
SENATE BILL 5926

State of Washington

67th Legislature

2022 Regular Session

By Senators Robinson and Nguyen

Read first time 01/21/22. Referred to Committee on Ways & Means.

1 AN ACT Relating to capital gains taxation of certain investment
2 management services provided to a partnership or similar entity;
3 amending RCW 82.87.020 and 82.87.040; and providing an effective
4 date.

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

6 **Sec. 1.** RCW 82.87.020 and 2021 c 196 s 4 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

16 (b) Plus any amount of long-term capital loss from a sale or
17 exchange that is not allocated to Washington under RCW 82.87.100, to
18 the extent such loss was included in calculating federal net long-
19 term capital gain;

20 (c) Plus any amount of loss carryforward from a sale or exchange
21 that is not allocated to Washington under RCW 82.87.100, to the

1 extent such loss was included in calculating federal net long-term
2 capital gain;

3 (d) Less any amount of long-term capital gain from a sale or
4 exchange that is not allocated to Washington under RCW 82.87.100, to
5 the extent such gain was included in calculating federal net long-
6 term capital gain; and

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

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

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

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

21 (5) "Internal revenue code" means the United States internal
22 revenue code of 1986, as amended, as of July 25, 2021, or such
23 subsequent date as the department may provide by rule consistent with
24 the purpose of this chapter.

25 (6) "Investment management services" means providing a
26 substantial quantity of any of the following services to a
27 partnership, S corporation, or other entity as a partner thereto:

28 (a) Advising as to the advisability of investing in, purchasing,
29 or selling a specified asset;

30 (b) Managing, acquiring, or disposing of a specified asset;

31 (c) Arranging financing with respect to acquiring specified
32 assets; or

33 (d) Any activity in support of any of the services described in
34 (a) through (c) of this subsection.

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

37 ((+7)) (8) "Long-term capital gain" means gain from the sale or
38 exchange of a long-term capital asset.

39 ((+8)) (9) "Long-term capital loss" means a loss from the sale
40 or exchange of a long-term capital asset.

1 ~~((9))~~ (10) "Real estate" means land and fixtures affixed to
2 land. "Real estate" also includes used mobile homes, used park model
3 trailers, used floating homes, and improvements constructed upon
4 leased land.

5 ~~((10))~~ (11)(a) "Resident" means an individual:

6 (i) Who is domiciled in this state during the taxable year,
7 unless the individual (A) maintained no permanent place of abode in
8 this state during the entire taxable year, (B) maintained a permanent
9 place of abode outside of this state during the entire taxable year,
10 and (C) spent in the aggregate not more than 30 days of the taxable
11 year in this state; or

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

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

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

21 ~~((11))~~ (12) "Specified asset" means certain securities,
22 interests in partnerships, commodities, or options or derivatives
23 contracts.

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

26 ~~((12))~~ (14) "Taxpayer" means an individual subject to tax under
27 this chapter.

28 ~~((13))~~ (15) "Washington capital gains" means an individual's
29 adjusted capital gain, as modified in RCW 82.87.060, for each return
30 filed under this chapter.

31 **Sec. 2.** RCW 82.87.040 and 2021 c 196 s 5 are each amended to
32 read as follows:

33 (1)(a) Beginning January 1, 2022, an excise tax is imposed on the
34 sale or exchange of long-term capital assets. Only individuals are
35 subject to payment of the tax, which equals seven percent multiplied
36 by an individual's Washington capital gains, except as provided in
37 (b) of this subsection (1).

1 (b) The tax on an individual's Washington capital gains derived
2 primarily as compensation for investment management services is
3 subject to a rate of 14 percent.

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

7 (3) If an individual's Washington capital gains are less than
8 zero for a taxable year, no tax is due under this section and no such
9 amount is allowed as a carryover for use in the calculation of that
10 individual's adjusted capital gain, as defined in RCW 82.87.020(1),
11 for any taxable year. To the extent that a loss carryforward is
12 included in the calculation of an individual's federal net long-term
13 capital gain and that loss carryforward is directly attributable to
14 losses from sales or exchanges allocated to this state under RCW
15 82.87.100, the loss carryforward is included in the calculation of
16 that individual's adjusted capital gain for the purposes of this
17 chapter. An individual may not include any losses carried back for
18 federal income tax purposes in the calculation of that individual's
19 adjusted capital gain for any taxable year.

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

26 (b) For purposes of this chapter:

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

33 (ii) A nongrantor trust is deemed to be a grantor trust if the
34 trust does not qualify as a grantor trust for federal tax purposes,
35 and the grantor's transfer of assets to the trust is treated as an
36 incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal
37 revenue code and its accompanying regulations. A grantor of such
38 trust is considered the beneficial owner of the capital assets of the
39 trust for purposes of the tax imposed in this section and must
40 include any long-term capital gain or loss from the sale or exchange

1 of a capital asset by the trust in the calculation of that
2 individual's adjusted capital gain, if such gain or loss is allocated
3 to this state under RCW 82.87.100.

4 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2023.

--- END ---