

## Jacob Allen

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**From:** Caleb Allen  
**Sent:** Monday, April 17, 2023 4:38 PM  
**To:** Ron Ward  
**Cc:** John Katsandres  
**Subject:** RE: [External] WA CGT answers for you

Ron,

I cannot state the answer definitively. This tax is new and we do not know how aggressively the DOR will administer this. That said, I don't think your sales qualify based on the following. I start with the imposition:

...tax is imposed on the **sale or exchange of long-term capital assets**. Only individuals are subject to payment of the tax, which equals seven percent multiplied by an individual's **Washington capital gains**. [RCW 82.87.040\(1\)](#).

"**Long-term capital asset**" means a capital asset that is **held for more than one year**. [RCW 82.87.020\(6\)](#). This appears to be the threshold and you do NOT appear to meet sale type because the asset (apparently) is held less than a year.

The remaining language in the statute and rule appears to address the "measure" of the tax or "base." Put another way, it appears the tax is measured by the **Washington capital gains** (tax measure is different than imposition).

- **Washington capital gains** is your **federal net long-term capital gain** with certain adjustments made under RCW [82.87.020](#) (1)(a) through (e) and further modified by the deductions in RCW [82.87.060](#). The adjustments are primarily aimed at removing capital gains and losses allocated to places outside of Washington from your Washington capital gains figure. [Rule 300\(1\)\(d\)](#)
  - "**Federal net long-term capital gain**" means the net long-term capital gain reportable for federal income tax purposes, determined as if Title 26 U.S.C. Secs. 55 through 59 and 1400Z-1 and 1400Z-2 of the federal Internal Revenue Code did not exist. Title 26 U.S.C. Secs. 55 through 59 relate to the alternative minimum tax and Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 relate to opportunity zones. [Rule 300\(1\)\(d\)\(i\)](#)

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**From:** Ron Ward <rward@fspm.com>  
**Sent:** Monday, April 17, 2023 3:36 PM  
**To:** Caleb Allen <caleba@komconsulting.com>  
**Subject:** RE: [External] WA CGT answers for you

Caleb,

I agree with your analysis.

The one thing that concerns me is item 3 under components. The federal law grandfathered favorable treatment for futures trading. Even if you only hold the position for a day, you get allocated 60% of any gains as LTCG. The Washington state law clearly says you need to hold 12 months to qualify for LTCG.

It strikes me that short term futures contracts should be exempt from the Washington tax. Can I assume that this falls as an exclusion to matching the federal LTCG?

Thanks,

Ron

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**From:** Caleb Allen <[caleba@komconsulting.com](mailto:caleba@komconsulting.com)>

**Sent:** Monday, April 17, 2023 11:02 AM

**To:** Ron Ward <[rward@fspm.com](mailto:rward@fspm.com)>

**Cc:** Mike Roben <[mike@komconsulting.com](mailto:mike@komconsulting.com)>

**Subject:** RE: [External] WA CGT answers for you

Ron,

Please see below.

**Question**

One more question. The rules say that tax is only due if asset has been held more than a year. If you are doing futures trading on a daily basis, would the only reporting be due on positions that you held more than a year?

**Answer**

I did not see any specific guidance on “futures” trading. However, based on the rule it does not appear that the futures (short term) would qualify as long-term capital gain. The rule ([WAC 458-20-300](#)) provides the guidelines as follows:

**General Rule**

- Imposition is on **sale or exchange of long-term capital assets**. [Rule 300\(1\)\(a\)](#). **Washington capital gains is your federal net long term capital gain with certain adjustments** (e.g. primarily aimed at removing capital gains and losses allocated outside Washington). [Rule 300\(1\)\(d\)](#).

**Components**

- A **long term capital asset** must be held for **more than one year**. [Rule 300\(1\)\(a\)](#)
- A **capital asset** has the same meaning as provided by section 1221 of the federal IRC and includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under section 1231 or any other provision of the federal Internal Revenue Code. [Rule 300\(1\)\(a\)](#)
- The **Washington capital gains** is your **federal net long term capital gain** with adjustments. [Rule 300\(1\)\(d\)](#)
- "**Federal net long-term capital gain**" means the net long-term capital gain reportable for federal income tax purposes, determined as if Title 26 U.S.C. Secs. 55 through 59 and 1400Z-1 and 1400Z-2 of the federal Internal Revenue Code did not exist. Title 26 U.S.C. Secs. 55 through 59 relate to the alternative minimum tax and Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 relate to opportunity zones. [Rule 300\(1\)\(d\)\(i\)](#).

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**From:** Ron Ward <[rward@fspm.com](mailto:rward@fspm.com)>

**Sent:** Sunday, April 16, 2023 9:42 PM

**To:** Mike Roben <[mike@komconsulting.com](mailto:mike@komconsulting.com)>

**Cc:** Caleb Allen <[caleba@komconsulting.com](mailto:caleba@komconsulting.com)>

**Subject:** RE: [External] WA CGT answers for you

Hi Guys,

One more question. The rules say that tax is only due if asset has been held more than a year. If you are doing futures trading on a daily basis, would the only reporting be due on positions that you held more than a year?

Thank you,

Ron

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**From:** Mike Roben <[mike@komconsulting.com](mailto:mike@komconsulting.com)>

**Sent:** Thursday, April 13, 2023 12:23 PM

**To:** Ron Ward <[rward@fspm.com](mailto:rward@fspm.com)>

**Cc:** Caleb Allen <[caleba@komconsulting.com](mailto:caleba@komconsulting.com)>

**Subject:** WA CGT answers for you

Hello Ron, see the information below. Hopefully, this will help you decide what you want to do by April 18. If you have any questions, please reach out. Talk to you soon.

Mike

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**From:** Caleb Allen <[caleba@komconsulting.com](mailto:caleba@komconsulting.com)>

**Sent:** Thursday, April 13, 2023 12:15 PM

**To:** Mike Roben <[mike@komconsulting.com](mailto:mike@komconsulting.com)>

**Subject:** RE: WA CGT question - NEED HELP ASAP

#### Citations Used

- [RCW 82.87](#)
- [WAC 458-20-300](#)
- DOR website:
  - [MY DOR Help](#)
  - [Capital Gains landing page](#)
  - [FAQ](#)

#### Questions:

1. Does a federal extension automatically apply to WA or is there a separate extension to be filed?
  - If you have obtained an extension of time for filing the federal income tax return for the taxable year, you are entitled to the same **extension** of time for **filing the return** required if you provide the department, **before the due date, the extension confirmation number or other evidence satisfactory to the department confirming the federal extension.** See DOR website here:
  - Keep in mind filing extension does not extend the due date for **paying the capital gains tax due.** See DOR website here:
2. If no separate extension, do you make payment online by setting up an account and make online payment by 4\18?
  - **Online:** You can file and or pay with an online account. To register a capital gains account, you will need a SecureAccess Washington (SAW) account. If necessary, you can [check if you have a SAW account](#), or [create a SAW account](#). DOR website here.
  - **Offline:** You can also pay without access to an account. The following services are available without having access to the capital gains account. We strongly encourage you to [gain access to your account using a letter ID](#). Gaining access will allow you to view previously filed returns, payments, extension requests, and important correspondence from the Department of Revenue. DOR website here.
3. If he does not make an extension payment but it turns out the tax is owed, what are the penalties?
  - Yes, payment is due if owed even if the extension is used. DOR website here.

- The department has determined that estimated payments will be treated as estimated returns. This means if you submit a payment by the filing deadline of April 18, 2023, **you will not owe additional penalties unless you have substantially underpaid** your tax liability. Substantially underpaid means you have paid less than 80% of the tax due. [DOR website here](#).

- **Penalties and interest**

- **Late filing penalty.** If you do not file a complete capital gains excise tax return by the due date, the department will assess a late filing penalty in the amount of **five percent** of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled.
- See RCW [82.87.110](#). The total late filing penalty may **not exceed 25 percent** of the tax due for the taxable year covered by the late return. [See WAC 458-20-300\(5\)](#).
- **Late payment penalty.** If you do not remit your capital gains excise tax on or before the due date for payment of the capital gains excise tax, you are subject to the late payment penalty.
  - If payment is not received by the department by the due date, the department will assess a penalty of nine percent of the amount of the tax due; if the tax is not received on or before the last day of the month following the due date, the department will assess a total penalty of **19 percent** of the amount of the tax due; and if the tax is not received on or before the last day of the second month following the due date, the department will assess a **total penalty of 29 percent** of the amount of the tax due. See RCW [82.32.090\(1\)](#) and WAC [458-20-228](#) for more information regarding late payment penalties. [WAC 458-20-300](#):
- **Other penalties.**
  - Other penalties imposed under chapter [82.32](#) RCW may apply. These penalties include the penalties for **substantial underpayment** of tax, **disregard of specific written instructions**, and **intent to evade tax**. See [WAC 458-20-300](#):

4. What if you are not sure if you owe any tax since the K-1s from various partnerships have not been finished which may or may not yield LTCG subject to the tax?
  - You can make an estimated payment. The department has determined that estimated payments will be treated as estimated returns. This means if you submit a payment by the filing deadline of April 18, 2023, you will not owe additional penalties unless you have substantially underpaid your tax liability. [See DOR website](#).
  - Substantially underpaid means you have paid less than 80% of the tax due. [See DOR website](#).
  - Also, if you do not have basis or cost information from K-1, you can enter the total amount of the long term gain in the “Proceeds (sales price)” field and leave the cost or other basis field blank. [See DOR Website here](#).
5. For FTR purposes, he estimates the tax and remits with the return extension. Same approach?
  - Yes. You may submit a payment. See #4 and #1 above.
6. If he overpays, do they refund the money or apply to next year?
  - You can apply for a refund under Rule 229. If you discover that you have overpaid taxes, penalties, or interest, you may file an amended capital gains excise tax return or apply for a refund or credit. The provisions under WAC [458-20-229](#) apply to refunds of overpaid capital gains excise tax. [Rule 300\(6\)\(c\) here](#).

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From: Mike Roben <[mike@komconsulting.com](mailto:mike@komconsulting.com)>

Sent: Thursday, April 13, 2023 11:15 AM

**To:** Caleb Allen <[caleba@komconsulting.com](mailto:caleba@komconsulting.com)>

**Subject:** WA CGT question - NEED HELP ASAP

**Questions:**

1. Does a federal extension automatically apply to WA or is there a separate extension to be filed?
2. If no separate extension, do you make payment online by setting up an account and make online payment by 4\18?
3. If he does not make an extension payment but it turns out the tax is owed, what are the penalties?
4. What if you are not sure if you owe any tax since the K-1s from various partnerships have not been finished which may or may not yield LTCG subject to the tax? For FTR purposes, he estimates the tax and remits with the return extension. Same approach?
5. If he overpays, do they refund the money or apply to next year?

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