

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5096

67th Legislature
2021 Regular Session

Passed by the Senate April 25, 2021
Yeas 25 Nays 24

President of the Senate

Passed by the House April 24, 2021
Yeas 52 Nays 44

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5096** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5096

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Robinson, Hunt, Nguyen, and Wilson, C.; by request of Office of Financial Management)

READ FIRST TIME 02/18/21.

1 AN ACT Relating to investing in Washington families and creating
2 a more progressive tax system in Washington by enacting an excise tax
3 on the sale or exchange of certain capital assets; amending RCW
4 83.100.230; adding a new section to chapter 82.04 RCW; adding a new
5 chapter to Title 82 RCW; creating new sections; and prescribing
6 penalties.

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

8 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that it is
9 the paramount duty of the state to amply provide every child in the
10 state with an education, creating the opportunity for the child to
11 succeed in school and thrive in life. The legislature further finds
12 that high quality early learning and child care is critical to a
13 child's success in school and life, as it supports the development of
14 the child's social-emotional, physical, cognitive, and language
15 skills. Therefore, the legislature will invest in the ongoing support
16 of K-12 education and early learning and child care by dedicating
17 revenues from this act to the education legacy trust account and the
18 common school construction account.

19 The legislature further recognizes that a tax system that is
20 fair, balanced, and works for everyone is essential to help all
21 Washingtonians grow and thrive. But Washington's tax system today is

1 the most regressive in the nation because it asks those making the
2 least to pay the most as a percentage of their income. Middle-income
3 families in Washington pay two to four times more in taxes, as a
4 percentage of household income, as compared to top earners in the
5 state. Low-income Washingtonians pay at least six times more than do
6 our wealthiest residents.

7 To help meet the state's paramount duty, the legislature intends
8 to levy a seven percent tax on the voluntary sale or exchange of
9 stocks, bonds, and other capital assets where the profit is in excess
10 of \$250,000 annually to fund K-12 education, early learning, and
11 child care, and advance our paramount duty to amply provide an
12 education to every child in the state. The legislature recognizes
13 that levying this tax will have the additional effect of making
14 material progress toward rebalancing the state's tax code.

15 The legislature further intends to exempt certain assets from the
16 tax including, but not limited to, qualified family-owned small
17 businesses, all residential and other real property, and retirement
18 accounts.

19 NEW SECTION. **Sec. 2.** DISTRIBUTION OF REVENUES. (1) All taxes,
20 interest, and penalties collected under this chapter shall be
21 distributed as follows:

22 (a) The first \$500,000,000 collected each fiscal year shall be
23 deposited into the education legacy trust account created in RCW
24 83.100.230; and

25 (b) Any remainder collected each fiscal year shall be deposited
26 into the common school construction account.

27 (2) The amounts specified under subsection (1)(a) of this section
28 shall be adjusted annually as provided under section 17 of this act.

29 **Sec. 3.** RCW 83.100.230 and 2019 c 415 s 990 are each amended to
30 read as follows:

31 The education legacy trust account is created in the state
32 treasury. Money in the account may be spent only after appropriation.
33 Expenditures from the account may be used only for support of the
34 common schools, and for expanding access to higher education through
35 funding for new enrollments and financial aid, early learning and
36 child care programs, and other educational improvement efforts.
37 (~~During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia~~
38 ~~appropriations from the account may be made for support of early~~

1 ~~learning programs. It is the intent of the legislature that this~~
2 ~~policy will be continued in subsequent fiscal biennia.))~~

3 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Adjusted capital gain" means federal net long-term capital
7 gain:

8 (a) Plus any amount of long-term capital loss from a sale or
9 exchange that is exempt from the tax imposed in this chapter, to the
10 extent such loss was included in calculating federal net long-term
11 capital gain;

12 (b) Plus any amount of long-term capital loss from a sale or
13 exchange that is not allocated to Washington under section 11 of this
14 act, to the extent such loss was included in calculating federal net
15 long-term capital gain;

16 (c) Plus any amount of loss carryforward from a sale or exchange
17 that is not allocated to Washington under section 11 of this act, to
18 the extent such loss was included in calculating federal net long-
19 term capital gain;

20 (d) Less any amount of long-term capital gain from a sale or
21 exchange that is not allocated to Washington under section 11 of this
22 act, to the extent such gain was included in calculating federal net
23 long-term capital gain; and

24 (e) Less any amount of long-term capital gain from a sale or
25 exchange that is exempt from the tax imposed in this chapter, to the
26 extent such gain was included in calculating federal net long-term
27 capital gain.

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

33 (3) "Federal net long-term capital gain" means the net long-term
34 capital gain reportable for federal income tax purposes determined as
35 if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the
36 internal revenue code did not exist.

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

38 (5) "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 (6) "Long-term capital asset" means a capital asset that is held
4 for more than one year.

5 (7) "Long-term capital gain" means gain from the sale or exchange
6 of a long-term capital asset.

7 (8) "Long-term capital loss" means a loss from the sale or
8 exchange of a long-term capital asset.

9 (9) "Real estate" means land and fixtures affixed to land. "Real
10 estate" also includes used mobile homes, used park model trailers,
11 used floating homes, and improvements constructed upon leased land.

12 (10)(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 30 days of the taxable
18 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 183 days during the taxable year.

22 (b) For purposes of this subsection, "day" means a calendar day
23 or any portion of a calendar day.

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

28 (11) "Taxable year" means the taxpayer's taxable year as
29 determined under the internal revenue code.

30 (12) "Taxpayer" means an individual subject to tax under this
31 chapter.

32 (13) "Washington capital gains" means an individual's adjusted
33 capital gain, as modified in section 7 of this act, for each return
34 filed under this chapter.

35 NEW SECTION. **Sec. 5.** TAX IMPOSED. (1) Beginning January 1,
36 2022, an excise tax is imposed on the sale or exchange of long-term
37 capital assets. Only individuals are subject to payment of the tax,
38 which equals seven percent multiplied by an individual's Washington
39 capital gains.

1 (2) The tax levied in subsection (1) of this section is necessary
2 for the support of the state government and its existing public
3 institutions.

4 (3) If an individual's Washington capital gains are less than
5 zero for a taxable year, no tax is due under this section and no such
6 amount is allowed as a carryover for use in the calculation of that
7 individual's adjusted capital gain, as defined in section 4(1) of
8 this act, for any taxable year. To the extent that a loss
9 carryforward is included in the calculation of an individual's
10 federal net long-term capital gain and that loss carryforward is
11 directly attributable to losses from sales or exchanges allocated to
12 this state under section 11 of this act, the loss carryforward is
13 included in the calculation of that individual's adjusted capital
14 gain for the purposes of this chapter. An individual may not include
15 any losses carried back for federal income tax purposes in the
16 calculation of that individual's adjusted capital gain for any
17 taxable year.

18 (4)(a) The tax imposed in this section applies to the sale or
19 exchange of long-term capital assets owned by the taxpayer, whether
20 the taxpayer was the legal or beneficial owner of such assets at the
21 time of the sale or exchange. The tax applies when the Washington
22 capital gains are recognized by the taxpayer in accordance with this
23 chapter.

24 (b) For purposes of this chapter:

25 (i) An individual is considered to be a beneficial owner of long-
26 term capital assets held by an entity that is a pass-through or
27 disregarded entity for federal tax purposes, such as a partnership,
28 limited liability company, S corporation, or grantor trust, to the
29 extent of the individual's ownership interest in the entity as
30 reported for federal income tax purposes.

31 (ii) A nongrantor trust is deemed to be a grantor trust if the
32 trust does not qualify as a grantor trust for federal tax purposes,
33 and the grantor's transfer of assets to the trust is treated as an
34 incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal
35 revenue code and its accompanying regulations. A grantor of such
36 trust is considered the beneficial owner of the capital assets of the
37 trust for purposes of the tax imposed in this section and must
38 include any long-term capital gain or loss from the sale or exchange
39 of a capital asset by the trust in the calculation of that

1 individual's adjusted capital gain, if such gain or loss is allocated
2 to this state under section 11 of this act.

3 NEW SECTION. **Sec. 6.** EXEMPTIONS. This chapter does not apply to
4 the sale or exchange of:

5 (1) All real estate transferred by deed, real estate contract,
6 judgment, or other lawful instruments that transfer title to real
7 property and are filed as a public record with the counties where
8 real property is located;

9 (2) (a) An interest in a privately held entity only to the extent
10 that any long-term capital gain or loss from such sale or exchange is
11 directly attributable to the real estate owned directly by such
12 entity.

13 (b) (i) Except as provided in (b) (ii) and (iii) of this
14 subsection, the value of the exemption under this subsection is equal
15 to the fair market value of the real estate owned directly by the
16 entity less its basis, at the time that the sale or exchange of the
17 individual's interest occurs, multiplied by the percentage of the
18 ownership interest in the entity which is sold or exchanged by the
19 individual.

20 (ii) If a sale or exchange of an interest in an entity results in
21 an amount directly attributable to real property and that is
22 considered as an amount realized from the sale or exchange of
23 property other than a capital asset under Title 26 U.S.C. Sec. 751 of
24 the internal revenue code, such amount must not be considered in the
25 calculation of an individual's exemption amount under (b) (i) of this
26 subsection (2).

27 (iii) Real estate not owned directly by the entity in which an
28 individual is selling or exchanging the individual's interest must
29 not be considered in the calculation of an individual's exemption
30 amount under (b) (i) of this subsection (2).

31 (c) Fair market value of real estate may be established by a fair
32 market appraisal of the real estate or an allocation of assets by the
33 seller and the buyer made under Title 26 U.S.C. Sec. 1060 of the
34 internal revenue code, as amended. However, the department is not
35 bound by the parties' agreement as to the allocation of assets,
36 allocation of consideration, or fair market value, if such
37 allocations or fair market value do not reflect the fair market value
38 of the real estate. The assessed value of the real estate for
39 property tax purposes may be used to determine the fair market value

1 of the real estate, if the assessed value is current as of the date
2 of the sale or exchange of the ownership interest in the entity
3 owning the real estate and the department determines that this method
4 is reasonable under the circumstances.

5 (d) The value of the exemption under this subsection (2) may not
6 exceed the individual's long-term capital gain or loss from the sale
7 or exchange of an interest in an entity for which the individual is
8 claiming this exemption;

9 (3) Assets held under a retirement savings account under Title 26
10 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
11 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)
12 of the internal revenue code, a deferred compensation plan under
13 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
14 individual retirement account or individual retirement annuity
15 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
16 Roth individual retirement account described in Title 26 U.S.C. Sec.
17 408A of the internal revenue code, an employee defined contribution
18 program, an employee defined benefit plan, or a similar retirement
19 savings vehicle;

20 (4) Assets pursuant to, or under imminent threat of, condemnation
21 proceedings by the United States, the state or any of its political
22 subdivisions, or a municipal corporation;

23 (5) Cattle, horses, or breeding livestock if for the taxable year
24 of the sale or exchange, more than 50 percent of the taxpayer's gross
25 income for the taxable year, including from the sale or exchange of
26 capital assets, is from farming or ranching;

27 (6) Property depreciable under Title 26 U.S.C. Sec. 167(a)(1) of
28 the internal revenue code, or that qualifies for expensing under
29 Title 26 U.S.C. Sec. 179 of the internal revenue code;

30 (7) Timber, timberland, or the receipt of Washington capital
31 gains as dividends and distributions from real estate investment
32 trusts derived from gains from the sale or exchange of timber and
33 timberland. "Timber" means forest trees, standing or down, on
34 privately or publicly owned land, and includes Christmas trees and
35 short-rotation hardwoods. The sale or exchange of timber includes the
36 cutting or disposal of timber qualifying for capital gains treatment
37 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue
38 code;

39 (8) (a) Commercial fishing privileges.

1 (b) For the purposes of this subsection (8), "commercial fishing
2 privilege" means a right, held by a seafood harvester or processor,
3 to participate in a limited access fishery. "Commercial fishing
4 privilege" includes and is limited to:

5 (i) In the case of federally managed fisheries, quota and access
6 to fisheries assigned pursuant to individual fishing quota programs,
7 limited entry and catch share programs, cooperative fishing
8 management agreements, or similar arrangements; and

9 (ii) In the case of state-managed fisheries, quota and access to
10 fisheries assigned under fishery permits, limited entry and catch
11 share programs, or similar arrangements; and

12 (9) Goodwill received from the sale of an auto dealership
13 licensed under chapter 46.70 RCW whose activities are subject to
14 chapter 46.96 RCW.

15 NEW SECTION. **Sec. 7.** DEDUCTIONS. In computing tax for a taxable
16 year, a taxpayer may deduct from his or her Washington capital gains:

17 (1) A standard deduction of \$250,000 per individual, or in the
18 case of spouses or domestic partners, their combined standard
19 deduction is limited to \$250,000, regardless of whether they file
20 joint or separate returns. The amount of the standard deduction shall
21 be adjusted pursuant to section 17 of this act;

22 (2) Amounts that the state is prohibited from taxing under the
23 Constitution of this state or the Constitution or laws of the United
24 States;

25 (3) The amount of adjusted capital gain derived from the sale or
26 transfer of the taxpayer's interest in a qualified family-owned small
27 business pursuant to section 8 of this act; and

28 (4) Charitable donations deductible under section 9 of this act.

29 NEW SECTION. **Sec. 8.** QUALIFIED FAMILY-OWNED SMALL BUSINESS
30 DEDUCTION. (1) In computing tax under this chapter for a taxable
31 year, a taxpayer may deduct from his or her Washington capital gains
32 the amount of adjusted capital gain derived in the taxable year from
33 the sale of substantially all of the fair market value of the assets
34 of, or the transfer of substantially all of the taxpayer's interest
35 in, a qualified family-owned small business, to the extent that such
36 adjusted capital gain would otherwise be included in the taxpayer's
37 Washington capital gains.

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 Title 26
12 U.S.C. Sec. 469 of the internal revenue code, to the extent that such
13 interpretation 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 five years immediately preceding the sale or transfer described in
17 subsection (1) of this section;

18 (ii) In which either the taxpayer or members of the taxpayer's
19 family, or both, materially participated in operating the business
20 for at least five of the 10 years immediately preceding the sale or
21 transfer described in subsection (1) of this section, unless such
22 sale or transfer was to a qualified heir; and

23 (iii) That had worldwide gross revenue of \$10,000,000 or less in
24 the 12-month period immediately preceding the sale or transfer
25 described in subsection (1) of this section. The worldwide gross
26 revenue amount under this subsection (2)(d)(iii) shall be adjusted
27 annually as provided in section 17 of this act.

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

29 (f) "Qualifying interest" means:

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

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

33 (A) Fifty percent of the business is owned, directly or
34 indirectly, by any combination of the taxpayer or members of the
35 taxpayer's family, or both;

36 (B) Thirty percent of the business is owned, directly or
37 indirectly, by any combination of the taxpayer or members of the
38 taxpayer's family, or both, and at least:

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

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

3 (g) "Substantially all" means at least 90 percent.

4 NEW SECTION. **Sec. 9.** ADDITIONAL DEDUCTION FOR CHARITABLE
5 DONATIONS. (1) In computing tax under this chapter for a taxable
6 year, a taxpayer may deduct from his or her Washington capital gains
7 the amount donated by the taxpayer to one or more qualified
8 organizations during the same taxable year in excess of the minimum
9 qualifying charitable donation amount. For the purposes of this
10 section, the minimum qualifying charitable donation amount equals
11 \$250,000. The minimum qualifying charitable donation amount under
12 this subsection (1) shall be adjusted pursuant to section 17 of this
13 act.

14 (2) The deduction authorized under subsection (1) of this section
15 may not exceed \$100,000 for the taxable year. The maximum amount of
16 the available deduction under this subsection (2) shall be adjusted
17 pursuant to section 17 of this act.

18 (3) The deduction authorized under subsection (1) of this section
19 may not be carried forward or backward to another tax reporting
20 period.

21 (4) For the purposes of this section, the following definitions
22 apply:

23 (a) "Nonprofit organization" means an organization exempt from
24 tax under Title 26 U.S.C. Sec. 501(c)(3) of the internal revenue
25 code.

26 (b) "Qualified organization" means a nonprofit organization, or
27 any other organization, that is:

28 (i) Eligible to receive a charitable deduction as defined in
29 Title 26 U.S.C. Sec. 170(c) of the internal revenue code; and

30 (ii) Principally directed or managed within the state of
31 Washington.

32 NEW SECTION. **Sec. 10.** OTHER TAXES. The tax imposed under this
33 chapter is in addition to any other taxes imposed by the state or any
34 of its political subdivisions, or a municipal corporation, with
35 respect to the same sale or exchange, including the taxes imposed in,
36 or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45,
37 or 82.46 RCW.

1 NEW SECTION. **Sec. 11.** ALLOCATION OF GAINS AND LOSSES. (1) For
2 purposes of the tax imposed under this chapter, long-term capital
3 gains and losses are allocated to Washington as follows:

4 (a) Long-term capital gains or losses from the sale or exchange
5 of tangible personal property are allocated to this state if the
6 property was located in this state at the time of the sale or
7 exchange. Long-term capital gains or losses from the sale or exchange
8 of tangible personal property are also allocated to this state even
9 though the property was not located in this state at the time of the
10 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 long-term capital gains or losses
18 by another taxing jurisdiction.

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

22 (2)(a) A credit is allowed against the tax imposed in section 5
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. 12.** FILING OF RETURNS. (1)(a) Except as
37 otherwise provided in this section or RCW 82.32.080, taxpayers owing
38 tax under this chapter must file, on forms prescribed by the
39 department, a return with the department on or before the date the

1 taxpayer's federal income tax return for the taxable year is required
2 to be filed.

3 (b) (i) Except as provided in (b) (ii) of this subsection (1),
4 returns and all supporting documents must be filed electronically
5 using the department's online tax filing service or other method of
6 electronic reporting as the department may authorize.

7 (ii) The department may waive the electronic filing requirement
8 in this subsection for good cause as provided in RCW 82.32.080.

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

14 (3) Each taxpayer required to file a return under this section
15 must, without assessment, notice, or demand, pay any tax due thereon
16 to the department on or before the date fixed for the filing of the
17 return, regardless of any filing extension. The tax must be paid by
18 electronic funds transfer as defined in RCW 82.32.085 or by other
19 forms of electronic payment as may be authorized by the department.
20 The department may waive the electronic payment requirement for good
21 cause as provided in RCW 82.32.080. If any tax due under this chapter
22 is not paid by the due date, interest and penalties as provided in
23 chapter 82.32 RCW apply to the deficiency.

24 (4) (a) In addition to the Washington return required to be filed
25 under subsection (1) of this section, an individual claiming an
26 exemption under section 6(2) of this act must file documentation
27 substantiating the following:

28 (i) The fair market value and basis of the real estate held
29 directly by the entity in which the interest was sold or exchanged;

30 (ii) The percentage of the ownership interest sold or exchanged
31 in the entity owning real estate; and

32 (iii) The methodology, if any, established by the entity in which
33 the interest was sold or exchanged, for allocating gains or losses to
34 the owners, partners, or shareholders of the entity from the sale of
35 real estate.

36 (b) The department may by rule prescribe additional filing
37 requirements to substantiate an individual's claim for an exemption
38 under section 6(2) of this act. Prior to adopting any rule under this
39 subsection (4) (b), the department must allow for an opportunity for

1 participation by interested parties in the rule-making process in
2 accordance with the administrative procedure act, chapter 34.05 RCW.

3 (5) If a taxpayer has obtained an extension of time for filing
4 the federal income tax return for the taxable year, the taxpayer is
5 entitled to the same extension of time for filing the return required
6 under this section if the taxpayer provides the department, before
7 the due date provided in subsection (1) of this section, the
8 extension confirmation number or other evidence satisfactory to the
9 department confirming the federal extension. An extension under this
10 subsection for the filing of a return under this chapter is not an
11 extension of time to pay the tax due under this chapter.

12 (6)(a) If any return due under subsection (1) of this section,
13 along with a copy of the federal income tax return, is not filed with
14 the department by the due date or any extension granted by the
15 department, the department must assess a penalty in the amount of
16 five percent of the tax due for the taxable year covered by the
17 return for each month or portion of a month that the return remains
18 unfiled. The total penalty assessed under this subsection may not
19 exceed 25 percent of the tax due for the taxable year covered by the
20 delinquent return. The penalty under this subsection is in addition
21 to any penalties assessed for the late payment of any tax due on the
22 return.

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

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

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

30 NEW SECTION. **Sec. 13.** JOINT FILERS. (1) If the federal income
31 tax liabilities of both spouses are determined on a joint federal
32 return for the taxable year, they must file a joint return under this
33 chapter.

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

1 (3) The liability for tax due under this chapter of each spouse
2 or state registered domestic partner is joint and several, unless:

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

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

10 NEW SECTION. **Sec. 14.** ADMINISTRATION OF TAXES. Except as
11 otherwise provided by law and to the extent not inconsistent with the
12 provisions of this chapter, chapter 82.32 RCW applies to the
13 administration of taxes imposed under this chapter.

14 NEW SECTION. **Sec. 15.** CRIMINAL ACTIONS. (1) Any taxpayer who
15 knowingly attempts to evade payment of the tax imposed under this
16 chapter is guilty of a class C felony as provided in chapter 9A.20
17 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. 16.** A new section is added to chapter 82.04
22 RCW to read as follows:

23 BUSINESS AND OCCUPATION TAX CREDIT. (1) To avoid taxing the same
24 sale or exchange under both the business and occupation tax and
25 capital gains tax, a credit is allowed against taxes due under this
26 chapter on a sale or exchange that is also subject to the tax imposed
27 under section 5 of this act. The credit is equal to the amount of tax
28 imposed under this chapter on such sale or exchange.

29 (2) The credit may be used against any tax due under this
30 chapter.

31 (3) The credit under this section is earned in regards to a sale
32 or exchange, and may be claimed against taxes due under this chapter,
33 for the tax reporting period in which the sale or exchange occurred.
34 The credit claimed for a tax reporting period may not exceed the tax
35 otherwise due under this chapter for that tax reporting period.
36 Unused credit may not be carried forward or backward to another tax

1 reporting period. No refunds may be granted for unused credit under
2 this section.

3 (4) The department must apply the credit first to taxes deposited
4 into the general fund. If any remaining credit reduces the amount of
5 taxes deposited into the workforce education investment account
6 established in RCW 43.79.195, the department must notify the state
7 treasurer of such amounts monthly, and the state treasurer must
8 transfer those amounts from the general fund to the workforce
9 education investment account.

10 NEW SECTION. **Sec. 17.** ANNUAL ADJUSTMENTS. (1) Beginning
11 December 2023 and each December thereafter, the department must
12 adjust the applicable amounts by multiplying the current applicable
13 amounts by one plus the percentage by which the most current consumer
14 price index available on December 1st of the current year exceeds the
15 consumer price index for the prior 12-month period, and rounding the
16 result to the nearest \$1,000. If an adjustment under this subsection
17 (1) would reduce the applicable amounts, the department must not
18 adjust the applicable amounts for use in the following year. The
19 department must publish the adjusted applicable amounts on its public
20 website by December 31st. The adjusted applicable amounts calculated
21 under this subsection (1) take effect for taxes due and distributions
22 made, as the case may be, in the following calendar year.

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

25 (a) "Applicable amounts" means:

26 (i) The distribution amount to the education legacy trust account
27 as provided in section 2(1)(a) of this act;

28 (ii) The standard deduction amount in sections 4(13) and 7(1) of
29 this act;

30 (iii) The worldwide gross revenue amount under section 8 of this
31 act; and

32 (iv) The minimum qualifying charitable donation amount and
33 maximum charitable donation amount under section 9 of this act.

34 (b) "Consumer price index" means the consumer price index for all
35 urban consumers, all items, for the Seattle area as calculated by the
36 United States bureau of labor statistics or its successor agency.

37 (c) "Seattle area" means the geographic area sample that includes
38 Seattle and surrounding areas.

1 NEW SECTION. **Sec. 18.** The provisions of RCW 82.32.805 and
2 82.32.808 do not apply to this act.

3 NEW SECTION. **Sec. 19.** Sections 1, 2, 4 through 15, and 17 of
4 this act constitute a new chapter in Title 82 RCW.

5 NEW SECTION. **Sec. 20.** (1) If a court of competent jurisdiction,
6 in a final judgment not subject to appeal, adjudges section 5 of this
7 act unconstitutional, or otherwise invalid, in its entirety, section
8 16 of this act is null and void in its entirety. Any credits
9 previously claimed under section 16 of this act must be repaid within
10 30 days of the department of revenue's notice to the taxpayer of the
11 amount due.

12 (2) If the taxpayer fails to repay the credit by the due date,
13 interest and penalties as provided in chapter 82.32 RCW apply to the
14 deficiency.

15 NEW SECTION. **Sec. 21.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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