

---

HOUSE BILL 1926

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Pollet and Santos

Read first time 02/02/17. Referred to Committee on Finance.

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, 2018, 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 four percent multiplied by the individual's Washington  
8 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 Title 26 U.S.C. Sec. 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 Title 26 U.S.C. Sec. 121 of the internal revenue code;  
30 or

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

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

1 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
2 individual retirement account or an individual retirement annuity  
3 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
4 Roth individual retirement account described in Title 26 U.S.C. Sec.  
5 408A of the internal revenue code, an employee defined contribution  
6 program, an employee defined benefit plan, or similar retirement  
7 savings vehicle;

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

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

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

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

25 (7) Timber for which the taxpayer makes an election under Title  
26 U.S.C. Sec. 631 (a) or (b) of the internal revenue code to treat  
27 the cutting of such timber as a sale or exchange.

28 NEW SECTION. **Sec. 104.** The tax imposed under this chapter is in  
29 addition to any other taxes imposed by the state or any of its  
30 political subdivisions, or a municipal corporation, with respect to  
31 the same sale or exchange, including the taxes imposed in or under  
32 the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
33 RCW.

34 NEW SECTION. **Sec. 105.** In computing tax there may be deducted  
35 from the measure of tax amounts that the state is prohibited from  
36 taxing under the Constitution of this state or the Constitution or  
37 laws of the United States.

1        NEW SECTION.    **Sec. 106.**    (1) For purposes of the tax imposed  
2 under this chapter, adjusted capital gains are allocated as follows:

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 107.**    (1) Except as otherwise provided in this  
2 section or RCW 82.32.080, taxpayers owing tax under this chapter must  
3 file, on forms prescribed by the department, a return with the  
4 department on or before the date the taxpayer's federal income tax  
5 return for the taxable year is required to be filed.

6        (2) 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, not including 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        (3) 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        (4) 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        NEW SECTION.    **Sec. 108.**    (1) If the federal income tax  
25 liabilities of both spouses are determined on a joint federal return  
26 for the taxable year, they must file a joint return under this  
27 chapter.

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

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

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

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

5 NEW SECTION. **Sec. 109.** To the extent not inconsistent with the  
6 provisions of this chapter, the following sections apply to the  
7 administration of taxes imposed under this chapter: RCW 82.32.050,  
8 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,  
9 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,  
10 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,  
11 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,  
12 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,  
13 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380,  
14 82.32.410, 82.32.805, and 82.32.808.

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

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

21 NEW SECTION. **Sec. 111.** RCW 82.32.805 and 82.32.808 do not apply  
22 to the new tax preferences, as defined in RCW 82.32.805, created in  
23 section 103, chapter . . . , Laws of 2017 (section 103 of this act).

24 NEW SECTION. **Sec. 112.** All revenue collected under this chapter  
25 must be deposited in the education legacy trust account created in  
26 RCW 83.100.230 for the benefit of public institutions of higher  
27 education as defined in RCW 28B.10.016.

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

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

32 (1) A deduction is allowed against a person's gross income of the  
33 business to the extent necessary to avoid taxing the same amounts  
34 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  
2 (1) through (5).

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

5 NEW SECTION. **Sec. 301.** Sections 101 through 112 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.

--- END ---