
SENATE BILL 5426

State of Washington

67th Legislature

2021 Regular Session

By Senators Hunt, Conway, Das, Dhingra, Hasegawa, Keiser, Kuderer, Lovelett, Nguyen, Saldaña, Stanford, and Wilson, C.

Read first time 02/04/21. Referred to Committee on Ways & Means.

1 AN ACT Relating to improving the equity of Washington state's tax
2 code by creating the Washington state wealth tax and taxing
3 extraordinary financial intangible assets; amending RCW 43.135.034
4 and 82.32.655; adding a new title to the Revised Code of Washington
5 to be codified as Title 84A RCW; creating a new section; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) Washington has long led the way with
9 innovative and bold ideas that have changed the world. Many of the
10 world's greatest innovators and artists, engineers and entrepreneurs,
11 and scientists and social activists have called Washington home. But
12 Washington's status as an economic and social leader is threatened by
13 growing wealth inequality and a tax structure that perpetuates it.
14 Asking the state's poorest residents to pay six times more in taxes,
15 as a share of their income, than the state's highest income
16 households, including some of the wealthiest individuals in the
17 world, is unconscionable.

18 (2) The legislature recognizes Washington's tax system is the
19 most upside down and regressive in the nation. As a percentage of
20 household income, low-income families pay nearly 18 percent in taxes,
21 middle-income families pay 11 percent, and the state's highest income

1 households pay three percent or less. Washington's overreliance on
2 low-income and middle-income families to pay for education, child
3 care, public health, housing, public safety, and other vital
4 government programs and functions is simply not sustainable. The
5 legislature finds that building a tax system that is fair, balanced,
6 and works for everyone is imperative for the long-term economic
7 growth of our state. Washington's wealthiest residents can and should
8 share more equitably in the responsibility of funding these key
9 community programs alongside their neighbors.

10 (3) Washington's inequitable tax code is particularly egregious
11 when you consider the size of the wealth gap in the United States,
12 and in Washington state specifically. According to Forbes, nine of
13 the world's wealthiest people reside in Washington state, and their
14 individual wealth ranges from \$2,700,000,000 to \$179,000,000,000. The
15 Washington state department of revenue estimates that there are 100
16 taxpayers with wealth in excess of \$1,000,000,000 who reside in
17 Washington state. By comparison, median household wealth, or net
18 worth, in the United States is \$64,000. The disparity between white
19 households and Black and Latino households shows an even wider wealth
20 gap. Whereas the median wealth for white families is \$116,800, it is
21 just \$1,700 for Black families and \$2,000 for Latino families. Wealth
22 has shifted dramatically in the United States, and we now have the
23 biggest wealth gap in 50 years.

24 (4) The legislature further finds that over the last nine months
25 of the coronavirus pandemic, the stock market has reached a record
26 high and the cumulative wealth of the nation's billionaires has
27 increased by \$1,000,000,000,000. At the same time, small businesses
28 are struggling to keep their doors open and families across this
29 state and nation are struggling to keep a roof over their head and
30 food on the table.

31 (5) Therefore, the legislature intends to disrupt the long-
32 standing systemic inequities in our tax code laid bare by the
33 coronavirus pandemic as we recover, rebuild, and transform
34 Washington's economy.

35 (6) The Washington state wealth tax is created by narrowing the
36 existing tax preference that exempts all intangible property and
37 assesses a modest one percent tax only on financial intangible
38 assets, such as publicly traded options, futures contracts, and
39 stocks and bonds. The first \$1,000,000,000 of assessed value is
40 exempt from the Washington state wealth tax.

1 (7) The legislature further intends to achieve equity by using
2 revenues generated by the Washington state wealth tax to offer
3 credits against taxes paid disproportionately by low-income and
4 middle-income families and small start-up and low-margin businesses.

5 (8) Finally, the legislature intends to invest the revenues
6 generated by the Washington state wealth tax to fund other critical
7 services, such as education, child care, public health, housing, and
8 public safety. The legislature finds that if Washington state wants
9 to continue its role as a global leader and attract, retain, and grow
10 the most innovative, creative, and talented residents in the world,
11 it must fund community investments and ensure that our state is a
12 place where every resident has a fair and equitable chance to not
13 only survive, but thrive.

14 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
15 section apply throughout this chapter unless the context clearly
16 requires otherwise.

17 (1) "Artificial person" means a corporation; limited liability
18 company; limited liability partnership, limited partnership, joint
19 venture, or any other kind of partnership; association; business
20 trust or any other trust; estate; association; or any other
21 organization.

22 (2) "Cash and cash equivalents" means currency and short-term,
23 highly liquid investments that are readily convertible to known
24 amounts of cash. "Cash and cash equivalents" includes money on hand,
25 certificates of deposit, checking account deposits, savings account
26 deposits, money market funds, cryptocurrency, and similar assets.

27 (3) "Day" means a calendar day or any portion of a calendar day.

28 (4) "Department" means the department of revenue.

29 (5) "Domicile" means:

30 (a) The same as in RCW 72.36.035, for purposes of a natural
31 person; and

32 (b) For purposes of an artificial person:

33 (i) For a business, the principal place from which the business
34 is directed or managed; and

35 (ii) For artificial persons other than businesses, the place
36 where the entity was organized.

37 (6) "Fair market value" means the amount of money that a willing
38 buyer would pay to a willing seller for property in an arms-length
39 transaction if both parties were fully informed about all advantages

1 and disadvantages of the property and neither party is acting under a
2 compulsion to enter into the transaction.

3 (7) "Financial intangible assets" means the following assets:

4 (a) Cash and cash equivalents;

5 (b) Financial investments such as annuities, bonds, treasury
6 bills, mutual funds or index funds, stocks, publicly traded options,
7 futures contracts, commodities contracts, put and call options,
8 pension funds, mortgages and liabilities secured by real property,
9 certificates of interest in gold and other precious metals or gems,
10 and other similar investments;

11 (c) Units of ownership in a subchapter K entity; and

12 (d) Similar intangible assets.

13 (8) "Intangible assets" means both financial intangible assets
14 and nonfinancial intangible assets.

15 (9) "Nonfinancial intangible assets" means all intangible
16 property other than financial intangible assets, such as trademarks,
17 trade names, brand names, patents, copyrights, trade secrets,
18 licenses, permits, core deposits of financial institutions,
19 noncompete agreements, customer lists, patient lists, favorable
20 contracts, favorable financing agreements, reputation, exceptional
21 management, prestige, good name, integrity of a business, private
22 nongovernmental personal service contracts, and private
23 nongovernmental athletic or sports franchises or agreements.

24 (10) "Person" means any natural person or artificial person.

25 (11) "Subchapter K entity" means a partnership, including a
26 limited partnership, limited liability partnership, limited liability
27 limited partnership, limited liability company, joint venture, or any
28 other entity subject to subchapter K of the internal revenue code, 26
29 U.S.C. Secs. 701 through 761, including a single member limited
30 liability company.

31 (12) "Tax year" means the calendar year immediately preceding the
32 year in which the tax under this chapter is due and payable to the
33 department.

34 (13) "Taxable worldwide wealth" means a person's worldwide
35 wealth, excluding the fair market value of any intangible property
36 exempt from the tax imposed under this chapter.

37 (14) "Washington resident" or "resident" means the following:

38 (a) Any artificial person domiciled in this state at any time
39 during the tax year; or

40 (b) A natural person:

1 (i) Who is domiciled in this state at any time during the tax
2 year, unless that person (A) maintained no permanent place of abode
3 in this state during the entire tax year, (B) maintained a permanent
4 place of abode outside of this state during the entire tax year, and
5 (C) spent in the aggregate not more than 30 days of the tax year in
6 this state; or

7 (ii) Who is not domiciled in this state during the tax year, but
8 maintained a place of abode and was physically present in this state
9 for more than 183 days during the tax year.

10 (15)(a) "Worldwide wealth" means the fair market value of all
11 intangible assets, or portion thereof, owned or controlled by a
12 resident.

13 (b) For purposes of this subsection:

14 (i) "Control" means a person possesses, directly or indirectly,
15 alone or with one or more close associates, more than 50 percent of
16 the power to sell or otherwise dispose of intangible assets.

17 (ii) "Close associates" means natural persons who are in close
18 association with another natural person by reason of a family,
19 marital, personal, or business relationship.

20 (iii) "Own" includes both legal and beneficial ownership.

21 NEW SECTION. **Sec. 3.** TAX IMPOSED. (1) Beginning January 1,
22 2022, for taxes due in 2023, a wealth tax is imposed on each
23 Washington resident. The wealth tax equals one percent multiplied by
24 a resident's taxable worldwide wealth.

25 (2) The tax imposed under this section applies to a resident's
26 taxable worldwide wealth as of December 31st of the tax year.

27 NEW SECTION. **Sec. 4.** WHEN TAXES AND TAX RETURNS ARE DUE. (1)(a)
28 Except as otherwise provided in this section or RCW 82.32.080, each
29 resident owing tax under this chapter must file, on forms prescribed
30 by the department, a return with the department on or before October
31 15th each year reporting that person's taxable worldwide wealth for
32 the immediate preceding calendar year, and such other information the
33 department determines necessary to administer the tax imposed under
34 this chapter.

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

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

3 (2) Spouses and domestic partners must jointly file returns
4 required under this section.

5 (3) Each resident required to file a return under this section
6 must, without assessment, notice, or demand, pay any tax due under
7 this chapter to the department on or before the due date of the
8 return, regardless of any filing extension granted by the department.
9 The tax must be paid by electronic funds transfer as defined in RCW
10 82.32.085 or by other forms of electronic payment as may be
11 authorized by the department. The department may waive the electronic
12 payment requirement for good cause as provided in RCW 82.32.080. If
13 any tax due under this chapter is not paid by the due date, interest
14 and penalties as provided in chapter 82.32 RCW apply to the
15 deficiency.

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

26 (b) The department must waive the penalty imposed under this
27 subsection if:

28 (i) The department is persuaded that the person's failure to file
29 the return by the due date was due to circumstances beyond the
30 person's control; or

31 (ii) The person has not been delinquent in filing any return due
32 under this section during the preceding five calendar years.

33 NEW SECTION. **Sec. 5.** ADMINISTRATIVE PROVISIONS. (1) Except as
34 otherwise provided by law and to the extent not inconsistent with the
35 provisions of this chapter, chapter 82.32 RCW applies to the
36 administration of taxes imposed under this chapter.

37 (2) The department may adopt any rules it considers useful in
38 administering the tax under this chapter.

1 NEW SECTION. **Sec. 6.** EXEMPTIONS. Exemptions from the tax
2 imposed under section 3 of this act are provided for:

3 (1) Up to \$1,000,000,000 of a resident's financial intangible
4 assets. Only one such exemption may be claimed on a jointly filed
5 return required under section 4 of this act;

6 (2) Nonfinancial intangible assets;

7 (3) Worldwide wealth of artificial persons. However, the
8 exemption provided in this subsection (3) does not apply to any
9 financial intangible assets included in a natural person's worldwide
10 wealth;

11 (4) Any obligations or evidences of debt of the United States and
12 obligations of United States government agencies and corporations
13 established by acts of the congress of the United States to the
14 extent required by federal law to be exempt from taxation by the
15 states;

16 (5) Any obligations or evidences of debt of the state of
17 Washington and its political subdivisions and agencies, and
18 instrumentalities of the state of Washington and its political
19 subdivisions, which include municipal bonds;

20 (6) Any stock of the federal reserve bank, the government
21 national mortgage association, the federal national mortgage
22 association, and other corporations and associations established by
23 acts of the congress of the United States; and

24 (7) Any property subject to ad valorem taxation under RCW
25 84.36.005.

26 NEW SECTION. **Sec. 7.** CREDIT FOR SIMILAR WEALTH TAX PAID TO
27 ANOTHER STATE. (1) Except as provided in subsection (2) of this
28 section, a person subject to tax under this chapter is allowed a
29 credit against the tax otherwise due under this chapter equal to the
30 amount of any similar wealth tax legally imposed on, and paid by, the
31 person to another state for the same tax year on financial intangible
32 assets subject to tax under this chapter. Credit under this section
33 may not exceed the tax otherwise due under this chapter and may not
34 be carried forward or backward to another tax year. Unused credit is
35 not refundable.

36 (2) No credit may be claimed under this section if:

37 (a) The other state does not provide a substantially similar
38 credit against its wealth tax; or

1 (b) The taxpayer was domiciled in this state for a greater amount
2 of time than in the other state during the tax year.

3 (3) For purposes of this section, a similar wealth tax does not
4 include an estate tax, inheritance tax, net income tax, gross
5 receipts tax, other business activity tax, or similar tax.

6 (4) For purposes of this section, "state" has the same meaning as
7 in RCW 82.04.462.

8 NEW SECTION. **Sec. 8.** TAX REVENUES TO BE DEPOSITED INTO THE
9 GENERAL FUND. All revenues collected under this chapter must be
10 deposited into the state general fund.

11 NEW SECTION. **Sec. 9.** RULE OF CONSTRUCTION. The legislature
12 intends that any provision of this chapter that is found to be
13 ambiguous by a court of competent jurisdiction or administrative
14 agency be construed in favor of application of the tax,
15 notwithstanding any contrary common law rule of statutory
16 construction.

17 NEW SECTION. **Sec. 10.** TITLE 84 RCW INAPPLICABLE TO WEALTH TAX.
18 None of the provisions of Title 84 RCW apply to this chapter.

19 **Sec. 11.** RCW 43.135.034 and 2020 c 218 s 4 are each amended to
20 read as follows:

21 (1)(a) Any action or combination of actions by the legislature
22 that raises taxes may be taken only if approved by a two-thirds vote
23 in both the house of representatives and the senate. Pursuant to the
24 referendum power set forth in Article II, section 1(b) of the state
25 Constitution, tax increases may be referred to the voters for their
26 approval or rejection at an election.

27 (b) For the purposes of this chapter, "raises taxes" means any
28 action or combination of actions by the state legislature that
29 increases state tax revenue deposited in any fund, budget, or
30 account, regardless of whether the revenues are deposited into the
31 general fund.

32 (2) (~~The state or any political subdivision~~) Political
33 subdivisions of the state may not impose any tax on intangible
34 property listed in RCW 84.36.070 as that statute exists on January 1,
35 1993.

1 **Sec. 12.** RCW 82.32.655 and 2010 1st sp.s. c 23 s 201 are each
2 amended to read as follows:

3 (1) It is the legislature's intent to require all taxpayers to
4 pay their fair share of taxes. To accomplish this purpose, it is the
5 legislature's intent to stop transactions or arrangements that are
6 designed to unfairly avoid taxes.

7 (2) The department must disregard, for tax purposes, the tax
8 avoidance transactions or arrangements that are described in
9 subsection (3) of this section. The department must deny the tax
10 benefit that would otherwise result from the tax avoidance
11 transaction or arrangement. In determining whether the department
12 must disregard a transaction or arrangement described under
13 subsection (3) of this section, the department may consider:

14 (a) Whether an arrangement or transaction changes in a meaningful
15 way, apart from its tax effects, the economic positions of the
16 participants in the arrangement when considered as a whole;

17 (b) Whether substantial nontax reasons exist for entering into an
18 arrangement or transaction;

19 (c) Whether an arrangement or transaction is a reasonable means
20 of accomplishing a substantial nontax purpose;

21 (d) An entities' relative contributions to the work that
22 generates income;

23 (e) The location where work is performed; and

24 (f) Other relevant factors.

25 (3) This section applies only to the following transactions or
26 arrangements:

27 (a) Arrangements that are, in form, a joint venture or similar
28 arrangement between a construction contractor and the owner or
29 developer of a construction project but that are, in substance,
30 substantially guaranteed payments for the purchase of construction
31 services characterized by a failure of the parties' agreement to
32 provide for the contractor to share substantial profits and bear
33 significant risk of loss in the venture;

34 (b) Arrangements through which a taxpayer attempts to avoid tax
35 under chapter 82.04 RCW by disguising income received, or otherwise
36 avoiding tax on income, from a person that is not affiliated with the
37 taxpayer from business activities that would be taxable in Washington
38 by moving that income to another entity that would not be taxable in
39 Washington; ((and))

1 (c) Arrangements through which a taxpayer attempts to avoid tax
2 under chapter 82.08 or 82.12 RCW by engaging in a transaction to
3 disguise its purchase or use of tangible personal property by vesting
4 legal title or other ownership interest in another entity over which
5 the taxpayer exercises control in such a manner as to effectively
6 retain control of the tangible personal property; and

7 (d) Arrangements through which a taxpayer attempts to avoid tax
8 under chapter 84A.--- RCW (the new chapter created in section 15 of
9 this act) through intentional deception, such as by concealing assets
10 or evidence of the location of the taxpayer's domicile in this state,
11 by transferring assets prior to December 31st when the taxpayer
12 effectively retained control of the assets, or by effectively
13 converting taxable assets into nontaxable assets prior to December
14 31st when the taxpayer engages in a substantially offsetting
15 transaction.

16 (4) In determining whether a transaction or arrangement comes
17 within the scope of subsection (3) of this section, the department is
18 not required to prove a taxpayer's subjective intent in engaging in
19 the transaction or arrangement.

20 (5) The department must adopt rules to assist in determining
21 whether a transaction or arrangement is within the scope of
22 subsection (3) of this section. The adoption of a rule as required
23 under this subsection is not a condition precedent for the
24 department's exercise of the authority provided in this section. Any
25 rules adopted under this section must include examples of
26 transactions that the department will disregard for tax purposes.

27 (6) This section does not affect the department's authority to
28 apply any other remedies available under statutory or common law.

29 (7) For purposes of this section, "affiliated" means under common
30 control. "Control" means the possession, directly or indirectly, of
31 more than (~~fifty~~) 50 percent of the power to direct or cause the
32 direction of the management and policies of a person, whether through
33 the ownership of voting shares, by contract, or otherwise.

34 NEW SECTION. Sec. 13. EXEMPTION FROM CERTAIN LAWS APPLICABLE TO
35 NEW TAX PREFERENCES. The provisions of RCW 82.32.805 and 82.32.808 do
36 not apply to this act.

37 NEW SECTION. Sec. 14. SEVERABILITY CLAUSE. If any provision of
38 this act or its application to any person or circumstance is held

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

3 NEW SECTION. **Sec. 15.** CODIFICATION DIRECTION. Sections 1
4 through 10 of this act constitute a new chapter in a new title to be
5 codified as Title 84A RCW.

--- END ---