
SENATE BILL 5096

State of Washington**67th Legislature****2021 Regular Session**

By Senator Robinson; by request of Office of Financial Management
Prefiled 01/06/21.

1 AN ACT Relating to enacting an excise tax on gains from the sale
2 or exchange of certain capital assets; amending RCW 82.32.655; adding
3 a new section to chapter 82.04 RCW; adding a new section to chapter
4 82.32 RCW; adding a new chapter to Title 82 RCW; creating new
5 sections; prescribing penalties; and declaring an emergency.

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) "Accessory dwelling unit" means a separate habitable living
11 area that is subordinate to the principal single-family dwelling
12 unit, which is either internal to, attached to, or located on the
13 same property tax parcel as, the principal single-family dwelling
14 unit.

15 (2) "Adjusted capital gain" means federal net long-term capital
16 gain:

17 (a) Plus any amount of long-term capital loss from a sale or
18 exchange that is exempt from the tax imposed in this chapter, to the
19 extent such loss was included in calculating federal net long-term
20 capital gain;

1 (b) Plus any amount of long-term capital loss from a sale or
2 exchange that is not allocated to Washington under section 7 of this
3 act, to the extent such loss was included in calculating federal net
4 long-term capital gain;

5 (c) Plus any amount of loss carryforward from a sale or exchange
6 that is not allocated to Washington under section 7 of this act, to
7 the extent such loss was included in calculating federal net long-
8 term capital gain;

9 (d) Less any amount of long-term capital gain from a sale or
10 exchange that is not allocated to Washington under section 7 of this
11 act, to the extent such gain was included in calculating federal net
12 long-term capital gain; and

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

17 (3) "Capital asset" has the same meaning as provided by Title 26
18 U.S.C. Sec. 1221 of the internal revenue code and also includes any
19 other property if the sale or exchange of the property results in a
20 gain that is treated as a long-term capital gain under Title 26
21 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

22 (4) "Federal net long-term capital gain" means the net long-term
23 capital gain reportable for federal income tax purposes determined as
24 if Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 of the internal revenue
25 code did not exist.

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

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

31 (7) "Long-term capital asset" means a capital asset that is held
32 for more than one year.

33 (8) "Long-term capital gain" means gain from the sale or exchange
34 of a long-term capital asset.

35 (9) "Long-term capital loss" means a loss from the sale or
36 exchange of a long-term capital asset.

37 (10) (a) "Resident" means an individual:

38 (i) Who is domiciled in this state during the taxable year,
39 unless the individual (A) maintained no permanent place of abode in
40 this state during the entire taxable year, (B) maintained a permanent

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

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

7 (b) For purposes of this subsection, "day" includes any portion
8 of a day, except that a continuous period of 24 hours or less may not
9 constitute more than one day.

10 (c) An individual who is a resident under (a) of this subsection
11 is a resident for that portion of a taxable year in which the
12 individual was domiciled in this state or maintained a place of abode
13 in this state.

14 (11) "Taxable year" means the taxpayer's taxable year as
15 determined under the internal revenue code.

16 (12) "Taxpayer" means an individual subject to tax under this
17 chapter.

18 (13) "Washington capital gains" means an individual's adjusted
19 capital gains, less:

20 (a) \$25,000; or

21 (b) \$50,000 for individuals filing joint returns under this
22 chapter.

23 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2022, an excise
24 tax is imposed on the sale or exchange of long-term capital assets.
25 Only individuals are subject to payment of the tax, which equals nine
26 percent multiplied by an individual's Washington capital gains.

27 (2) If an individual's Washington capital gains are less than
28 zero for a taxable year, no tax is due under this section. No such
29 losses may be carried back or carried forward to another taxable
30 year. An individual may not adjust prior year Washington capital
31 gains for losses carried back for federal income tax purposes.

32 (3) (a) The tax imposed in this section applies to the sale or
33 exchange of long-term capital assets owned by the taxpayer, whether
34 the taxpayer was the legal or a beneficial owner of such assets at
35 the time of the sale or exchange. The tax applies when the Washington
36 capital gains are recognized by the taxpayer in accordance with this
37 chapter.

38 (b) For purposes of this chapter, an individual is considered to
39 be a beneficial owner of long-term capital assets held by an entity

1 that is a pass-through or disregarded entity for federal tax
2 purposes, such as a partnership, limited liability company, S
3 corporation, or trust, to the extent of the individual's ownership
4 interest in the entity as reported for federal income tax purposes.

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

7 (1) Any residential dwelling along with the land upon which the
8 dwelling is located. For the purposes of this subsection (1),
9 "residential dwelling" means property consisting solely of (a) a
10 single-family residence, a residential condominium unit, or a
11 residential cooperative unit, including any accessory dwelling unit
12 associated with such residence or residential unit; (b) a multifamily
13 residential building consisting of one or more common walls and fewer
14 than four units; or (c) a floating home as defined in RCW 82.45.032;

15 (2) Assets held under a retirement savings account under Title 26
16 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
17 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)
18 of the internal revenue code, a deferred compensation plan under
19 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
20 individual retirement account or individual retirement annuity
21 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
22 Roth individual retirement account described in Title 26 U.S.C. Sec.
23 408A of the internal revenue code, an employee defined contribution
24 program, an employee defined benefit plan, or a similar retirement
25 savings vehicle;

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

29 (4) Cattle, horses, or breeding livestock held for more than 12
30 months if for the taxable year of the sale or exchange, more than 50
31 percent of the taxpayer's gross income for the taxable year,
32 including from the sale or exchange of capital assets, is from
33 farming or ranching;

34 (5) Agricultural land by an individual who has regular,
35 continuous, and substantial involvement in the operation of the
36 agriculture that meets the criteria for material participation in an
37 activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue
38 code for the 10 years prior to the date of the sale or exchange of
39 the agricultural land;

1 (6) Property used in a trade or business if the property is
2 depreciable under Title 26 U.S.C. Sec. 167 of the internal revenue
3 code, or qualifies for expensing under Title 26 U.S.C. Sec. 179 of
4 the internal revenue code; and

5 (7) Timber, timberland, or the receipt of Washington capital
6 gains as dividends and distributions from real estate investment
7 trusts derived from gains from the sale or exchange of timber and
8 timberland. "Timber" means forest trees, standing or down, on
9 privately or publicly owned land, and includes Christmas trees and
10 short-rotation hardwoods. The sale or exchange of timber includes the
11 cutting or disposal of timber qualifying for capital gains treatment
12 under Title 26 U.S.C. Sec. 631 (a) or (b) of the internal revenue
13 code.

14 NEW SECTION. **Sec. 4.** The tax imposed under this chapter is in
15 addition to any other taxes imposed by the state or any of its
16 political subdivisions, or a municipal corporation, with respect to
17 the same sale or exchange, including the taxes imposed in or under
18 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
19 RCW.

20 NEW SECTION. **Sec. 5.** In computing tax, there may be deducted
21 from the measure of tax amounts that the state is prohibited from
22 taxing under the Constitution of this state or the Constitution or
23 laws of the United States.

24 NEW SECTION. **Sec. 6.** (1) A sole proprietor may deduct from the
25 measure of tax imposed under this chapter the amounts of adjusted
26 capital gains from the sale of long-term capital assets acquired and
27 used only for purposes of the trade or business of the sole
28 proprietor.

29 (2) The deduction claimed under subsection (1) of this section
30 may not reduce a sole proprietor's Washington capital gains below
31 zero.

32 (3) The amount of the adjusted capital gains deducted under
33 subsection (1) of this section may not exceed the sole proprietor's
34 net income reported for federal income tax purposes for the taxable
35 year in which the adjusted capital gains are recognized.

1 NEW SECTION. **Sec. 7.** (1) For purposes of the tax imposed under

2 this chapter, long-term capital gains and losses are allocated to
3 Washington as follows:

4 (a) Long-term capital gains or losses from the sale or exchange
5 of real property are allocated to this state if the real property is
6 located in this state or a majority of the fair market value of the
7 real property is located in this state.

8 (b) Long-term capital gains or losses from the sale or exchange
9 of tangible personal property are allocated to this state if the
10 property was located in this state at the time of the sale or
11 exchange. Adjusted capital gains from the sale or exchange of
12 tangible personal property are also allocated to this state even
13 though the property was not located in this state at the time of the
14 sale or exchange if:

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

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

20 (iii) The taxpayer is not subject to the payment of an income or
21 excise tax legally imposed on the adjusted capital gains by another
22 taxing jurisdiction.

23 (c) Long-term capital gains or losses derived from intangible
24 personal property are allocated to this state if the taxpayer was
25 domiciled in this state at the time the sale or exchange occurred.

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

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

1 NEW SECTION. **Sec. 8.** (1) (a) Except as otherwise provided in
2 this section or RCW 82.32.080, taxpayers owing tax under this chapter
3 must file, on forms prescribed by the department, a return with the
4 department on or before the date the taxpayer's federal income tax
5 return for the taxable year is required to be filed.

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

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

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

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

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

30 (5) If a taxpayer has obtained an extension of time for filing
31 the federal income tax return for the taxable year, the taxpayer is
32 entitled to the same extension of time for filing the return required
33 under this section if the taxpayer provides the department, before
34 the due date provided in subsection (1) of this section, the
35 extension confirmation number or other evidence satisfactory to the
36 department confirming the federal extension. An extension under this
37 subsection for the filing of a return under this chapter is not an
38 extension of time to pay the tax due under this chapter.

39 (6) (a) If any return due under subsection (1) of this section,
40 along with a copy of the federal income tax return, is not filed with

1 the department by the due date or any extension granted by the
2 department, the department must assess a penalty in the amount of
3 five percent of the tax due for the taxable year covered by the
4 return for each month or portion of a month that the return remains
5 unfiled. The total penalty assessed under this subsection may not
6 exceed 25 percent of the tax due for the taxable year covered by the
7 delinquent return. The penalty under this subsection is in addition
8 to any penalties assessed for the late payment of any tax due on the
9 return.

10 (b) The department must waive or cancel the penalty imposed under
11 this subsection if:

12 (i) The department is persuaded that the taxpayer's failure to
13 file the return by the due date was due to circumstances beyond the
14 taxpayer's control; or

15 (ii) The taxpayer has not been delinquent in filing any return
16 due under this section during the preceding five calendar years.

17 NEW SECTION. **Sec. 9.** (1) If the federal income tax liabilities
18 of both spouses are determined on a joint federal return for the
19 taxable year, they must file a joint return under this chapter.

20 (2) Except as otherwise provided in this subsection, if the
21 federal income tax liability of either spouse is determined on a
22 separate federal return for the taxable year, they must file separate
23 returns under this chapter. State registered domestic partners may
24 file a joint return under this chapter even if they filed separate
25 federal returns for the taxable year.

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

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

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

36 NEW SECTION. **Sec. 10.** To the extent not inconsistent with the
37 provisions of this chapter, the following statutes apply to the
38 administration of taxes imposed under this chapter: RCW 82.32.050,

1 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
2 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
3 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
4 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
5 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
6 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
7 82.32.655, 82.32.805, 82.32.808, and section 13 of this act.

8 NEW SECTION. **Sec. 11.** (1) Any taxpayer who knowingly attempts
9 to evade payment of the tax imposed under this chapter is guilty of a
10 class C felony as provided in chapter 9A.20 RCW.

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

14 NEW SECTION. **Sec. 12.** The legislature intends that any
15 provision of this chapter found to be ambiguous by any court of
16 competent jurisdiction or administrative agency be construed in favor
17 of application of the tax, notwithstanding any contrary common law
18 rule of statutory construction.

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

21 (1) To avoid taxing the same sale or exchange under both the
22 business and occupation tax and capital gains tax, a credit is
23 allowed against taxes due under this chapter on a sale or exchange
24 that is also subject to the tax imposed under section 2 of this act.
25 The credit is equal to the amount of tax imposed under this chapter
26 on such sale or exchange.

27 (2) The credit may be used against any tax due under this
28 chapter.

29 (3) The credit under this section is earned in regards to a sale
30 or exchange, and may be claimed against taxes due under this chapter,
31 for the tax reporting period in which the sale or exchange occurred.
32 The credit claimed for a tax reporting period may not exceed the tax
33 otherwise due under this chapter for that tax reporting period.
34 Unused credit may not be carried forward or backward to another tax
35 reporting period. No refunds may be granted for unused credit under
36 this section.

1 (4) The department must apply the credit first to taxes deposited
2 into the general fund. If any remaining credit reduces the amount of
3 taxes deposited into the workforce education investment account
4 established in RCW 43.79.195, the department must notify the state
5 treasurer of such amounts monthly, and the state treasurer must
6 transfer those amounts from the general fund to the workforce
7 education investment account.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.32
9 RCW to read as follows:

10 (1) The department may enter into reciprocal tax collection
11 agreements with the taxing officials of any other state imposing a
12 specified tax. Agreements authorized under this section must require
13 each state to offset delinquent specified taxes owed by a taxpayer to
14 one party to the agreement, including any associated penalties,
15 interest, or other additions, against refunds of overpaid specified
16 taxes owed to the taxpayer by the other party to the agreement. Such
17 agreements may also include provisions governing the sharing of
18 information relevant to the administration of specified taxes.
19 However, the department may not share return or tax information with
20 other states except as allowed under RCW 82.32.330. Likewise, the
21 department may not share federal tax information with other states
22 without the express written consent of the internal revenue service.

23 (2) The definitions in this subsection apply throughout this
24 section unless the context clearly requires otherwise.

25 (a) "Specified taxes" means generally applicable state and local
26 sales taxes and use taxes, broad-based state gross receipts taxes,
27 state income taxes, and stand-alone state taxes on capital gains or
28 interest and dividends. "Specified taxes" includes, but is not
29 limited to, the taxes imposed in or under the authority of
30 chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new
31 chapter created in section 17 of this act), and similar taxes imposed
32 by another state. For purposes of this subsection (2)(a), "gross
33 receipts tax," "income tax," "sales tax," and "use tax" have the same
34 meanings as provided in RCW 82.56.010.

35 (b) "State" has the same meaning as provided in RCW 82.56.010.

36 **Sec. 15.** RCW 82.32.655 and 2010 1st sp.s. c 23 s 201 are each
37 amended to read as follows:

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

5 (2) The department must disregard, for tax purposes, the tax
6 avoidance transactions or arrangements that are described in
7 subsection (3) of this section. The department must deny the tax
8 benefit that would otherwise result from the tax avoidance
9 transaction or arrangement. In determining whether the department
10 must disregard a transaction or arrangement described under
11 subsection (3) of this section, the department may consider:

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

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

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

19 (d) An entities' relative contributions to the work that
20 generates income;

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

22 (f) Other relevant factors.

23 (3) This section applies only to the following transactions or
24 arrangements:

25 (a) Arrangements that are, in form, a joint venture or similar
26 arrangement between a construction contractor and the owner or
27 developer of a construction project but that are, in substance,
28 substantially guaranteed payments for the purchase of construction
29 services characterized by a failure of the parties' agreement to
30 provide for the contractor to share substantial profits and bear
31 significant risk of loss in the venture;

32 (b) Arrangements through which a taxpayer attempts to avoid tax
33 under chapter 82.04 RCW by disguising income received, or otherwise
34 avoiding tax on income, from a person that is not affiliated with the
35 taxpayer from business activities that would be taxable in Washington
36 by moving that income to another entity that would not be taxable in
37 Washington; ((and))

38 (c) Arrangements through which a taxpayer attempts to avoid tax
39 under chapter 82.08 or 82.12 RCW by engaging in a transaction to
40 disguise its purchase or use of tangible personal property by vesting

1 legal title or other ownership interest in another entity over which
2 the taxpayer exercises control in such a manner as to effectively
3 retain control of the tangible personal property; and

4 (d) Arrangements through which a taxpayer attempts to avoid tax
5 imposed in section 2 of this act through misuse of the deduction in
6 section 6 of this act.

7 (4) In determining whether a transaction or arrangement comes
8 within the scope of subsection (3) of this section, the department is
9 not required to prove a taxpayer's subjective intent in engaging in
10 the transaction or arrangement.

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

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

20 (7) For purposes of this section, "affiliated" means under common
21 control. "Control" means the possession, directly or indirectly, of
22 more than fifty percent of the power to direct or cause the direction
23 of the management and policies of a person, whether through the
24 ownership of voting shares, by contract, or otherwise.

25 NEW SECTION. **Sec. 16.** The provisions of RCW 82.32.805 and
26 82.32.808 do not apply to this act.

27 NEW SECTION. **Sec. 17.** Sections 1 through 12 of this act
28 constitute a new chapter in Title 82 RCW.

29 NEW SECTION. **Sec. 18.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 19.** (1) If a court of competent jurisdiction,
34 in a final judgment not subject to appeal, adjudges section 2 of this
35 act unconstitutional, or otherwise invalid, in its entirety, section
36 13 of this act is null and void in its entirety. Any credits

1 previously claimed under section 13 of this act must be repaid within
2 30 days of the department of revenue's notice to the taxpayer of the
3 amount due.

4 (2) If the taxpayer fails to repay the credit by the due date,
5 interest and penalties as provided in chapter 82.32 RCW apply to the
6 deficiency.

7 **NEW SECTION.** **Sec. 20.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of
9 the state government and its existing public institutions, and takes
10 effect immediately.

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