

RCW 82.87.040 Tax imposed—Long-term capital assets. (1) (a) Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals seven percent multiplied by an individual's Washington capital gains.

(b) Beginning January 1, 2025, an additional excise tax is imposed on the sale or exchange of long-term capital assets, which equals 2.90 percent multiplied by the portion of an individual's Washington capital gains exceeding \$1,000,000.

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

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

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

(b) For purposes of this chapter:

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

(ii) A nongrantor trust is deemed to be a grantor trust if the trust does not qualify as a grantor trust for federal tax purposes, and the grantor's transfer of assets to the trust is treated as an incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal revenue code and its accompanying regulations. A grantor of such trust is considered the beneficial owner of the capital assets of the trust for purposes of the tax imposed in this section and must include any long-term capital gain or loss from the sale or exchange of a capital asset by the trust in the calculation of that individual's adjusted capital gain, if such gain or loss is allocated to this state under RCW 82.87.100. [2025 c 421 s 101; 2021 c 196 s 5.]

Application—2025 c 421 s 101: "Section 101 of this act applies to taxes imposed in calendar year 2025 for collection in calendar year 2026." [2025 c 421 s 301.]

Findings—Intent—2025 c 421: "(1) The legislature finds that it is the paramount duty of the state to amply provide every child in the

state with an education, creating the opportunity for the child to succeed in school and thrive in life. The legislature further finds that high quality early learning and child care is critical to a child's success in school and life, as it supports the development of the child's social-emotional, physical, cognitive, and language skills. The legislature further finds that the state's higher education system ensures Washington residents have the opportunity to succeed in a competitive global economy.

(2) The legislature further finds that in 2024, when given the opportunity to retain investments in the education legacy trust account for high quality early learning and child care, 64.11 percent of Washington voters in 32 of its 39 counties voted to uphold the excise tax on sales of long-term capital assets for this purpose.

(3) Therefore, the legislature will fund ongoing support of public K-12 education, early learning and child care, and higher education, by dedicating revenues from this act to the education legacy trust account. The legislature further recognizes that a tax system that is fair, balanced, and works for everyone is essential to help all Washingtonians grow and thrive. Washington's tax system remains the second most regressive in the nation as it asks those with the least to pay the most as a percentage of their income. Low-income Washingtonians pay at least three times more in state and local taxes as a percentage of their income than the state's highest-income households.

(4) To help increase funding to the education legacy trust account, the legislature intends to levy an additional excise tax on the sale or exchange of long-term capital assets, which equals 2.90 percent multiplied by the portion of an individual's Washington capital gains exceeding \$1,000,000, and by creating a more progressive rate structure for the estate tax by increasing the top tier rates up to 35 percent. Further, the legislature intends to increase the exclusion amount to \$3,000,000 for the estate tax. The legislature recognizes that levying these taxes with a more progressive rate structure, and increasing the exclusion amount for the estate tax, will have the additional effect of making material progress toward rebalancing the state's tax code." [2025 c 421 s 1.]

Savings—2025 c 421: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2025 c 421 s 303.]

Effective date—2025 c 421: "This act is necessary for the support of the state government and its existing public institutions, and takes effect immediately [May 20, 2025]." [2025 c 421 s 305.]

Contingency—2021 c 196 ss 5 and 16: "(1) If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges section 5 of this act unconstitutional, or otherwise invalid, in its entirety, section 16 of this act is null and void in its entirety. Any credits previously claimed under section 16 of this act must be repaid within 30 days of the department of revenue's notice to the taxpayer of the amount due.

(2) If the taxpayer fails to repay the credit by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency." [2021 c 196 s 20.]

Automatic expiration date and tax preference performance statement exemption—2021 c 196: See note following RCW 82.87.010.