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**SENATE BILL 5314**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Wellman, Hunt, and Kuderer; by request of Superintendent of Public Instruction

Read first time 01/17/19. Referred to Committee on Ways & Means.

1 AN ACT Relating to assisting Washington families by improving the  
2 fairness of the state's tax system by enacting a capital gains tax  
3 and providing property tax relief; amending RCW 84.55.010; adding a  
4 new section to chapter 82.04 RCW; adding a new section to chapter  
5 82.32 RCW; adding a new section to chapter 84.55 RCW; adding a new  
6 chapter to Title 82 RCW; creating new sections; prescribing  
7 penalties; and providing an effective date.

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

9 **Part I**

10 **Capital Gains Tax**

11 NEW SECTION. **Sec. 101.** (1) The legislature finds that  
12 Washington is a great place to live, work, and raise a family. The  
13 legislature further finds that our tax system is the most upside down  
14 and regressive in the nation, allowing those who earn the most to pay  
15 the least in taxes. The legislature finds that as a percentage of  
16 personal income middle-income families pay two to four times in taxes  
17 as compared to top earners. Moreover, low-income Washingtonians pay  
18 seven times more in taxes than our wealthiest residents.

19 (2) The legislature does not believe in becoming a high tax  
20 state; however, it finds that building a tax system that works for

1 everyone is imperative. The legislature finds that a tax system that  
2 strengthens the middle-class economy, helps families and low-income  
3 residents, reduces the tax burden on small businesses, and asks the  
4 wealthiest among us and those benefiting from record Wall Street  
5 profits to contribute their fair share is essential to help all  
6 Washingtonians have the freedom to grow and thrive.

7 (3) The legislature finds that relying on higher property taxes  
8 to fund education is burdensome on working families; therefore, the  
9 legislature intends to ask the citizens of Washington to reduce the  
10 state property tax levy and impose a commensurate new tax. The  
11 legislature finds that this will mitigate some of the imbalance in  
12 the state's tax structure and ensure everyone is paying their fair  
13 share.

14 NEW SECTION. **Sec. 102.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

17 (1) "Accessory dwelling unit" means a separate habitable living  
18 area that is subordinate to the principal single-family dwelling  
19 unit, which is either internal to, attached to, or located on the  
20 same property tax parcel as, the principal single-family dwelling  
21 unit.

22 (2) "Adjusted capital gain" means federal net long-term capital  
23 gain:

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

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

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

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

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

38 (6) "Internal revenue code" means the United States internal  
39 revenue code of 1986, as amended, as of the effective date of this

1 section, or such subsequent date as the department may provide by  
2 rule consistent with the purpose of this chapter.

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

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

6 (i) Who is domiciled in this state during the taxable year,  
7 unless the individual (A) maintained no permanent place of abode in  
8 this state during the entire taxable year, (B) maintained a permanent  
9 place of abode outside of this state during the entire taxable year,  
10 and (C) spent in the aggregate not more than thirty days of the  
11 taxable year in this state; or

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

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

19 (c) An individual who is a resident under (a) of this subsection  
20 is a resident for that portion of a taxable year in which the  
21 individual was domiciled in this state or maintained a place of abode  
22 in this state.

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

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

27 (11) "Washington capital gains" means an individual's adjusted  
28 capital gains allocated to this state as provided in section 108 of  
29 this act, less:

30 (a) Twenty-five thousand dollars; or

31 (b) Fifty thousand dollars for individuals filing joint returns  
32 under this chapter.

33 NEW SECTION. **Sec. 103.** (1) Beginning January 1, 2020, a tax is  
34 imposed on all individuals for the privilege of selling or exchanging  
35 long-term capital assets, or receiving Washington capital gains. The  
36 tax equals eight percent multiplied by the individual's Washington  
37 capital gains.

38 (2) If an individual's Washington capital gains are less than  
39 zero for a taxable year, no tax is due under this section. No such

1 losses may be carried back or carried forward to another taxable  
2 year.

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

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

14 NEW SECTION. **Sec. 104.** This chapter does not apply to the sale  
15 or exchange of:

16 (1) Any residential dwelling along with the land upon which the  
17 dwelling is located. For the purposes of this subsection (1),  
18 "residential dwelling" means property consisting solely of (a) a  
19 single-family residence, a residential condominium unit, or a  
20 residential cooperative unit, including any accessory dwelling unit  
21 associated with such residence or residential unit, (b) a multifamily  
22 residential building consisting of one or more common walls and fewer  
23 than four units, or (c) a floating home as defined in RCW 82.45.032;

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

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

38 (4) Cattle, horses, or breeding livestock held for more than  
39 twelve months if for the taxable year of the sale or exchange, more

1 than fifty percent of the taxpayer's gross income for the taxable  
2 year, including from the sale or exchange of capital assets, is from  
3 farming or ranching;

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

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

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

21 NEW SECTION. **Sec. 105.** The tax imposed under this chapter is in  
22 addition to any other taxes imposed by the state or any of its  
23 political subdivisions, or a municipal corporation, with respect to  
24 the same sale or exchange, including the taxes imposed in or under  
25 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
26 RCW.

27 NEW SECTION. **Sec. 106.** In computing tax, there may be deducted  
28 from the measure of tax amounts that the state is prohibited from  
29 taxing under the Constitution of this state or the Constitution or  
30 laws of the United States.

31 NEW SECTION. **Sec. 107.** (1) In computing tax under this chapter  
32 for a taxable year, a taxpayer may deduct from the measure of tax the  
33 amount of adjusted capital gain derived in the taxable year from the  
34 sale of substantially all of the fair market value of the assets of,  
35 or the transfer of substantially all of the taxpayer's interest in, a  
36 qualified family-owned small business.

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

3 (a) "Assets" means real property and personal property, including  
4 tangible personal property and intangible property.

5 (b) "Family" means the same as "member of the family" in RCW  
6 83.100.046.

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

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

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

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

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

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

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

31 (iv) That had worldwide gross revenue of seven million dollars or  
32 less in the twelve-month period immediately preceding the sale or  
33 transfer described in subsection (1) of this section.

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

35 (f) "Qualifying interest" means:

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

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

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

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

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

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

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

9 NEW SECTION. **Sec. 108.** (1) For purposes of the tax imposed  
10 under this chapter, adjusted capital gains are allocated as follows:

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

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

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

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

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

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

32 (2) (a) A credit is allowed against the tax imposed in section 103  
33 of this act equal to the amount of any legally imposed income or  
34 excise tax paid by the taxpayer to another taxing jurisdiction on  
35 capital gains derived from capital assets within the other taxing  
36 jurisdiction to the extent such capital gains are included in the  
37 taxpayer's Washington capital gains. The amount of credit under this  
38 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. 109.** (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) In addition to the Washington return required to be filed  
14 under subsection (1) of this section, taxpayers owing tax under this  
15 chapter must file with the department on or before the date the  
16 federal return is required to be filed a copy of the federal income  
17 tax return along with all schedules and supporting documentation.

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

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

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

36 (6) (a) If any return due under subsection (1) of this section,  
37 along with a copy of the federal income tax return, is not filed with  
38 the department by the due date or any extension granted by the  
39 department, the department must assess a penalty in the amount of



1 five percent of the tax due for the taxable year covered by the  
2 return for each month or portion of a month that the return remains  
3 unfiled. The total penalty assessed under this subsection may not  
4 exceed twenty-five percent of the tax due for the taxable year  
5 covered by the delinquent return. The penalty under this subsection  
6 is in addition to any penalties assessed for the late payment of any  
7 tax due on the return.

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

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

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

15 NEW SECTION. **Sec. 110.** (1) If the federal income tax  
16 liabilities of both spouses are determined on a joint federal return  
17 for the taxable year, they must file a joint return under this  
18 chapter.

19 (2) Except as otherwise provided in this subsection, if the  
20 federal income tax liability of either spouse is determined on a  
21 separate federal return for the taxable year, they must file separate  
22 returns under this chapter. State registered domestic partners may  
23 file a joint return under this chapter even if they filed separate  
24 federal returns for the taxable year.

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

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

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

35 NEW SECTION. **Sec. 111.** To the extent not inconsistent with the  
36 provisions of this chapter, the following statutes apply to the  
37 administration of taxes imposed under this chapter: RCW 82.32.050,  
38 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,

1 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,  
2 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,  
3 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,  
4 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,  
5 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,  
6 82.32.805, 82.32.808, and section 114 of this act.

7 NEW SECTION. **Sec. 112.** (1) Any taxpayer who knowingly attempts  
8 to evade payment of the tax imposed under this chapter is guilty of a  
9 class C felony as provided in chapter 9A.20 RCW.

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

13 NEW SECTION. **Sec. 113.** Notwithstanding any common law rule of  
14 strict construction of statutes imposing taxes, this chapter, 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. 114.** A new section is added to chapter 82.04  
18 RCW to read as follows:

19 A deduction is allowed against a person's gross income of the  
20 business to the extent necessary to avoid taxing the same amounts  
21 under this chapter and section 103 of this act.

22 NEW SECTION. **Sec. 115.** A new section is added to chapter 82.32  
23 RCW to read as follows:

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

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

3 (a) "Specified taxes" means generally applicable state and local  
4 sales taxes and use taxes, broad-based state gross receipts taxes,  
5 state income taxes, and stand-alone state taxes on capital gains or  
6 interest and dividends. "Specified taxes" include, but are not  
7 limited to, the taxes imposed in or under the authority of chapters  
8 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter  
9 created in section 303 of this act), and similar taxes imposed by  
10 another state. For purposes of this subsection (2)(a), "gross  
11 receipts tax," "income tax," "sales tax," and "use tax" have the same  
12 meanings as provided in RCW 82.56.010.

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

14 NEW SECTION. **Sec. 116.** All revenue from taxes collected under  
15 this chapter, including penalties and interest on such taxes, must be  
16 deposited into the general fund of the state.

17 **Part II**

18 **Calculation of Overall Property Tax Relief**

19 NEW SECTION. **Sec. 201.** A new section is added to chapter 84.55  
20 RCW to read as follows:

21 (1) By December 10th of each year, the department must calculate  
22 the revenue collected during the previous twelve months through  
23 November 30th of the current year from the tax imposed by section 103  
24 of this act.

25 (2) By December 31st of each year, the department must reduce in  
26 the property tax rate imposed by RCW 84.52.065(2)(a) to the extent  
27 necessary to reduce state property tax collections for the next  
28 succeeding calendar year by fifty percent of the amount calculated in  
29 subsection (1) of this section.

30 **Sec. 202.** RCW 84.55.010 and 2017 3rd sp.s. c 13 s 302 are each  
31 amended to read as follows:

32 (1) Except as provided in this chapter, the levy for a taxing  
33 district in any year must be set so that the regular property taxes  
34 payable in the following year do not exceed the limit factor  
35 multiplied by the amount of regular property taxes lawfully levied  
36 for such district in the highest of the three most recent years in

1 which such taxes were levied for such district plus an additional  
2 dollar amount calculated by multiplying the regular property tax levy  
3 rate of that district for the preceding year by the increase in  
4 assessed value in that district resulting from:

5 (a) New construction;

6 (b) Increases in assessed value due to construction of wind  
7 turbine, solar, biomass, and geothermal facilities, if such  
8 facilities generate electricity and the property is not included  
9 elsewhere under this section for purposes of providing an additional  
10 dollar amount. The property may be classified as real or personal  
11 property;

12 (c) Improvements to property; and

13 (d) Any increase in the assessed value of state-assessed  
14 property.

15 (2) The requirements of this section do not apply to:

16 (a) State property taxes levied under RCW 84.52.065(1) for  
17 collection in calendar years 2019 through 2021; and

18 (b) State property taxes levied under RCW 84.52.065(2) for  
19 collection in calendar years 2018 through 2021.

20 (3) For the purposes of determining the levy limit under this  
21 section for a state property tax levy, the highest amount of regular  
22 property taxes levied in the three most recent years must be  
23 determined as if no reduction is made pursuant to section 201 of this  
24 act.

### 25 Part III

#### 26 Miscellaneous Provisions

27 NEW SECTION. Sec. 301. The provisions of RCW 82.32.805 and  
28 82.32.808 do not apply to this act.

29 NEW SECTION. Sec. 302. Part II of this act applies for taxes  
30 levied for collection in 2022 and thereafter.

31 NEW SECTION. Sec. 303. Sections 101 through 113 and 116 of this  
32 act constitute a new chapter in Title 82 RCW.

33 NEW SECTION. Sec. 304. If any provision of this act or its  
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 305.** This act takes effect January 1, 2020.

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