
SUBSTITUTE SENATE BILL 5096

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Robinson, Hunt, Nguyen, and Wilson, C.; by request of Office of Financial Management)

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

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

7 **Part I**

8 **Capital Gains Tax**

9 NEW SECTION. **Sec. 101.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

12 (1) "Adjusted capital gain" means federal net long-term capital
13 gain:

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

18 (b) Plus any amount of long-term capital loss from a sale or
19 exchange that is not allocated to Washington under section 107 of

1 this act, to the extent such loss was included in calculating federal
2 net long-term capital gain;

3 (c) Plus any amount of loss carryforward from a sale or exchange
4 that is not allocated to Washington under section 107 of this act, to
5 the extent such loss was included in calculating federal net long-
6 term capital gain;

7 (d) Less any amount of long-term capital gain from a sale or
8 exchange that is not allocated to Washington under section 107 of
9 this act, to the extent such gain was included in calculating federal
10 net long-term capital gain; and

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

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

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

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

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

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

31 (7) "Long-term capital gain" means gain from the sale or exchange
32 of a long-term capital asset.

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

35 (9) "Real estate" has the same meaning as in RCW 82.45.032.

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

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

1 and (C) spent in the aggregate not more than 30 days of the taxable
2 year in this state; or

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

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

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

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

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

17 (13) "Washington capital gains" means an individual's adjusted
18 capital gain less \$250,000 for each return filed under this chapter.

19 NEW SECTION. **Sec. 102.** (1) Beginning January 1, 2022, an excise
20 tax is imposed on the sale or exchange of long-term capital assets.
21 Only individuals are subject to payment of the tax, which equals
22 seven percent multiplied by an individual's Washington capital gains.

23 (2) If an individual's Washington capital gains are less than
24 zero for a taxable year, no tax is due under this section and no such
25 amount is allowed as a carryover for use in the calculation of that
26 individual's adjusted capital gain, as defined in section 101(1) of
27 this act, for any taxable year. To the extent that a loss
28 carryforward is included in the calculation of an individual's
29 federal net long-term capital gain and that loss carryforward is
30 directly attributable to losses from sales or exchanges allocated to
31 this state under section 107 of this act, the loss carryforward is
32 included in the calculation of that individual's adjusted capital
33 gain for the purposes of this chapter. An individual may not include
34 any losses carried back for federal income tax purposes in the
35 calculation of that individual's adjusted capital gain for any
36 taxable year.

37 (3)(a) The tax imposed in this section applies to the sale or
38 exchange of long-term capital assets owned by the taxpayer, whether
39 the taxpayer was the legal or beneficial owner of such assets at the

1 time of the sale or exchange. The tax applies when the Washington
2 capital gains are recognized by the taxpayer in accordance with this
3 chapter.

4 (b) For purposes of this chapter, an individual is considered to
5 be a beneficial owner of long-term capital assets held by an entity
6 that is a pass-through or disregarded entity for federal tax
7 purposes, such as a partnership, limited liability company, S
8 corporation, or trust, to the extent of the individual's ownership
9 interest in the entity as reported for federal income tax purposes.

10 NEW SECTION. **Sec. 103.** This chapter does not apply to the sale
11 or exchange of:

12 (1) All real estate;

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

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

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

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

38 (6) Property used in a trade or business if the property is
39 depreciable under Title 26 U.S.C. Sec. 167 of the internal revenue

1 code, or qualifies for expensing under Title 26 U.S.C. Sec. 179 of
2 the internal revenue code;

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

12 (8) Goodwill received from the sale of an auto dealership
13 licensed under chapter 46.70 RCW whose activities are subject to
14 chapter 46.96 RCW.

15 NEW SECTION. **Sec. 104.** The tax imposed under this chapter is in
16 addition to any other taxes imposed by the state or any of its
17 political subdivisions, or a municipal corporation, with respect to
18 the same sale or exchange, including the taxes imposed in, or under
19 the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
20 RCW.

21 NEW SECTION. **Sec. 105.** In computing tax, there may be deducted
22 from the measure of tax amounts that the state is prohibited from
23 taxing under the Constitution of this state or the Constitution or
24 laws of the United States.

25 NEW SECTION. **Sec. 106.** (1) In computing tax under this chapter
26 for a taxable year, a taxpayer may deduct from the measure of tax the
27 amount of adjusted capital gain derived in the taxable year from the
28 sale of substantially all of the fair market value of the assets of,
29 or the transfer of substantially all of the taxpayer's interest in, a
30 qualified family-owned small business, to the extent that such
31 adjusted capital gain would otherwise be included in the taxpayer's
32 Washington capital gains.

33 (2) For purposes of this section, the following definitions
34 apply:

35 (a) "Assets" means real property and personal property, including
36 tangible personal property and intangible property.

1 (b) "Family" means the same as "member of the family" in RCW
2 83.100.046.

3 (c) (i) "Materially participated" means an individual was involved
4 in the operation of a business on a basis that is regular,
5 continuous, and substantial.

6 (ii) The term "materially participated" must be interpreted
7 consistently with the applicable treasury regulations for Title 26
8 U.S.C. Sec. 469 of the internal revenue code, to the extent that such
9 interpretation does not conflict with any provision of this section.

10 (d) "Qualified family-owned small business" means a business:

11 (i) In which the taxpayer held a qualifying interest for at least
12 eight years immediately preceding the sale or transfer described in
13 subsection (1) of this section;

14 (ii) In which the taxpayer or his or her family member materially
15 participated in operating the business for at least five of the eight
16 years immediately preceding the sale or transfer described in
17 subsection (1) of this section, unless such sale or transfer was to a
18 qualified heir;

19 (iii) (A) That had no more than 50 full-time employees at any time
20 during the 12-month period immediately preceding the sale or transfer
21 described in subsection (1) of this section.

22 (B) For purposes of this subsection (2) (d) (iii), "full-time
23 employee" means an employee who is, or any combination of employees
24 who are, paid by the business for at least 1,820 hours of employment,
25 including paid leave, for the 12-month period described in
26 (d) (iii) (A) of this subsection (2); and

27 (iv) That had worldwide gross revenue of \$6,000,000 or less in
28 the 12-month period immediately preceding the sale or transfer
29 described in subsection (1) of this section.

30 (e) "Qualified heir" means a member of the taxpayer's family.

31 (f) "Qualifying interest" means:

32 (i) An interest as a proprietor in a business carried on as a
33 sole proprietorship; or

34 (ii) An interest in a business if at least:

35 (A) Fifty percent of the business is owned, directly or
36 indirectly, by the taxpayer and members of the taxpayer's family;

37 (B) Thirty percent of the business is owned, directly or
38 indirectly, by the taxpayer and members of the taxpayer's family, and
39 at least:

- 1 (I) Seventy percent of the business is owned, directly or
2 indirectly, by members of two families; or
3 (II) Ninety percent of the business is owned, directly or
4 indirectly, by members of three families.
5 (g) "Substantially all" means at least 90 percent.

6 NEW SECTION. **Sec. 107.** (1) For purposes of the tax imposed
7 under this chapter, long-term capital gains and losses are allocated
8 to Washington as follows:

9 (a) Long-term capital gains or losses from the sale or exchange
10 of real property are allocated to this state if the real property is
11 located in this state or a majority of the fair market value of the
12 real property is located in this state.

13 (b) Long-term capital gains or losses from the sale or exchange
14 of tangible personal property are allocated to this state if the
15 property was located in this state at the time of the sale or
16 exchange. Long-term capital gains or losses from the sale or exchange
17 of tangible personal property are also allocated to this state even
18 though the property was not located in this state at the time of the
19 sale or exchange if:

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

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

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

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

31 (2)(a) A credit is allowed against the tax imposed in section 102
32 of this act equal to the amount of any legally imposed income or
33 excise tax paid by the taxpayer to another taxing jurisdiction on
34 capital gains derived from capital assets within the other taxing
35 jurisdiction to the extent such capital gains are included in the
36 taxpayer's Washington capital gains. The amount of credit under this
37 subsection may not exceed the total amount of tax due under this
38 chapter, and there is no carryback or carryforward of any unused
39 credits.

1 (b) As used in this section, "taxing jurisdiction" means a state
2 of the United States other than the state of Washington, the District
3 of Columbia, the Commonwealth of Puerto Rico, any territory or
4 possession of the United States, or any foreign country or political
5 subdivision of a foreign country.

6 NEW SECTION. **Sec. 108.** (1)(a) Except as otherwise provided in
7 this section or RCW 82.32.080, taxpayers owing tax under this chapter
8 must file, on forms prescribed by the department, a return with the
9 department on or before the date the taxpayer's federal income tax
10 return for the taxable year is required to be filed.

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

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

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

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

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

35 (5) If a taxpayer has obtained an extension of time for filing
36 the federal income tax return for the taxable year, the taxpayer is
37 entitled to the same extension of time for filing the return required
38 under this section if the taxpayer provides the department, before
39 the due date provided in subsection (1) of this section, the

1 extension confirmation number or other evidence satisfactory to the
2 department confirming the federal extension. An extension under this
3 subsection for the filing of a return under this chapter is not an
4 extension of time to pay the tax due under this chapter.

5 (6) (a) If any return due under subsection (1) of this section,
6 along with a copy of the federal income tax return, is not filed with
7 the department by the due date or any extension granted by the
8 department, the department must assess a penalty in the amount of
9 five percent of the tax due for the taxable year covered by the
10 return for each month or portion of a month that the return remains
11 unfiled. The total penalty assessed under this subsection may not
12 exceed 25 percent of the tax due for the taxable year covered by the
13 delinquent return. The penalty under this subsection is in addition
14 to any penalties assessed for the late payment of any tax due on the
15 return.

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

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

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

23 NEW SECTION. **Sec. 109.** (1) If the federal income tax
24 liabilities of both spouses are determined on a joint federal return
25 for the taxable year, they must file a joint return under this
26 chapter.

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

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

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

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

5 NEW SECTION. **Sec. 110.** Except as otherwise provided by law and
6 to the extent not inconsistent with the provisions of this chapter,
7 chapter 82.32 RCW applies to the administration of taxes imposed
8 under this chapter.

9 NEW SECTION. **Sec. 111.** (1) Any taxpayer who knowingly attempts
10 to evade payment of the tax imposed under this chapter is guilty of a
11 class C felony as provided in chapter 9A.20 RCW.

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

15 NEW SECTION. **Sec. 112.** The legislature intends that any
16 provision of this chapter found to be ambiguous by any court of
17 competent jurisdiction or administrative agency be construed in favor
18 of application of the tax, notwithstanding any contrary common law
19 rule of statutory construction.

20 NEW SECTION. **Sec. 113.** A new section is added to chapter 82.04
21 RCW to read as follows:

22 (1) To avoid taxing the same sale or exchange under both the
23 business and occupation tax and capital gains tax, a credit is
24 allowed against taxes due under this chapter on a sale or exchange
25 that is also subject to the tax imposed under section 102 of this
26 act. The credit is equal to the amount of tax imposed under this
27 chapter on such sale or exchange.

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

30 (3) The credit under this section is earned in regards to a sale
31 or exchange, and may be claimed against taxes due under this chapter,
32 for the tax reporting period in which the sale or exchange occurred.
33 The credit claimed for a tax reporting period may not exceed the tax
34 otherwise due under this chapter for that tax reporting period.
35 Unused credit may not be carried forward or backward to another tax

1 reporting period. No refunds may be granted for unused credit under
2 this section.

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

10 NEW SECTION. **Sec. 114.** A new section is added to chapter 82.32
11 RCW to read as follows:

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

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

27 (a) "Specified taxes" means generally applicable state and local
28 sales taxes and use taxes, broad-based state gross receipts taxes,
29 state income taxes, and stand-alone state taxes on capital gains or
30 interest and dividends. "Specified taxes" includes, but is not
31 limited to, the taxes imposed in, or under the authority of, chapters
32 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
33 created in section 202 of this act), and similar taxes imposed by
34 another state. For purposes of this subsection (2)(a), "gross
35 receipts tax," "income tax," "sales tax," and "use tax" have the same
36 meanings as provided in RCW 82.56.010.

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

