
SENATE BILL 5959

State of Washington 65th Legislature 2017 2nd Special Session

By Senator Chase

Read first time 06/16/17. Referred to Committee on Ways & Means.

1 AN ACT Relating to establishing a capital gains tax; adding a new
2 section to chapter 82.04 RCW; adding a new section to chapter 82.32
3 RCW; and adding a new chapter to Title 82 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Accessory dwelling unit" means a separate habitable living
9 area that is subordinate to the principal single-family dwelling
10 unit, which is either internal to, attached to, or located on the
11 same property tax parcel as, the principal single-family dwelling
12 unit.

13 (2) "Adjusted capital gain" means federal net long-term capital
14 gain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (11) "Washington capital gains" means an individual's adjusted
38 capital gains allocated to this state as provided in section 6 of
39 this act, less:

40 (a) Twenty-five thousand dollars; or

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

3 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2018, a tax is
4 imposed on all individuals for the privilege of selling or exchanging
5 long-term capital assets, or receiving Washington capital gains. The
6 tax equals seven percent multiplied by the individual's Washington
7 capital gains.

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

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

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

23 NEW SECTION. **Sec. 3.** This chapter does not apply to the sale or
24 exchange of:

25 (1) Any residential dwelling, which means property consisting
26 solely of (a) a single-family residence, a residential condominium
27 unit, or a residential cooperative unit, including any accessory
28 dwelling unit associated with such residence or residential unit, (b)
29 a multifamily residential building consisting of one or more common
30 walls and fewer than four units, or (c) a floating home as defined in
31 RCW 82.45.032;

32 (2) Assets held under a retirement savings account under Title 26
33 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
34 annuity or a custodial account described in Title 26 U.S.C. Sec.
35 403(b) of the internal revenue code, a deferred compensation plan
36 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
37 individual retirement account or an individual retirement annuity
38 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a

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

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

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

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

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

22 (7) Timber, or the receipt of Washington capital gains as
23 dividends and distributions from real estate investment trusts
24 derived from gains from the sale or exchange of timber. "Timber"
25 means forest trees, standing or down, on privately or publicly owned
26 land, and includes Christmas trees and short-rotation hardwoods. The
27 sale or exchange of timber includes the cutting or disposal of timber
28 qualifying for capital gains treatment under Title 26 U.S.C. Sec.
29 631(a) or (b) of the internal revenue code.

30 NEW SECTION. **Sec. 4.** The tax imposed under this chapter is in
31 addition to any other taxes imposed by the state or any of its
32 political subdivisions, or a municipal corporation, with respect to
33 the same sale or exchange, including the taxes imposed in or under
34 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
35 RCW.

36 NEW SECTION. **Sec. 5.** In computing tax, there may be deducted
37 from the measure of tax amounts that the state is prohibited from

1 taxing under the Constitution of this state or the Constitution or
2 laws of the United States.

3 NEW SECTION. **Sec. 6.** (1) For purposes of the tax imposed under
4 this chapter, adjusted capital gains are allocated as follows:

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 7.** (1) Except as otherwise provided in this
2 section or RCW 82.32.080, taxpayers owing tax under this chapter must
3 file, on forms prescribed by the department, a return with the
4 department on or before the date the taxpayer's federal income tax
5 return for the taxable year is required to be filed.

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

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

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

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

29 (6)(a) If any return due under subsection (1) of this section,
30 along with a copy of the federal income tax return, is not filed with
31 the department by the due date or any extension granted by the
32 department, the department must assess a penalty in the amount of
33 five percent of the tax due for the taxable year covered by the
34 return for each month or portion of a month that the return remains
35 unfiled. The total penalty assessed under this subsection may not
36 exceed twenty-five percent of the tax due for the taxable year
37 covered by the delinquent return. The penalty under this subsection
38 is in addition to any penalties assessed for the late payment of any
39 tax due on the return.

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

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

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

8 NEW SECTION. **Sec. 8.** (1) If the federal income tax liabilities
9 of both spouses are determined on a joint federal return for the
10 taxable year, they must file a joint return under this chapter.

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

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

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

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

27 NEW SECTION. **Sec. 9.** To the extent not inconsistent with the
28 provisions of this chapter, the following statutes apply to the
29 administration of taxes imposed under this chapter: RCW 82.32.050,
30 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
31 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
32 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
33 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
34 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
35 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
36 82.32.805, 82.32.808, and section 14 of this act.

1 NEW SECTION. **Sec. 10.** (1) Any taxpayer who knowingly attempts
2 to evade payment of the tax imposed under this chapter is guilty of a
3 class C felony as provided in chapter 9A.20 RCW.

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

7 NEW SECTION. **Sec. 11.** All revenue from taxes collected under
8 this chapter, including penalties and interest on such taxes, must be
9 deposited in the education legacy trust account created in RCW
10 83.100.230.

11 NEW SECTION. **Sec. 12.** Notwithstanding any common law rule of
12 strict construction of statutes imposing taxes, this chapter, being
13 necessary for the welfare of the state and its inhabitants, must be
14 liberally construed in support of application of the tax.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.04
16 RCW to read as follows:

17 A deduction is allowed against a person's gross income of the
18 business to the extent necessary to avoid taxing the same amounts
19 under this chapter and section 2 of this act.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.32
21 RCW to read as follows:

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

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

1 (a) "Specified taxes" means generally applicable state and local
2 sales tax and use taxes, broad-based state gross receipts taxes,
3 state income taxes, and stand-alone state taxes on capital gains or
4 interest and dividends. "Specified taxes" include, but are not
5 limited to, the taxes imposed in or under the authority of chapters
6 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
7 created in section 15 of this act), and similar taxes imposed by
8 another state. For purposes of this subsection (2)(a), "gross
9 receipts tax," "income tax," "sales tax," and "use tax" have the same
10 meanings as provided in RCW 82.56.010.

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

12 NEW SECTION. **Sec. 15.** Sections 1 through 12 of this act
13 constitute a new chapter in Title 82 RCW.

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