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**SENATE BILL 5699**

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**State of Washington 64th Legislature 2015 Regular Session**

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

AN ACT Relating to enacting an excise tax on capital gains to improve the fairness of Washington's tax system and provide funding for the education legacy trust account; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 82 RCW; creating a new section; and prescribing penalties.

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

**PART I**

**CAPITAL GAINS TAX**

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

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

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

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

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

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

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

(5) "Individual" means a natural person.

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

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

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

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

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

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

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

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

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

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

(a) Twenty-five thousand dollars; or

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

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

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

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

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

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

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

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

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

(2) Assets held under a retirement savings account under section 401(k) of the internal revenue code, a tax-sheltered annuity or a custodial account described in section 403(b) of the internal revenue code, a deferred compensation plan under section 457(b) of the internal revenue code, an individual retirement account or an individual retirement annuity described in section 408 of the internal revenue code, a Roth individual retirement account described in section 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or similar retirement savings vehicle;

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

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

(5) Agricultural land by an individual who has regular, continuous, and substantial involvement in the operation of the agricultural land that meets the criteria for material participation in an activity under section 469(h) of the internal revenue code for the ten years prior to the date of the sale or exchange of the agricultural land;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART II**

**BUSINESS AND OCCUPATION TAX**

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

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

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

**PART III**

**MISCELLANEOUS PROVISIONS**

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

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

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

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