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The Washington State Legislature Approves Excise Tax on Capital Gain Income

by [Adam Cline](#), Partner, and [Mark Hawkins](#), Director, State & Local Tax Services
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On April 24 and 25, 2021, the Washington State Legislature approved the reconciled Senate Bill 5096 (SB 5096), a measure that imposes a capital gains tax (CGT) on long-term capital gain income. Here, we answer some commonly asked questions about the new tax.

Who's Impacted by the New Capital Gains Tax?

Beginning January 1, 2022, CGT is imposed on Washington State residents and nonresidents at a rate of 7% on the sale or exchange of long-term capital assets in excess of \$250,000.

Legal entities aren't subject to the CGT, though individual owners of legal entities can be subject to this tax on their beneficial interest in an entity's capital gain income.

What's Included in Capital Gain Income?

A taxpayer is subject to the CGT on their Washington capital gains, which means their federal long-term capital gain income as modified by Washington law.

Exemptions

The CGT contains numerous exemptions, including:

- All real estate transferred by deed, real estate contract, or other legal instrument
- An interest in a privately held entity, but only if the gain or loss is directly attributable to real estate owned by the entity
- Retirement savings accounts
- Assets sold or exchanged with respect to condemnation proceedings
- Cattle, horses, or breeding livestock, under certain conditions
- Certain depreciable property used in a trade or business
- Timber, timberlands, dividends, and distributions from real estate investment trusts derived from gains from the sale or exchange of timber or timberlands
- Commercial fishing privileges
- Goodwill from the sale of auto dealerships licensed under Washington law

How's the Capital Gains Tax Calculated?

The CGT is calculated on the taxpayer's Washington capital gains, after Washington modification and application of various exclusions. Taxpayers are then afforded several deductions, including a \$250,000 standard deduction.

Only Washington capital gain income that's allocated to Washington is subject to the CGT. For sales or exchanges of tangible personal property, gains are allocated to Washington if the property is in Washington at the time of the sale or exchange.

Gains from intangible property are allocated to Washington if the taxpayer's domiciled in the state. Notably, there are nuances in the legislation's use of the terms *resident* and *domicile* that will have to be considered for allocating intangible gain.

When Will the Tax Go into Effect?

The CGT will go into effect for taxable years beginning on or after January 1, 2022, provided Governor Jay Inslee signs the legislation, which is expected.

We're Here to Help

To discuss how you could be affected by the new capital gains tax, contact a Moss Adams tax professional at statetax@mossadams.com.