
HOUSE BILL 2563

State of Washington

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By Representatives Jinkins, Hasegawa, Ladenburg, Tharinger, Wylie, Ryu, Reykdal, Fitzgibbon, Billig, Appleton, Kagi, Ormsby, Pedersen, Eddy, McCoy, Hunt, Pollet, Kenney, Roberts, Dickerson, Darneille, Cody, Lias, Haigh, Green, Moeller, and Santos

Read first time 01/17/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to establishing a state tax on capital gains;
2 amending RCW 82.03.130 and 82.03.140; adding a new chapter to Title 82
3 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this title unless the context clearly requires otherwise.
7 Any term used in this title has the same meaning as when used in a
8 comparable context in the internal revenue code unless provided
9 otherwise.

10 (1) "Capital gains" means the gain derived from the sale or
11 exchange of capital assets as reported on federal tax form 1040 or
12 1041.

13 (2) "Department" means the state department of revenue.

14 (3) "Individual" means a natural person.

15 (4) "Internal revenue code" means the United States internal
16 revenue code of 1986 and amendments thereto, as existing and in effect
17 on January 1, 2013, or such subsequent date as the department may
18 provide by rule consistent with the purpose of this section.

1 (5) "Person" means an individual, fiduciary of a resident estate,
2 or fiduciary of a resident trust.

3 (6) "Resident" means an individual who:

4 (a) Has resided in this state for the entire taxable year; or

5 (b) Is domiciled in this state unless the individual:

6 (i) Maintains no permanent place of abode in this state; and

7 (ii) Does maintain a permanent place of abode elsewhere; and

8 (iii) Spends in the aggregate not more than thirty days in the
9 taxable year in this state; or

10 (c) Is not domiciled in this state, but maintains a permanent place
11 of abode in this state and spends in the aggregate more than one
12 hundred eighty-three days of the taxable year in this state unless the
13 individual establishes to the satisfaction of the director of revenue
14 that the individual is in the state only for temporary or transitory
15 purposes; or

16 (d) Claims the state of Washington as the individual's tax home for
17 federal income tax purposes.

18 (7) "Resident estate" means an estate of which a personal
19 representative was appointed by a Washington court or an estate
20 administered in this state.

21 (8) "Resident trust" means a trust whose situs, as determined by
22 RCW 11.96A.030, is within the state of Washington.

23 (9) "Taxable year" means the taxpayer's taxable year as defined
24 under the internal revenue code.

25 (10) "Taxpayer" means an individual, the fiduciary of a resident
26 estate, or the fiduciary of a resident trust receiving capital gains
27 subject to tax under this title.

28 NEW SECTION. **Sec. 2.** (1) Beginning on or after January 1, 2013,
29 a tax is hereby imposed on the privilege of selling or otherwise
30 voluntarily exchanging capital assets. The tax equals five percent
31 multiplied by the capital gains for each taxable year of resident
32 individuals, resident estates, and resident trusts, as provided in this
33 section.

34 (2) For resident individuals, all capital gains must be apportioned
35 and allocated to this state.

36 (3) The following threshold deductions are allowed in determining
37 the tax under subsection (1) of this section:

1 (a) Ten thousand dollars for a joint return; and

2 (b) Five thousand dollars for any return that is not a joint
3 return, including tax returns for resident estates and resident trusts.

4 (4) If capital gains of a resident estate or resident trust passes
5 through to the federal income tax return of a beneficiary of the estate
6 or trust, the amount may be deducted for purposes of the tax imposed
7 under subsection (1) of this section.

8 (5) Capital gains derived from the sale or exchange of a person's
9 primary residence may be deducted for purposes of the tax imposed under
10 subsection (1) of this section.

11 (6) Capital gains derived from an exchange resulting from
12 condemnation proceedings by any state, federal, or local government may
13 be deducted for purposes of the tax imposed under subsection (1) of
14 this section.

15 (7) The tax imposed under subsection (1) of this section is never
16 less than zero.

17 NEW SECTION. **Sec. 3.** (1) Any individual who knowingly attempts to
18 evade the tax imposed under this title or payment thereof is guilty of
19 a class C felony as provided in chapter 9A.20 RCW.

20 (2) Any individual who knowingly fails to pay tax, make returns,
21 keep records, or supply information, as required under this title, is
22 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

23 NEW SECTION. **Sec. 4.** (1) All taxpayers must file with the
24 department, on forms prescribed by the department, a capital gains tax
25 return for each taxable year. A person owing no tax for a taxable year
26 is not required to file a return for that year. Each person required
27 to file a return under this title must, without assessment, notice, or
28 demand, pay any tax due thereon to the department on or before the date
29 fixed for the filing of the return.

30 (2) The department may by rule require that certain taxpayers file,
31 on forms prescribed by the department, informational returns for any
32 period.

33 (3) For resident estates, the administrator, executor, or other
34 individual responsible for the administration of the estate, is
35 required to file the capital gains tax return.

1 (4) For resident trusts, the trustee or other individual
2 responsible for the administration of the trust, is required to file
3 the capital gains tax return.

4 NEW SECTION. **Sec. 5.** The due date of a return required to be
5 filed with the department is the due date of the federal income tax
6 return or informational return for federal income tax purposes, except
7 as otherwise required by the department. The department may grant
8 extensions of times by which returns required to be filed by this title
9 may be submitted. The department may grant extensions of time to pay
10 tax with regard to taxes imposed by this title. Interest at the rate
11 as specified in RCW 82.32.050 must accrue during any extension period
12 and the interest and penalty provisions of chapter 82.32 RCW apply to
13 late payments and deficiencies.

14 NEW SECTION. **Sec. 6.** (1) If the federal income tax liabilities of
15 both spouses are determined on a joint federal return for the taxable
16 year, they must file a joint return under this title.

17 (2) If neither spouse is required to file a federal income tax
18 return for the taxable year, a joint return is required to be filed
19 under this title under the same conditions under which a joint return
20 may be filed for purposes of the federal income tax.

21 (3) Except as provided in subsection (5) of this section, if the
22 federal income tax liability of either spouse is determined on a
23 separate federal return for the taxable year, they must file separate
24 returns under this title.

25 (4) In any case in which a joint return is filed under this
26 section, the liability of the husband and wife or partners is joint and
27 several, unless the spouse or partner is relieved of liability under
28 section 6013 of the internal revenue code.

29 (5) Partners in a state registered domestic partnership may file a
30 joint return under this title.

31 NEW SECTION. **Sec. 7.** (1) Every person required to pay the tax
32 imposed under this title must keep records, render statements, make
33 returns, file reports, and perform other acts as the department
34 requires by rule. Each return must be made under penalty of perjury
35 and on forms prescribed by the department. The department may require

1 other statements and reports be made under penalty of perjury and on
2 forms prescribed by the department. The department may require any
3 taxpayer to furnish to the department a correct copy of any return or
4 document that the taxpayer has filed with the internal revenue service
5 or received from the internal revenue service.

6 (2) All books and records and other papers and documents required
7 to be kept under this title are subject to inspection by the department
8 at all times during business hours of the day.

9 NEW SECTION. **Sec. 8.** (1) To the extent possible without being
10 inconsistent with this chapter, all of the provisions of the internal
11 revenue code relating to the time and manner of making returns,
12 extensions of time for filing returns, verification of returns, and the
13 time when a return is deemed filed apply to this chapter.

14 (2) The department by rule may provide modifications and exceptions
15 to requirements of subsection (1) of this section, if reasonably
16 necessary to facilitate the prompt, efficient, and equitable collection
17 of tax under this chapter.

18 NEW SECTION. **Sec. 9.** (1) The department must refund all taxes
19 improperly paid or collected.

20 (2) The following sections apply to the administration of taxes
21 imposed under this title: RCW 82.32.050, 82.32.055, 82.32.060,
22 82.32.070, 82.32.080, 82.32.090, 82.32.100, 82.32.105, 82.32.110,
23 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.140, 82.32.150,
24 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210,
25 82.32.212, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240,
26 82.32.245, 82.32.260, 82.32.265, 82.32.300, 82.32.310, 82.32.320,
27 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380, and 82.32.410.

28 NEW SECTION. **Sec. 10.** The department may adopt rules under
29 chapter 34.05 RCW for the administration and enforcement of this
30 chapter. The rules, to the extent possible without being inconsistent
31 with this chapter, must follow the internal revenue code and the
32 regulations and rulings of the United States treasury department with
33 respect to the federal income tax. The department may adopt as a part
34 of these rules any portions of the internal revenue code and treasury
35 department regulations and rulings, in whole or in part.

1 NEW SECTION. **Sec. 11.** Taxes collected under this chapter must be
2 deposited into the state general fund.

3 NEW SECTION. **Sec. 12.** This chapter applies to taxable years
4 beginning on or after January 1, 2013.

5 **Sec. 13.** RCW 82.03.130 and 2005 c 253 s 7 are each amended to read
6 as follows:

7 (1) The board (~~shall have~~) has jurisdiction to decide the
8 following types of appeals:

9 (a) Appeals taken pursuant to RCW 82.03.190.

10 (b) Appeals from a county board of equalization pursuant to RCW
11 84.08.130.

12 (c) Appeals by an assessor or landowner from an order of the
13 director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if
14 filed with the board of tax appeals within thirty days after the
15 mailing of the order, the right to such an appeal being hereby
16 established.

17 (d) Appeals by an assessor or owner of an intercounty public
18 utility or private car company from determinations by the director of
19 revenue of equalized assessed valuation of property and the
20 apportionment thereof to a county made pursuant to chapter 84.12 and
21 84.16 RCW, if filed with the board of tax appeals within thirty days
22 after mailing of the determination, the right to such appeal being
23 hereby established.

24 (e) Appeals by an assessor, landowner, or owner of an intercounty
25 public utility or private car company from a determination of any
26 county indicated ratio for such county compiled by the department of
27 revenue pursuant to RCW 84.48.075(~~(:—PROVIDED, That)~~).

28 (i) (~~Said~~) The appeal must be filed after review of the ratio
29 under RCW 84.48.075(3) and not later than fifteen days after the
30 mailing of the certification; and

31 (ii) The hearing before the board (~~shall~~) must be expeditiously
32 held in accordance with rules prescribed by the board and (~~shall~~)
33 takes precedence over all matters of the same character.

34 (f) Appeals from the decisions of sale price of second-class
35 shorelands on navigable lakes by the department of natural resources
36 pursuant to RCW (~~(79.94.210)~~) 79.125.450.

1 (g) Appeals from urban redevelopment property tax apportionment
2 district proposals established by governmental ordinances pursuant to
3 RCW 39.88.060.

4 (h) Appeals from interest rates as determined by the department of
5 revenue for use in valuing farmland under current use assessment
6 pursuant to RCW 84.34.065.

7 (i) Appeals from revisions to stumpage value tables used to
8 determine value by the department of revenue pursuant to RCW 84.33.091.

9 (j) Appeals from denial of tax exemption application by the
10 department of revenue pursuant to RCW 84.36.850.

11 (k) Appeals pursuant to RCW 84.40.038(3).

12 (l) Appeals pursuant to RCW 84.39.020.

13 (m) Appeals relating to capital gains tax deficiencies and refunds,
14 including penalties and interest, under chapter 82.--- RCW (the new
15 chapter created in section 15 of this act).

16 (2) Except as otherwise specifically provided by law hereafter, the
17 provisions of RCW 1.12.070 (~~shall~~) apply to all notices of appeal
18 filed with the board of tax appeals.

19 **Sec. 14.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to read
20 as follows:

21 In all appeals over which the board has jurisdiction under RCW
22 82.03.130, a party taking an appeal may elect either a formal or an
23 informal hearing, such election to be made according to rules of
24 practice and procedure to be promulgated by the board(~~(:—PROVIDED,~~
25 ~~That)).~~ However, nothing (~~shall~~) prevents the assessor or taxpayer,
26 as a party to an appeal pursuant to RCW 84.08.130, within twenty days
27 from the date of the receipt of the notice of appeal, from filing with
28 the clerk of the board notice of intention that the hearing be a formal
29 one(~~(:—PROVIDED, HOWEVER, That)).~~ Moreover, nothing (~~herein shall~~)
30 in this section may be construed to modify the provisions of RCW
31 82.03.190(~~(:—AND PROVIDED FURTHER, That))~~ and upon an appeal under RCW
32 82.03.130(1) (e) or (m), the director of revenue may, within ten days
33 from the date of its receipt of the notice of appeal, file with the
34 clerk of the board notice of its (~~intention that the hearing be held~~
35 ~~pursuant to chapter 34.05 RCW)) election of a formal hearing. In the
36 event that appeals are taken from the same decision, order, or~~

1 determination, as the case may be, by different parties and only one of
2 such parties elects a formal hearing, a formal hearing (~~shall~~) must
3 be granted.

4 NEW SECTION. **Sec. 15.** Sections 1 through 12 of this act
5 constitute a new chapter in Title 82 RCW.

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