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Subject: Washington Capital Gains Tax Update: State Trying to Collect the Tax Before the Washington Supreme Court Decides the Case

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Washington Capital Gains Tax Update: State Trying to Collect the Tax Before the Washington Supreme Court Decides the Case

Tax Legal Update

Eight months ago, the Superior Court agreed with our argument and struck down Washington's capital gains tax as unconstitutional, as described more fully [here](#). [As predicted](#), the State appealed directly to the Washington Supreme Court, which accepted the case. [Oral argument on the merits is scheduled for January 26, 2023 at 9:00 a.m.](#)

Not content to wait for the Washington Supreme Court to even hear argument, much less to rule on the merits, the State of Washington recently took the extraordinary step of asking the Washington Supreme Court to "stay" the superior court's ruling. In other words, the State has asked the Supreme Court to effectively invalidate the trial court's conclusion that the tax is unconstitutional – and thereby [allow the tax to go into effect before the Supreme Court even hears our oral argument in the State's appeal](#).

The Supreme Court is expected to consider the State's motion, as well as our opposition to it, at the [Court's next conference this month](#).

Our hope, of course, is that the Supreme Court will [deny the State's motion and retain the status quo, leaving the tax unenforceable](#). Indeed, because the Superior Court's decision found that the Washington capital gains tax violated the Washington State constitution, that court never even needed to consider our argument that the tax also violated the U.S. Constitution.

If the Supreme Court grants the State's motion and stays the Superior Court's ruling, then any person accruing Washington capital gains in the year 2022 may need to take steps to pay the Washington capital gains tax when they file their 2022 federal income tax returns.

Taxpayers would also have to go through the steps for seeking a refund if the Supreme Court ultimately agrees with the Superior Court that the tax is unconstitutional.

On the other hand, if the State's motion for a stay is denied, then assessment of compliance and reporting obligations for 2022 would need to await the Court's final decision on the merits – whenever that might occur.

We stand ready to assist with any questions you may have or to assist you in preparing for the tax should that become necessary.

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