S-0870.1

SENATE BILL 5426

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

By Senator Hunt

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

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

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

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

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

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

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

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

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

(7) The legislature further intends to achieve equity by using revenues generated by the Washington state wealth tax to offer credits against taxes paid disproportionately by low-income and middle-income families and small start-up and low-margin businesses.

(8) Finally, the legislature intends to invest the revenues generated by the Washington state wealth tax to fund other critical services, such as education, child care, public health, housing, and public safety. The legislature finds that if Washington state wants to continue its role as a global leader and attract, retain, and grow the most innovative, creative, and talented residents in the world, it must fund community investments and ensure that our state is a place where every resident has a fair and equitable chance to not only survive, but thrive.

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

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

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

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

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

(5) "Domicile" means:

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

(b) For purposes of an artificial person:

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

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

(6) "Fair market value" means the amount of money that a willing buyer would pay to a willing seller for property in an arms-length transaction if both parties were fully informed about all advantages

and disadvantages of the property and neither party is acting under a compulsion to enter into the transaction.

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

(a) Cash and cash equivalents;

(b) Financial investments such as annuities, bonds, treasury bills, mutual funds or index funds, stocks, publicly traded options, futures contracts, commodities contracts, put and call options, pension funds, mortgages and liabilities secured by real property, certificates of interest in gold and other precious metals or gems, and other similar investments;

(c) Units of ownership in a subchapter K entity; and

(d) Similar intangible assets.

(8) "Intangible assets" means both financial intangible assets and nonfinancial intangible assets.

(9) "Nonfinancial intangible assets" means all intangible property other than financial intangible assets, such as trademarks, trade names, brand names, patents, copyrights, trade secrets, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, integrity of a business, private nongovernmental personal service contracts, and private nongovernmental athletic or sports franchises or agreements.

(10) "Person" means any natural person or artificial person.

(11) "Subchapter K entity" means a partnership, including a limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, joint venture, or any other entity subject to subchapter K of the internal revenue code, 26 U.S.C. Secs. 701 through 761, including a single member limited liability company.

(12) "Tax year" means the calendar year immediately preceding the year in which the tax under this chapter is due and payable to the department.

(13) "Taxable worldwide wealth" means a person's worldwide wealth, excluding the fair market value of any intangible property exempt from the tax imposed under this chapter.

(14) "Washington resident" or "resident" means the following:

(a) Any artificial person domiciled in this state at any time during the tax year; or

(b) A natural person:

(i) Who is domiciled in this state at any time during the tax year, unless that person (A) maintained no permanent place of abode in this state during the entire tax year, (B) maintained a permanent place of abode outside of this state during the entire tax year, and (C) spent in the aggregate not more than 30 days of the tax year in this state; or

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

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

(b) For purposes of this subsection:

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

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

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

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

(2) The tax imposed under this section applies to a resident's taxable worldwide wealth as of December 31st of the tax year.

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

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

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

(2) Spouses and domestic partners must jointly file returns required under this section.

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

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

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

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

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

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

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

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

(1) Up to $1,000,000,000 of a resident's financial intangible assets. Only one such exemption may be claimed on a jointly filed return required under section 4 of this act;

(2) Nonfinancial intangible assets;

(3) Worldwide wealth of artificial persons. However, the exemption provided in this subsection (3) does not apply to any financial intangible assets included in a natural person's worldwide wealth;

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

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

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

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

NEW SECTION. **Sec. 7.** CREDIT FOR SIMILAR WEALTH TAX PAID TO ANOTHER STATE. (1) Except as provided in subsection (2) of this section, a person subject to tax under this chapter is allowed a credit against the tax otherwise due under this chapter equal to the amount of any similar wealth tax legally imposed on, and paid by, the person to another state for the same tax year on financial intangible assets subject to tax under this chapter. Credit under this section may not exceed the tax otherwise due under this chapter and may not be carried forward or backward to another tax year. Unused credit is not refundable.

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

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

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

(3) For purposes of this section, a similar wealth tax does not include an estate tax, inheritance tax, net income tax, gross receipts tax, other business activity tax, or similar tax.

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

NEW SECTION. **Sec. 8.** TAX REVENUES TO BE DEPOSITED INTO THE GENERAL FUND. All revenues collected under this chapter must be deposited into the state general fund.

NEW SECTION. **Sec. 9.** RULE OF CONSTRUCTION. The legislature intends that any provision of this chapter that is found to be ambiguous by a court of competent jurisdiction or administrative agency be construed in favor of application of the tax, notwithstanding any contrary common law rule of statutory construction.

NEW SECTION. **Sec. 10.** TITLE 84 RCW INAPPLICABLE TO WEALTH TAX. None of the provisions of Title 84 RCW apply to this chapter.

Sec. 11. RCW 43.135.034 and 2020 c 218 s 4 are each amended to read as follows:

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

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

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

Sec. 12. RCW 82.32.655 and 2010 1st sp.s. c 23 s 201 are each amended to read as follows:

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

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

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

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

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

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

(e) The location where work is performed; and

(f) Other relevant factors.

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

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

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

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

(d) Arrangements through which a taxpayer attempts to avoid tax under chapter 84A.--- RCW (the new chapter created in section 15 of this act) through intentional deception, such as by concealing assets or evidence of the location of the taxpayer's domicile in this state, by transferring assets prior to December 31st when the taxpayer effectively retained control of the assets, or by effectively converting taxable assets into nontaxable assets prior to December 31st when the taxpayer engages in a substantially offsetting transaction.

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

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

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

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

NEW SECTION. **Sec. 13.** EXEMPTION FROM CERTAIN LAWS APPLICABLE TO NEW TAX PREFERENCES. The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 14.** SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 15.** CODIFICATION DIRECTION. Sections 1 through 10 of this act constitute a new chapter in a new title to be codified as Title 84A RCW.

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