

# **ESSB 5096 – Washington capital gains tax**

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fund Washington's future"*

# **Disclaimer**

This document does not constitute official guidance from the Department of Revenue and should not be relied upon for determining tax liability or interpreting tax laws.

# Washington capital gains tax basics

- Only individuals are subject to the Washington capital gains tax.
- The tax applies to the sale or exchange of long-term capital assets allocated to Washington.
- The measure of the tax is Washington capital gains.
- The tax rate is 7%.
- The tax goes into effect Jan. 1, 2022 with taxes first becoming due in 2023.

# **Individuals**

**Only individuals are subject to the tax.**

**Individual:**

- Natural person who is the legal or beneficial owner of the capital asset at the time of the sale or exchange.

# Sales or exchanges

The tax applies to the sale or exchange of long-term capital assets allocated to Washington.

- Allocation rules depend on what kind of asset is being sold:
  - Intangible personal property.
  - Tangible personal property.

# Washington capital gains

|                  |   |
|------------------|---|
| <b>Start</b>     | Net long-term capital gains reported for federal income tax purposes.   |
| <b>Disregard</b> | Any deferrals, basis adjustments, or exemptions from the federal opportunity zone program.<br>Any long-term capital gains or losses that are included in the calculation of net long-term capital gains for alternative minimum tax purposes. |
| <b>Less</b>      | Amount of long-term capital gains from sales or exchanges that are either exempt or not allocated to Washington.  |
| <b>Plus</b>      | Amount of long-term capital losses from sales or exchanges that are either exempt or not allocated to Washington.   |
| <b>Less</b>      | Standard deduction.<br>Qualified family-owned small business deduction.<br>Charitable donations deduction.  |
| <b>Equals</b>    | <b>Washington capital gains</b>   |

# Exemptions

The tax does apply to the sale or exchange of:

- Real estate.
- Interests in a privately-held entity that directly owns real estate (partial).\*
- Assets under certain retirement savings vehicles.
- Assets subject to condemnation, or sold or exchanged under imminent threat of condemnation.
- Livestock by farmers or ranchers.
- Depreciable business property.
- Timber, timberland, or timber REIT distributions.
- Goodwill received from the sale of a franchised auto dealership.
- Commercial fishing privileges.

\* to the extent that the capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity.

# Deductions

- Standard deduction.
- Qualified family-owned small business deduction.
- Charitable donations deduction.

# **Qualified family-owned small business deduction**

An individual may deduct from the measure of the tax:

- Long-term capital gain from the sale of substantially all of their interest in, or substantially all of the fair market value of the assets of, a qualified family-owned small business.
- Basic requirements
  - Qualifying interest
  - Substantially all
  - Ownership duration
  - Material participation
  - Gross revenue limit

# Credits

- B&O tax credit
- Out-of-state credit

# Revenue distribution

- The first \$500 million collected each fiscal year goes to the Education Legacy Trust Account created in RCW 83.100.230.
- Any remaining amounts collected each fiscal year goes to the Common School Construction Account.

# Implementation

## Key dates

- ESSB 5096 goes into effect on July 25, 2021.
- The tax goes into effect January 1, 2022.
- Taxes first become due in 2023.

# Implementation progress

- Implementation is underway.
- An implementation team has been put together and is meeting regularly.
- The implementation team consists of representatives from impacted divisions within the agency.
- Implementation subgroups have been formed, which include:
  - Communications.
  - Programming.
  - Federal tax information.
  - Interpretations and letter rulings.

# **Letter rulings**

While the Department's Taxpayer Information and Education (TI&E) section gains capital gains tax expertise, an interdivisional taskforce will review letter rulings.

# Questions?

