
HOUSE BILL 2087

State of Washington 63rd Legislature 2013 2nd Special Session

By Representatives Jinkins, Tharinger, Kagi, Roberts, Farrell, Pedersen, Ryu, Reykdal, Lytton, Upthegrove, Fitzgibbon, Hunt, Green, Moscoso, Pollet, Tarleton, Fey, Ormsby, Sawyer, Bergquist, Wylie, Appleton, Riccelli, Sells, Moeller, Cody, Liiias, and Santos

Read first time 06/29/13. Referred to Committee on Finance.

1 AN ACT Relating to authorizing a capital gains tax to fund early
2 childhood investments, higher education, and the state's rainy day
3 fund; amending RCW 82.45.090, 82.45.150, and 83.100.230; adding a new
4 chapter to Title 82 RCW; creating a new section; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.
9 Any term used in this chapter has the same meaning as when used in a
10 comparable context in the internal revenue code unless provided
11 otherwise.

12 (1) "Capital assets" has the same meaning as provided by section
13 1221 of the internal revenue code.

14 (2) "Capital gains" means the excess of the gains from sales or
15 exchanges of capital assets over the losses from such sales or
16 exchanges received by a person.

17 (3) "Department" means the state department of revenue.

18 (4) "Internal revenue code" means the United States internal

1 revenue code of 1986 and amendments thereto, as existing and in effect
2 as of the effective date of this section.

3 (5) "Nonresident" means a person whose domicile is not in this
4 state and who does not reside in this state for more than one hundred
5 eighty-three days during the tax year.

6 (6) "Person" means a natural person.

7 (7)(a) "Resident" means a person whose domicile is in this state or
8 whose domicile is not in this state but who resides in this state for
9 more than one hundred eighty-three days during the tax year.

10 (b) For purposes of this subsection, once a person is a resident,
11 residency continues for three years, notwithstanding changes in
12 domicile.

13 (8) "Taxable year" means the taxpayer's taxable year as defined
14 under the internal revenue code.

15 (9) "Taxpayer" means a person receiving capital gains subject to
16 tax under this chapter.

17 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2014, a tax is
18 imposed on every person for the privilege of selling or exchanging
19 capital assets. The tax equals six and one-half percent multiplied by
20 a person's capital gains for each taxable year.

21 (2) For resident persons, all capital gains must be allocated to
22 this state.

23 (3) For nonresident persons, capital gains must be derived from
24 sources within this state and allocated to this state.

25 (4) The following threshold exemptions are allowed in determining
26 the tax under subsection (1) of this section:

27 (a) Fifty thousand dollars; or

28 (b) One hundred thousand dollars for persons filing joint returns
29 under section 9 of this act.

30 (5) Capital gains must be reported in the taxable year they are
31 received. Losses from the sale or exchange of capital assets may only
32 be used to offset gains from other sales or exchanges of capital assets
33 in the same taxable year.

34 (6) Receipts from this tax must be deposited into the education
35 legacy trust account created in RCW 83.100.230.

1 NEW SECTION. **Sec. 3.** This chapter does not apply to gain from
2 the sale of a principal residence.

3 NEW SECTION. **Sec. 4.** This chapter does not apply to amounts
4 received by any person for the sale or exchange of property as
5 authorized under the condemnation proceedings as provided by law for
6 the exercise of the power of eminent domain under Title 8 RCW,
7 regardless of whether the parties have settled the matter prior to
8 filing an action.

9 NEW SECTION. **Sec. 5.** (1) The intent of this section is to prevent
10 the multiple taxation of capital gains in both Washington and another
11 taxing jurisdiction.

12 (2) As used in this section, "taxing jurisdiction" means any of the
13 states, the District of Columbia, or any territory or possession of the
14 United States; any municipality, city, county, township, parish,
15 transportation district, or assessment jurisdiction; or other political
16 subdivision within the territorial limits of the United States with the
17 authority to impose a tax, charge, or fee.

18 (3) A resident person is allowed a credit against the tax imposed
19 in section 2 of this act equal to the amount of tax paid to another
20 taxing jurisdiction on capital gains derived from sources within the
21 other taxing jurisdiction.

22 (4) The amount of tax credits received by any resident person under
23 this section may not exceed the total amount of tax due under this
24 chapter, and there may be no carryback or carryforward of any unused
25 credits.

26 NEW SECTION. **Sec. 6.** (1) Any person who knowingly attempts to
27 evade the tax imposed under this title or payment thereof is guilty of
28 a class C felony as provided in chapter 9A.20 RCW.

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

32 NEW SECTION. **Sec. 7.** (1) All taxpayers must file with the
33 department, on forms prescribed by the department, a capital gains tax
34 return for each taxable year. A person owing no tax for a taxable year

1 is not required to file a return for that year. Each person required
2 to file a return under this title must, without assessment, notice, or
3 demand, pay any tax due thereon to the department on or before the date
4 fixed for the filing of the return.

5 (2) The department may by rule require that certain taxpayers file,
6 on forms prescribed by the department, informational returns for any
7 period.

8 NEW SECTION. **Sec. 8.** The due date of a return required to be
9 filed with the department must be the due date of the federal income
10 tax return or informational return for federal income tax purposes,
11 except as otherwise required by the department. The department may
12 grant extensions of times by which returns required to be filed by this
13 title may be submitted. The department may grant extensions of time to
14 pay tax with regard to taxes imposed by this title. Interest at the
15 rate as specified in RCW 82.32.050 must accrue during any extension
16 period and the interest and penalty provisions of chapter 82.32 RCW
17 apply to late payments and deficiencies.

18 NEW SECTION. **Sec. 9.** (1) If the federal income tax liabilities of
19 both spouses are determined on a joint federal return for the taxable
20 year, they must file a joint return under this title.

21 (2) If neither spouse is required to file a federal income tax
22 return for the taxable year, a joint return is required to be filed
23 under this title under the same conditions under which a joint return
24 may be filed for purposes of the federal income tax.

25 (3) Except as provided in subsection (5) of this section, 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 title.

29 (4) In any case in which a joint return is filed under this
30 section, the liability of the husband and wife or partners is joint and
31 several, unless the spouse or partner is relieved of liability under 26
32 U.S.C. Sec. 6013 of the internal revenue code.

33 (5) Partners in a state registered domestic partnership or who have
34 a marriage licensed under chapter 26.04 RCW may file a joint return
35 under this title.

1 with this chapter, must follow the internal revenue code and the
2 regulations and rulings of the United States treasury department with
3 respect to the federal income tax. The department may adopt as a part
4 of these rules any portions of the internal revenue code and treasury
5 department regulations and rulings, in whole or in part.

6 NEW SECTION. **Sec. 14.** (1) An authorized agent providing closing
7 and settlement services in a conveyance is required to withhold from
8 consideration payable to a transferor an amount equal to the tax due
9 imposed under section 2 of this act.

10 (2) An authorized agent is not required to withhold amounts under
11 this section if:

12 (a) The conveyance is in lieu of foreclosure of a mortgage, trust
13 deed, or other security instrument or a land sale contract with no
14 additional monetary consideration;

15 (b) The transferor is a personal representative, executor,
16 conservator, bankruptcy trustee, or other person acting under judicial
17 review;

18 (c) The transferor delivers to the authorized agent a written
19 assurance that the sale or exchange qualifies for exclusion of gain
20 under section 3 or 4 of this act.

21 (3)(a) An authorized agent must electronically report the tax
22 withheld on forms prescribed by the department and remit electronic
23 payment of the tax to the department under the methods provided in RCW
24 82.32.080. An authorized agent must electronically file and make
25 payment under this subsection within twenty-five days after the end of
26 the month in which the conveyance occurred.

27 (b) The amount of tax due is a specific lien upon each parcel of
28 real property located in this state that is sold by a transferor. The
29 lien attached from the time of sale until the tax is withheld and paid
30 as provided by this section. The lien may be enforced in the manner
31 prescribed for the foreclosure of mortgages.

32 (c) Amounts withheld pursuant to this section are held in trust for
33 Washington. If an authorized agent fails to remit an amount withheld
34 by the agent under this section by the time remittance is required, the
35 department may recover from the authorized agent the amount withheld,
36 plus interest and penalties as provided in chapter 82.32 RCW. The tax

1 collection provisions of chapter 82.32 RCW apply to the collection of
2 amounts withheld pursuant to this section but not remitted to the
3 department as required under this section.

4 (4) A transferor may claim the amount withheld by an authorized
5 agent on the transferor's tax return.

6 (5) An authorized agent may withhold funds under this section
7 without written instructions to withhold from the transferor.

8 (6) A written affidavit must be executed by the transferor or the
9 transferor's tax advisor under penalty of perjury and must contain the
10 transferor's taxpayer identification number. The authorized agent must
11 retain for six years from the date of the closing of the conveyance any
12 written affirmation obtained by the agent in connection with the
13 conveyance. The department must prescribe by rule the form and content
14 of the written affidavit.

15 (7) It is a defense to any claim by the department or by a
16 transferor against an agent that the agent has acted in reasonable
17 reliance upon representations made by the transferor or the
18 transferor's tax advisor.

19 (8) For the purposes of this section, the following definitions
20 apply unless the context clearly requires otherwise:

21 (a) "Authorized agent" means an agent who is responsible for
22 closing and settlement services in a conveyance;

23 (b) "Closing and settlement services" means services that are
24 provided by:

25 (i) A licensed escrow agent in a real estate closing escrow; or

26 (ii) An attorney for the benefit of a transferor or a transferee in
27 a conveyance, if, simultaneously with the conveyance, the attorney
28 deposits the unpaid purchase price into the attorney's client trust
29 account for disbursement pursuant to the written instructions of, or the
30 agreement between, the transferor and transferee;

31 (c) "Consideration" includes the amount of cash paid for a
32 conveyance and the amount of any lien, mortgage, contract, indebtedness
33 or other encumbrance existing against the property conveyed to which
34 the property remains subject or which the purchaser agrees to pay or
35 assume;

36 (d) "Conveyance" means a sale or exchange of any real estate
37 located in Washington;

1 (e) "Net proceeds" means the net amount to be disbursed to the
2 transferor, prior to reduction for withholding, as shown on the
3 transferor's settlement statement for the conveyance; and

4 (f) "Transferor" means a person, as defined in section 1 of this
5 act, on the closing date of the conveyance.

6 **Sec. 15.** RCW 82.45.090 and 2009 c 350 s 8 are each amended to read
7 as follows:

8 (1) Except for a sale of a beneficial interest in real property
9 (~~where~~) when no instrument evidencing the sale is recorded in the
10 official real property records of the county in which the property is
11 located, the tax imposed by this chapter (~~shall~~) and the tax withheld
12 under section 14 of this act must be paid to and collected by the
13 treasurer of the county within which is located the real property which
14 was sold.

15 (2) In collecting the tax under this section the treasurer
16 (~~shall~~) must act as agent for the state.

17 (a) The county treasurer (~~shall~~) must cause a verification of
18 payment evidencing satisfaction of the lien to be affixed to the
19 instrument of sale or conveyance prior to its recording or to the real
20 estate excise tax affidavit in the case of used mobile home sales and
21 used floating home sales.

22 (i) A receipt issued by the county treasurer for the payment of the
23 tax imposed under this chapter (~~shall be~~) is evidence of the
24 satisfaction of the lien imposed hereunder and may be recorded in the
25 manner prescribed for recording satisfactions of mortgages.

26 (ii) No instrument of sale or conveyance evidencing a sale subject
27 to the tax (~~shall~~) may be accepted by the county auditor for filing
28 or recording until the tax (~~shall have~~) has been paid and the
29 verification of payment affixed thereto; in case the tax is not due on
30 the transfer, the instrument (~~shall~~) may not be so accepted until
31 suitable notation of such fact has been made on the instrument by the
32 treasurer.

33 (iii) Any time there is a sale of a used mobile home, used
34 manufactured home, used park model, or used floating home that has not
35 been title eliminated, property taxes must be current in order to
36 complete the processing of the real estate excise tax affidavit or
37 other documents transferring title.

1 (iv) Verification that the property taxes are current must be noted
2 on the mobile home real estate excise tax affidavit or on a form
3 approved by the county treasurer.

4 (b) For the purposes of this subsection (2), "mobile home,"
5 "manufactured home," and "park model" have the same meaning as provided
6 in RCW 59.20.030.

7 ~~((+2))~~ (3) For a sale of a beneficial interest in real property
8 ~~((where))~~ when a tax is due under this chapter and ~~((where))~~ when no
9 instrument is recorded in the official real property records of the
10 county in which the property is located, the sale ~~((shall))~~ must be
11 reported to the department of revenue within five days from the date of
12 the sale on such returns or forms and according to such procedures as
13 the department may prescribe. Such forms or returns ~~((shall))~~ must be
14 signed by both the transferor and the transferee and shall be
15 accompanied by payment of the tax due.

16 ~~((+3))~~ (4) Any person who intentionally makes a false statement on
17 any return or form required to be filed with the department under this
18 chapter is guilty of perjury under chapter 9A.72 RCW.

19 **Sec. 16.** RCW 82.45.150 and 1996 c 149 s 6 are each amended to read
20 as follows:

21 (1) All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050,
22 82.32.140, 82.32.270, and 82.32.090 (1) and ~~((+8))~~ (10), applies to
23 the tax imposed by this chapter, in addition to any other provisions of
24 law for the payment and enforcement of the tax imposed by this chapter.
25 The department of revenue ~~((shall))~~ must provide by rule ~~((provide))~~
26 for the effective administration of this chapter. The rules ~~((shall))~~
27 must prescribe and furnish a real estate excise tax affidavit form
28 verified by both the seller and the buyer, or agents of each, to be
29 used by each county, or the department, as the case may be, in the
30 collection of the tax imposed by this chapter, except that an affidavit
31 given in connection with grant of an easement or right-of-way to a gas,
32 electrical, or telecommunications company, as defined in RCW 80.04.010,
33 or to a public utility district or cooperative that distributes
34 electricity, need be verified only on behalf of the company, district,
35 or cooperative. The department of revenue ~~((shall))~~ must annually
36 conduct audits of transactions and affidavits filed under this chapter.

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

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