

ESSB 5096 - H COMM AMD  
By Committee on Finance

ADOPTED AND ENGROSSED 04/21/2021

1 Strike everything after the enacting clause and insert the  
2 following:

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

13 The legislature intends to levy a seven percent tax on the  
14 privilege of voluntarily selling or exchanging stocks, bonds, and  
15 other capital assets where the profit is in excess of \$250,000  
16 annually to fund K-12 education, early learning, and child care, and  
17 advance our paramount duty to amply provide an education to every  
18 child in the state.

19 The legislature further intends to exempt certain assets from the  
20 tax including, but not limited to, qualified family-owned small  
21 businesses, all residential and other real property, and retirement  
22 accounts.

23 NEW SECTION. **Sec. 2.** REVENUES DEPOSITED INTO EDUCATION LEGACY  
24 TRUST ACCOUNT. All taxes, interest, and penalties collected under  
25 this chapter must be deposited into the education legacy trust  
26 account created in RCW 83.100.230.

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

29 The education legacy trust account is created in the state  
30 treasury. Money in the account may be spent only after appropriation.

1 Expenditures from the account may be used only for support of the  
2 common schools, and for expanding access to higher education through  
3 funding for new enrollments and financial aid, early learning and  
4 child care programs, and other educational improvement efforts.  
5 (~~During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia~~  
6 ~~appropriations from the account may be made for support of early~~  
7 ~~learning programs. It is the intent of the legislature that this~~  
8 ~~policy will be continued in subsequent fiscal biennia.~~)

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

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

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

18 (b) Plus any amount of long-term capital loss from a sale or  
19 exchange that is not allocated to Washington under section 10 of this  
20 act, to the extent such loss was included in calculating federal net  
21 long-term capital gain;

22 (c) Plus any amount of loss carryforward from a sale or exchange  
23 that is not allocated to Washington under section 10 of this act, to  
24 the extent such loss was included in calculating federal net long-  
25 term capital gain;

26 (d) Less any amount of long-term capital gain from a sale or  
27 exchange that is not allocated to Washington under section 10 of this  
28 act, to the extent such gain was included in calculating federal net  
29 long-term capital gain; and

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

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

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

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

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

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

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

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

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

19 (10)(a) "Resident" means an individual:

20 (i) Who is domiciled in this state during the taxable year,  
21 unless the individual (A) maintained no permanent place of abode in  
22 this state during the entire taxable year, (B) maintained a permanent  
23 place of abode outside of this state during the entire taxable year,  
24 and (C) spent in the aggregate not more than 30 days of the taxable  
25 year in this state; or

26 (ii) Who is not domiciled in this state during the taxable year,  
27 but maintained a place of abode and was physically present in this  
28 state for more than 183 days during the taxable year.

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

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

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

37 (12) "Taxpayer" means an individual subject to tax under this  
38 chapter.

39 (13) "Washington capital gains" means an individual's adjusted  
40 capital gain less \$250,000, as provided in section 7 of this act and

1 adjusted annually under section 16 of this act, for each return filed  
2 under this chapter.

3 NEW SECTION. **Sec. 5.** TAX IMPOSED. (1) Beginning January 1,  
4 2022, an excise tax is imposed on the sale or exchange of long-term  
5 capital assets. Only individuals are subject to payment of the tax,  
6 which equals seven percent multiplied by an individual's Washington  
7 capital gains.

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

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

25 (4)(a) The tax imposed in this section applies to the sale or  
26 exchange of long-term capital assets owned by the taxpayer, whether  
27 the taxpayer was the legal or beneficial owner of such assets at the  
28 time of the sale or exchange. The tax applies when the Washington  
29 capital gains are recognized by the taxpayer in accordance with this  
30 chapter.

31 (b) For purposes of this chapter:

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

38 (ii) A nongrantor trust is deemed to be a grantor trust if the  
39 trust does not qualify as a grantor trust for federal tax purposes,

1 and the grantor's transfer of assets to the trust is treated as an  
2 incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal  
3 revenue code and its accompanying regulations. A grantor of such  
4 trust is considered the beneficial owner of the capital assets of the  
5 trust for purposes of the tax imposed in this section and must  
6 include any long-term capital gain or loss from the sale or exchange  
7 of a capital asset by the trust in the calculation of that  
8 individual's adjusted capital gain, if such gain or loss is allocated  
9 to this state under section 10 of this act.

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

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

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

20 (b) (i) Except as provided in (b) (ii) and (iii) of this  
21 subsection, the value of the exemption under this subsection is equal  
22 to the fair market value of the real estate owned directly by the  
23 entity less its basis, at the time that the sale or exchange of the  
24 individual's interest occurs, multiplied by the percentage of the  
25 ownership interest in the entity which is sold or exchanged by the  
26 individual.

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

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

38 (c) Fair market value of real estate may be established by a fair  
39 market appraisal of the real estate or an allocation of assets by the

1 seller and the buyer made under Title 26 U.S.C. Sec. 1060 of the  
2 internal revenue code, as amended. However, the department is not  
3 bound by the parties' agreement as to the allocation of assets,  
4 allocation of consideration, or fair market value, if such  
5 allocations or fair market value do not reflect the fair market value  
6 of the real estate. The assessed value of the real estate for  
7 property tax purposes may be used to determine the fair market value  
8 of the real estate, if the assessed value is current as of the date  
9 of the sale or exchange of the ownership interest in the entity  
10 owning the real estate and the department determines that this method  
11 is reasonable under the circumstances.

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

16 (3) Assets held under a retirement savings account under Title 26  
17 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
18 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)  
19 of the internal revenue code, a deferred compensation plan under  
20 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
21 individual retirement account or individual retirement annuity  
22 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
23 Roth individual retirement account described in Title 26 U.S.C. Sec.  
24 408A of the internal revenue code, an employee defined contribution  
25 program, an employee defined benefit plan, or a similar retirement  
26 savings vehicle;

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

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

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

37 (7) Timber, timberland, or the receipt of Washington capital  
38 gains as dividends and distributions from real estate investment  
39 trusts derived from gains from the sale or exchange of timber and  
40 timberland. "Timber" means forest trees, standing or down, on

1 privately or publicly owned land, and includes Christmas trees and  
2 short-rotation hardwoods. The sale or exchange of timber includes the  
3 cutting or disposal of timber qualifying for capital gains treatment  
4 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue  
5 code;

6 (8) (a) Commercial fishing privileges.

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

11 (i) In the case of federally managed fisheries, quota and access  
12 to fisheries assigned pursuant to individual fishing quota programs,  
13 limited entry and catch share programs, cooperative fishing  
14 management agreements, or similar arrangements; and

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

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

21 NEW SECTION. **Sec. 7.** DEDUCTIONS. In computing tax, there may be  
22 deducted from the measure of tax:

23 (1) A standard deduction of \$250,000 per individual, or in the  
24 case of spouses or domestic partners, their combined standard  
25 deduction is limited to \$250,000, regardless of whether they file  
26 joint or separate returns. The amount of the standard deduction shall  
27 be adjusted pursuant to section 16 of this act;

28 (2) Amounts that the state is prohibited from taxing under the  
29 Constitution of this state or the Constitution or laws of the United  
30 States; and

31 (3) The amount of adjusted capital gain derived from the sale or  
32 transfer of the taxpayer's interest in a qualified family-owned small  
33 business pursuant to section 8 of this act.

34 NEW SECTION. **Sec. 8.** QUALIFIED FAMILY-OWNED SMALL BUSINESS  
35 DEDUCTION. (1) In computing tax under this chapter for a taxable  
36 year, a taxpayer may deduct from the measure of tax the amount of  
37 adjusted capital gain derived in the taxable year from the sale of  
38 substantially all of the fair market value of the assets of, or the

1 transfer of substantially all of the taxpayer's interest in, a  
2 qualified family-owned small business, to the extent that such  
3 adjusted capital gain would otherwise be included in the taxpayer's  
4 Washington capital gains.

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

7 (a) "Assets" means real property and personal property, including  
8 tangible personal property and intangible property.

9 (b) "Family" means the same as "member of the family" in RCW  
10 83.100.046.

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

14 (ii) The term "materially participated" must be interpreted  
15 consistently with the applicable treasury regulations for Title 26  
16 U.S.C. Sec. 469 of the internal revenue code, to the extent that such  
17 interpretation does not conflict with any provision of this section.

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

19 (i) In which the taxpayer held a qualifying interest for at least  
20 five years immediately preceding the sale or transfer described in  
21 subsection (1) of this section;

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

27 (iii) That had worldwide gross revenue of \$10,000,000 or less in  
28 the 12-month period immediately preceding the sale or transfer  
29 described in subsection (1) of this section. The worldwide gross  
30 revenue amount under this subsection (2)(d)(iii) shall be adjusted  
31 annually as provided in section 16 of this act.

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

33 (f) "Qualifying interest" means:

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

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

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



1 (B) Thirty percent of the business is owned, directly or  
2 indirectly, by any combination of the taxpayer or members of the  
3 taxpayer's family, or both, and 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 90 percent.

9 NEW SECTION. **Sec. 9.** OTHER TAXES. The tax imposed under this  
10 chapter is in addition to any other taxes imposed by the state or any  
11 of its political subdivisions, or a municipal corporation, with  
12 respect to the same sale or exchange, including the taxes imposed in,  
13 or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45,  
14 or 82.46 RCW.

15 NEW SECTION. **Sec. 10.** ALLOCATION OF GAINS AND LOSSES. (1) For  
16 purposes of the tax imposed under this chapter, long-term capital  
17 gains and losses are allocated to Washington as follows:

18 (a) Long-term capital gains or losses from the sale or exchange  
19 of tangible personal property are allocated to this state if the  
20 property was located in this state at the time of the sale or  
21 exchange. Long-term capital gains or losses from the sale or exchange  
22 of tangible personal property are also allocated to this state even  
23 though the property was not located in this state at the time of the  
24 sale or exchange if:

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

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

30 (iii) The taxpayer is not subject to the payment of an income or  
31 excise tax legally imposed on the long-term capital gains or losses  
32 by another taxing jurisdiction.

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

36 (2)(a) A credit is allowed against the tax imposed in section 5  
37 of this act equal to the amount of any legally imposed income or  
38 excise tax paid by the taxpayer to another taxing jurisdiction on

1 capital gains derived from capital assets within the other taxing  
2 jurisdiction to the extent such capital gains are included in the  
3 taxpayer's Washington capital gains. The amount of credit under this  
4 subsection may not exceed the total amount of tax due under this  
5 chapter, and there is no carryback or carryforward of any unused  
6 credits.

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

12 NEW SECTION. **Sec. 11.** FILING OF RETURNS. (1)(a) Except as  
13 otherwise provided in this section or RCW 82.32.080, taxpayers owing  
14 tax under this chapter must file, on forms prescribed by the  
15 department, a return with the department on or before the date the  
16 taxpayer's federal income tax return for the taxable year is required  
17 to be filed.

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

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

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

29 (3) Each taxpayer required to file a return under this section  
30 must, without assessment, notice, or demand, pay any tax due thereon  
31 to the department on or before the date fixed for the filing of the  
32 return, regardless of any filing extension. The tax must be paid by  
33 electronic funds transfer as defined in RCW 82.32.085 or by other  
34 forms of electronic payment as may be authorized by the department.  
35 The department may waive the electronic payment requirement for good  
36 cause as provided in RCW 82.32.080. If any tax due under this chapter  
37 is not paid by the due date, interest and penalties as provided in  
38 chapter 82.32 RCW apply to the deficiency.

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

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

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

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

13 (b) The department may by rule prescribe additional filing  
14 requirements to substantiate an individual's claim for an exemption  
15 under section 6(2) of this act. Prior to adopting any rule under this  
16 subsection (4) (b), the department must allow for an opportunity for  
17 participation by interested parties in the rule-making process in  
18 accordance with the administrative procedure act, chapter 34.05 RCW.

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

28 (6) (a) If any return due under subsection (1) of this section,  
29 along with a copy of the federal income tax return, is not filed with  
30 the department by the due date or any extension granted by the  
31 department, the department must assess a penalty in the amount of  
32 five percent of the tax due for the taxable year covered by the  
33 return for each month or portion of a month that the return remains  
34 unfiled. The total penalty assessed under this subsection may not  
35 exceed 25 percent of the tax due for the taxable year covered by the  
36 delinquent return. The penalty under this subsection is in addition  
37 to any penalties assessed for the late payment of any tax due on the  
38 return.

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

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

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

6 NEW SECTION. **Sec. 12.** JOINT FILERS. (1) If the federal income  
7 tax liabilities of both spouses are determined on a joint federal  
8 return for the taxable year, they must file a joint return under this  
9 chapter.

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

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

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

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

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

29 NEW SECTION. **Sec. 14.** CRIMINAL ACTIONS. (1) Any taxpayer who  
30 knowingly attempts to evade payment of the tax imposed under this  
31 chapter is guilty of a class C felony as provided in chapter 9A.20  
32 RCW.

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

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

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

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

11        (3) The credit under this section is earned in regards to a sale  
12 or exchange, and may be claimed against taxes due under this chapter,  
13 for the tax reporting period in which the sale or exchange occurred.  
14 The credit claimed for a tax reporting period may not exceed the tax  
15 otherwise due under this chapter for that tax reporting period.  
16 Unused credit may not be carried forward or backward to another tax  
17 reporting period. No refunds may be granted for unused credit under  
18 this section.

19        (4) The department must apply the credit first to taxes deposited  
20 into the general fund. If any remaining credit reduces the amount of  
21 taxes deposited into the workforce education investment account  
22 established in RCW 43.79.195, the department must notify the state  
23 treasurer of such amounts monthly, and the state treasurer must  
24 transfer those amounts from the general fund to the workforce  
25 education investment account.

26        NEW SECTION.    **Sec. 16.**    ANNUAL ADJUSTMENTS. (1) Beginning  
27 December 2023 and each December thereafter, the department must  
28 adjust the applicable amounts by multiplying the current applicable  
29 amounts by one plus the percentage by which the most current consumer  
30 price index available on December 1st of the current year exceeds the  
31 consumer price index for the prior 12-month period, and rounding the  
32 result to the nearest \$1,000. If an adjustment under this subsection  
33 (1) would reduce the applicable amounts, the department must not  
34 adjust the applicable amounts for use in the following year. The  
35 department must publish the adjusted applicable amounts on its public  
36 website by December 31st. The adjusted applicable amounts calculated  
37 under this subsection (1) take effect for taxes due and distributions  
38 made, as the case may be, in the following calendar year.

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

3 (a) "Applicable amounts" means:

4 (i) The standard deduction amount in sections 4(13) and 7(1) of  
5 this act; and

6 (ii) The worldwide gross revenue amount under section 8 of this  
7 act.

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

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

13 NEW SECTION. **Sec. 17.** The provisions of RCW 82.32.805 and  
14 82.32.808 do not apply to this act.

15 NEW SECTION. **Sec. 18.** Sections 1, 2, 4 through 14, and 16 of  
16 this act constitute a new chapter in Title 82 RCW.

17 NEW SECTION. **Sec. 19.** (1) If a court of competent jurisdiction,  
18 in a final judgment not subject to appeal, adjudges section 5 of this  
19 act unconstitutional, or otherwise invalid, in its entirety, section  
20 15 of this act is null and void in its entirety. Any credits  
21 previously claimed under section 15 of this act must be repaid within  
22 30 days of the department of revenue's notice to the taxpayer of the  
23 amount due.

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

27 NEW SECTION. **Sec. 20.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected."

31 Correct the title.

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