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Lawsuits Brought Against the Washington Capital Gains Tax

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Last May, Clark Nuber published an **overview of Washington state's capital gains tax** that takes effect on January 1, 2022. Shortly after the act was signed into law by Governor Inslee, **a lawsuit was filed by the Freedom Foundation**, represented by Seattle law firm Lane Powell. The lawsuit alleges the new tax violates the Washington State Constitution, as well as the Commerce Clause of the U.S. Constitution, by taxing the sale of capital held out-of-state by Washington residents.

A second lawsuit was filed on May 20, 2021 by former Washington state Attorney General Rob McKenna (now with the law firm Orrick Harrington & Sutcliffe) on behalf of a coalition of farmers, business owners, investors, and the Washington State Farm Bureau. It claims the law is unconstitutional because it is in reality a graduated tax on income, not an excise tax as the law's legislative preamble asserts.

The cases were subsequently consolidated in Douglas County Superior Court. On September 10, 2021, Judge Brian Huber issued a ruling denying the state's motion to dismiss, holding that the plaintiffs had presented a justiciable controversy and were entitled to a decision on the merits. The case is expected to be decided by the Superior Court in late 2021 or early 2022, but it is widely anticipated that the decision will be appealed and the validity of the tax will ultimately be decided by the Washington Supreme Court.



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The Washington Department of Revenue has published **a short outline of the capital gains tax** as well as an **FAQ page**. Interested parties can register on that webpage to receive email or text notifications from the Department related to the tax.

We will continue to provide updates on the new tax and associated litigation as significant developments occur. If you have questions regarding the capital gains tax, **please reach out to a member of Clark Nuber's State and Local Tax team.**

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