



Technical Issues

1. Section 9(4)((b)(ii) provides for a charitable donation to be allowed, but it must be contributed to an organization, "Principally directed or managed within the state of Washington." Guidance is needed as to what will be deemed to meet this requirement. How are large national non-profits like American Red Cross with large Washington activity classified? For donor advised funds is it based on the direction of funds by Washington residents?
2. Clarity is needed with respect to the computation of long-term capital loss carryovers in several categories, because federal capital loss carryforwards are computed differently than what this statute provides for Washington. Federal tax includes short and long terms, so the process for determining in WA is unclear. How will capital losses from years where a taxpayer is not required to file be handled?
3. Section 6(2)(a) and (b)(iii) limit the exemption for the sale of an interest in a privately held entity to the extent that the gain or loss is directly attributable to real estate owned directly by such entity. The meaning of "directly owned" has caused considerable concern about this particular provision, due to common ownership structures that are necessary for lender requirements and other valid business purposes. Can directly owned include disregarded entities? Can mostly owned entities be considered?
4. While Section 6 largely exempts real property from being subject to the tax, Section 11 at final passage does not provide a measure for sourcing real property. Earlier versions of the bill included such allocation information.
5. Real estate options are contracts that allow potential developers time to determine the feasibility of their plans. Depending on the feasibility the developers can exercise the option and build a development or sell it to another party. This sale would typically generate long term capital gains under federal law. How to source and the process by which credit against B&O taxes paid would be helpful to address.
6. Section 11 (2) provides a credit against taxes paid to other jurisdictions. The amount is "equal to the amount of any legally imposed income tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets **within** the other taxing jurisdiction..." our emphasis added. Intangible assets do not have a location so how should they be sourced? Is it just the assets sourced to the other jurisdiction per their rules?
7. Definition of "tangible personal property" and "intangible personal property" would be useful.

8. Section 9 provides the additional deduction for charitable donations exceeding \$250K, and limited to \$100K. The construction of this section refers to a deduction from "his or her Washington Capital Gains" which implies that if the taxpayers file separate returns, each spouse has their own deduction limitation. This does not match the wording in other sections and would benefit from clarity.
9. Gains recognized for federal tax purposes are subject to the tax. Installment sales of assets are recognized for federal tax purposes so how will that be handled? Will installment sales that start before January 1, 2022, be included? Definitions of "realized" and "recognized" could also be helpful in this discussion.
10. No entities are disregarded normally in Washington taxation, even single member LLCs. But for federal tax purposes these entities are deemed to not exist and are disregarded, as all the activity of those are attributable to the owner. Several of the exemptions in the bill are entity level only, not at the owner level. If the exemptions do not flow to the owner in these cases, there will be different treatment at state vs. federal level. Can that be addressed or resolved?
11. There is not a definition of "domicile" directly within the bill. The definition of resident, who is subject to the tax, includes domicile.

Administrative Challenges

1. Section 12(3) requires that taxpayers pay any tax due by electronic funds transfer, and that the department may waive the electronic requirement for good cause. Many individual taxpayers do not currently have a SAW account. Given this, what is good cause and can there be exceptions for small amounts or integration with other tax payment software as well as a safe harbor for smaller amounts?
2. Section 12(1) provides that taxpayers owing tax under this chapter must file a return. Our concern is that when you receive shared information from the IRS, taxpayers with long-term capital gains in excess of \$250,000 will appear in the database, and many of those will not have filed a Washington return because there is no tax due. This will cause additional administrative follow-up burden for the DOR. Perhaps a simple "check the box" filing for taxpayers with gains over \$250,000 on federal returns, similar to "no business" reporting for B&O, could address this.
3. Often taxpayers will receive amended 1099 forms from their brokers, after they have filed their tax returns, and these amended 1099 forms could impact their total long-term capital gain income for the year. Typically, these are small adjustments. Allowing for de minimis exceptions would help here.
4. There could be other changes that occur after filing, for example, if the taxpayer is audited by the IRS, is notified of an information return mismatch in reporting by the IRS, or otherwise amends their tax return. Allow de minimis and/or timeline for updated returns.
5. Taxpayers often receive K-1s with capital gain amounts noted; however, those K-1s do not specify whether the sale was from real estate, tangible personal property (and where located) or intangible personal property. There is no IRS requirement to provide this information on the K-1 so allowing de minimis safe harbor would be helpful for these

instances when the taxpayer would have a challenging or impossible time getting the information.

6. The distinction between the sale of a taxpayer's ownership interest in a pass-through entity (PTE) as compared to a sale by the PTE of its business assets could be problematic. K-1s, as mentioned above, do not specify what the gain was from. If a PTE sells business assets that appears on a K-1, while if the ownership interest is sold by the owners, then that would not be included on a K-1. Many investment funds hold investments in lower tier PTEs. The lack of information on K-1s around what was sold by PTEs poses a problem in determining tax liability. Under federal law, the structure of a business sales (ownership interest vs assets) are taxed the same and that should likely be the case for this tax, but the process by which to do that should be clarified.