



MULTISTATE INCOME/FRANCHISE TAX

## Washington law imposes new excise tax on capital gains

Tax Alert

### Overview

On May 4, 2021, Washington Governor Jay Inslee signed [Senate Bill 5096](#) (“WA SB 5096”) imposing a new excise tax on long-term capital gains earned by individuals from the sale or exchange of certain capital assets. This Alert summarizes some of the significant provisions of WA SB 5096.

### Excise tax on capital gains

The bill includes but is not limited to the following provisions:

- Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets.
- Only individuals are subject to the tax, which is levied at the rate of 7% multiplied by an individual's Washington capital gains.
- There is a standard deduction of \$250,000 per individual or couple filing joint or separate returns.
- This tax applies to individuals who are beneficial owners of long-term capital assets held by a pass-through or other disregarded entity (as defined for federal income tax purposes), to the extent the individual's ownership interest in the entity is reported for federal tax purposes.
- If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section and no such amount is allowed as a carryover for use in the calculation of that individual's adjusted capital gain for any taxable year.
- For long-term intangible personal property, the capital gains tax will apply if the taxpayer was domiciled in Washington at the time of sale or exchange.
- For long-term tangible personal property, the capital gains tax will apply if the property was located in Washington at the time of the sale or exchange. The capital gains tax will also apply if the property was not located in Washington at the time of the sale but the property was located in Washington at any time during the tax year of the sale or exchange (or the immediately preceding tax year), the taxpayer was a

Washington resident at the time of the sale or exchange, and the taxpayer is not subject to another income or excise tax on the capital gains imposed by another jurisdiction.

- A deduction from the amount of adjusted capital gain is authorized for the sale of a qualified family-owned small business. Charitable donations are also deductible.
- A credit for Washington capital gains tax paid may be available for the business and occupation tax.
- Credits are also allowed equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another jurisdiction on the same capital gains.

## Exemptions

This excise tax will not apply to capital gains realized by sales and transfers of:

- Real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title and are filed as public record where the real property is located;
- An interest in a privately held entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity;
- Retirement assets, including 401(k), a tax-sheltered annuity or custodial account, deferred compensation plans, individual retirement accounts (IRAs), Roth IRAs, employee defined contribution programs, employee defined benefit plans, or similar retirement saving vehicles;
- Assets condemned by the government;
- Cattle, horses, or breeding livestock, if more than 50 percent of the taxpayer's gross income for the year is from farming or ranching;
- Commercial fishing privileges;
- Certain depreciable property used in a trade or business;
- Goodwill received from the sale of an automobile dealership; and
- Timber, timberlands, or receipts of Washington capital gains from a Real Estate Investment Trust derived from the sale of timber.

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