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From: Caleb Allen
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To: Mike Roben; John Katsandres; David MacMillan; Nima Kishan
Subject: Capital Gains Tax Updates (WA)



Washington—Business and Occupation Tax—Regulation adopted—Washington capital gains tax.

The Washington Department of Revenue has adopted Wash. Rev. Code § 458-20-300 (Capital gains excise tax—Overview and administration) effective January 28, 2023. The regulation sets forth proper filing and payment procedures and potential penalties for not following filing and payment requirements for the capital gains excise tax. The capital gains excise tax is imposed on the sale or exchange of long-term capital assets beginning January 1, 2022. Note that this new regulation is subject to repeal since the validity of the underlying tax is currently under review by the Washington Supreme Court after the Douglas County Superior Court ruled that the capital gains tax is unconstitutional and invalid.



Washington—Cigarette, Alcohol & Miscellaneous Taxes—Update on capital gains tax litigation.

The Washington Department of Revenue has provided an update on the status of litigation regarding the capital gains excise tax that was codified under Wash. Rev. Code Ch. 82.87, and that was determined by the Douglas County Superior Court to be unconstitutional and invalid. The state appealed the ruling to the Washington Supreme Court, and in the interim, the Douglas County ruling was stayed. The stay preserves the Department's ability to administer and implement the tax pending a final decision. As such, the online system will be made available to taxpayers to report and pay the tax effective February 2023. If the statute is determined to be unconstitutional, any tax payments will be refunded with interest. The Department has also issued a capital gains tax return guide that provides examples as well as adopted a rule that clarifies the administrative aspects including proper filing and payment procedures. (Update on Capital Gains Excise Tax Litigation, Wash. Dept. Rev., 01/11/2023; Capital Gains Tax Return Guide, Wash. Dept. Rev., 01/11/2023.)

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