
SUBSTITUTE HOUSE BILL 1406

State of Washington

67th Legislature

2021 Regular Session

By House Finance (originally sponsored by Representatives Frame, Sullivan, Ormsby, Ortiz-Self, Kirby, Davis, Bateman, Valdez, Kloba, Pollet, Walen, Dolan, Simmons, Cody, Ramel, Lekanoff, Duerr, Ryu, Berry, Peterson, Hackney, Chopp, Macri, Bergquist, Riccelli, and Harris-Talley)

1 AN ACT Relating to improving the equity of Washington state's tax
2 code by creating the Washington state wealth tax and taxing
3 extraordinary financial intangible assets; amending RCW 82.32.160,
4 43.135.034, and 82.32.655; adding a new section to chapter 84.36 RCW;
5 adding a new title to the Revised Code of Washington to be codified
6 as Title 84A RCW; creating a new section; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) Washington has long led the way with
9 innovative and bold ideas that have changed the world. Many of the
10 world's greatest innovators and artists, engineers and entrepreneurs,
11 and scientists and social activists have called Washington home. But
12 Washington's status as an economic and social leader is threatened by
13 growing wealth inequality and a tax structure that perpetuates it.
14 Asking the state's poorest residents to pay six times more in taxes,
15 as a share of their income, than the state's highest income
16 households, including some of the wealthiest individuals in the
17 world, is unconscionable.

18 (2) The legislature recognizes Washington's tax system is the
19 most upside down and regressive in the nation. As a percentage of
20 household income, low-income families pay nearly 18 percent in taxes,
21 middle-income families pay 11 percent, and the state's highest income

1 households pay three percent or less. Washington's overreliance on
2 low-income and middle-income families to pay for education, child
3 care, public health, housing, public safety, and other vital
4 government programs and functions is simply not sustainable. The
5 legislature finds that building a tax system that is fair, balanced,
6 and works for everyone is imperative for the long-term economic
7 growth of our state. Washington's wealthiest residents can and should
8 share more equitably in the responsibility of funding these key
9 community programs alongside their neighbors.

10 (3) Washington's inequitable tax code is particularly egregious
11 when you consider the size of the wealth gap in the United States,
12 and in Washington state specifically. According to Forbes, nine of
13 the world's wealthiest people reside in Washington state, and their
14 individual wealth ranges from \$2,700,000,000 to \$179,000,000,000. The
15 Washington state department of revenue estimates that there are 100
16 taxpayers with wealth in excess of \$1,000,000,000 who reside in
17 Washington state. By comparison, median household wealth, or net
18 worth, in the United States is \$64,000. The disparity between white
19 households and Black and Latino households shows an even wider wealth
20 gap. Whereas the median wealth for white families is \$116,800, it is
21 just \$1,700 for Black families and \$2,000 for Latino families. Wealth
22 has shifted dramatically in the United States, and we now have the
23 biggest wealth gap in 50 years.

24 (4) The legislature further finds that over the last nine months
25 of the coronavirus pandemic, the stock market has reached a record
26 high and the cumulative wealth of the nation's billionaires has
27 increased by \$1,000,000,000,000. At the same time, small businesses
28 are struggling to keep their doors open and families across this
29 state and nation are struggling to keep a roof over their head and
30 food on the table.

31 (5) Therefore, the legislature intends to disrupt the long-
32 standing systemic inequities in our tax code laid bare by the
33 coronavirus pandemic as we recover, rebuild, and transform
34 Washington's economy.

35 (6) The Washington state wealth tax is created by narrowing the
36 existing tax preference that exempts all intangible property and
37 assesses a modest one percent tax only on financial intangible
38 assets, such as publicly traded options, futures contracts, and
39 stocks and bonds. The first \$1,000,000,000 of assessed value is
40 exempt from the Washington state wealth tax.

1 (7) Finally, the legislature further intends to achieve equity by
2 using revenues generated by the Washington state wealth tax to offer
3 credits against taxes paid disproportionately by low-income and
4 middle-income families and small start-up and low-margin businesses.
5 The legislature finds that if Washington state wants to continue its
6 role as a global leader and attract, retain, and grow the most
7 innovative, creative, and talented residents in the world, it must
8 fund community investments equitably and ensure that our state is a
9 place where every resident has a fair and equitable chance to not
10 only survive, but thrive.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

14 (1) "Artificial person" means a corporation; limited liability
15 company; limited liability partnership, limited partnership, joint
16 venture, or any other kind of partnership; association; business
17 trust or any other trust; estate; association; or any other
18 organization.

19 (2) "Cash and cash equivalents" means currency and short-term,
20 highly liquid investments that are readily convertible to known
21 amounts of cash. "Cash and cash equivalents" includes money on hand,
22 certificates of deposit, checking account deposits, savings account
23 deposits, money market funds, cryptocurrency, and similar assets.

24 (3) "Day" means a calendar day or any portion of a calendar day.

25 (4) "Department" means the department of revenue.

26 (5) "Domicile" means:

27 (a) The same as in RCW 72.36.035, for purposes of a natural
28 person; and

29 (b) For purposes of an artificial person:

30 (i) For a business, the principal place from which the business
31 is directed or managed; and

32 (ii) For artificial persons other than businesses, the place
33 where the entity was organized.

34 (6) "Fair market value" means the amount of money that a willing
35 buyer would pay to a willing seller for property in an arms-length
36 transaction if both parties were fully informed about all advantages
37 and disadvantages of the property and neither party is acting under a
38 compulsion to enter into the transaction.

39 (7) "Financial intangible assets" means the following assets:

- 1 (a) Cash and cash equivalents;
- 2 (b) Financial investments such as annuities, bonds, treasury
3 bills, mutual funds or index funds, stocks, publicly traded options,
4 futures contracts, commodities contracts, put and call options,
5 pension funds, mortgages and liabilities secured by real property,
6 certificates of interest in gold and other precious metals or gems,
7 and other similar investments;
- 8 (c) Units of ownership in a subchapter K entity; and
- 9 (d) Similar intangible assets.
- 10 (8) "Intangible assets" means both financial intangible assets
11 and nonfinancial intangible assets.
- 12 (9) "Nonfinancial intangible assets" means all intangible
13 property other than financial intangible assets, such as trademarks,
14 trade names, brand names, patents, copyrights, trade secrets,
15 licenses, permits, core deposits of financial institutions,
16 noncompete agreements, customer lists, patient lists, favorable
17 contracts, favorable financing agreements, reputation, exceptional
18 management, prestige, good name, integrity of a business, private
19 nongovernmental personal service contracts, and private
20 nongovernmental athletic or sports franchises or agreements.
- 21 (10) "Person" means any natural person or artificial person.
- 22 (11) "Subchapter K entity" means a partnership, including a
23 limited partnership, limited liability partnership, limited liability
24 limited partnership, limited liability company, joint venture, or any
25 other entity subject to subchapter K of the internal revenue code, 26
26 U.S.C. Secs. 701 through 761, including a single member limited
27 liability company.
- 28 (12) "Tax year" means the calendar year immediately preceding the
29 year in which the tax under this chapter is due and payable to the
30 department.
- 31 (13) "Taxable worldwide wealth" means a person's worldwide
32 wealth, excluding the fair market value of any intangible property
33 exempt from the tax imposed under this chapter.
- 34 (14) "Washington resident" or "resident" means the following:
- 35 (a) Any artificial person domiciled in this state at any time
36 during the tax year; or
- 37 (b) A natural person:
- 38 (i) Who is domiciled in this state at any time during the tax
39 year, unless that person (A) maintained no permanent place of abode
40 in this state during the entire tax year, (B) maintained a permanent

1 place of abode outside of this state during the entire tax year, and
2 (C) spent in the aggregate not more than 30 days of the tax year in
3 this state; or

4 (ii) Who is not domiciled in this state during the tax year, but
5 maintained a place of abode and was physically present in this state
6 for more than 183 days during the tax year.

7 (15)(a) "Worldwide wealth" means the fair market value of all
8 intangible assets, or portion thereof, owned or controlled by a
9 resident.

10 (b) For purposes of this subsection:

11 (i) "Control" means a person possesses, directly or indirectly,
12 alone or with one or more close associates, more than 50 percent of
13 the power to sell or otherwise dispose of intangible assets.

14 (ii) "Close associates" means natural persons who are in close
15 association with another natural person by reason of a family,
16 marital, personal, or business relationship.

17 (iii) "Own" includes both legal and beneficial ownership.

18 NEW SECTION. **Sec. 3.** TAX IMPOSED. (1) Beginning January 1,
19 2022, for taxes due in 2023, a wealth tax is imposed on each
20 Washington resident. The wealth tax equals one percent multiplied by
21 a resident's taxable worldwide wealth.

22 (2) Except as provided in subsection (3) of this section, the tax
23 imposed under this section applies to a resident's taxable worldwide
24 wealth as of December 31st of the tax year.

25 (3) In the case of any individual who dies during a tax year and
26 who is not married or in a state registered domestic partnership on
27 the date of such individual's death:

28 (a) The tax imposed under this section applies to the
29 individual's taxable worldwide wealth as of the date of the
30 individual's death; and

31 (b) The amount of the tax otherwise due under this section must
32 be reduced by an amount determined by:

33 (i) Dividing the amount of tax otherwise due for the entire tax
34 year by the total number of days in the tax year; and

35 (ii) Multiplying the amount determined in (b)(i) of this
36 subsection (3) by the number of days remaining in the tax year after
37 the date of the individual's death.

38 (4) The tax imposed in this section does not apply to a resident
39 based on that person's status as a trustee of a trust, unless that

1 person is also a beneficiary of the trust or holds a general power of
2 appointment over the assets of the trust.

3 (5) (a) If an individual is treated as the owner of any portion of
4 a trust that qualifies as a grantor trust for federal income tax
5 purposes, that individual must be treated as the owner of that
6 property for purposes of the tax imposed in this section to the
7 extent such property includes intangible assets.

8 (b) A grantor of a trust that does not qualify as a grantor trust
9 for federal income tax purposes must nevertheless be treated as the
10 owner of the intangible assets of the trust for purposes of the tax
11 imposed in this section if the grantor's transfer of assets to the
12 trust is treated as an incomplete gift under Title 26 U.S.C. Sec.
13 2511 of the internal revenue code and its accompanying regulations.

14 (6) Intangible assets transferred after the effective date of
15 this section by a resident to an individual who is a member of the
16 family of the resident and has not attained the age of 18 must be
17 treated as property of the resident for any calendar year before the
18 year in which such individual attains the age of 18. For purposes of
19 this subsection, "member of the family" has the same meaning as in
20 RCW 83.100.046.

21 (7) All moneys collected from the wealth tax must be deposited
22 into the Washington tax justice and equity fund.

23 NEW SECTION. **Sec. 4.** WHEN TAXES AND TAX RETURNS ARE DUE. (1) (a)
24 Except as otherwise provided in this section or RCW 82.32.080, each
25 resident owing tax under this chapter must file, on forms prescribed
26 by the department, a return with the department on or before April
27 15th each year reporting that person's taxable worldwide wealth for
28 the immediate preceding calendar year, and such other information the
29 department determines necessary to administer the tax imposed under
30 this chapter.

31 (b) (i) Except as provided in (b) (ii) of this subsection (1),
32 returns and all supporting documents must be filed electronically
33 using the department's online tax filing service or other method of
34 electronic reporting as the department may authorize.

35 (ii) The department may waive the electronic filing requirement
36 in this subsection for good cause as provided in RCW 82.32.080.

37 (2) (a) Except as otherwise provided in this subsection (2),
38 spouses and state registered domestic partners must jointly file
39 returns required under this section.

1 (b) (i) A spouse or state registered domestic partner may petition
2 the department, on a form and in a format as required by the
3 department, for permission to file a separate return. The department
4 must grant the petition only if it finds that good cause exists for
5 allowing the petitioner to file a separate return.

6 (ii) For purposes of this subsection (2) (b), "good cause" means:

7 (A) The petitioner reasonably believes that the nonpetitioning
8 spouse or state registered domestic partner will not cooperate in the
9 filing of a complete and accurate joint return; or

10 (B) Any other circumstance that, in the department's judgment,
11 renders the filing of a joint return manifestly unreasonable.

12 (3) Each resident required to file a return under this section
13 must, without assessment, notice, or demand, pay any tax due under
14 this chapter to the department on or before the due date of the
15 return, regardless of any filing extension granted by the department.
16 The tax must be paid by electronic funds transfer as defined in RCW
17 82.32.085 or by other forms of electronic payment as may be
18 authorized by the department. The department may waive the electronic
19 payment requirement for good cause as provided in RCW 82.32.080. If
20 any tax due under this chapter is not paid by the due date, interest
21 and penalties as provided in chapter 82.32 RCW apply to the
22 deficiency.

23 (4) (a) If any return due under subsection (1) of this section is
24 not filed with the department by the due date or any extension
25 granted by the department, the department must assess a penalty in
26 the amount of five percent of the tax due for the tax year covered by
27 the return for each month or portion of a month that the return
28 remains unfiled. The total penalty assessed under this subsection may
29 not exceed 25 percent of the tax due for the tax year covered by the
30 delinquent return. The penalty under this subsection is in addition
31 to any penalties assessed for the late payment of any tax due on the
32 return.

33 (b) The department must waive the penalty imposed under this
34 subsection if:

35 (i) The department is persuaded that the person's failure to file
36 the return by the due date was due to circumstances beyond the
37 person's control; or

38 (ii) The person has not been delinquent in filing any return due
39 under this section during the preceding five calendar years.

1 NEW SECTION. **Sec. 5.** ADMINISTRATIVE PROVISIONS. (1) Except as
2 otherwise provided by law and to the extent not inconsistent with the
3 provisions of this chapter, chapter 82.32 RCW applies to the
4 administration of taxes imposed under this chapter.

5 (2) The department may adopt any rules it considers useful in
6 administering the tax under this chapter.

7 NEW SECTION. **Sec. 6.** EXEMPTIONS. Exemptions from the tax
8 imposed under section 3 of this act are provided for:

9 (1) Up to \$1,000,000,000 of a taxpayer's financial intangible
10 assets. For purposes of this exemption, both spouses or state
11 registered domestic partners are considered to be one taxpayer. If
12 the department authorizes the filing of separate returns for a tax
13 year, each spouse or state registered domestic partner is entitled to
14 claim one-half of the exemption provided under this subsection (1)
15 for that tax year;

16 (2) Nonfinancial intangible assets;

17 (3) Worldwide wealth of artificial persons. However, the
18 exemption provided in this subsection (3) does not affect the
19 computation of a natural person's worldwide wealth;

20 (4) Any obligations or evidences of debt of the United States and
21 obligations of United States government agencies and corporations
22 established by acts of the congress of the United States to the
23 extent required by federal law to be exempt from taxation by the
24 states;

25 (5) Any obligations or evidences of debt of the state of
26 Washington and its agencies, instrumentalities, political
27 subdivisions, and municipal corporations, which include municipal
28 bonds;

29 (6) Any stock of the federal reserve bank, the government
30 national mortgage association, the federal national mortgage
31 association, and other corporations and associations established by
32 acts of the congress of the United States; and

33 (7) Any property subject to ad valorem taxation under RCW
34 84.36.005.

35 NEW SECTION. **Sec. 7.** CREDIT FOR SIMILAR WEALTH TAX PAID TO
36 ANOTHER STATE. (1) Except as provided in subsection (2) of this
37 section, a person subject to tax under this chapter is allowed a
38 credit against the tax otherwise due under this chapter equal to the

1 amount of any similar wealth tax legally imposed on, and paid by, the
2 person to another state for the same tax year on financial intangible
3 assets subject to tax under this chapter. Credit under this section
4 may not exceed the tax otherwise due under this chapter and may not
5 be carried forward or backward to another tax year. Unused credit is
6 not refundable.

7 (2) No credit may be claimed under this section if:

8 (a) The other state does not provide a substantially similar
9 credit against its wealth tax; or

10 (b) The taxpayer was domiciled in this state for a greater amount
11 of time than in the other state during the tax year.

12 (3) For purposes of this section, a similar wealth tax does not
13 include an estate tax, inheritance tax, net income tax, gross
14 receipts tax, other business activity tax, or similar tax. A tax on
15 the value of property may be considered to be a similar wealth tax
16 even though taxpayers are allowed a deduction for their liabilities
17 in computing the tax.

18 (4) For purposes of this section, "state" has the same meaning as
19 in RCW 82.04.462.

20 NEW SECTION. **Sec. 8.** INNOCENT SPOUSE RELIEF. (1) An individual
21 who is required to jointly file a return under this chapter may
22 petition the department for relief from joint and several liability
23 for an assessment of taxes due under this chapter, including
24 penalties and interest. Relief under this section is available only
25 to the extent that the individual establishes by clear, cogent, and
26 convincing evidence that he or she is entitled to relief under this
27 section. The petition must be made on a form and in a format
28 prescribed by the department.

29 (2) An individual is entitled to relief from joint and several
30 liability under this section only if he or she establishes that all
31 of the following criteria have been met:

32 (a) The individual jointly filed a return under this chapter for
33 a taxable year;

34 (b) There is an understatement of tax due on the jointly filed
35 return that is attributable to erroneous reporting of assets by the
36 nonpetitioning current or former spouse or state registered domestic
37 partner;

1 (c) The individual seeking relief establishes that he or she did
2 not know, and had no reason to know, that there was such an
3 understatement; and

4 (d) Taking into account all the facts and circumstances, it is
5 manifestly inequitable to hold the individual seeking relief liable
6 for the deficiency in tax for such taxable year attributable to such
7 understatement.

8 (3) Any determination under this section must be made without
9 regard to community property laws.

10 (4) If an individual seeking relief under this section
11 establishes that he or she did not know, and had no reason to know,
12 the extent of such understatement, then such individual must be
13 relieved of liability for tax not properly paid, including penalties
14 and interest, for such taxable year to the extent that such liability
15 is attributable to the portion of such understatement of which such
16 individual did not know and had no reason to know.

17 (5) An individual seeking relief under this section has the
18 burden of proof with respect to establishing the portion of any
19 deficiency allocable to such individual and the portion solely
20 allocable to the individual's current or former spouse or state
21 registered domestic partner.

22 (6)(a) Notwithstanding any other provision of this section, an
23 individual seeking relief under this section may not seek relief for
24 taxes on wealth derived from disqualified assets. For the purposes of
25 this subsection, "disqualified asset" means any asset or right to an
26 asset transferred between spouses or state registered domestic
27 partners required to jointly file a return under this chapter if the
28 principal purpose of the transfer was the avoidance of tax.

29 (b) Except as provided in (c) of this subsection (6), any
30 transfer of assets between two spouses or state registered domestic
31 partners, required to jointly file a return under this chapter, that
32 is made within 12 months prior to December 31st of the tax year for
33 which an individual is seeking relief under this section is presumed
34 to be made with the principle purpose of avoidance of tax.

35 (c) The presumption under (b) of this subsection (6) does not
36 apply to any transfer pursuant to a decree of divorce, dissolution of
37 a domestic partnership, separate maintenance action, or a written
38 instrument incident to such action, or to any transfer that an
39 individual establishes did not have tax avoidance as its principal
40 purpose.

1 (7) If relief is granted under this section, any asset giving
2 rise to a deficiency on a jointly filed return shall be allocated to
3 the individuals filing the return in the same manner as it would have
4 been allocated if the individuals had filed separate returns for the
5 taxable year. No relief granted under this section may reduce the
6 combined tax liability of individuals required to jointly file a
7 return under this chapter in any given tax year.

8 (8) Any relief granted under this section may not result in an
9 increase in the exemption amount under section 6(1) of this act.
10 Nothing in this section shall be construed to permit individuals
11 required to jointly file a return under this chapter to claim a
12 combined exemption under section 6(1) of this act exceeding the limit
13 established in section 6(1) of this act.

14 (9) An individual seeking relief under this section must file a
15 petition with the department no later than two years after the date
16 of the department's notification of the deficiency that is the
17 subject of the petition.

18 (10) The department may by rule provide a method or methods for
19 allocating assets between individuals required to jointly file
20 returns under this chapter in cases where one of the individuals is
21 granted relief under this section. The department may also by rule
22 provide substantiation requirements for an individual to establish
23 his or her eligibility for relief under this section.

24 (11) An individual seeking relief under this section may petition
25 the department for a review of a denial of such relief pursuant to
26 RCW 82.32.160.

27 **Sec. 9.** RCW 82.32.160 and 2007 c 111 s 110 are each amended to
28 read as follows:

29 (1) Any person having been issued a notice of additional taxes,
30 delinquent taxes, interest, or penalties assessed by the department,
31 may within thirty days after the issuance of the original notice of
32 the amount thereof or within the period covered by any extension of
33 the due date thereof granted by the department petition the
34 department in writing for a correction of the amount of the
35 assessment, and a conference for examination and review of the
36 assessment. The petition shall set forth the reasons why the
37 correction should be granted and the amount of the tax, interest, or
38 penalties, which the petitioner believes to be due. The department
39 shall promptly consider the petition and may grant or deny it. If

1 denied, the petitioner shall be notified by mail, or electronically
2 as provided in RCW 82.32.135, thereof forthwith. If a conference is
3 granted, the department shall fix the time and place therefor and
4 notify the petitioner thereof by mail or electronically as provided
5 in RCW 82.32.135. After the conference the department may make such
6 determination as may appear to it to be just and lawful and shall
7 mail a copy of its determination to the petitioner, or provide a copy
8 of its determination electronically as provided in RCW 82.32.135. If
9 no such petition is filed within the thirty-day period the assessment
10 covered by the notice shall become final.

11 (2) The procedures provided for herein shall apply also to a
12 notice denying, in whole or in part, an application for a pollution
13 control tax exemption and credit certificate, with such modifications
14 to such procedures established by departmental rules and regulations
15 as may be necessary to accommodate a claim for exemption or credit.

16 (3) The procedures provided in subsection (1) of this section, as
17 modified in this subsection (3), also apply to a notice denying, in
18 whole or in part, a petition for relief from joint and several
19 liability under section 8 of this act. A petition under this
20 subsection (3) is due within 30 days after the date the department
21 issued its denial of relief under section 8 of this act. The petition
22 must set forth the reasons why the department should grant the
23 petitioner's request for relief from joint and several liability. The
24 petition must also set forth the portion of any deficiency allocable
25 to the petitioner and the portion solely allocable to the
26 petitioner's current or former spouse or state registered domestic
27 partner.

28 NEW SECTION. Sec. 10. SUBSTANTIAL WEALTH TAX VALUATION
29 UNDERSTATEMENT PENALTY IMPOSED. (1) Except as otherwise provided in
30 this section, if any portion of an underpayment of tax due under this
31 chapter is due to a substantial wealth tax valuation understatement,
32 there must be added to the tax an amount equal to:

33 (a) In the case of any substantial wealth tax valuation
34 understatement that is a gross wealth tax valuation misstatement, 50
35 percent of the portion of the underpayment due to the valuation
36 understatement; or

37 (b) In all other cases, 30 percent of the portion of the
38 underpayment due to the valuation understatement.

1 (2) The penalty imposed under subsection (1) of this section does
2 not apply unless the portion of the underpayment attributable to
3 substantial wealth tax valuation understatements for the calendar
4 year exceeds \$5,000.

5 (3) The penalty imposed in this section is in addition to any
6 other applicable penalties imposed under this chapter or chapter
7 82.32 RCW on the same tax due, except for the penalty imposed in RCW
8 82.32.090(7).

9 (4) For purposes of this section, the following definitions
10 apply:

11 (a) "Gross wealth tax valuation misstatement" means the fair
12 market value of any financial intangible assets reported on a return
13 required by this chapter is 40 percent or less of the amount
14 determined to be the correct amount of such fair market value.

15 (b) "Substantial wealth tax valuation understatement" means the
16 fair market value of any financial intangible assets reported on a
17 return required by this chapter is 65 percent or less of the amount
18 determined to be the correct amount of such fair market value.

19 NEW SECTION. **Sec. 11.** ENFORCEMENT. Beginning in calendar year
20 2024, to the extent that sufficient funds are specifically
21 appropriated for this purpose, the department must initiate audits of
22 at least 10 percent of individuals who are registered with the
23 department to pay the tax imposed in this chapter, increasing to 15
24 percent in calendar year 2025, and 20 percent in calendar year 2026
25 and thereafter.

26 NEW SECTION. **Sec. 12.** TAX REVENUES TO BE DEPOSITED INTO THE
27 WASHINGTON TAX JUSTICE AND EQUITY FUND. All taxes collected under
28 this chapter, including associated penalties and interest, must be
29 deposited into the Washington tax justice and equity fund.

30 NEW SECTION. **Sec. 13.** RULE OF CONSTRUCTION. The legislature
31 intends that any provision of this chapter that is found to be
32 ambiguous by a court of competent jurisdiction or administrative
33 agency be construed in favor of application of the tax,
34 notwithstanding any contrary common law rule of statutory
35 construction.

1 NEW SECTION. **Sec. 14.** TITLE 84 RCW INAPPLICABLE TO WEALTH TAX.
2 None of the provisions of Title 84 RCW apply to this chapter.

3 **Sec. 15.** RCW 43.135.034 and 2020 c 218 s 4 are each amended to
4 read as follows:

5 (1) (a) Any action or combination of actions by the legislature
6 that raises taxes may be taken only if approved by a two-thirds vote
7 in both the house of representatives and the senate. Pursuant to the
8 referendum power set forth in Article II, section 1(b) of the state
9 Constitution, tax increases may be referred to the voters for their
10 approval or rejection at an election.

11 (b) For the purposes of this chapter, "raises taxes" means any
12 action or combination of actions by the state legislature that
13 increases state tax revenue deposited in any fund, budget, or
14 account, regardless of whether the revenues are deposited into the
15 general fund.

16 (2) (~~The state or any political subdivision~~) Political
17 subdivisions of the state may not impose any tax on intangible
18 property listed in RCW 84.36.070 as that statute exists on January 1,
19 1993.

20 **Sec. 16.** RCW 82.32.655 and 2010 1st sp.s. c 23 s 201 are each
21 amended to read as follows:

22 (1) It is the legislature's intent to require all taxpayers to
23 pay their fair share of taxes. To accomplish this purpose, it is the
24 legislature's intent to stop transactions or arrangements that are
25 designed to unfairly avoid taxes.

26 (2) The department must disregard, for tax purposes, the tax
27 avoidance transactions or arrangements that are described in
28 subsection (3) of this section. The department must deny the tax
29 benefit that would otherwise result from the tax avoidance
30 transaction or arrangement. In determining whether the department
31 must disregard a transaction or arrangement described under
32 subsection (3) of this section, the department may consider:

33 (a) Whether an arrangement or transaction changes in a meaningful
34 way, apart from its tax effects, the economic positions of the
35 participants in the arrangement when considered as a whole;

36 (b) Whether substantial nontax reasons exist for entering into an
37 arrangement or transaction;

1 (c) Whether an arrangement or transaction is a reasonable means
2 of accomplishing a substantial nontax purpose;

3 (d) An entities' relative contributions to the work that
4 generates income;

5 (e) The location where work is performed; and

6 (f) Other relevant factors.

7 (3) This section applies only to the following transactions or
8 arrangements:

9 (a) Arrangements that are, in form, a joint venture or similar
10 arrangement between a construction contractor and the owner or
11 developer of a construction project but that are, in substance,
12 substantially guaranteed payments for the purchase of construction
13 services characterized by a failure of the parties' agreement to
14 provide for the contractor to share substantial profits and bear
15 significant risk of loss in the venture;

16 (b) Arrangements through which a taxpayer attempts to avoid tax
17 under chapter 82.04 RCW by disguising income received, or otherwise
18 avoiding tax on income, from a person that is not affiliated with the
19 taxpayer from business activities that would be taxable in Washington
20 by moving that income to another entity that would not be taxable in
21 Washington; (~~and~~)

22 (c) Arrangements through which a taxpayer attempts to avoid tax
23 under chapter 82.08 or 82.12 RCW by engaging in a transaction to
24 disguise its purchase or use of tangible personal property by vesting
25 legal title or other ownership interest in another entity over which
26 the taxpayer exercises control in such a manner as to effectively
27 retain control of the tangible personal property; and

28 (d) Arrangements through which a taxpayer attempts to avoid tax
29 under chapter 84A.--- RCW (the new chapter created in section 20 of
30 this act) through intentional deception, such as by concealing assets
31 or evidence of the location of the taxpayer's domicile in this state,
32 by transferring assets prior to December 31st when the taxpayer
33 effectively retained control of the assets, or by effectively
34 converting taxable assets into nontaxable assets prior to December
35 31st when the taxpayer engages in a substantially offsetting
36 transaction. This subsection (3)(d) does not apply to substantial
37 wealth tax valuation understatements subject to the penalty in
38 section 10 of this act.

39 (4) In determining whether a transaction or arrangement comes
40 within the scope of subsection (3) of this section, the department is

1 not required to prove a taxpayer's subjective intent in engaging in
2 the transaction or arrangement.

3 (5) The department must adopt rules to assist in determining
4 whether a transaction or arrangement is within the scope of
5 subsection (3) of this section. The adoption of a rule as required
6 under this subsection is not a condition precedent for the
7 department's exercise of the authority provided in this section. Any
8 rules adopted under this section must include examples of
9 transactions that the department will disregard for tax purposes.

10 (6) This section does not affect the department's authority to
11 apply any other remedies available under statutory or common law.

12 (7) For purposes of this section, "affiliated" means under common
13 control. "Control" means the possession, directly or indirectly, of
14 more than (~~fifty~~) 50 percent of the power to direct or cause the
15 direction of the management and policies of a person, whether through
16 the ownership of voting shares, by contract, or otherwise.

17 NEW SECTION. **Sec. 17.** A new section is added to chapter 84.36
18 RCW to read as follows:

19 WASHINGTON TAX JUSTICE AND EQUITY FUND CREATED. The Washington
20 tax justice and equity fund is created in the state treasury. Moneys
21 in the account may only be used as specified in this section.

22 (1) First, moneys in the Washington tax justice and equity fund
23 must be used to offset reductions in revenue and administrative costs
24 resulting from the antidisplacement property tax exemption program in
25 chapter . . . (H-1414/21), Laws of 2021. This use is the highest
26 priority of moneys in the fund.

27 (2) After the requirements of subsection (1) of this section are
28 satisfied, expenditures from the Washington tax justice and equity
29 fund may be used for offsetting reductions in revenue due to
30 implementation of other policies such as the working families' tax
31 exemption, expansion of the small business tax credit, a replacement
32 to the business and occupation tax, and other tax fairness policies
33 such as those that may be suggested by the tax structure work group.

34 NEW SECTION. **Sec. 18.** EXEMPTION FROM CERTAIN LAWS APPLICABLE TO
35 NEW TAX PREFERENCES. The provisions of RCW 82.32.805 and 82.32.808 do
36 not apply to this act.

1 NEW SECTION. **Sec. 19.** SEVERABILITY CLAUSE. If any provision of
2 this act or its application to any person or circumstance is held
3 invalid, the remainder of the act or the application of the provision
4 to other persons or circumstances is not affected.

5 NEW SECTION. **Sec. 20.** CODIFICATION DIRECTION. Sections 1
6 through 8 and 10 through 14 of this act constitute a new chapter in a
7 new title to be codified as Title 84A RCW.

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