
SENATE BILL 5961

State of Washington

66th Legislature

2019 Regular Session

By Senators Saldaña, Kuderer, and Dhingra

1 AN ACT Relating to improving the equity and sustainability of
2 Washington's tax structure; amending RCW 82.08.0206; adding a new
3 section to chapter 82.04 RCW; adding a new section to chapter 82.32
4 RCW; adding a new chapter to Title 82 RCW; creating a new section;
5 prescribing penalties; providing an effective date; and providing a
6 contingent expiration date.

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

8 **Part I**
9 **Capital Gains Tax**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (9) "Taxpayer" means an individual subject to tax under this
36 chapter.

37 (10) "Washington capital gains" means an individual's adjusted
38 capital gains allocated to this state as provided in section 107 of
39 this act, less:

40 (a) Twenty-five thousand dollars; or

1 (b) Fifty thousand dollars for individuals filing joint returns
2 under this chapter.

3 NEW SECTION. **Sec. 102.** (1) Beginning January 1, 2020, a tax is
4 imposed on all individuals for the privilege of selling or exchanging
5 long-term capital assets, or receiving Washington capital gains. The
6 tax equals seven and nine-tenths percent multiplied by the
7 individual's Washington capital gains.

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

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

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

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

25 (1) Any residential dwelling along with the land upon which the
26 dwelling is located. For the purposes of this subsection (1),
27 "residential dwelling" means property consisting solely of (a) a
28 single-family residence, a residential condominium unit, or a
29 residential cooperative unit, including any accessory dwelling unit
30 associated with such residence or residential unit, (b) a multifamily
31 residential building consisting of one or more common walls and fewer
32 than four units, or (c) a floating home as defined in RCW 82.45.032;

33 (2) Assets held under a retirement savings account under Title 26
34 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
35 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)
36 of the internal revenue code, a deferred compensation plan under
37 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
38 individual retirement account or individual retirement annuity

1 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
2 Roth individual retirement account described in Title 26 U.S.C. Sec.
3 408A of the internal revenue code, an employee defined contribution
4 program, an employee defined benefit plan, or a similar retirement
5 savings vehicle;

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

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

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

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

23 (7) Timber, timberland, or the receipt of Washington capital
24 gains as dividends and distributions from real estate investment
25 trusts derived from gains from the sale or exchange of timber.
26 "Timber" means forest trees, standing or down, on privately or
27 publicly owned land, and includes Christmas trees and short-rotation
28 hardwoods. The sale or exchange of timber includes the cutting or
29 disposal of timber qualifying for capital gains treatment under Title
30 26 U.S.C. Sec. 631(a) or (b) of the internal revenue code;

31 (8)(a) Affordable rental housing to a nonprofit corporation or
32 housing authority.

33 (b) The definitions in this subsection (8)(b) apply to this
34 subsection (8).

35 (i) "Affordable rental housing" means multifamily rental housing
36 where the property is acquired by the nonprofit organization or
37 housing authority as part of a public investment or subsidy program
38 with rent or income restrictions.

39 (ii) "Housing authority" means a public corporation created under
40 chapter 35.82 RCW.

1 (iii) "Nonprofit corporation" means a corporation created under
2 chapter 24.03 RCW;

3 (9) Residences by a nonprofit entity to a low-income household if
4 the residence at the time of transfer qualified for the exemption
5 under RCW 84.36.049. "Residence," "nonprofit entity," and "low-income
6 household" have the meanings provided in RCW 84.36.049.

7 NEW SECTION. **Sec. 104.** The tax imposed under this chapter is in
8 addition to any other taxes imposed by the state or any of its
9 political subdivisions, or a municipal corporation, with respect to
10 the same sale or exchange, including the taxes imposed in or under
11 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
12 RCW.

13 NEW SECTION. **Sec. 105.** In computing tax, there may be deducted
14 from the measure of tax amounts that the state is prohibited from
15 taxing under the Constitution of this state or the Constitution or
16 laws of the United States.

17 NEW SECTION. **Sec. 106.** (1) In computing tax under this chapter
18 for a taxable year, a taxpayer may deduct from the measure of tax the
19 amount of adjusted capital gain derived in the taxable year from the
20 sale of substantially all of the fair market value of the assets of,
21 or the transfer of substantially all of the taxpayer's interest in, a
22 qualified family-owned small business.

23 (2) For purposes of this section, the following definitions
24 apply:

25 (a) "Assets" means real property and personal property, including
26 tangible personal property and intangible property.

27 (b) "Family" means the same as "member of the family" in RCW
28 83.100.046.

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

32 (ii) The term "materially participated" must be interpreted
33 consistently with the applicable treasury regulations for section 469
34 of the internal revenue code, to the extent that such interpretation
35 does not conflict with any provision of this section.

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

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

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

9 (iii)(A) That had no more than fifty full-time employees at any
10 time during the twelve-month period immediately preceding the sale or
11 transfer described in subsection (1) of this section.

12 (B) For purposes of this subsection (2)(d)(iii), "full-time
13 employee" means an employee who is, or any combination of employees
14 who are, paid by the business for at least one thousand eight hundred
15 twenty hours of employment, including paid leave, for the twelve-
16 month period described in (d)(iii)(A) of this subsection (2); and

17 (iv) That had worldwide gross revenue of six million dollars or
18 less in the twelve-month period immediately preceding the sale or
19 transfer described in subsection (1) of this section.

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

21 (f) "Qualifying interest" means:

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

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

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

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

30 (I) Seventy percent of the business is owned, directly or
31 indirectly, by members of two families; or

32 (II) Ninety percent of the business is owned, directly or
33 indirectly, by members of three families.

34 (g) "Substantially all" means at least ninety percent.

35 NEW SECTION. **Sec. 107.** (1) For purposes of the tax imposed
36 under this chapter, adjusted capital gains are allocated as follows:

37 (a) Adjusted capital gains from the sale or exchange of real
38 property are allocated to this state if the real property is located

1 in this state or a majority of the fair market value of the real
2 property is located in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) Except as otherwise provided in this subsection, if the
8 federal income tax liability of either spouse is determined on a
9 separate federal return for the taxable year, they must file separate
10 returns under this chapter. State registered domestic partners may
11 file a joint return under this chapter even if they filed separate
12 federal returns for the taxable year.

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

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

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

23 NEW SECTION. **Sec. 110.** To the extent not inconsistent with the
24 provisions of this chapter, the following statutes apply to the
25 administration of taxes imposed under this chapter: RCW 82.32.050,
26 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
27 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
28 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
29 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
30 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
31 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
32 82.32.805, 82.32.808, and section 113 of this act.

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

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

4 NEW SECTION. **Sec. 112.** Notwithstanding any common law rule of
5 strict construction of statutes imposing taxes, this chapter, being
6 necessary for the welfare of the state and its inhabitants, must be
7 liberally construed in support of application of the tax.

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

10 A deduction is allowed against a person's gross income of the
11 business to the extent necessary to avoid taxing the same amounts
12 under this chapter and section 102 of this act.

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

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

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

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

1 receipts tax," "income tax," "sales tax," and "use tax" have the same
2 meanings as provided in RCW 82.56.010.

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

4 NEW SECTION. **Sec. 115.** All revenue from taxes collected under
5 this chapter, including penalties and interest on such taxes, must be
6 deposited into the general fund of the state. A portion of the
7 revenue from taxes collected under this chapter that are deposited in
8 the general fund must be used to fully implement and fund the working
9 families' tax exemption under RCW 82.08.0206.

10 **Sec. 116.** RCW 82.08.0206 and 2008 c 325 s 2 are each amended to
11 read as follows:

12 (1) A working families' tax exemption, in the form of a
13 remittance tax due under this chapter and chapter 82.12 RCW, is
14 provided to eligible low-income persons for sales taxes paid under
15 this chapter after January 1, (~~(2008)~~) 2020.

16 (2) For purposes of the exemption in this section, an eligible
17 low-income person is:

18 (a) An individual, or an individual and that individual's spouse
19 if they file a federal joint income tax return;

20 (b) (~~{An individual who}~~) An individual who is eligible for,
21 and is granted, the credit provided in Title 26 U.S.C. Sec. 32; and

22 (c) (~~{An individual who}~~) An individual who properly files a
23 federal income tax return as a Washington resident, and has been a
24 resident of the state of Washington more than one hundred eighty days
25 of the year for which the exemption is claimed.

26 (3) (~~{For remittances made in 2009 and 2010, the working~~
27 ~~families' tax exemption for the prior year is a retail sales tax~~
28 ~~exemption equal to the greater of five percent of the credit granted~~
29 ~~as a result of Title 26 U.S.C. Sec. 32 in the most recent year for~~
30 ~~which data is available or twenty-five dollars.}) For (~~(2011)~~) 2021
31 and thereafter, the working families' tax exemption for the prior
32 year is equal to the greater of ten percent of the credit granted as
33 a result of Title 26 U.S.C. Sec. 32 in the most recent year for which
34 data is available or fifty dollars.~~

35 (4) (~~{For any fiscal period, the working families' tax exemption~~
36 ~~authorized under this section shall be approved by the legislature in~~
37 ~~the state omnibus appropriations act before persons may claim the~~
38 ~~exemption during the fiscal period.~~

1 ~~(5)~~) The working families' tax exemption (~~shall~~) must be
2 administered as provided in this subsection.

3 (a) An eligible low-income person claiming an exemption under
4 this section must pay the tax imposed under chapters 82.08, 82.12,
5 and 82.14 RCW in the year for which the exemption is claimed. The
6 eligible low-income person may then apply to the department for the
7 remittance as calculated under subsection (3) of this section.

8 (b) Application (~~shall~~) must be made to the department in a
9 form and manner determined by the department, but the department must
10 provide alternative filing methods for applicants who do not have
11 access to electronic filing.

12 (c) Application for the exemption remittance under this section
13 must be made in the year following the year for which the federal
14 return was filed(~~, but in no case may any remittance be provided for~~
15 ~~any period before January 1, 2008~~). The department may use the best
16 available data to process the exemption remittance. The department
17 (~~shall~~) must begin accepting applications October 1, (~~2009~~) 2021.

18 (d) The department (~~shall~~) must review the application and
19 determine eligibility for the working families' tax exemption based
20 on information provided by the applicant and through audit and other
21 administrative records, including, when it deems it necessary,
22 verification through internal revenue service data.

23 (e) The department (~~shall~~) must remit the exempted amounts to
24 eligible low-income persons who submitted applications. Remittances
25 may be made by electronic funds transfer or other means.

26 (f) The department may, in conjunction with other agencies or
27 organizations, design and implement a public information campaign to
28 inform potentially eligible persons of the existence of and
29 requirements for this exemption.

30 (g) The department may contact persons who appear to be eligible
31 low-income persons as a result of information received from the
32 internal revenue service under such conditions and requirements as
33 the internal revenue service may by law require.

34 ~~((6))~~ (5) The provisions of chapter 82.32 RCW apply to the
35 exemption in this section.

36 ~~((7))~~ (6) The department may adopt rules necessary to implement
37 this section.

38 ~~((8))~~ (7) The department (~~shall~~) must limit its costs for the
39 exemption program to the initial start-up costs to implement the
40 program. The state omnibus appropriations act (~~shall~~) must specify

1 funding to be used for the ongoing administrative costs of the
2 program. These ongoing administrative costs include, but are not
3 limited to, costs for: The processing of internet and mail
4 applications, verification of application claims, compliance and
5 collections, additional full-time employees at the department's call
6 center, processing warrants, updating printed materials and web
7 information, media advertising, and support and maintenance of
8 computer systems.

9 **Part II**

10 **Miscellaneous Provisions**

11 NEW SECTION. **Sec. 201.** This act is not subject to the
12 requirements provided in RCW 82.32.805 and 82.32.808.

13 NEW SECTION. **Sec. 202.** Sections 101 through 112 and 115 of this
14 act constitute a new chapter in Title 82 RCW.

15 NEW SECTION. **Sec. 203.** (1) If any provision of this act or its
16 application to any person or circumstance is held invalid, this act
17 expires on the date that a court holds such provision or application
18 to be invalid.

19 (2) The department of revenue must provide written notice of the
20 expiration date under this section to affected parties, the chief
21 clerk of the house of representatives, the secretary of the senate,
22 the office of the code reviser, and others as deemed appropriate by
23 the department.

24 NEW SECTION. **Sec. 204.** This act takes effect January 1, 2020.

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