

**Jacob Allen**

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**From:** Tommy J Gantz <tommyjg@awb.org>  
**Sent:** Tuesday, March 1, 2022 5:08 PM  
**Subject:** FW: [External] BREAKING: Judge rules capital gains income tax is unconstitutional

Dear Tax & Fiscal Policy Committee,

Please see an update below on the capital gains.

Let me know if you have any questions.

Warm Regards,

*Tommy Gantz / Government Affairs Director, Tax & Fiscal Policy, Manufacturing  
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**From:** Jason Mercier <jmercier@washingtonpolicy.org>  
**Sent:** Tuesday, March 1, 2022 4:58 PM  
**To:** Tommy J Gantz <tommyjg@awb.org>  
**Subject:** BREAKING: Judge rules capital gains income tax is unconstitutional

<https://www.washingtonpolicy.org/publications/detail/judge-rules-capital-gains-income-tax-is-unconstitutional>

## Judge rules capital gains income tax is unconstitutional

By Jason Mercier  
Mar 1, 2022

If only someone had [warned lawmakers](#) that the [IRS](#) and every other state in the country [unequivocally say a capital gains tax is an income tax](#). Perhaps they'll pay attention now that the courts have said the same. The Douglas County Superior Court ruled today that capital gains income tax is unconstitutional. From the [judge's ruling](#):

"ESSB 5096 is properly characterized as an income tax pursuant to Culliton, Jensen, Power and other applicable Washington caselaw, rather than as an excise tax as argued by the State. As a tax on the receipt of income, ESSB 5096 is also properly characterized as a tax on properly pursuant to that same caselaw. This Court concludes that ESSB 5096 violates the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution. It violates the uniformity requirement by imposing a 7% tax on an individual's long-term capital

gains exceeding \$250,000 but imposing zero tax on capital gains below that \$250,000 threshold. It violates the limitation requirement because the 7% tax exceeds the 1% maximum annual property tax rate of 1%."

Former Attorney General Rob McKenna (one of the attorneys for the plaintiffs) told me about the ruling:

"This is not the first time a Washington court has rejected an attempt by the legislature to enact an unconstitutional income tax by labeling it an 'excise tax.' We appreciate Judge Huber's careful consideration of those precedents in reaching a similar result in this case."

As the state Supreme Court [reminded lawmakers in 1960](#), the proper way to impose a graduated income tax is with a constitutional amendment. It is past time to stop playing tax word games in an attempt to circumvent the [voters' consistent opposition to income taxes](#).

A capital gains income tax is unconstitutional in Washington. Full stop.

#### **Additional Information**

[Judge hears oral arguments in capital gains income tax case](#)

[Attorney General can't handle the truth about capital gains income taxes](#)

[Advisory Vote 37 \(2021\): 61% of voters recommend repeal of capital gains income tax](#)

[Capital gains income tax quotes – who said it?](#)

[Tax Foundation gives WA income tax asterisk](#)

[Capital gains income tax interview with University of Washington tax expert Professor Schumacher](#)

[Tax Foundation: Why Washington State Can't Claim Its Capital Gains Tax Is an Excise Tax](#)

[A Capital Gains Tax IS an Income Tax: Irrefutable Proof in About Two Minutes](#) (video)

Sincerely,

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*IRS: "You ask whether tax on capital gains is considered an excise tax or an income tax? It is an income tax."*