

Jacob Allen

From: Caleb Allen
Sent: Friday, March 4, 2022 7:44 AM
To: Caleb Allen
Subject: Washington—Property Tax—Washington capital gains tax ruled invalid.



Washington—Property Tax—Washington capital gains tax ruled invalid.

The Washington Superior Court determined that the capital gains tax, enacted by L. 2021, S5096, is unconstitutional because it violates both the uniformity and limitation requirements of the state constitution. The taxpayers challenged the capital gains tax, contending that it is an income tax masquerading as an excise tax. The court agreed, noting that the tax showed hallmarks of an income tax, including relying upon federal income tax returns that Washington residents must file and thus is derived from a taxpayer's annual federal income tax reporting, levies a tax on the same long-term capital gains that the IRS characterizes as "income" under federal law, and is levied annually (like an income tax) rather than at the time of each transaction (like an excise tax). While the state characterized the tax as a tax that applies on the sale or transfer of property, and thus an excise tax, the court noted that the tax is not levied upon the sale or transfer of capital gains but rather on the receipt, or ownership, of capital gains. As such, the capital gains tax is properly characterized as an income tax and as a tax on property. The court held that the capital gains tax violates the uniformity and limitation requirements of Article VII, Sections 1 and 2 of the state constitution. The court concluded that the capital gains tax violates the uniformity requirement by imposing a 7% tax on an individual's long-term capital gains exceeding \$250,000 but imposing a zero tax on capital gains below that \$250,000 threshold. The tax violates the limitation requirement because the 7% tax exceeds the 1% maximum annual property tax rate of 1%. Therefore, the court held that the capital gains tax is unconstitutional and granted the taxpayers' motion for summary judgment. (Quinn, et al. v. State of Washington, et al., Wash. Super. Ct. (Douglas Cty.), Dkt. Nos. 21-2-0075-09 and 21-2-00087-09, 03/01/2022.)

Caleb Allen | KOM Consulting, PLLC | Office: (206) 281-7258 ext. 229 | Mobile: (206) 419-9272 |
Fax: (206) 217-5449 | P.O. Box 99702 | caleba@komconsulting.com | www.komconsulting.com

This electronic communication may contain information that is CONFIDENTIAL and/or PRIVILEGED and is intended for the use of the recipient or the employee or person responsible for delivering this communication to the intended recipient. If you are not the intended recipient, you are hereby notified that any unauthorized viewing, dissemination, disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you have received this electronic communication in error, please immediately contact KOM Consulting, PLLC at 206-281-7258.

Circular 230 Disclosure: If this written communication, including any attachments, includes federal tax advice, please be advised that it was not intended or written to be used, and cannot be used for the purpose of avoiding penalties.