
SENATE BILL 6102

State of Washington

64th Legislature

2015 Regular Session

By Senators Ranker, Hargrove, Keiser, Chase, Kohl-Welles, McAuliffe, Hasegawa, Frockt, Nelson, Hatfield, Cleveland, Conway, Billig, Rolfes, McCoy, Jayapal, Fraser, Pedersen, and Darneille

Read first time 04/16/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to enacting an excise tax on capital gains to
2 improve the fairness of Washington's tax system and provide funding
3 for the education legacy trust account; amending RCW 83.100.230;
4 adding a new section to chapter 82.04 RCW; adding a new chapter to
5 Title 82 RCW; creating new sections; and prescribing penalties.

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

7 **PART I**
8 **INTENT**

9 NEW SECTION. **Sec. 101.** (1) Washington's economy is dependent on
10 a thriving middle class, and the prosperity of the middle class
11 depends on our children's access to, and ability to benefit from,
12 high quality education at all levels. The state must provide funding
13 for education and it must also ensure that students receive the best
14 possible education to ensure their personal and economic success.

15 (2) Therefore, this act implements an excise tax on capital gains
16 to provide an ongoing source of funding to support the program of
17 basic education. This revenue will have a direct and positive impact
18 on the social and economic success of the state by supporting
19 children through our educational system.

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

4 (c) An individual who is a resident under (a) of this subsection
5 is a resident for that portion of a taxable year in which the
6 individual was domiciled in this state or maintained a place of abode
7 in this state.

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

10 (10) "Taxpayer" means an individual subject to tax under this
11 chapter.

12 (11) "Washington capital gains" means an individual's adjusted
13 capital gains allocated to this state as provided in section 206 of
14 this act, less:

15 (a) Two hundred fifty thousand dollars; or

16 (b) Five hundred thousand dollars for individuals filing joint
17 returns under this chapter.

18 NEW SECTION. **Sec. 202.** (1) Beginning January 1, 2016, a tax is
19 imposed on all individuals for the privilege of selling or exchanging
20 long-term capital assets, or of receiving Washington capital gains.
21 The tax equals seven percent multiplied by the individual's
22 Washington capital gains. The tax is measured by the individual's
23 Washington capital gains multiplied by the rate of seven percent.

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

28 (3)(a) The tax imposed in this section applies to the sale or
29 exchange of long-term capital assets owned by the taxpayer, whether
30 the taxpayer was the legal or a beneficial owner at the time of the
31 sale or exchange.

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

1 NEW SECTION. **Sec. 203.** This chapter does not apply to the sale
2 or exchange of:

3 (1) Residential real property. "Residential real property" means
4 property consisting solely of a single-family residence, a
5 residential condominium unit, or a residential cooperative unit;

6 (2) Assets held under a retirement savings account under section
7 401(k) of the internal revenue code, a tax-sheltered annuity or a
8 custodial account described in section 403(b) of the internal revenue
9 code, a deferred compensation plan under section 457(b) of the
10 internal revenue code, an individual retirement account or an
11 individual retirement annuity described in section 408 of the
12 internal revenue code, a Roth individual retirement account described
13 in section 408A of the internal revenue code, an employee defined
14 contribution program, an employee defined benefit plan, or similar
15 retirement savings vehicle;

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

19 (4) Cattle, horses, or breeding livestock held for more than
20 twelve months if for the taxable year of the sale or exchange, more
21 than fifty percent of the taxpayer's gross income for the taxable
22 year, including from the sale or exchange of capital assets, is from
23 farming or ranching;

24 (5) Agricultural or timber land by an individual who has regular,
25 continuous, and substantial involvement in the operation of the land
26 that meets the criteria for material participation in an activity
27 under section 469(h) of the internal revenue code for the ten years
28 prior to the date of the sale or exchange of the agricultural or
29 timber land;

30 (6) Property used in the trade or business of the taxpayer if the
31 property qualifies for an income tax deduction under sections 167 or
32 179 of the internal revenue code; and

33 (7) Timber for which the taxpayer makes an election under section
34 631 (a) or (b) of the internal revenue code to treat the cutting of
35 such timber as a sale or exchange.

36 NEW SECTION. **Sec. 204.** The tax imposed under this chapter is in
37 addition to any other taxes imposed by the state or any of its
38 political subdivisions, or a municipal corporation, with respect to
39 the same sale or exchange, including the taxes imposed in or under

1 the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
2 RCW.

3 NEW SECTION. **Sec. 205.** In computing tax there may be deducted
4 from the measure of tax amounts that the state is prohibited from
5 taxing under the Constitution of this state or the Constitution or
6 laws of the United States.

7 NEW SECTION. **Sec. 206.** (1) For purposes of the tax imposed
8 under this chapter, adjusted capital gains are allocated as follows:

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

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

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

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

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

27 (c) Adjusted capital gains from the sale or exchange of
28 intangible personal property are allocated to this state if the
29 taxpayer was domiciled in this state at the time the sale or exchange
30 occurred.

31 (2)(a) A credit is allowed against the tax imposed in section 202
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

1 chapter, and there is no carryback or carryforward of any unused
2 credits.

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

8 NEW SECTION. **Sec. 207.** (1) Except as otherwise provided in this
9 section or RCW 82.32.080, taxpayers owing tax under this chapter must
10 file, on forms prescribed by the department, a return with the
11 department on or before the date the taxpayer's federal income tax
12 return for the taxable year is required to be filed.

13 (2) Each taxpayer required to file a return under this section
14 must, without assessment, notice, or demand, pay any tax due thereon
15 to the department on or before the date fixed for the filing of the
16 return, not including any filing extension. If any tax due under this
17 chapter is not paid by the due date, interest and penalties as
18 provided in chapter 82.32 RCW apply to the deficiency.

19 (3) The department may by rule require that certain individuals
20 and other persons file, at times and on forms prescribed by the
21 department, informational returns for any period.

22 (4) If a taxpayer has obtained an extension of time for filing
23 the federal income tax return for the taxable year, the taxpayer is
24 entitled to the same extension of time for filing the return required
25 under this section if the taxpayer provides the department, before
26 the due date provided in subsection (1) of this section, the
27 extension confirmation number or other evidence satisfactory to the
28 department confirming the federal extension. An extension under this
29 subsection for the filing of a return under this chapter is not an
30 extension of time to pay the tax due under this chapter.

31 NEW SECTION. **Sec. 208.** (1) If the federal income tax
32 liabilities of both spouses are determined on a joint federal return
33 for the taxable year, they must file a joint return under this
34 chapter.

35 (2) Except as otherwise provided in this subsection, if the
36 federal income tax liability of either spouse is determined on a
37 separate federal return for the taxable year, they must file separate
38 returns under this chapter. State registered domestic partners and

1 spouses of the same sex may file a joint return under this chapter
2 even if they filed separate federal returns for the taxable year.

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

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

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

13 NEW SECTION. **Sec. 209.** To the extent not inconsistent with the
14 provisions of this chapter, the following sections apply to the
15 administration of taxes imposed under this chapter: RCW 82.32.050,
16 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
17 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
18 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
19 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
20 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
21 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380, and
22 82.32.410.

23 NEW SECTION. **Sec. 210.** (1) Any taxpayer who knowingly attempts
24 to evade payment of the tax imposed under this chapter is guilty of a
25 class C felony as provided in chapter 9A.20 RCW.

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

29 NEW SECTION. **Sec. 211.** RCW 82.32.805 and 82.32.808 apply only
30 with respect to new tax preferences under chapter 82.--- RCW (the new
31 chapter created in section 401 of this act), as defined in RCW
32 82.32.805, enacted after the effective date of this section.

33 NEW SECTION. **Sec. 212.** All revenue collected under this chapter
34 must be deposited in the education legacy trust account created in
35 RCW 83.100.230.

