
SENATE BILL 5699

State of Washington

64th Legislature

2015 Regular Session

By Senators Nelson, Darneille, Hasegawa, Keiser, Conway, and McAuliffe; by request of Office of Financial Management

Read first time 01/29/15. 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; 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 **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 loss from a sale or exchange that is exempt from the
15 tax imposed in this chapter, to the extent such loss was included in
16 calculating federal net long-term capital gain; and

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

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

6 (3) "Department" means the department of revenue.

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

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

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

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

16 (8)(a) "Resident" means an individual:

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

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

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

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

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

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

38 (11) "Washington capital gains" means an individual's adjusted
39 capital gains allocated to this state as provided in section 106 of
40 this act, less:

- 1 (a) Twenty-five thousand dollars; or
2 (b) Fifty thousand dollars for individuals filing joint returns
3 under this chapter.

4 NEW SECTION. **Sec. 102.** (1) Beginning January 1, 2016, a tax is
5 imposed on all individuals for the privilege of selling or exchanging
6 long-term capital assets, or of receiving Washington capital gains.
7 The tax equals seven percent multiplied by the individual's
8 Washington capital gains.

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

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

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)(a) A principal residence if the gain is excluded from tax
26 under section 121 of the internal revenue code;

27 (b) A principal residence by state registered domestic partners
28 or spouses of the same sex, if the gain would be otherwise excluded
29 from tax under section 121 of the internal revenue code; or

30 (c) A principal residence if it has been used by the taxpayer as
31 the taxpayer's principal residence for periods aggregating at least
32 ten years and owned by the taxpayer for at least a twenty-year period
33 ending on the date of the sale or exchange of the property;

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

1 individual retirement annuity described in section 408 of the
2 internal revenue code, a Roth individual retirement account described
3 in section 408A of the internal revenue code, an employee defined
4 contribution program, an employee defined benefit plan, or similar
5 retirement 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 agricultural land that meets the criteria for material participation
17 in an activity under section 469(h) of the internal revenue code for
18 the ten years prior to the date of the sale or exchange of the
19 agricultural land;

20 (6) Property used in the trade or business of the taxpayer if the
21 property qualifies for an income tax deduction under sections 167 or
22 179 of the internal revenue code; and

23 (7) Timber for which the taxpayer makes an election under section
24 631 (a) or (b) of the internal revenue code to treat the cutting of
25 such timber as a sale or exchange.

26 NEW SECTION. **Sec. 104.** 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 chapters 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
31 RCW.

32 NEW SECTION. **Sec. 105.** 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. 106.** (1) For purposes of the tax imposed
37 under 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 from the sale or exchange of
20 intangible personal property are allocated to this state if the
21 taxpayer was domiciled in this state at the time the sale or exchange
22 occurred.

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

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

37 NEW SECTION. **Sec. 107.** (1) Except as otherwise provided in this
38 section or RCW 82.32.080, taxpayers owing tax under this chapter must
39 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) Each taxpayer required to file a return under this section
4 must, without assessment, notice, or demand, pay any tax due thereon
5 to the department on or before the date fixed for the filing of the
6 return, not including any filing extension. If any tax due under this
7 chapter is not paid by the due date, interest and penalties as
8 provided in chapter 82.32 RCW apply to the deficiency.

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

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

21 NEW SECTION. **Sec. 108.** (1) If the federal income tax
22 liabilities of both spouses are determined on a joint federal return
23 for the taxable year, they must file a joint return under this
24 chapter.

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

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

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

37 (b) The department determines that the domestic partner qualifies
38 for relief as provided by rule of the department. Such rule, to the

1 extent possible without being inconsistent with this chapter, must
2 follow 26 U.S.C. Sec. 6015.

3 NEW SECTION. **Sec. 109.** To the extent not inconsistent with the
4 provisions of this chapter, the following sections apply to the
5 administration of taxes imposed under this chapter: RCW 82.32.050,
6 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
7 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
8 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
9 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
10 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
11 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380,
12 82.32.410, 82.32.805, and 82.32.808.

13 NEW SECTION. **Sec. 110.** (1) Any taxpayer who knowingly attempts
14 to evade payment of the tax imposed under this chapter is guilty of a
15 class C felony as provided in chapter 9A.20 RCW.

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

19 NEW SECTION. **Sec. 111.** See RCW 82.32.805 for the expiration
20 date of new tax preferences for the tax imposed under this chapter.

21 NEW SECTION. **Sec. 112.** RCW 82.32.805 and 82.32.808 apply only
22 with respect to new tax preferences, as defined in RCW 82.32.805,
23 enacted after the effective date of this section.

24 NEW SECTION. **Sec. 113.** All revenue collected under this chapter
25 must be deposited in the education legacy trust account created in
26 RCW 83.100.230.

27 **PART II**
28 **BUSINESS AND OCCUPATION TAX**

29 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.04
30 RCW to read as follows:

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

1 (2) This section is not subject to RCW 82.32.805 and 82.32.808(1)
2 through (5).

3 **PART III**
4 **MISCELLANEOUS PROVISIONS**

5 NEW SECTION. **Sec. 301.** Sections 101 through 113 of this act
6 constitute a new chapter in Title 82 RCW.

7 NEW SECTION. **Sec. 302.** Notwithstanding any common law rule of
8 strict construction of statutes imposing taxes, this act, being
9 necessary for the welfare of the state and its inhabitants, must be
10 liberally construed in support of the tax.

11 NEW SECTION. **Sec. 303.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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