

Legislative Elements for an Income Tax Imposed as a Capital Gains Tax

Overview

Regarding a capital gains tax imposed as an income tax, the purpose of this document is to provide lawmakers:

- A list of legislative elements needed to ensure, when challenged, the Washington State Supreme Court has an opportunity to reverse, point-by-point, the longstanding precedent that an income tax is unconstitutional.
- A short summary of the judicial precedent requiring the legislative element.

Tax Bill Elements

- Impose the tax against either personal or corporate income, not both.

The Attorney General has opined [1d]

Supreme Court held that a corporate income tax violated the uniformity provision of the state constitution because, among other things, it didn't apply to individuals and other types of business entities (See *Power, Inc. v Huntley*, 39 Wn.2nd 191 at 195 and *Petroleum Navigation Co. v. Henneford*, 185 Wash. 495, 496-97). The same rationale would apply to a personal income tax that did not apply to business entities.

- Apply credits, deductions, and exemptions based on marital status (single, joint, married/domestic partnership) and number of dependents.

The Court determined that a standard credit of \$1,000 for single persons, \$2,500 for married persons, and a \$400 deduction for each dependent violated the uniformity provision of the Washington Constitution (See *Jensen v. Henneford*, 185 Wash. 209 at 222-223).

- Tax must not apply equally to three sub-classes of real estate: rents, non-income bearing real estate, and real estate owned by nonresidents.

Since the Constitution requires uniformity within each class of property, such as real estate, the Court held that an income tax on income from rents is unconstitutional because it didn't also apply to non-income bearing real estate or real estate owned by nonresidents (*Jensen v. Henneford*, 185 Wash. 209 at 222).

- Assign different tax rates based on income levels.

The Court held that an income tax is, in reality, a property tax that violated the Constitution's requirement that all property taxes be uniform upon the same class of property (*Culliton v. Chase*, 174 Wash. 363 and *Jensen v. Henneford*, 185 Wash. 209).

- The bill draft should unequivocally state that the tax is an income tax (intent section and the term "income tax" should appear elsewhere within the body of the bill where appropriate). It is possible that the Court, upon a challenge, might rule that the bill is not an income tax but an excise tax to avoid the perception that the Court levied an income tax (due to potential political fallout with voters).

"Unless the income tax constitutes a tax on property, the uniformity clause of the state constitution is not violated." (*Culliton v. Chase*, 174 Wash. 363)

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Legislative Elements for an Income Tax on Capital Gains

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Commented [DLD2]: Omit???

Duvall, David (DOR)

From: Adams, Kate (DOR)
Sent: Friday, December 12, 2014 11:12 AM
To: Duvall, David (DOR)
Subject: FW: Compliance assumption

So our conversation Thursday was very useful, because on Friday Don asked me for information on compliance issues under a capital gains tax. Chris came down for the chat, and I learned me a few things.

1. Under a B&O capital gains tax, apportionment only applies if we make it apportionable income. In the alternative, we source it to a particular location and give a credit for taxes paid in other states. Not both.
2. Under a stand-alone excise tax, again, we either apportion or source+ credit. We won't have to do both.
3. A stand-alone excise tax is generally assumed to be safe – not an income tax – because it is based on a *transaction*. The privilege of selling assets.

We can discuss/debate further. Just wanted to get this to you before I forgot~!

KT

From: Adams, Kate (DOR)
Sent: Friday, December 12, 2014 11:08 AM
To: Gutmann, Don (DOR)
Cc: Duvall, David (DOR)
Subject: Compliance assumption

We assume that the capital gains tax is imposed as a stand-alone tax that includes provisions to prevent taxpayers from avoiding the tax by shifting gains to related persons, entities, or trusts.

Does that work? If you need something different, give me a shout.

KT

Kate Adams

Tax Policy Specialist
Washington State Department of Revenue

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Tax Reform: Capital Gains Tax as a B&O Tax (Option 1)

Overview • To explain the aspects of a capital gains tax imposed as a B&O tax.

Background Capital Gains Tax under Washington State

- Currently, there is a limited capital gains tax built into the State's B&O tax imposed on a business' "gains realized from trading in stocks, bonds, or other evidences of indebtedness, . . . on a net annualized basis." (RCW 82.04.080)
- The "net annualized basis" allows for the monthly deduction of losses up to the amount of gains, from either (WAC 458-20-162):
 - Gross income from interest gross income from commissions;
 - Gross income from trading; or,
 - Gross income from all other sources for stockbrokers and security houses for transactions that occur within the same month.
- While the federal government's capital gains tax has broad application, Washington's is narrow in scope.

As a B&O Tax **Capital Gains Tax Imposed as a B&O Tax**

- The B&O tax is an excise tax or a tax on gross receipts for the privilege of conducting business in Washington State.
- This option would create a broad "capital gains" B&O classification for those who engage in the selling of a "capital asset" as defined by the IRS.
- The capital asset's "basis" would include the purchase price of the asset, not other costs allowed under the Federal capital gains tax (i.e. brokers fees).
- Losses would be deducted in the same reporting period the loss occurred. No refunds for losses exceeding one's tax liability.
- Existing B&O gross income filing thresholds and small business tax credits would apply.
- While some changes would be required, the tax would be sourced/apportioned under the corresponding excise tax rules based on the capital asset's type.
 - Tangible capital assets – WAC 458-20-193
 - Intangible capital assets – WAC 458-20-19403

- The capital gains tax would not apply to “casual and isolated sales.”
- A deduction will have to be created to exempt federally pre-empted capital gains from this tax (i.e. interest from federal bonds, certain payments to Indians, payments to non-residents, etc...). See the *Capital Gains Tax: Technical, Administrative, & Other Policy Considerations* document for a discussion.

Tax Reform: Capital Gains Tax as a Stand-Alone Excise Tax (Option 2)

Overview • To explain the aspects of a capital gains tax imposed as a stand-alone excise tax.

Background *Capital Gains Tax under Washington State*

- Currently, there is a limited capital gains tax built into the State's B&O tax imposed on a business' "gains realized from trading in stocks, bonds, or other evidences of indebtedness, . . . on a net annualized basis." (RCW 82.04.080)
- Under WAC 458-20-162, the "net annualized basis" allows for the monthly deduction of losses up to the amount of gains within the same month commissions paid to employees, from either:
 - Gross income from interest;
 - Gross income from commissions;
 - Gross income from trading; or,
 - Gross income from all other sources for stockbrokers and security houses for transactions that occur within the same month.
- While the federal government's capital gains tax has broad application, Washington's is limited.

As a Stand-Alone Excise Tax

- An excise tax is a tax on gross receipts for the privilege of conducting business in Washington State. While the B&O tax is an excise tax, this stand-alone tax would be in addition to any B&O tax or any other excise tax liability.
- This option would impose a capital gains tax as a privilege tax on the net capital gains of a taxpayer's sale of "capital assets" as defined by the IRS.
- The capital asset's "basis" would only include the purchase price of acquiring the asset, not other costs allowed under the Federal capital gains tax (i.e. brokers fees).
- Losses could be deducted in the same reporting period the loss occurred. There would be no refunds for losses exceeding one's tax liability.
- Existing B&O gross income filing thresholds and small business tax credits would **not** apply.
- While some changes would be required, the tax would be sourced/apportioned under the corresponding excise tax rules based on the capital asset's type.

- Tangible capital assets – WAC 458-20-193
- Intangible capital assets – WAC 458-20-19403

- This tax would not apply to “casual and isolated sales.”

- A deduction will have to be created to exempt federally pre-empted capital gains from this tax (i.e. interest from federal bonds, certain payments to Indians, payments to non-residents, etc...). See the *Capital Gains Tax: Technical, Administrative, & Other Policy Considerations* document for a discussion.

Tax Reform: Capital Gains Tax as an Income Tax (Option 3)

- Overview**
- To explain the aspects of a capital gains tax imposed as an income tax.
- As an Income Tax**
- An income tax is imposed on one’s taxable income after allowable exemptions, deductions, and credits are applied. The tax rate applied to taxable income is determined by its corresponding income tax bracket.
 - A capital gains tax imposed as an income tax would apply to the sale or exchange of “capital assets.”
 - When a capital asset is sold, the seller calculates its “basis” or the cost of property plus other costs necessary to acquire the asset such as broker’s fees, commissions, and state and local transfer taxes.
 - When a capital asset is sold, the “basis” is subtracted from the asset’s sales price. The result is either a “capital gain” or a “capital loss.”
 - A taxpayer aggregates all capital gains and losses for the tax year and a “net capital gain” or “net capital loss” is calculated and reported to the State.
 - Under a capital gains schema, the tax rate applied to a taxpayer’s net capital gains in the tax year depends on the value of the net capital gain.

<i>Hypothetical Net Capital Gain</i> Income Brackets	Tax Rate
\$0 - \$50,000	0%
\$50,001 - \$150,000	3%
\$150,001 - \$250,000	5%
\$250,001 - \$500,000	7%
\$500,001 and higher	9.99%

- Unlike the Federal Government, the State will not distinguish between short-term (owned for one year or less) and long-term capital gains (owned for more than one year).
- Net capital losses not used in one reporting period can be carried forward and applied to the following year’s net capital gain (recommend setting limits on the amount of and how far into the future losses can be carried forward).

- Sourcing and apportionment rules would be customized to administer the tax. Rules would be patterned after corresponding excise tax rules based on the capital asset's type.
 - Tangible capital assets – WAC 458-20-193
 - Intangible capital assets – WAC 458-20-19403

- Deductions will have to be created to exempt federally pre-empted capital gains from the state's capital gains/income tax (i.e. interest from federal bonds, certain payments to Indians, payments to non-residents, etc...).

- An income tax presents significant technical and policy considerations. See the *Capital Gains Tax: Technical, Administrative, & Other Policy Considerations* document for a discussion.

Tax Reform: 3 Capital Gains Tax Proposals – Side-by-Side Comparison

- Overview**
- The purpose of this document is to provide a side by side comparison of three different approaches to imposing a capital gains tax as a :
 - B&O tax;
 - Stand-alone excise tax; and,
 - Income tax.

	B&O Tax	Stand-Alone Excise Tax	Income Tax
Tax Imposed On	The gross income of those who engage in the business of selling “capital assets” as defined by the IRS.	The gross income of those who engage in the business of selling “capital assets” as defined by the IRS.	The net capital gain of the sale or exchange of “capital assets” as defined by the IRS.
“Basis” for Tax	The capital asset’s “basis” is asset’s purchase price, not other costs allowed under the Federal capital gains tax (i.e. broker’s fees).	The capital asset’s “basis” is the asset’s purchase price, not other costs allowed under the Federal capital gains tax (i.e. broker’s fees).	The capital asset’s basis is the property’s purchase price plus other costs necessary to acquire the asset such as broker’s fees, commissions, and state and local transfer taxes.
Credits, Exemptions, & Deductions	Capital losses are deducted in the same reporting period the loss occurred. Existing B&O gross income filing thresholds and small business tax credits apply. Casual and isolated sales are exempt. Deduction for federally pre-empted income.	Capital losses are deducted in the same reporting period the loss occurred. Existing B&O gross income filing thresholds and small business tax credits do <i>not</i> apply. Casual and isolated sales are exempt. Deduction for federally pre-empted income.	Credit for income taxes paid on capital gains to other states. The tax would not apply against casual and isolated sales. Deduction for federally pre-empted income.

<p>Sourcing & Apportionment</p>	<p>Under current sourcing/apportionment rules with some modification for administration:</p> <ul style="list-style-type: none"> • Tangible capital assets – WAC 458-20-193 • Intangible capital assets – WAC 458-20-19403 	<p>Under current sourcing/apportionment rules with some modification for administration:</p> <ul style="list-style-type: none"> • Tangible capital assets – WAC 458-20-193 • Intangible capital assets – WAC 458-20-19403 	<p>Sourcing and apportionment rules would be customized to administer the tax. Rules would be patterned after corresponding excise tax rules based on the capital asset's type:</p> <ul style="list-style-type: none"> • Tangible capital assets – WAC 458-20-193 • Intangible capital assets – WAC 458-20-19403
<p>Deduction Required For Federally Pre-empted Income</p>	<p>Yes. Congress has pre-empted specific types of revenues from state income tax. While this tax might not be viewed by Washington State's courts as an income tax, the Federal government views any capital gains tax as an income tax, and the tax statute could be struck down in its entirety in federal court.</p>	<p>Yes. Congress has pre-empted specific types of revenues from state income tax. While this tax might not be viewed by Washington State's courts as an income tax, the Federal government views any capital gains tax as an income tax, and the tax statute could be struck down in its entirety in federal court.</p>	<p>Yes, deduction is needed as Congress has pre-empted specific types of revenues from state income tax.</p>
<p>Constitutionally At-Risk</p>	<p><i>Least at risk:</i> Tax mirrors state's limited capital gains tax and limits deductions and calculation of losses.</p>	<p><i>Moderate risk:</i> The question hinges on whether this tax is an excise or an income tax. The courts have ruled an excise tax imposed on a net is an income tax and declared the excise tax unconstitutional.</p>	<p><i>Most at risk:</i> State Supreme Court's current and long-term precedent is that an income tax is unconstitutional.</p>

Refunds	No refunds in exceeding one's tax liability.	No refunds in exceeding one's tax liability.	This tax could be structured in such a way to give refunds in excess of a taxpayer's liability. Raises other constitutional concerns unless the State Constitution is amended to allow a public gift of funds for the purposes of an income tax.

Impose 5% excise tax on capital gains

Description

This proposal would impose an excise tax of 5 percent on net capital gains income received by Washington residents and businesses. The tax would be in addition to the B&O tax paid by those engaged in banking, loan, and security activities who currently are not allowed to deduct capital gain income from B&O tax. The excise tax on capital gains would be due at the same time the federal income taxes are due.

- There would be a \$10,000 exemption for single filers and \$20,000 for joint filers.

Defining “net capital gain”

For the purposes of this proposal, “net capital gain” is the amount reported on line 13 (capital gain or loss) on the IRS form 1040.

Implementation factors

Because Washington does not have an income tax, most individuals are not registered to pay taxes to the Department. Administration of an excise tax on capital gains may require a substantial lead time.

The Department receives IRS reporting information for Washington residents approximately 18 months after it is reported to the IRS.

Current Law

Currently, a B&O tax deduction is allowed for interest, dividends, and capital gain earned by businesses not engaged in banking, loan, or security activities.

Businesses with annual gross income of \$28,000 or less do not have to file a tax return if they would have otherwise reported only B&O tax.

Revenue Impact

General Fund Impacts (\$ millions):

Fiscal Year 2012	Fiscal Year 2013	2011-2013 Biennium
\$0	\$698.0	\$698.0

Notes:

- Revenue from this proposal will greatly depend on fluctuations in the financial markets and can be expected to vary from the amounts presented here.
- Estimates assume a July 1, 2012, effective date.
- Estimates reflect the November 2011 Economic & Revenue Forecast

Council revenue forecast.

**Updated revenue impact currently not available.*

**Expenditure
Impact**

Fiscal Year 2012	Fiscal Year 2013	2011-2013 Biennium
TBD	TBD	TBD

Tax Reform: Capital Gains Tax on Unearned Income

Overview

- The purpose of this document is to provide the following:
 - A description of 2 options for a stand-alone capital gains tax (not part of an income tax)
 - A list of technical, administrative, and other policy considerations.

2 Types of Capital Gains Taxes

Traditional Capital Gains Tax

- The traditional capital gains tax is a tax against the (positive) net total profit of the sale of stocks, bonds, or real estate.
- When someone purchases an investment, such as stock, and then subsequently sells the stock, a rate of tax is applied on the net or capital gain (the difference between the stock's sales price and its original purchase price).
- No tax is owed if the net results in a capital loss (where the sale price was lower than the original purchase price).
- Congress allows several deductions:
 - Broker's fees;
 - Commissions; and,
 - State and local transfer taxes.

"Custom" Capital Gains Tax Imposed as a B&O Tax

- A "custom" capital gains tax would impose the state's B&O tax on unearned income received by Washington residents and businesses (in addition to those engaged in banking, loan, and security activities who currently are not allowed to deduct such income).
 - Unearned income means income derived from interest, dividends, bonds and net capital gains.
 - Washington residents would pay tax on all their taxable unearned income, wherever derived.
 - Recommend nonresidents and fiduciaries are exempt from the tax. (see "Federal Pre-Emption" under "Issues & Considerations" below)

- Existing B&O tax gross income filing thresholds and small business tax credits would apply.
- This method of taxation comes under the auspices of the B&O tax and not a capital gains/income tax.

**What About
 Other States?**

- Only Tennessee and New Hampshire impose a stand-alone capital gains tax (without an income tax on personal income). Most other states include a capital gains component in their income taxes.
- Tennessee imposes the “Hall Income Tax” which is imposed only on individuals and entities receiving interest from bonds, notes, and dividends from stock.

Exemptions: Any person 65 years of age or older having a total annual income derived from any and all sources below specific limits is completely exempt from the tax.

Total Annual Income Limits

<u>Tax Year(s)</u>	<u>Single Filers</u>	<u>Joint Filers</u>
2001-2011	\$16,200	\$27,000
2012	\$26,200	\$37,000
2013 and after	\$33,000	\$59,000

Tax Rate: 6% of taxable income

- **New Hampshire** imposes an “Interest and Dividends Tax” (I&D Tax).
- Exemptions: A \$1,200 exemption is available for residents who are 65 years of age or older, who are blind regardless of age, and disabled individuals who are unable to work (who are not yet 65).
- Tax Rate:
 - 5% tax on all residents and fiduciaries whose gross interest and dividends income exceeds \$2,400 annually (\$4800 for joint filers).
 - LLCs, partnerships, associations and trusts with non-transferable shares whose gross interest and dividends income, from all sources, exceeds \$2,400 annually must also file and pay I&D Tax.
 - 7 States have no individual capital gains tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington , and Wyoming.

Issues & Considerations

Issues
Common to
Both

Federal Pre-Emption:

Congress pre-empted any state income tax (4 USC §114) on all payments to non-resident taxpayers that originate in-state under Internal Revenue Code:

- Section 401(a) qualified plans,
- Section 408(k) simplified employee pensions,
- Section 403(a) annuity plans,
- Section 403(b) annuity contracts,
- Section 408 individual retirement accounts,
- Section 457(a) eligible deferred compensation plans,
- Section 414(d) governmental plans,
- Military retired or retainer pay plans, and
- Section 501(c)(18) employee contribution trusts, and
- Section 3121 (v) excess plans and deferred bonus plans only if the payments made are substantially equal periodic payments made at least annually for the recipient's life or life expectancy (or the joint life or joint life expectancy of the recipient and his or her beneficiary) or for a period of at least 10 years – excludes any payments from other types of employment-related compensation plans not described in section 3121 (v); other plans that are taxable include stock options, stock appreciation rights, restricted stock, severance, sick leave, compensatory time, and vacation pay.

Please note: The periodic payment rule does not apply if the payments are made from a section 3121(v) plan that is maintained solely to provide benefits in excess of the limitations under Internal Revenue Code section 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k) or 415. For example, lump sum payments from these types of excess plans are preempted from a state income tax.

- ❖ Any capital gains tax that seeks to impose B&O or other tax on non-resident financial income is at risk of litigation *in Federal court* as opposed to state court. It is possible for a taxpayer to challenge the law as a concealed income tax on federally-preempted income.

A tax on dividends, a tax on net gains from the sale or exchange of a capital asset, and a tax on the net taxable income of an unincorporated business are taxes on gain or profit rather than on gross receipts. Therefore, they are income taxes, . . . (2015 Instructions for Form 1099-G, Internal Revenue Service)

Differentiate between Short-Term and Long-Term Capital Gains? What rates?

The Federal Government taxes short-term capital gains (investments held for a year or less before being sold) and long-term capital gains (investments held for more than a year before being sold) differently. See *Appendix A: IRS Tax Form 1040, Schedule D, Capital Gains and Losses*.

Do lawmakers want to tax all capital gains the same/at the same rate? Congress created a tiered system on long-term gain. The tax rate is determined by the investor's tax bracket. The highest federal rate is 20%.

Penalties for Income Tax Evasion

- Penalties for income tax evasion should mirror those for excise tax evasion placed on businesses in state law.

Litigation Expected

- We expect litigation and appeals after a bill becomes law.

Conflict with Constitution – “Uniform”?

- More than one tax rate could appear to be unconstitutional because it wouldn't be uniform. Since uniformity is required by the Constitution, a State Constitutional Amendment would solve this problem.

Effective Date

- The effective date of a capital gains tax needs to be January 1 in any successive year. That would be the first tax year. April 15th (or any other date the Legislature specifies) the year after the first tax year is when the state's first revenue collections would come in.

Administrative Issues/Rulemaking

- *DOR will need immediate funding and emergency purchasing authority to shorten the purchasing timeframe for computer equipment, software, hardware, and any other purchased equipment or services required.*

DOR needs rulemaking authority to:

- Delay “deadlines” or grant additional grace period(s) for taxpayers in the event:
 - Implementation is delayed and not ready to process returns by date tax is due – April 15th in the year following the first tax year.
(Could be cause by circumstances out of DOR's control, such as a key vendor pulling out or not performing its obligations)
 - Federal or Gubernatorial-declared natural disaster;
 - Military service;

- In combat military service;
 - Divorce decree;
 - Injured spouse;
 - Single decedent or husband;
 - Wife deceased if joint return;
 - Both taxpayers deceased; or,
 - Multiple special conditions.
- Administer and collect the tax, including such things as rules for rounding on a return.
 - Deal with unforeseen circumstances to ensure collection of the tax.

Number of FTEs

- Agency's FTEs will increase. Depending on the specifics of any capital gains tax, estimates range from a few to many additional FTEs. Also, the more customized and sophisticated the code becomes the more funding and FTEs required to implement the law. If the number of increased FTEs exceeds DOR's capacity, additional office space may be required.
- Increase in DOR's IS (Information Services) FTEs – may have difficulty recruiting and training new staff and bringing them up to speed within time frame, particularly in light of DOR's new Legacy software replacement project.

Technology Cost Overruns/Project Management

- Cost overruns and slippage in due dates are ongoing issues with any vendor-supplied system. Penalties should be included in any contract to ensure timelines are being met.
- There will be additional project reporting requirements, oversight, and approvals from OFM and possibly DES.
- DOR needs ability to make quick decisions, monitor, and control project timelines.

Tax on Indian Tribes and Enrolled Indian Tribe Members

IRS Code does not levy any taxes on Indian tribes, as the tribe is not a taxable entity.

- Exemption of Indians from the payment of tax must derive from either:
 - Treaties or agreements with the specific Indian Tribe in question; or,
 - An Act of Congress.
- Under the general welfare exclusion, payments or benefits under certain

governmental programs for the promotion of the general welfare are not includible in a recipient's gross income.

- The United States settled with Indian Tribes across the country, including several tribes in Washington State, for mismanagement of certain assets by the Federal Government. An updated list of tribes receiving funds can be found [here](#). Some tribes have chosen to invest the money and distribute proceeds as per capita payments to its members. Distribution of settlement dollars is excluded ***but interest distributed is to be included in gross income***.
- **Tribal income not otherwise exempt from Federal income tax is includible** in the gross income of the Indian Tribal member.
- The tax code and case law as it relates to the taxation of federally-recognized Indian Tribes is extensive.

State's Reporting Obligations to IRS Impacted

- Legislative changes can impact the State's reporting obligations to the IRS.

For example:

- If WA ST enacts a capital gains tax, it must file informational return(s) with the IRS for every taxpayer receiving a refund (there is an exception).
- **The IRS considers taxes on investment income** (dividends, a tax on net gains from the sale or exchange of a capital asset, or a tax on the net taxable income of an unincorporated business) **an income tax**. If WA ST eliminated the investment income B&O exemption in whole or in part and if there is any refund in excess of \$10 as a result, then WA ST must include that refund (in addition to any other refund received) in an informational return submitted to the IRS
- Please note that the Unemployment Security Department already is required to file these returns for state unemployment benefits paid.

Electronic Filing Incentive

- Policymakers might consider incentivizing electronic filing to help keep costs down.

Audit Period/Statute of Limitations For Collection & Refunds

- The current audit period is 4 years plus the current year. This statute of limitations applies to refunds and DOR's ability to assess for back taxes, with the exception of sales and use tax which has no limitation.

- Should income tax fall under the excise tax audit period (4 years plus current) or the sales and use tax period (no limit) or should we adopt the IRS's language (see below)?
- IRS' Statute of Limitations – Refunds and Collection of Assessments
 - The IRS generally has three years from the date your return was filed to assess the tax. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. There are some limited exceptions to the 3-year rule, however, including not filing a return or filing a fraudulent return. IRC § 6501
 - The IRS generally has ten years from the assessment date to collect unpaid taxes from you. This ten-year period cannot be extended unless you are entering into an installment agreement or unless the IRS reduces the lien to a judgment. IRC § 6502
 - If you believe you have overpaid your taxes, you can file a refund claim asking for the money back. Generally, you must file a refund claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. IRC § 6511
 - If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

Apportionment/Sourcing of Income

- If Legislature means to tax nonresident income generated in Washington State, how will income from residents and non-residents with nexus in Washington State be apportioned to Washington? (Will Washington use the existing nexus standard?)

Eminent Domain

- If property is taken through the exercise of eminent domain, should this property be exempt?
- If the parties in a potential eminent domain proceedings settle the matter prior to a filing of eminent domain action, should this property be exempt?

Other Policy Considerations

- Should Washington State's Lottery awards (or any other state's award to a Washington State resident) be considered as unearned income and subject to a capital gains tax?

APPENDIX A: IRS Tax Form 1040, Schedule D, Capital Gains and Losses

SCHEDULE D
(Form 1040)

Capital Gains and Losses

OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1040NR.
▶ Information about Schedule D and its separate instructions is at www.irs.gov/scheduled.
▶ Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

2013
Attachment
Sequence No. **12**

Name(s) shown on return

Your social security number

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked				
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824				4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions				6 ()
7 Net short-term capital gain or (loss) . Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back				7

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824				11
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13 Capital gain distributions. See the instructions				13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet in the instructions				14 ()
15 Net long-term capital gain or (loss) . Combine lines 8a through 14 in column (h). Then go to Part III on the back				15

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 11336H

Schedule D (Form 1040) 2013

Part III Summary

<p>16 Combine lines 7 and 15 and enter the result</p> <ul style="list-style-type: none"> • If line 16 is a gain, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a loss, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is zero, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22. <p>17 Are lines 15 and 16 both gains? <input type="checkbox"/> Yes. Go to line 18. <input type="checkbox"/> No. Skip lines 18 through 21, and go to line 22.</p> <p>18 Enter the amount, if any, from line 7 of the 28% Rate Gain Worksheet in the instructions . . . ▶</p> <p>19 Enter the amount, if any, from line 18 of the Unrecaptured Section 1250 Gain Worksheet in the instructions ▶</p> <p>20 Are lines 18 and 19 both zero or blank? <input type="checkbox"/> Yes. Complete the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). Do not complete lines 21 and 22 below. <input type="checkbox"/> No. Complete the Schedule D Tax Worksheet in the instructions. Do not complete lines 21 and 22 below.</p> <p>21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the smaller of: <ul style="list-style-type: none"> • The loss on line 16 or • (\$3,000), or if married filing separately, (\$1,500) } <p>Note. When figuring which amount is smaller, treat both amounts as positive numbers.</p> <p>22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? <input type="checkbox"/> Yes. Complete the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). <input type="checkbox"/> No. Complete the rest of Form 1040 or Form 1040NR.</p> </p>	<p>16</p> <p>18</p> <p>19</p> <p>21 ()</p>	
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