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7 **STATE OF WASHINGTON**  
8 **DOUGLAS COUNTY SUPERIOR COURT**

9 CHRIS QUINN, an individual; CRAIG  
10 LEUTHOLD, an individual; SUZIE BURKE,  
11 an individual; LEWIS and MARTHA  
12 RANDALL, as individuals and the marital  
13 community comprised thereof; RICK GLENN,  
14 an individual; NEIL MULLER, an individual;  
15 LARRY and MARGARET KING, as  
16 individuals and the marital community  
17 comprised thereof; and KERRY COX, an  
18 individual,

19 Plaintiffs,

20 v.

21 STATE OF WASHINGTON, DEPARTMENT  
22 OF REVENUE, an agency of the State of  
23 Washington; VIKKI SMITH, in her official  
24 capacity as Director of the Department of  
25 Revenue,

26 Defendants.

APRIL CLAYTON, an individual; KEVIN  
BOUCHEY, an individual; RENEE BOUCHEY,  
an individual; JOANNA CABLE, and individual;  
ROSELLA MOSBY, an individual; BURR  
MOSBY, an individual; CHRISTOPHER  
SENSKE, an individual; CATHERINE SENSKE,  
an individual; MATTHEW SONDEREN, an  
individual; WASHINGTON FARM BUREAU,

Plaintiffs,

v.

NO. 21-2-00075-09  
NO. 21-2-00087-09

MOTION TO DISMISS  
PLAINTIFFS' COMPLAINTS (CR  
12(b)(6)) OR IN THE  
ALTERNATIVE TO TRANSFER  
VENUE (CR 12(b)(3))

1 STATE OF WASHINGTON, DEPARTMENT OF  
2 REVENUE, an agency of the State of Washington;  
3 VIKKI SMITH, in her official capacity as Director  
of the Department of Revenue,

4 Defendants.

5  
6 **I. INTRODUCTION AND RELIEF REQUESTED**

7 Lawsuits are supposed to resolve legal disputes, not political ones. But Plaintiffs in  
8 these cases are suffering no legal harm from the tax they challenge, and they ask this Court to  
9 issue a purely advisory political opinion. Because this tax applies only to capital gains above  
10 \$250,000 in a single year and exempts many types of capital gains (such as from the sale of  
11 real estate, small businesses, and retirement assets), less than one tenth of one percent of  
12 Washingtonians will owe this tax. It is impossible for Plaintiffs to know yet whether they will  
13 be among that small group, because no tax will be due until 2023 and they have no way of  
14 knowing what capital gains they will have in future years. They therefore lack standing to  
15 challenge this tax, and this case should be dismissed.

16 Plaintiffs seek to challenge the constitutionality of Engrossed Substitute Senate Bill  
17 (ESSB) 5096, under which, beginning January 1, 2022, “an excise tax is imposed on the sale of  
18 or exchange of long-term capital assets.” ESSB 5096, § 5(1).<sup>1</sup> The Act’s purposes include  
19 “advanc[ing the state’s] paramount duty to amply provide an education to every child in the  
20 state” and “making material progress toward rebalancing the state’s tax code.” *Id.*, § 1.

21 Plaintiffs request declaratory and injunctive relief under the Uniform Declaratory  
22 Judgment Act (UDJA), alleging that ESSB 5096 violates the state and federal constitutions.  
23 *See* First Am. Compl., ¶¶ 31-58. They claim that “an actual, present and justiciable  
24 controversy” exists. First Am. Compl. (Quinn), ¶¶ 32, 37, 42, 47, and 52; Compl. (Clayton), ¶¶

25  
26 <sup>1</sup> A copy of ESSB 5096 is attached as Appendix A for the Court’s convenience. ESSB 5096 is chaptered  
at Laws of 2021, ch. 196.

1 66, 71, 76. But their assertions of an actual, present, and justiciable controversy are unfounded  
2 and speculative. Indeed, none of the Plaintiffs allege that they will be required to pay the tax  
3 imposed by ESSB 5096. Rather, the Quinn Plaintiffs merely allege that they “own capital  
4 assets and would be subject to the capital gains tax in ESSB 5096 *if they realized capital gains*  
5 *and would incur a tax liability on capital gains in excess of \$250,000.*” First Am. Compl.  
6 (Quinn), ¶ 10 (emphases added). Similarly, the Clayton Plaintiffs merely allege that they “own  
7 non-exempt capital assets and would be subject to the capital gains tax imposed by ESSB 5096  
8 *if on the sale of those assets they realized capital gains in excess of \$250,000.*” Compl.  
9 (Clayton), ¶ 24 (emphasis added). At best, these allegations present a hypothetical and  
10 speculative controversy, not an actual, present, and existing dispute. Therefore, no justiciable  
11 controversy exists at this time, as required under the UDJA.

12 Plaintiffs further ask this Court to enjoin defendant Department of Revenue from  
13 implementing and enforcing the capital gains tax. *See* First Am. Compl. (Quinn), ¶ 58; Compl.  
14 (Clayton) at 17. In support of injunctive relief, they allege that their “right to be free from the  
15 imposition of an invalid tax is in jeopardy of *immediate* invasion and will cause actual and  
16 substantial injury *without any adequate remedy at law.*” First Am. Compl. (Quinn), ¶ 57  
17 (emphasis added); Compl. (Clayton) at 17 (emphasis added). This allegation is demonstrably  
18 untrue.

19 First, Plaintiffs face no “immediate” risk of actual and substantial injury. The tax  
20 imposed by ESSB 5096 does not go into effect until January 1, 2022, ESSB 5096, § 5, and any  
21 capital gains tax incurred during 2022 will be not be due until April 2023. *See id.*, § 12.  
22 Therefore, none of the Plaintiffs, nor any other person, will be required to pay the tax imposed  
23 by ESSB 5096 until nearly two years from now. And no one can possibly know today what  
24 capital gains they will have in 2022.

25 Second, the alleged lack of an “adequate remedy at law” is untrue. Each Plaintiff, if he  
26 or she is actually required to pay the capital gains tax in 2023, will have an adequate remedy at

1 law under RCW 82.32.150 and .180, which establish the method for aggrieved taxpayers to  
2 challenge a tax assessment or sue for a refund of the challenged tax. Where, as here, the  
3 Legislature has provided an adequate statutory remedy for seeking redress from the courts, a  
4 plaintiff must substantially comply with that available remedy. *Freedom Found. v. Teamsters*  
5 *Local 117 Segregated Fund*, 197 Wn.2d 116, 141, 480 P.3d 1119 (2021).

6 In short, Plaintiffs seek to jump the starting gun. Their lawsuits do not constitute a  
7 justiciable controversy under the UDJA and ignore the statutory remedy the Legislature has  
8 provided to address the constitutionality of the capital gains tax. For these reasons, this Court  
9 should dismiss both complaints. Plaintiffs, like all other taxpayers, should be required to seek  
10 redress from the courts under RCW 82.32.180 after first paying the disputed tax; a  
11 circumstance that will not occur for nearly two years, if it occurs at all.

12 Alternatively, if this Court does not dismiss these cases outright, it should transfer  
13 venue to Thurston County pursuant to RCW 4.12.030(3). The tax was enacted in Thurston  
14 County and will be administered by the Department of Revenue from Thurston County.  
15 Transferring venue to the locus of administration of the tax would serve the ends of justice.

## 16 II. STATEMENT OF MATERIAL FACTS

17 The House of Representatives and the Senate passed ESSB 5096 on April 24 and April  
18 25, 2021, respectively. Governor Inslee signed the bill into law on May 4, 2021. *See*  
19 <https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false>.

20 Beginning January 1, 2022, the Act imposes “an excise tax ... on the sale or exchange  
21 of long-term capital assets.” ESSB 5096, § 5(1). The Act provides a number of deductions and  
22 exemptions. For example, it exempts “[a]ll real estate transferred by deed, real estate contract,  
23 judgment, or other lawful instruments. . . .” *Id.*, § 6(1). Assets held in various retirement  
24 accounts are exempt. *Id.*, § 6(3). And it provides for a standard deduction of \$250,000 and a  
25 qualified family-owned small business deduction. *Id.*, §§ 7(1), 8(1).

1           Because of the Act’s generous credits and exemptions, a very small percentage of  
2 Washingtonians are expected to owe capital gains tax in any given year. An example helps  
3 illustrate the point. Imagine a Washington taxpayer who in a single year sells a large rental  
4 property at a \$1 million profit, sells a small business at a \$1 million profit, sells assets in a  
5 retirement account at a \$1 million profit, and sells ordinary stocks held outside a retirement  
6 account at a \$200,000 profit. Though the person would have earned over \$3 million in capital  
7 gains from these sale transactions, they would owe no Washington capital gains tax because  
8 the first three asset categories are exempt and the \$250,000 standard deduction exceeds the  
9 profit from non-exempt assets.

10           The Act requires taxpayers that owe the tax to file “a return with the department on or  
11 before the date the taxpayer’s federal income tax return for the taxable year is required to be  
12 filed.” ESSB 5096, § 12(1)(a). “Taxable year” is defined as “the taxpayer’s taxable year as  
13 determined under the internal revenue code.” *Id.*, § 4(11). Accordingly, since the tax does not  
14 take effect until January 1, 2022, “the first payments are due on or about April 17, 2023.” *See*  
15 <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=63304> (Department of  
16 Revenue’s Fiscal Note, at 4).

17           The administrative provisions in RCW 82.32 will apply to the capital gains tax. ESSB  
18 5096, § 14. This includes RCW 82.32.150 and .180, which require full payment before any  
19 action challenging a tax may be instituted in court, and which bar restraining orders and  
20 injunctions against the collection of any tax “except upon the ground that *the assessment*  
21 *thereof* was in violation of the Constitution of the United States or that of the state.” (Emphasis  
22 added).

23           None of the Plaintiffs have paid the capital gains tax, nor have they been assessed the  
24 tax by the Department. Further, it is presently unknown and unknowable whether any of the  
25 Plaintiffs will actually owe the tax in the future.  
26

1 **III. STATEMENT OF ISSUES**

2 1. Under the UDJA, a justiciable controversy is an actual, present, and existing  
3 dispute, as opposed to a possible, dormant, hypothetical, speculative, or moot disagreement.  
4 Here, Plaintiffs merely allege they will be required to pay the tax imposed by ESSB 5096 *if*  
5 they realize non-exempt capital gains in excess of \$250,000. But none of the Plaintiffs can  
6 possibly know whether that eventuality will occur. Given the speculative nature of Plaintiffs’  
7 claim that they may possibly pay the tax at some time years in the future, do Plaintiffs present  
8 an actual, present, and existing dispute?

9 2. Pursuant to article II, section 26 of the Washington Constitution, the Legislature  
10 has established the statutory requirements to bring a court action challenging an excise tax enacted  
11 by the Legislature. RCW 82.32.180. It has also limited such actions to ones in which the disputed  
12 excise tax has been paid, or to an action requesting a restraining order or injunction against the  
13 collection of an assessed tax on constitutional grounds. RCW 82.32.150. Given the express  
14 language of these statutes, should the Court dismiss both Plaintiffs’ complaints under CR 12(b)(6)  
15 where it is undisputed that none of them has paid the capital gains tax or seeks to restrain or enjoin  
16 the collection of a capital gains tax assessment?

17 3. Should this Court transfer venue to the Superior Court for Thurston County  
18 pursuant to RCW 4.12.030(3) and CR 12(b)(3)?

19 **IV. EVIDENCE RELIED ON**

20 This motion involves a CR 12(b)(6) motion to dismiss, as well as an alternative request for  
21 a transfer of venue pursuant to CR 12(b)(3). As a result, Defendants rely on the allegations  
22 contained in the First Amended Complaint filed by the Quinn Plaintiffs and the Complaint filed  
23 by the Clayton Plaintiffs.  
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1 **V. ARGUMENTS AND AUTHORITY**

2 **A. Plaintiffs’ Claim for Declaratory Relief is not Justiciable Under the UDJA**

3 “A challenge to the constitutionality of a statute by means of a declaratory judgment  
4 must be justiciable before it will be considered.” *Snohomish Cnty. v. Anderson*, 124 Wn.2d  
5 834, 840, 881 P.2d 240 (1994); *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 814-15,  
6 514 P.2d 137 (1973) (jurisdiction under the UDJA requires a justiciable controversy). This  
7 Court should dismiss Plaintiffs’ Complaints based on the lack of a justiciable controversy.

8 “[T]o invoke the Uniform Declaratory Judgments Act, . . . a plaintiff must  
9 establish” four factors:

10 “(1) ... an actual, present and existing dispute, or the mature seeds of one, as  
11 distinguished from a possible, dormant, hypothetical, speculative, or moot  
12 disagreement, (2) between parties having genuine and opposing interests, (3)  
13 which involves interests that must be direct and substantial, rather than  
14 potential, theoretical, abstract or academic, and (4) a judicial determination of  
15 which will be final and conclusive.”

16 *Coppernoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005) (quoting *Diversified Indus.*  
17 *Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). It is the plaintiff’s burden to  
18 establish that all four elements are satisfied. *Id.*; see also *Grant Cty. Fire Prot. Dist. No. 5 v.*  
19 *City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (explaining that “the party  
20 seeking standing” must establish justiciability). “Inherent in these four requirements are the  
21 traditional limiting doctrines of standing, mootness, and ripeness[.]” *To-Ro Trade Shows v.*  
22 *Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001).

23 Here, Plaintiffs cannot meet their burden of establishing several of these necessary  
24 elements.

25 As to the first factor, Plaintiffs’ claim that they will owe the tax *if* they realize capital  
26 gains in excess of \$250,000 in 2022 is entirely speculative. Any person in Washington, even  
someone with no assets, could truthfully allege what Plaintiffs allege here: that they would owe  
the tax *if* they realize capital gains in excess of \$250,000 from the sale of non-exempt assets.

1 Therefore, at best, Plaintiffs’ allegations merely establish the possibility that they might owe  
2 the capital gains tax at some point in the future. But that possibility is truly speculative given  
3 the Act’s deductions and exemptions, including the \$250,000 standard deduction. As detailed  
4 above, because the Act exempts capital gains from the sale of real estate, retirement assets, and  
5 small businesses, even people who routinely experience annual capital gains exceeding  
6 \$250,000 may not owe any tax under the Act. And no one, including Plaintiffs, can yet know  
7 what capital gains they will experience in 2022 or beyond. Applying the first factor, the  
8 Supreme Court has “repeatedly refused to find a justiciable controversy where the event at  
9 issue has not yet occurred or remains a matter of speculation[.]” *To-Ro Trade Shows*, 144  
10 Wn.2d at 415–16. That principle controls here and requires dismissal.

11 Plaintiffs also cannot possibly meet their burden of establishing the third factor, which  
12 requires showing “direct and substantial” harm, “rather than potential, theoretical, abstract or  
13 academic” injury. *Id.* at 411-12. The Supreme Court has made clear that “direct and  
14 substantial” harm cannot be “contingent on . . . intervening event[s].” *Id.* at 413. Here, any  
15 alleged harm is entirely contingent on future events, namely, Plaintiffs incurring capital gains  
16 in some future year of over \$250,000 from the sale of non-exempt assets. Because no one,  
17 including any plaintiff, can possibly know what capital gains they will incur in future years,  
18 Plaintiffs’ alleged harms are “potential, theoretical, abstract or academic,” and they cannot  
19 meet the UDJA’s third requirement.

20 Because Plaintiffs cannot possibly meet their burden of proving justiciability under the  
21 UDJA, this Court should dismiss Plaintiffs’ complaints.

22 **B. Plaintiffs’ Action Also Fails Because It Seeks Declaratory and Injunctive Relief in**  
23 **a Manner that is Contrary to the Statutory Remedy Authorized by the Legislature**  
24 **to Challenge Taxes Under RCW Title 82**

25 Even if Plaintiffs could meet the standard for justiciability under the UDJA, this Court  
26 should still dismiss Plaintiffs’ complaints because they have not invoked the statutory  
procedures the Legislature specifically established for challenging a tax under RCW Title 82.

1 Importantly, section 14 of the Act expressly provides that the administrative provisions in  
2 RCW 82.32 apply to the capital gains tax. ESSB 5096, § 14. Among those administrative  
3 provisions are RCW 82.32.150 and .180, which require full payment before any action  
4 challenging a tax may be instituted in court, and which generally bar restraining orders and  
5 injunctions against the collection of any tax. When, as here, the Legislature has granted a right  
6 to seek review of a state tax, the right must be exercised in the manner provided by the statute.  
7 *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 52, 905 P.2d 338 (1995); *Guy F.*  
8 *Atkinson Co. v. State*, 66 Wn.2d 570, 575, 403 P.2d 880 (1965); *Booker Auction Co. v. Dep't of*  
9 *Revenue*, 158 Wn. App. 84, 88, 241 P.3d 439 (2010). Plaintiffs may not end-run the statutory  
10 remedies available in RCW 82.32.150 and .180 by invoking the UDJA.

11 **1. The Legislature has established a detailed statutory procedure for seeking**  
12 **judicial review of taxes under RCW Title 82**

13 Pursuant to section 14 of ESSB 5096, the Department will administer the capital gains  
14 tax as part of its general powers and duties to administer and enforce the state's excise tax  
15 laws. *See generally* RCW 82.01.060 (powers and duties of Department). The procedures for  
16 challenging a tax administered by the Department under RCW Title 82 are set out in RCW  
17 82.32.

18 RCW 82.32.150 sets out a clear general rule that a taxpayer may not challenge a tax in  
19 court prior to paying it, with a narrow exception allowing a taxpayer to seek injunctive relief  
20 on constitutional grounds to challenge the *collection of an assessment* of unpaid taxes:

21 All taxes, penalties, and interest shall be paid in full before any action may be  
22 instituted in any court to contest all or any part of such taxes, penalties, or  
23 interest. *No restraining order or injunction shall be granted or issued by any  
court or judge to restrain or enjoin the collection of any tax or penalty or any  
part thereof, except upon the ground that the assessment thereof was in  
violation of the Constitution of the United States or that of the state.*

24 RCW 82.32.150 (emphasis added).

25 RCW 82.32.150 is not ambiguous. *Booker Auction*, 158 Wn. App. at 89. By its express  
26 terms, the statute allows injunctive relief *only* with respect to the *collection of an assessment of*

1 unpaid taxes, and even then collection of the assessment may be enjoined *only* on  
2 constitutional grounds. *Id.* at 88; *AOL, LLC v. Dep't of Revenue*, 149 Wn. App. 533, 546-47,  
3 205 P.3d 159 (2009). In all other circumstances, the disputed tax “shall be paid in full before  
4 any action may be instituted in any court” to challenge the tax. RCW 82.32.150. Here,  
5 Plaintiffs have obviously not paid the tax yet, and they have been issued no assessment the  
6 collection of which could be enjoined. They thus fail RCW 82.32.150’s requirements.

7 The “paid in full” requirement in RCW 82.32.150 supports society’s strong interest in  
8 the efficient collection of taxes by preventing tax disputes from delaying collection of tax  
9 revenue unless the taxpayer raises a constitutional challenge to the collection of an assessment  
10 and establishes a likelihood of prevailing on the merits. *Tyler Pipe Indus., Inc. v. Dep't of*  
11 *Revenue*, 96 Wn.2d 785, 793-94, 796, 638 P.2d 1213 (1982) (“An injunction is an  
12 extraordinary equitable remedy designed to prevent serious harm. Its purpose is not to protect a  
13 plaintiff from mere inconveniences or speculative and insubstantial injury.”); *see also Booker*  
14 *Auction*, 158 Wn. App. at 89 (RCW 82.32.150 and .180 foster the state’s longstanding policy to  
15 avoid disrupting the prompt and orderly collection of taxes); *Grace Brethren Church*, 457 U.S.  
16 393, 410 n.23, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982) (acknowledging the danger inherent in  
17 disrupting tax payments into state treasuries). As discussed in more detail below, there is no  
18 legal or sound policy reason to disregard the “paid in full” requirement in this case.

19 Once a taxpayer has paid a tax, RCW 82.32.180 provides a taxpayer direct judicial  
20 review by filing a refund action in Thurston County Superior Court. RCW 82.32.180.

21 Any person ... *having paid any tax as required* and feeling aggrieved by  
22 the amount of the tax may appeal to the superior court of Thurston county,  
23 within the time limitation for a refund provided in chapter 82.32 RCW or, if an  
24 application for refund has been made to the department within that time  
25 limitation, then within thirty days after rejection of the application, whichever  
26 time limitation is later.

25 *Id.* (emphasis added). The conditions in RCW 82.32.180 for seeking direct review by the  
26 Thurston County Superior Court in an action involving taxes under RCW Title 82 are

1 mandatory, and “no court action or proceeding of any kind shall be maintained by the taxpayer  
2 to recover any tax paid, or any part thereof, except as herein provided.” *Id.* (third paragraph).

3           Alternatively, instead of seeking direct review by the Thurston County Superior Court,  
4 a taxpayer may file an administrative appeal under RCW 82.32.160 with the Department of  
5 Revenue. The administrative appeal option does not initially require payment of the challenged  
6 tax as a prerequisite to obtain review. Rather, the taxpayer initiates the review by filing a  
7 written request with the Department. RCW 82.32.160 (first sentence). After the Department  
8 issues a final decision, an aggrieved taxpayer has a right to a de novo appeal before the Board  
9 of Tax Appeals. RCW 82.03.190. A Board decision is generally subject to further appeal  
10 through a petition for review filed in superior court under the Administrative Procedure Act.  
11 RCW 82.03.180; *see generally Dep’t of Revenue v. Nord Nw. Corp.*, 164 Wn. App. 215, 222-  
12 23, 264 P.3d 259 (2011) (discussing procedure and standard of review in an appeal of a Board  
13 decision). Only then, to obtain superior court review, is payment of the disputed tax required.  
14 RCW 82.03.180.

15           Thus, the Legislature has established two avenues to challenge taxes administered by  
16 the Department under RCW Title 82: a pre-deprivation process (administrative review) and a  
17 post-deprivation process (refund lawsuit). But neither of these options allows a court to enjoin  
18 a tax without the tax being paid or at least assessed.

19           **2. Plaintiffs, like all other taxpayers, must follow the statutory procedures in**  
20           **RCW Title 82 for seeking judicial review of taxes**

21           The Washington Constitution provides that the Legislature “shall direct by law, in what  
22 manner, and in what courts, suits may be brought against the state.” Const. art. II, § 26.  
23 Washington’s appellate courts have long held that the right to sue the State or a state agency  
24 must be derived from statute, and the Legislature may establish conditions that must be met  
25 before that right can be exercised. *Nelson v. Dunkin*, 69 Wn.2d 726, 729, 419 P.2d 984 (1966).  
26 This principle applies in actions challenging the payment of taxes: “Since a right has been

1 granted to plaintiffs to recover an overpayment of tax, the right must be exercised in the  
2 manner provided by the statute.” *Guy F. Atkinson Co.*, 66 Wn.2d at 575.

3 Moreover, it is well-established that RCW 82.32.180—authorizing refund actions only  
4 in Thurston County Superior Court—is a “conditional, partial waiver of the sovereign  
5 immunity afforded by Article II, § 26 of the Washington Constitution.” *Lacey Nursing Ctr.*,  
6 128 Wn.2d at 52. Consequently, the right to bring an action against the State to challenge the  
7 imposition of tax “‘must be exercised in the manner provided by statute.’” *Id.* at 55 (quoting  
8 *Guy F. Atkinson Co.*, 66 Wn.2d at 575).

9 RCW 82.32.180 provides an aggrieved taxpayer with a plain, speedy, and adequate  
10 method to challenge the constitutionality of the capital gains tax. Declaratory relief is generally  
11 not available when the Legislature has provided an adequate statutory method for determining  
12 a particular type of case, including a case challenging a state tax. *Seattle-King Cnty. Council of*  
13 *Camp Fire v. Dep’t of Revenue*, 105 Wn.2d 55, 58, 711 P.2d 300 (1985); *Cf. Wash. Trucking*  
14 *Ass’ns v. Emp. Sec. Dep’t*, 188 Wn.2d 198, 223-24, 393 P.3d 761 (2017) (a challenge to the  
15 “justness or correctness” of employment taxes administered by the Employment Security  
16 Department “must proceed” under the applicable tax administration statutes in RCW Title 50).<sup>2</sup>  
17 The Washington Supreme Court recently reiterated this point: “It is now a ‘well established  
18 rule that where statutes prescribe procedures for the resolution of a particular type of dispute,  
19 state courts have required substantial compliance or satisfaction of the spirit of the procedural  
20 requirements . . . .” *Freedom Found.*, 197 Wn.2d at 141 (quoting *James v. Kitsap County*, 154  
21 Wn.2d 574, 588, 115 P.3d 286 (2005)). Under this established law, no legal or logical reason  
22 exists to allow Plaintiffs to challenge the capital gains tax other than as provided in  
23 RCW 82.32—particularly given that the Legislature expressly applied RCW 82.32 as part of  
24 the Act establishing the capital gains tax. ESSB 5096, § 14.

25 <sup>2</sup> See generally 22A Am. Jur.2d, *Declaratory Judgments* § 51 (2003) (“Where a statute provides a special  
26 form of remedy for a specific type of case, the statutory remedy shall be followed, and a party may not circumvent  
those special statutory proceedings by a declaratory judgment action.”).

1 Plaintiffs' claims for declaratory and injunctive relief under the UDJA clearly are  
2 contrary to RCW 82.32.150's requirement that taxpayers must pay all taxes in full prior to  
3 instituting an action to contest an excise tax. Their claim for injunctive relief also is contrary to  
4 RCW 82.32.150's prohibition against injunctive relief except to "enjoin the collection of any  
5 tax" on constitutional grounds after the taxpayer receives an assessment. Therefore, RCW  
6 82.32.150 plainly forecloses Plaintiffs' claim for injunctive relief under the current facts, where  
7 no plaintiff has been assessed the tax.

8 Plaintiffs' claims for declaratory relief fare no better. RCW 82.32.150 provides *no*  
9 exception allowing a court to grant declaratory relief. Furthermore, the term "restraining order  
10 or injunction" in RCW 82.32.150, properly construed, should include orders granting  
11 declaratory relief. In *Grace Brethren Church*, the United States Supreme Court concluded that  
12 the phrase "enjoin, suspend or restrain" in the federal Tax Injunction Act<sup>3</sup> also prohibits  
13 declaratory relief because permitting declaratory orders would defeat the Act's purpose:

14 Because the declaratory judgment "procedure may in every practical sense  
15 operate to suspend collection of the state taxes until the litigation is ended,"  
16 *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299, 63 S. Ct. 1070,  
17 1073, 87 L. Ed. 1407 (1943), the very language of the Act suggests that a  
18 federal court is prohibited from issuing declaratory relief in state tax cases.  
19 Additionally, because there is little practical difference between injunctive and  
20 declaratory relief, we would be hard pressed to conclude that Congress intended  
21 to prohibit taxpayers from seeking one form of anticipatory relief against state  
22 tax officials in federal court, while permitting them to seek another, thereby  
23 defeating the principal purpose of the Tax Injunction Act: "to limit drastically  
24 federal district court jurisdiction to interfere with so important a local concern  
25 as the collection of taxes." *Rosewell v. LaSalle National Bank*, 450 U.S. 503,  
26 522, 101 S. Ct. 1221, 1233, 67 L. Ed. 2d. 464 (1981).

21 457 U.S. at 407-08; *see also Nat'l Private Truck Council v. Oklahoma Tax Comm'n*, 515 U.S.  
22 582, 591, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995) (quoting *Grace Brethren Church* for the  
23 proposition that "there is little practical difference between injunctive and declaratory relief").  
24 The sound reasoning of the United States Supreme Court applies equally here. Construing

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25 <sup>3</sup> The federal Tax Injunction Act provides in full: "The district courts shall not enjoin, suspend or restrain  
26 the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be  
had in the courts of such State." 28 U.S.C. § 1341.

1 RCW 82.32.150 to prohibit declaratory relief supports the legislative purposes reflected in  
2 RCW 82.32.150 and .180.

3 Here, no Plaintiff has paid any capital gains tax. Nor has the Department assessed any  
4 of the Plaintiffs for unpaid capital gains taxes. Therefore, none of them are entitled to relief  
5 under RCW 82.32.150 or .180 and this Court should dismiss Plaintiffs' claims for declaratory  
6 and injunctive relief.

7 **C. The Ends of Justice are Best Served by a Transfer of Venue**

8 If this Court does not dismiss this case outright, it should alternatively transfer venue to  
9 Thurston County under RCW 4.12.030(3). That statute provides that a court may change venue  
10 when it appears that "the ends of justice would be forwarded by the change." RCW 4.12.030(3);  
11 *see Ralph v. Weyerhaeuser Co.*, 187 Wn.2d at 343 (changing venue for ends of justice "is a  
12 question to be addressed to the discretion of the superior court").

13 Changing venue would forward the ends of justice in this case. The Legislature enacted  
14 this tax in Thurston County and the Department will administer it from Thurston County; no  
15 relevant governmental action will take place in Douglas County. The Department must  
16 implement ESSB 5096 uniformly statewide, and transferring venue to the locus of  
17 administration of the tax, Thurston County, would serve the ends of justice.

18 **VI. CONCLUSION**

19 For the reasons stated, Defendants respectfully ask the Court to dismiss Plaintiffs'  
20 complaints. Alternatively, this Court should transfer venue to Thurston County.

21 \\\

22 \\\

23 \\\

24 \\\

1 DATED this 14th day of June, 2021.

2 ROBERT W. FERGUSON  
3 Attorney General

4 

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16 OID Nos. 91027 and 91087

1 **PROOF OF SERVICE**

2 I certify that I caused to be served a copy of this document, through my legal assistant,  
3 through electronic mail, per agreement, on June 14, 2021 to:

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26 Attorneys for the Clayton Plaintiffs

21 I certify under penalty of perjury under the laws of the State of Washington that the  
22 foregoing is true and correct.

23 DATED this 14th day of June, 2021, at University Place, WA.

25 s/Cameron G. Comfort  
26 Cameron G. Comfort, Sr. Asst Attorney General

# **APPENDIX A**

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5096**

Chapter 196, Laws of 2021

67th Legislature  
2021 Regular Session

CAPITAL GAINS TAX

EFFECTIVE DATE: July 25, 2021

Passed by the Senate April 25, 2021  
Yeas 25 Nays 24

DENNY HECK

**President of the Senate**

Passed by the House April 24, 2021  
Yeas 52 Nays 44

Laurie Jinkins

**Speaker of the House of  
Representatives**

Approved May 4, 2021 2:58 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5096** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 5, 2021

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5096**

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2021 Regular Session

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Robinson, Hunt, Nguyen, and Wilson, C.; by request of Office of Financial Management)

READ FIRST TIME 02/18/21.

1        AN ACT Relating to investing in Washington families and creating  
2 a more progressive tax system in Washington by enacting an excise tax  
3 on the sale or exchange of certain capital assets; amending RCW  
4 83.100.230; adding a new section to chapter 82.04 RCW; adding a new  
5 chapter to Title 82 RCW; creating new sections; and prescribing  
6 penalties.

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

8        NEW SECTION.    **Sec. 1.**    INTENT. The legislature finds that it is  
9 the paramount duty of the state to amply provide every child in the  
10 state with an education, creating the opportunity for the child to  
11 succeed in school and thrive in life. The legislature further finds  
12 that high quality early learning and child care is critical to a  
13 child's success in school and life, as it supports the development of  
14 the child's social-emotional, physical, cognitive, and language  
15 skills. Therefore, the legislature will invest in the ongoing support  
16 of K-12 education and early learning and child care by dedicating  
17 revenues from this act to the education legacy trust account and the  
18 common school construction account.

19        The legislature further recognizes that a tax system that is  
20 fair, balanced, and works for everyone is essential to help all  
21 Washingtonians grow and thrive. But Washington's tax system today is

1 the most regressive in the nation because it asks those making the  
2 least to pay the most as a percentage of their income. Middle-income  
3 families in Washington pay two to four times more in taxes, as a  
4 percentage of household income, as compared to top earners in the  
5 state. Low-income Washingtonians pay at least six times more than do  
6 our wealthiest residents.

7 To help meet the state's paramount duty, the legislature intends  
8 to levy a seven percent tax on the voluntary sale or exchange of  
9 stocks, bonds, and other capital assets where the profit is in excess  
10 of \$250,000 annually to fund K-12 education, early learning, and  
11 child care, and advance our paramount duty to amply provide an  
12 education to every child in the state. The legislature recognizes  
13 that levying this tax will have the additional effect of making  
14 material progress toward rebalancing the state's tax code.

15 The legislature further intends to exempt certain assets from the  
16 tax including, but not limited to, qualified family-owned small  
17 businesses, all residential and other real property, and retirement  
18 accounts.

19 NEW SECTION. **Sec. 2.** DISTRIBUTION OF REVENUES. (1) All taxes,  
20 interest, and penalties collected under this chapter shall be  
21 distributed as follows:

22 (a) The first \$500,000,000 collected each fiscal year shall be  
23 deposited into the education legacy trust account created in RCW  
24 83.100.230; and

25 (b) Any remainder collected each fiscal year shall be deposited  
26 into the common school construction account.

27 (2) The amounts specified under subsection (1)(a) of this section  
28 shall be adjusted annually as provided under section 17 of this act.

29 **Sec. 3.** RCW 83.100.230 and 2019 c 415 s 990 are each amended to  
30 read as follows:

31 The education legacy trust account is created in the state  
32 treasury. Money in the account may be spent only after appropriation.  
33 Expenditures from the account may be used only for support of the  
34 common schools, and for expanding access to higher education through  
35 funding for new enrollments and financial aid, early learning and  
36 child care programs, and other educational improvement efforts.  
37 (~~During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia~~  
38 ~~appropriations from the account may be made for support of early~~

1 ~~learning programs. It is the intent of the legislature that this~~  
2 ~~policy will be continued in subsequent fiscal biennia.))~~

3 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this  
4 section apply throughout this chapter unless the context clearly  
5 requires otherwise.

6 (1) "Adjusted capital gain" means federal net long-term capital  
7 gain:

8 (a) Plus any amount of long-term capital loss from a sale or  
9 exchange that is exempt from the tax imposed in this chapter, to the  
10 extent such loss was included in calculating federal net long-term  
11 capital gain;

12 (b) Plus any amount of long-term capital loss from a sale or  
13 exchange that is not allocated to Washington under section 11 of this  
14 act, to the extent such loss was included in calculating federal net  
15 long-term capital gain;

16 (c) Plus any amount of loss carryforward from a sale or exchange  
17 that is not allocated to Washington under section 11 of this act, to  
18 the extent such loss was included in calculating federal net long-  
19 term capital gain;

20 (d) Less any amount of long-term capital gain from a sale or  
21 exchange that is not allocated to Washington under section 11 of this  
22 act, to the extent such gain was included in calculating federal net  
23 long-term capital gain; and

24 (e) Less any amount of long-term capital gain from a sale or  
25 exchange that is exempt from the tax imposed in this chapter, to the  
26 extent such gain was included in calculating federal net long-term  
27 capital gain.

28 (2) "Capital asset" has the same meaning as provided by Title 26  
29 U.S.C. Sec. 1221 of the internal revenue code and also includes any  
30 other property if the sale or exchange of the property results in a  
31 gain that is treated as a long-term capital gain under Title 26  
32 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

33 (3) "Federal net long-term capital gain" means the net long-term  
34 capital gain reportable for federal income tax purposes determined as  
35 if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the  
36 internal revenue code did not exist.

37 (4) "Individual" means a natural person.

38 (5) "Internal revenue code" means the United States internal  
39 revenue code of 1986, as amended, as of the effective date of this

1 section, or such subsequent date as the department may provide by  
2 rule consistent with the purpose of this chapter.

3 (6) "Long-term capital asset" means a capital asset that is held  
4 for more than one year.

5 (7) "Long-term capital gain" means gain from the sale or exchange  
6 of a long-term capital asset.

7 (8) "Long-term capital loss" means a loss from the sale or  
8 exchange of a long-term capital asset.

9 (9) "Real estate" means land and fixtures affixed to land. "Real  
10 estate" also includes used mobile homes, used park model trailers,  
11 used floating homes, and improvements constructed upon leased land.

12 (10)(a) "Resident" means an individual:

13 (i) Who is domiciled in this state during the taxable year,  
14 unless the individual (A) maintained no permanent place of abode in  
15 this state during the entire taxable year, (B) maintained a permanent  
16 place of abode outside of this state during the entire taxable year,  
17 and (C) spent in the aggregate not more than 30 days of the taxable  
18 year in this state; or

19 (ii) Who is not domiciled in this state during the taxable year,  
20 but maintained a place of abode and was physically present in this  
21 state for more than 183 days during the taxable year.

22 (b) For purposes of this subsection, "day" means a calendar day  
23 or any portion of a calendar day.

24 (c) An individual who is a resident under (a) of this subsection  
25 is a resident for that portion of a taxable year in which the  
26 individual was domiciled in this state or maintained a place of abode  
27 in this state.

28 (11) "Taxable year" means the taxpayer's taxable year as  
29 determined under the internal revenue code.

30 (12) "Taxpayer" means an individual subject to tax under this  
31 chapter.

32 (13) "Washington capital gains" means an individual's adjusted  
33 capital gain, as modified in section 7 of this act, for each return  
34 filed under this chapter.

35 NEW SECTION. **Sec. 5.** TAX IMPOSED. (1) Beginning January 1,  
36 2022, an excise tax is imposed on the sale or exchange of long-term  
37 capital assets. Only individuals are subject to payment of the tax,  
38 which equals seven percent multiplied by an individual's Washington  
39 capital gains.

1 (2) The tax levied in subsection (1) of this section is necessary  
2 for the support of the state government and its existing public  
3 institutions.

4 (3) If an individual's Washington capital gains are less than  
5 zero for a taxable year, no tax is due under this section and no such  
6 amount is allowed as a carryover for use in the calculation of that  
7 individual's adjusted capital gain, as defined in section 4(1) of  
8 this act, for any taxable year. To the extent that a loss  
9 carryforward is included in the calculation of an individual's  
10 federal net long-term capital gain and that loss carryforward is  
11 directly attributable to losses from sales or exchanges allocated to  
12 this state under section 11 of this act, the loss carryforward is  
13 included in the calculation of that individual's adjusted capital  
14 gain for the purposes of this chapter. An individual may not include  
15 any losses carried back for federal income tax purposes in the  
16 calculation of that individual's adjusted capital gain for any  
17 taxable year.

18 (4)(a) The tax imposed in this section applies to the sale or  
19 exchange of long-term capital assets owned by the taxpayer, whether  
20 the taxpayer was the legal or beneficial owner of such assets at the  
21 time of the sale or exchange. The tax applies when the Washington  
22 capital gains are recognized by the taxpayer in accordance with this  
23 chapter.

24 (b) For purposes of this chapter:

25 (i) An individual is considered to be a beneficial owner of long-  
26 term capital assets held by an entity that is a pass-through or  
27 disregarded entity for federal tax purposes, such as a partnership,  
28 limited liability company, S corporation, or grantor trust, to the  
29 extent of the individual's ownership interest in the entity as  
30 reported for federal income tax purposes.

31 (ii) A nongrantor trust is deemed to be a grantor trust if the  
32 trust does not qualify as a grantor trust for federal tax purposes,  
33 and the grantor's transfer of assets to the trust is treated as an  
34 incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal  
35 revenue code and its accompanying regulations. A grantor of such  
36 trust is considered the beneficial owner of the capital assets of the  
37 trust for purposes of the tax imposed in this section and must  
38 include any long-term capital gain or loss from the sale or exchange  
39 of a capital asset by the trust in the calculation of that

1 individual's adjusted capital gain, if such gain or loss is allocated  
2 to this state under section 11 of this act.

3 NEW SECTION. **Sec. 6.** EXEMPTIONS. This chapter does not apply to  
4 the sale or exchange of:

5 (1) All real estate transferred by deed, real estate contract,  
6 judgment, or other lawful instruments that transfer title to real  
7 property and are filed as a public record with the counties where  
8 real property is located;

9 (2) (a) An interest in a privately held entity only to the extent  
10 that any long-term capital gain or loss from such sale or exchange is  
11 directly attributable to the real estate owned directly by such  
12 entity.

13 (b) (i) Except as provided in (b) (ii) and (iii) of this  
14 subsection, the value of the exemption under this subsection is equal  
15 to the fair market value of the real estate owned directly by the  
16 entity less its basis, at the time that the sale or exchange of the  
17 individual's interest occurs, multiplied by the percentage of the  
18 ownership interest in the entity which is sold or exchanged by the  
19 individual.

20 (ii) If a sale or exchange of an interest in an entity results in  
21 an amount directly attributable to real property and that is  
22 considered as an amount realized from the sale or exchange of  
23 property other than a capital asset under Title 26 U.S.C. Sec. 751 of  
24 the internal revenue code, such amount must not be considered in the  
25 calculation of an individual's exemption amount under (b) (i) of this  
26 subsection (2).

27 (iii) Real estate not owned directly by the entity in which an  
28 individual is selling or exchanging the individual's interest must  
29 not be considered in the calculation of an individual's exemption  
30 amount under (b) (i) of this subsection (2).

31 (c) Fair market value of real estate may be established by a fair  
32 market appraisal of the real estate or an allocation of assets by the  
33 seller and the buyer made under Title 26 U.S.C. Sec. 1060 of the  
34 internal revenue code, as amended. However, the department is not  
35 bound by the parties' agreement as to the allocation of assets,  
36 allocation of consideration, or fair market value, if such  
37 allocations or fair market value do not reflect the fair market value  
38 of the real estate. The assessed value of the real estate for  
39 property tax purposes may be used to determine the fair market value

1 of the real estate, if the assessed value is current as of the date  
2 of the sale or exchange of the ownership interest in the entity  
3 owning the real estate and the department determines that this method  
4 is reasonable under the circumstances.

5 (d) The value of the exemption under this subsection (2) may not  
6 exceed the individual's long-term capital gain or loss from the sale  
7 or exchange of an interest in an entity for which the individual is  
8 claiming this exemption;

9 (3) Assets held under a retirement savings account under Title 26  
10 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
11 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)  
12 of the internal revenue code, a deferred compensation plan under  
13 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
14 individual retirement account or individual retirement annuity  
15 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
16 Roth individual retirement account described in Title 26 U.S.C. Sec.  
17 408A of the internal revenue code, an employee defined contribution  
18 program, an employee defined benefit plan, or a similar retirement  
19 savings vehicle;

20 (4) Assets pursuant to, or under imminent threat of, condemnation  
21 proceedings by the United States, the state or any of its political  
22 subdivisions, or a municipal corporation;

23 (5) Cattle, horses, or breeding livestock if for the taxable year  
24 of the sale or exchange, more than 50 percent of the taxpayer's gross  
25 income for the taxable year, including from the sale or exchange of  
26 capital assets, is from farming or ranching;

27 (6) Property depreciable under Title 26 U.S.C. Sec. 167(a)(1) of  
28 the internal revenue code, or that qualifies for expensing under  
29 Title 26 U.S.C. Sec. 179 of the internal revenue code;

30 (7) Timber, timberland, or the receipt of Washington capital  
31 gains as dividends and distributions from real estate investment  
32 trusts derived from gains from the sale or exchange of timber and  
33 timberland. "Timber" means forest trees, standing or down, on  
34 privately or publicly owned land, and includes Christmas trees and  
35 short-rotation hardwoods. The sale or exchange of timber includes the  
36 cutting or disposal of timber qualifying for capital gains treatment  
37 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue  
38 code;

39 (8) (a) Commercial fishing privileges.

1 (b) For the purposes of this subsection (8), "commercial fishing  
2 privilege" means a right, held by a seafood harvester or processor,  
3 to participate in a limited access fishery. "Commercial fishing  
4 privilege" includes and is limited to:

5 (i) In the case of federally managed fisheries, quota and access  
6 to fisheries assigned pursuant to individual fishing quota programs,  
7 limited entry and catch share programs, cooperative fishing  
8 management agreements, or similar arrangements; and

9 (ii) In the case of state-managed fisheries, quota and access to  
10 fisheries assigned under fishery permits, limited entry and catch  
11 share programs, or similar arrangements; and

12 (9) Goodwill received from the sale of an auto dealership  
13 licensed under chapter 46.70 RCW whose activities are subject to  
14 chapter 46.96 RCW.

15 NEW SECTION. **Sec. 7.** DEDUCTIONS. In computing tax for a taxable  
16 year, a taxpayer may deduct from his or her Washington capital gains:

17 (1) A standard deduction of \$250,000 per individual, or in the  
18 case of spouses or domestic partners, their combined standard  
19 deduction is limited to \$250,000, regardless of whether they file  
20 joint or separate returns. The amount of the standard deduction shall  
21 be adjusted pursuant to section 17 of this act;

22 (2) Amounts that the state is prohibited from taxing under the  
23 Constitution of this state or the Constitution or laws of the United  
24 States;

25 (3) The amount of adjusted capital gain derived from the sale or  
26 transfer of the taxpayer's interest in a qualified family-owned small  
27 business pursuant to section 8 of this act; and

28 (4) Charitable donations deductible under section 9 of this act.

29 NEW SECTION. **Sec. 8.** QUALIFIED FAMILY-OWNED SMALL BUSINESS  
30 DEDUCTION. (1) In computing tax under this chapter for a taxable  
31 year, a taxpayer may deduct from his or her Washington capital gains  
32 the amount of adjusted capital gain derived in the taxable year from  
33 the sale of substantially all of the fair market value of the assets  
34 of, or the transfer of substantially all of the taxpayer's interest  
35 in, a qualified family-owned small business, to the extent that such  
36 adjusted capital gain would otherwise be included in the taxpayer's  
37 Washington capital gains.

1 (2) For purposes of this section, the following definitions  
2 apply:

3 (a) "Assets" means real property and personal property, including  
4 tangible personal property and intangible property.

5 (b) "Family" means the same as "member of the family" in RCW  
6 83.100.046.

7 (c) (i) "Materially participated" means an individual was involved  
8 in the operation of a business on a basis that is regular,  
9 continuous, and substantial.

10 (ii) The term "materially participated" must be interpreted  
11 consistently with the applicable treasury regulations for Title 26  
12 U.S.C. Sec. 469 of the internal revenue code, to the extent that such  
13 interpretation does not conflict with any provision of this section.

14 (d) "Qualified family-owned small business" means a business:

15 (i) In which the taxpayer held a qualifying interest for at least  
16 five years immediately preceding the sale or transfer described in  
17 subsection (1) of this section;

18 (ii) In which either the taxpayer or members of the taxpayer's  
19 family, or both, materially participated in operating the business  
20 for at least five of the 10 years immediately preceding the sale or  
21 transfer described in subsection (1) of this section, unless such  
22 sale or transfer was to a qualified heir; and

23 (iii) That had worldwide gross revenue of \$10,000,000 or less in  
24 the 12-month period immediately preceding the sale or transfer  
25 described in subsection (1) of this section. The worldwide gross  
26 revenue amount under this subsection (2)(d)(iii) shall be adjusted  
27 annually as provided in section 17 of this act.

28 (e) "Qualified heir" means a member of the taxpayer's family.

29 (f) "Qualifying interest" means:

30 (i) An interest as a proprietor in a business carried on as a  
31 sole proprietorship; or

32 (ii) An interest in a business if at least:

33 (A) Fifty percent of the business is owned, directly or  
34 indirectly, by any combination of the taxpayer or members of the  
35 taxpayer's family, or both;

36 (B) Thirty percent of the business is owned, directly or  
37 indirectly, by any combination of the taxpayer or members of the  
38 taxpayer's family, or both, and at least:

39 (I) Seventy percent of the business is owned, directly or  
40 indirectly, by members of two families; or

1 (II) Ninety percent of the business is owned, directly or  
2 indirectly, by members of three families.

3 (g) "Substantially all" means at least 90 percent.

4 NEW SECTION. **Sec. 9.** ADDITIONAL DEDUCTION FOR CHARITABLE  
5 DONATIONS. (1) In computing tax under this chapter for a taxable  
6 year, a taxpayer may deduct from his or her Washington capital gains  
7 the amount donated by the taxpayer to one or more qualified  
8 organizations during the same taxable year in excess of the minimum  
9 qualifying charitable donation amount. For the purposes of this  
10 section, the minimum qualifying charitable donation amount equals  
11 \$250,000. The minimum qualifying charitable donation amount under  
12 this subsection (1) shall be adjusted pursuant to section 17 of this  
13 act.

14 (2) The deduction authorized under subsection (1) of this section  
15 may not exceed \$100,000 for the taxable year. The maximum amount of  
16 the available deduction under this subsection (2) shall be adjusted  
17 pursuant to section 17 of this act.

18 (3) The deduction authorized under subsection (1) of this section  
19 may not be carried forward or backward to another tax reporting  
20 period.

21 (4) For the purposes of this section, the following definitions  
22 apply:

23 (a) "Nonprofit organization" means an organization exempt from  
24 tax under Title 26 U.S.C. Sec. 501(c)(3) of the internal revenue  
25 code.

26 (b) "Qualified organization" means a nonprofit organization, or  
27 any other organization, that is:

28 (i) Eligible to receive a charitable deduction as defined in  
29 Title 26 U.S.C. Sec. 170(c) of the internal revenue code; and

30 (ii) Principally directed or managed within the state of  
31 Washington.

32 NEW SECTION. **Sec. 10.** OTHER TAXES. The tax imposed under this  
33 chapter is in addition to any other taxes imposed by the state or any  
34 of its political subdivisions, or a municipal corporation, with  
35 respect to the same sale or exchange, including the taxes imposed in,  
36 or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45,  
37 or 82.46 RCW.

1        NEW SECTION.    **Sec. 11.**    ALLOCATION OF GAINS AND LOSSES. (1) For  
2 purposes of the tax imposed under this chapter, long-term capital  
3 gains and losses are allocated to Washington as follows:

4        (a) Long-term capital gains or losses from the sale or exchange  
5 of tangible personal property are allocated to this state if the  
6 property was located in this state at the time of the sale or  
7 exchange. Long-term capital gains or losses from the sale or exchange  
8 of tangible personal property are also allocated to this state even  
9 though the property was not located in this state at the time of the  
10 sale or exchange if:

11        (i) The property was located in the state at any time during the  
12 taxable year in which the sale or exchange occurred or the  
13 immediately preceding taxable year;

14        (ii) The taxpayer was a resident at the time the sale or exchange  
15 occurred; and

16        (iii) The taxpayer is not subject to the payment of an income or  
17 excise tax legally imposed on the long-term capital gains or losses  
18 by another taxing jurisdiction.

19        (b) Long-term capital gains or losses derived from intangible  
20 personal property are allocated to this state if the taxpayer was  
21 domiciled in this state at the time the sale or exchange occurred.

22        (2)(a) A credit is allowed against the tax imposed in section 5  
23 of this act equal to the amount of any legally imposed income or  
24 excise tax paid by the taxpayer to another taxing jurisdiction on  
25 capital gains derived from capital assets within the other taxing  
26 jurisdiction to the extent such capital gains are included in the  
27 taxpayer's Washington capital gains. The amount of credit under this  
28 subsection may not exceed the total amount of tax due under this  
29 chapter, and there is no carryback or carryforward of any unused  
30 credits.

31        (b) As used in this section, "taxing jurisdiction" means a state  
32 of the United States other than the state of Washington, the District  
33 of Columbia, the Commonwealth of Puerto Rico, any territory or  
34 possession of the United States, or any foreign country or political  
35 subdivision of a foreign country.

36        NEW SECTION.    **Sec. 12.**    FILING OF RETURNS. (1)(a) Except as  
37 otherwise provided in this section or RCW 82.32.080, taxpayers owing  
38 tax under this chapter must file, on forms prescribed by the  
39 department, a return with the department on or before the date the

1 taxpayer's federal income tax return for the taxable year is required  
2 to be filed.

3 (b) (i) Except as provided in (b) (ii) of this subsection (1),  
4 returns and all supporting documents must be filed electronically  
5 using the department's online tax filing service or other method of  
6 electronic reporting as the department may authorize.

7 (ii) The department may waive the electronic filing requirement  
8 in this subsection for good cause as provided in RCW 82.32.080.

9 (2) In addition to the Washington return required to be filed  
10 under subsection (1) of this section, taxpayers owing tax under this  
11 chapter must file with the department on or before the date the  
12 federal return is required to be filed a copy of the federal income  
13 tax return along with all schedules and supporting documentation.

14 (3) Each taxpayer required to file a return under this section  
15 must, without assessment, notice, or demand, pay any tax due thereon  
16 to the department on or before the date fixed for the filing of the  
17 return, regardless of any filing extension. The tax must be paid by  
18 electronic funds transfer as defined in RCW 82.32.085 or by other  
19 forms of electronic payment as may be authorized by the department.  
20 The department may waive the electronic payment requirement for good  
21 cause as provided in RCW 82.32.080. If any tax due under this chapter  
22 is not paid by the due date, interest and penalties as provided in  
23 chapter 82.32 RCW apply to the deficiency.

24 (4) (a) In addition to the Washington return required to be filed  
25 under subsection (1) of this section, an individual claiming an  
26 exemption under section 6(2) of this act must file documentation  
27 substantiating the following:

28 (i) The fair market value and basis of the real estate held  
29 directly by the entity in which the interest was sold or exchanged;

30 (ii) The percentage of the ownership interest sold or exchanged  
31 in the entity owning real estate; and

32 (iii) The methodology, if any, established by the entity in which  
33 the interest was sold or exchanged, for allocating gains or losses to  
34 the owners, partners, or shareholders of the entity from the sale of  
35 real estate.

36 (b) The department may by rule prescribe additional filing  
37 requirements to substantiate an individual's claim for an exemption  
38 under section 6(2) of this act. Prior to adopting any rule under this  
39 subsection (4) (b), the department must allow for an opportunity for

1 participation by interested parties in the rule-making process in  
2 accordance with the administrative procedure act, chapter 34.05 RCW.

3 (5) If a taxpayer has obtained an extension of time for filing  
4 the federal income tax return for the taxable year, the taxpayer is  
5 entitled to the same extension of time for filing the return required  
6 under this section if the taxpayer provides the department, before  
7 the due date provided in subsection (1) of this section, the  
8 extension confirmation number or other evidence satisfactory to the  
9 department confirming the federal extension. An extension under this  
10 subsection for the filing of a return under this chapter is not an  
11 extension of time to pay the tax due under this chapter.

12 (6) (a) If any return due under subsection (1) of this section,  
13 along with a copy of the federal income tax return, is not filed with  
14 the department by the due date or any extension granted by the  
15 department, the department must assess a penalty in the amount of  
16 five percent of the tax due for the taxable year covered by the  
17 return for each month or portion of a month that the return remains  
18 unfiled. The total penalty assessed under this subsection may not  
19 exceed 25 percent of the tax due for the taxable year covered by the  
20 delinquent return. The penalty under this subsection is in addition  
21 to any penalties assessed for the late payment of any tax due on the  
22 return.

23 (b) The department must waive or cancel the penalty imposed under  
24 this subsection if:

25 (i) The department is persuaded that the taxpayer's failure to  
26 file the return by the due date was due to circumstances beyond the  
27 taxpayer's control; or

28 (ii) The taxpayer has not been delinquent in filing any return  
29 due under this section during the preceding five calendar years.

30 NEW SECTION. **Sec. 13.** JOINT FILERS. (1) If the federal income  
31 tax liabilities of both spouses are determined on a joint federal  
32 return for the taxable year, they must file a joint return under this  
33 chapter.

34 (2) Except as otherwise provided in this subsection, if the  
35 federal income tax liability of either spouse is determined on a  
36 separate federal return for the taxable year, they must file separate  
37 returns under this chapter. State registered domestic partners may  
38 file a joint return under this chapter even if they filed separate  
39 federal returns for the taxable year.

1 (3) The liability for tax due under this chapter of each spouse  
2 or state registered domestic partner is joint and several, unless:

3 (a) The spouse is relieved of liability for federal tax purposes  
4 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue  
5 code; or

6 (b) The department determines that the domestic partner qualifies  
7 for relief as provided by rule of the department. Such rule, to the  
8 extent possible without being inconsistent with this chapter, must  
9 follow Title 26 U.S.C. Sec. 6015.

10 NEW SECTION. **Sec. 14.** ADMINISTRATION OF TAXES. Except as  
11 otherwise provided by law and to the extent not inconsistent with the  
12 provisions of this chapter, chapter 82.32 RCW applies to the  
13 administration of taxes imposed under this chapter.

14 NEW SECTION. **Sec. 15.** CRIMINAL ACTIONS. (1) Any taxpayer who  
15 knowingly attempts to evade payment of the tax imposed under this  
16 chapter is guilty of a class C felony as provided in chapter 9A.20  
17 RCW.

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

21 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04  
22 RCW to read as follows:

23 BUSINESS AND OCCUPATION TAX CREDIT. (1) To avoid taxing the same  
24 sale or exchange under both the business and occupation tax and  
25 capital gains tax, a credit is allowed against taxes due under this  
26 chapter on a sale or exchange that is also subject to the tax imposed  
27 under section 5 of this act. The credit is equal to the amount of tax  
28 imposed under this chapter on such sale or exchange.

29 (2) The credit may be used against any tax due under this  
30 chapter.

31 (3) The credit under this section is earned in regards to a sale  
32 or exchange, and may be claimed against taxes due under this chapter,  
33 for the tax reporting period in which the sale or exchange occurred.  
34 The credit claimed for a tax reporting period may not exceed the tax  
35 otherwise due under this chapter for that tax reporting period.  
36 Unused credit may not be carried forward or backward to another tax

1 reporting period. No refunds may be granted for unused credit under  
2 this section.

3 (4) The department must apply the credit first to taxes deposited  
4 into the general fund. If any remaining credit reduces the amount of  
5 taxes deposited into the workforce education investment account  
6 established in RCW 43.79.195, the department must notify the state  
7 treasurer of such amounts monthly, and the state treasurer must  
8 transfer those amounts from the general fund to the workforce  
9 education investment account.

10 NEW SECTION. **Sec. 17.** ANNUAL ADJUSTMENTS. (1) Beginning  
11 December 2023 and each December thereafter, the department must  
12 adjust the applicable amounts by multiplying the current applicable  
13 amounts by one plus the percentage by which the most current consumer  
14 price index available on December 1st of the current year exceeds the  
15 consumer price index for the prior 12-month period, and rounding the  
16 result to the nearest \$1,000. If an adjustment under this subsection  
17 (1) would reduce the applicable amounts, the department must not  
18 adjust the applicable amounts for use in the following year. The  
19 department must publish the adjusted applicable amounts on its public  
20 website by December 31st. The adjusted applicable amounts calculated  
21 under this subsection (1) take effect for taxes due and distributions  
22 made, as the case may be, in the following calendar year.

23 (2) For purposes of this section, the following definitions  
24 apply:

25 (a) "Applicable amounts" means:

26 (i) The distribution amount to the education legacy trust account  
27 as provided in section 2(1)(a) of this act;

28 (ii) The standard deduction amount in sections 4(13) and 7(1) of  
29 this act;

30 (iii) The worldwide gross revenue amount under section 8 of this  
31 act; and

32 (iv) The minimum qualifying charitable donation amount and  
33 maximum charitable donation amount under section 9 of this act.

34 (b) "Consumer price index" means the consumer price index for all  
35 urban consumers, all items, for the Seattle area as calculated by the  
36 United States bureau of labor statistics or its successor agency.

37 (c) "Seattle area" means the geographic area sample that includes  
38 Seattle and surrounding areas.

1        NEW SECTION.    **Sec. 18.**    The provisions of RCW 82.32.805 and  
2 82.32.808 do not apply to this act.

3        NEW SECTION.    **Sec. 19.**    Sections 1, 2, 4 through 15, and 17 of  
4 this act constitute a new chapter in Title 82 RCW.

5        NEW SECTION.    **Sec. 20.**    (1) If a court of competent jurisdiction,  
6 in a final judgment not subject to appeal, adjudges section 5 of this  
7 act unconstitutional, or otherwise invalid, in its entirety, section  
8 16 of this act is null and void in its entirety. Any credits  
9 previously claimed under section 16 of this act must be repaid within  
10 30 days of the department of revenue's notice to the taxpayer of the  
11 amount due.

12        (2) If the taxpayer fails to repay the credit by the due date,  
13 interest and penalties as provided in chapter 82.32 RCW apply to the  
14 deficiency.

15        NEW SECTION.    **Sec. 21.**    If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

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