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**SENATE BILL 5111**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senators Braun, Ranker, and Hunt; by request of Office of Financial Management

Read first time 01/12/17. 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; adding a new section to  
4 chapter 82.04 RCW; adding a new chapter to Title 82 RCW; creating a  
5 new section; and prescribing penalties.

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) "Adjusted capital gain" means federal net long-term capital  
11 gain:

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

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

18 (2) "Capital asset" has the same meaning as provided by Title 26  
19 U.S.C. Sec. 1221 of the internal revenue code and also includes any  
20 other property if the sale or exchange of the property results in a

1 gain that is treated as a long-term capital gain under Title 26  
2 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

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

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

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

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

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

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

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

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

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

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

32 (9) "Taxpayer" means an individual subject to tax under this  
33 chapter.

34 (10) "Washington capital gains" means an individual's adjusted  
35 capital gains allocated to this state as provided in section 106 of  
36 this act, less:

37 (a) Twenty-five thousand dollars; or

38 (b) Fifty thousand dollars for individuals filing joint returns  
39 under this chapter.

1        NEW SECTION.    **Sec. 2.**    (1) Beginning January 1, 2018, a tax is  
2 imposed on all individuals for the privilege of selling or exchanging  
3 long-term capital assets, or receiving Washington capital gains. The  
4 tax equals seven and nine-tenths percent multiplied by the  
5 individual's Washington capital gains.

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

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

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

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

23       (1) Any residential dwelling, which means property consisting  
24 solely of a single-family residence, a residential condominium unit,  
25 a residential cooperative unit, or a floating home as defined in RCW  
26 82.45.032;

27       (2) Assets held under a retirement savings account under Title 26  
28 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
29 annuity or a custodial account described in Title 26 U.S.C. Sec.  
30 403(b) of the internal revenue code, a deferred compensation plan  
31 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
32 individual retirement account or an individual retirement annuity  
33 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
34 Roth individual retirement account described in Title 26 U.S.C. Sec.  
35 408A of the internal revenue code, an employee defined contribution  
36 program, an employee defined benefit plan, or a similar retirement  
37 savings vehicle;

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

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

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

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

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

26 NEW SECTION. **Sec. 4.** The tax imposed under this chapter is in  
27 addition to any other taxes imposed by the state or any of its  
28 political subdivisions, or a municipal corporation, with respect to  
29 the same sale or exchange, including the taxes imposed in or under  
30 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
31 RCW.

32 NEW SECTION. **Sec. 5.** In computing tax, there may be deducted  
33 from the measure of tax amounts that the state is prohibited from  
34 taxing under the Constitution of this state or the Constitution or  
35 laws of the United States.

36 NEW SECTION. **Sec. 6.** (1) For purposes of the tax imposed under  
37 this chapter, adjusted capital gains are allocated as follows:

1 (a) Adjusted capital gains from the sale or exchange of real  
2 property are allocated to this state if the real property is located  
3 in this state or a majority of the fair market value of the real  
4 property is located in this state.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 7.** (1) Except as otherwise provided in this  
37 section or RCW 82.32.080, taxpayers owing tax under this chapter must  
38 file, on forms prescribed by the department, a return with the

1 department on or before the date the taxpayer's federal income tax  
2 return for the taxable year is required to be filed.

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

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

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

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

26 NEW SECTION. **Sec. 8.** (1) If the federal income tax liabilities  
27 of both spouses are determined on a joint federal return for the  
28 taxable year, they must file a joint return under this chapter.

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

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

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

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

8 NEW SECTION. **Sec. 9.** To the extent not inconsistent with the  
9 provisions of this chapter, the following statutes apply to the  
10 administration of taxes imposed under this chapter: RCW 82.32.050,  
11 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,  
12 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,  
13 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,  
14 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,  
15 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,  
16 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,  
17 82.32.805, and 82.32.808.

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

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

24 NEW SECTION. **Sec. 11.** RCW 82.32.805 and 82.32.808 do not apply  
25 to the new tax preferences, as defined in RCW 82.32.805, created in  
26 section 3, chapter . . ., Laws of 2017 (section 3 of this act).

27 NEW SECTION. **Sec. 12.** (1) All revenue from taxes collected  
28 under this chapter, including penalties and interest on such taxes,  
29 except as provided in subsection (2) of this section must be  
30 deposited in the education legacy trust account created in RCW  
31 83.100.230.

32 (2) Any revenue from taxes collected under this chapter,  
33 including penalties and interest on such taxes, in excess of nine  
34 hundred million dollars in each fiscal year must be deposited into  
35 the school investment fund hereby created in the state treasury.  
36 Moneys in the fund may only be transferred into the education legacy

1 trust account created in RCW 83.100.230 when revenue collections  
2 under this chapter are below nine hundred million dollars in a fiscal  
3 year.

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

6 (1) A deduction is allowed against a person's gross income of the  
7 business to the extent necessary to avoid taxing the same amounts  
8 under this chapter and section 102 of this act.

9 (2) This section is not subject to:

10 (a) The expiration date provisions in RCW 82.32.805; and

11 (b) The tax preference performance statement requirements in RCW  
12 82.32.808 (1) through (5).

13 NEW SECTION. **Sec. 14.** Notwithstanding any common law rule of  
14 strict construction of statutes imposing taxes, this act, being  
15 necessary for the welfare of the state and its inhabitants, must be  
16 liberally construed in support of application of the tax.

17 NEW SECTION. **Sec. 15.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 16.** Sections 1 through 12 of this act  
22 constitute a new chapter in Title 82 RCW.

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