in this section, "taxing jurisdiction" means a state
32 of the United States other than the state of Washington, the District
33 of Columbia, the Commonwealth of Puerto Rico, any territory or
34 possession of the United States, or any foreign country or political
35 subdivision of a foreign country.

36 NEW SECTION. **Sec. 7.** (1) Except as otherwise provided in this
37 section or RCW 82.32.080, taxpayers owing tax under this chapter must
38 file, on forms prescribed by the department, a return with the

1 department on or before the date the taxpayer's federal income tax
2 return for the taxable year is required to be filed.

3 (2) In addition to the Washington return required to be filed
4 under subsection (1) of this section, taxpayers owing tax under this
5 chapter must file with the department on or before the date the
6 federal return is required to be filed a copy of the federal income
7 tax return along with all schedules and supporting documentation.

8 (3) Each taxpayer required to file a return under this section
9 must, without assessment, notice, or demand, pay any tax due thereon
10 to the department on or before the date fixed for the filing of the
11 return, regardless of any filing extension. If any tax due under this
12 chapter is not paid by the due date, interest and penalties as
13 provided in chapter 82.32 RCW apply to the deficiency.

14 (4) The department may by rule require that certain individuals
15 and other persons file, at times and on forms prescribed by the
16 department, informational returns for any period.

17 (5) If a taxpayer has obtained an extension of time for filing
18 the federal income tax return for the taxable year, the taxpayer is
19 entitled to the same extension of time for filing the return required
20 under this section if the taxpayer provides the department, before
21 the due date provided in subsection (1) of this section, the
22 extension confirmation number or other evidence satisfactory to the
23 department confirming the federal extension. An extension under this
24 subsection for the filing of a return under this chapter is not an
25 extension of time to pay the tax due under this chapter.

26 NEW SECTION. **Sec. 8.** (1) If the federal income tax liabilities
27 of both spouses are determined on a joint federal return for the
28 taxable year, they must file a joint return under this chapter.

29 (2) Except as otherwise provided in this subsection, if the
30 federal income tax liability of either spouse is determined on a
31 separate federal return for the taxable year, they must file separate
32 returns under this chapter. State registered domestic partners may
33 file a joint return under this chapter even if they filed separate
34 federal returns for the taxable year.

35 (3) In any case in which a joint return is filed under this
36 section, the liability of each spouse or state registered domestic
37 partner is joint and several, unless:

1 (a) The spouse is relieved of liability for federal tax purposes
2 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue
3 code; or

4 (b) The department determines that the domestic partner qualifies
5 for relief as provided by rule of the department. Such rule, to the
6 extent possible without being inconsistent with this chapter, must
7 follow Title 26 U.S.C. Sec. 6015.

8 NEW SECTION. **Sec. 9.** To the extent not inconsistent with the
9 provisions of this chapter, the following statutes apply to the
10 administration of taxes imposed under this chapter: RCW 82.32.050,
11 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
12 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
13 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
14 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
15 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
16 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
17 82.32.805, and 82.32.808.

18 NEW SECTION. **Sec. 10.** (1) Any taxpayer who knowingly attempts
19 to evade payment of the tax imposed under this chapter is guilty of a
20 class C felony as provided in chapter 9A.20 RCW.

21 (2) Any taxpayer who knowingly fails to pay tax, make returns,
22 keep records, or supply information, as required under this title, is
23 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

24 NEW SECTION. **Sec. 11.** RCW 82.32.805 and 82.32.808 do not apply
25 to the new tax preferences, as defined in RCW 82.32.805, created in
26 section 3, chapter . . ., Laws of 2017 (section 3 of this act).

27 NEW SECTION. **Sec. 12.** (1) All revenue from taxes collected
28 under this chapter, including penalties and interest on such taxes,
29 except as provided in subsection (2) of this section must be
30 deposited in the education legacy trust account created in RCW
31 83.100.230.

32 (2) Any revenue from taxes collected under this chapter,
33 including penalties and interest on such taxes, in excess of nine
34 hundred million dollars in each fiscal year must be deposited into
35 the school investment fund hereby created in the state treasury.
36 Moneys in the fund may only be transferred into the education legacy

1 trust account created in RCW 83.100.230 when revenue collections
2 under this chapter are below nine hundred million dollars in a fiscal
3 year.

4 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.04
5 RCW to read as follows:

6 (1) A deduction is allowed against a person's gross income of the
7 business to the extent necessary to avoid taxing the same amounts
8 under this chapter and section 102 of this act.

9 (2) This section is not subject to:

10 (a) The expiration date provisions in RCW 82.32.805; and

11 (b) The tax preference performance statement requirements in RCW
12 82.32.808 (1) through (5).

13 NEW SECTION. **Sec. 14.** Notwithstanding any common law rule of
14 strict construction of statutes imposing taxes, this act, being
15 necessary for the welfare of the state and its inhabitants, must be
16 liberally construed in support of application of the tax.

17 NEW SECTION. **Sec. 15.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 16.** Sections 1 through 12 of this act
22 constitute a new chapter in Title 82 RCW.

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