

1 X EXPEDITE
2 ☐ No hearing set
3 ☐ Hearing is set
Hearing Date:
Hearing Time:
Judge/Calendar:
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10 SUPERIOR COURT OF THE STATE OF WASHINGTON
THURSTON COUNTY

11 In the Matter of:

12 A CHALLENGE TO THE BALLOT TITLE AND
13 SUMMARY OF INITIATIVE NO. 1929.
14
15

No.

PETITION OF APPEAL OF
BALLOT TITLE AND SUMMARY
FOR INITIATIVE NO. 1929

16 Pursuant to RCW 29A.72.080, Petitioners Repeal the Capital Gains Income Tax and J.
17 Vander Stoep hereby appeal the Ballot Title and Ballot Measure Summary issued by the
18 Attorney General of Washington for Initiative Measure No. 1929. This measure is an act
19 relating to repealing the tax on capital gains income authorized in chapter 82.87 RCW; creating
20 new sections; repealing RCW 82.87.010, RCW 82.87.020, RCW 82.87.030, RCW 82.87.040,
21 RCW 82.87.050, RCW 82.87.060, RCW 82.87.070, RCW 82.87.080, RCW 82.87.090, RCW
22 82.87.100, RCW 82.87.110, RCW 82.87.120, RCW 82.87.130, RCW 82.87.140, RCW
23 82.87.150, and RCW 82.04.4497; and repealing 2021 c 196 § 18 and 2021 c 196 § 20
24 (uncodified).

25 The Attorney General's proposed "Ballot Title" and "Ballot Measure Summary" are
26 misleading, imprecise, and will likely cause confusion and improper bias in opposition to the
27

1 initiative. The proposed concise description also exceeds the statutorily mandated 30-word limit.
2 The Court can resolve these problems by revising the ballot title and summary of the measure.

3 **I. PARTIES**

4 1. Petitioner Repeal the Capital Gains Income Tax is a Washington political action
5 committee with a mailing address of PO Box 7685, Olympia, WA 98507.

6 2. Petitioner J. Vander Stoep is a resident of, and a registered voter in, the State of
7 Washington.

8 3. Pursuant to RCW 29A.72.080, a copy of this petition and a notice of its filing
9 have been served upon the Secretary of State of Washington and the Attorney General of the
10 State of Washington.

11 **II. JURISDICTION**

12 4. This court has jurisdiction over this appeal pursuant to RCW 29A.72.080.

13 **III. THE INITIATIVE**

14 5. Copies of the text of I-1929 as well as the Attorney General's proposed ballot title
15 and summary for I-1929 are attached hereto as Exhibits A and B.

16 **IV. BACKGROUND FACTS**

17 6. In 1930, Washington voters adopted Amendment 14 to the Washington State
18 Constitution which set a uniformity requirement for taxes on property. Const. art. VII.
19 Amendment 14 broadly defined property: "The word 'property' as used herein shall mean and
20 include everything, whether tangible or intangible, subject to ownership." Const. art. VII, § 1.

21 7. In 1933, the Washington Supreme Court invalidated a graduated state income tax
22 as a non-uniform tax on property under the Washington State Constitution. *Culliton v. Chase*,
23 174 Wn. 363, 25 P.2d 81 (1933).

24 8. In 1936, the Washington Supreme Court again invalidated an attempted graduated
25 income tax. *Jensen v. Henneford*, 185 Wn. 209, 53 P.2d 607 (1936).

26 9. Since 1934, voters in the State of Washington have rejected proposals to impose a
27 personal or corporate income tax 10 times.

10. In 2021, Governor Inslee signed into law ESSB 5096, which imposes a seven percent tax on “Washington capital gains.” ESSB 5096 is codified at RCW 82.87.010 *et seq.* Collections on the tax were not scheduled to begin until 2023.

11. “Washington capital gains” are defined as “an individual’s adjusted capital gain, as modified in RCW 82.87.060, for each return filed under this chapter.” RCW 82.87.020(13). “Adjusted capital gain” is defined as “federal net long-term capital gain” subject to a number of defined additions and deductions. RCW 82.87.020(1).

12. “Long-term capital gain” is defined as “gain from the sale or exchange of a long-term capital asset.” RCW 82.87.020(7).

13. “Long-term capital asset” is defined as “a capital asset that is held for more than one year.” RCW 82.87.020(6). “Capital asset” is defined as having “the same meaning as provided by Title 26 U.S.C. Sec. 1221 of the internal revenue code and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under Title 26 U.S.C. Sec. 1231 or any other provision of the internal revenue code.” RCW 82.87.020(2).

14. Despite the tax’s computation beginning with an individual’s reporting of annual federal income tax, the legislature erroneously labeled the capital gains tax an excise tax.¹

15. On March 1, 2022, Douglas County Superior Court held that ESSB 5096 is properly characterized as an income tax. The Court thus declared ESSB 5096 unconstitutional in violation of the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution. Ex. C.

16. On March 25, 2022, the State filed a notice of appeal of that ruling with the Washington Supreme Court. *Id.*

¹ Black’s Law Dictionary defines “excise tax” as “A tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee). — Also termed *excise*. Cf. *income tax*; *property tax*.” Black’s Law Dictionary (11th ed. 2019).

1 17. On March 29, 2022, Petitioners filed the measure at issue together with the
2 certificate of review with the Secretary of State. Ex. A.

3 18. The measure would repeal the tax on capital gains income authorized in chapter
4 82.87 RCW and would apply retroactively to January 1, 2022, as well as prospectively. *Id.*

5 **V. OBJECTIONS TO THE BALLOT TITLE AND SUMMARY**

6 19. On April 6, 2022, the Attorney General assigned the following Ballot Title and
7 Ballot Measure Summary to I-1929:

8 **BALLOT TITLE**

9 Statement of Subject: Initiative Measure No. 1929 concerns taxes.

10 Concise Description: This measure would repeal a 7% excise tax on
11 annual capital-gains above \$250,000 by individuals from the
12 sale/exchange of stocks and certain other capital assets (the tax exempts
real estate and retirement accounts).

13 Should this measure be enacted into law? Yes [] No []

14 **BALLOT MEASURE SUMMARY**

15 This measure would repeal an excise tax imposed on the sale or exchange
16 of certain long-term capital assets by individuals who have annual capital
17 gains of over \$250,000. The tax applies to the sale or exchange of stocks,
bonds, and certain other long-term capital assets, but exempts real estate,
retirement accounts, and certain other assets. This repeal would operate
retroactively to January 1, 2022, as well as prospectively.

18 Ex. B.

19 20. The Attorney General's proposed ballot title and ballot measure summary are
20 incorrect, imprecise, and misleading. They will create prejudice against the measure. In
21 addition, the proposed ballot title exceeds the statutory 30-word limit.

22 21. The Attorney General's proposed concise description contains more than 30
23 words and thus violates RCW 29A.72.050(1). In an attempt to squeeze into the 30-word limit,
24 the concise description hyphenates "capital gains" and tries to count "sale/exchange" as one
25 word. But there is no hyphen in capital gains. And placing a slash between sale and exchange
26 does not properly combine two words into one. The concise description cannot combine words
27

1 using a hyphen or a slash to get around the word count and, thus, it fails the most basic
2 requirement set forth in RCW 29A.72.050(1).

3 22. As a product of failing to meet the 30-word limit, the Attorney General's
4 proposed ballot title does not clearly identify the proposition to be voted upon because its
5 description of the core elements of RCW 82.87 is poorly drafted. It is difficult to make sense of
6 the phrasing "repeal a 7% excise tax on annual capital-gains above \$250,000 by individuals from
7 the sale/exchange of stocks" It is missing a verb in between "by" and "individuals" and
8 thus reads as if the tax is imposed by individuals rather than by the state. "[F]rom the
9 sale/exchange" reads as if it is referencing individuals rather than capital gains. And shortening
10 "sale or exchange" with a slash does voters no favors in trying to decipher a meaning. The ballot
11 title did not have to be so confusing. These grammatical failings and shortcuts are not found in
12 the initiative measure, the ballot measure summary, or the text of RCW 82.87; yet, they appear in
13 the one place most prominent to voters: the ballot title.

14 23. The Attorney General's proposed ballot title and ballot measure summary
15 incorrectly state that RCW 82.87 is an excise tax. It is not. RCW 82.87 is properly characterized
16 as an income tax by definition. This is not a tax on the privilege of engaging in transactions; it is
17 a tax on annual net capital gains income. The tax is not imposed per transaction and it is not
18 even imposed on revenue from all capital gains transactions; rather it is based on an individual's
19 annual net long-term capital gains income as reported to the IRS. Aside from simply being
20 incorrect, describing RCW 82.87 as an excise tax will cause confusion. Voters will readily
21 understand that capital gains are reported to the IRS as income. Voters will almost certainly
22 never have encountered an excise tax on capital gains. After all, the federal government and
23 every other state in the union classify a tax on capital gains as a tax on income. The incorrect
24 excise tax label on the ballot title will cause confusion.

25 24. Labeling RCW 82.87 as an excise tax is especially concerning given the
26 definition is at issue in ongoing litigation. The Douglas County Superior Court has already ruled
27 that RCW 82.87 is an income tax, not an excise tax. Ex. C. That ruling stands as of the time of

1 this filing, making the proposed ballot title erroneous. If the Douglas County Superior Court
2 ruling is still in place by the time this initiative is voted upon, then the ballot title will incorrectly
3 set forth the law at the time of the vote. And until there is a final ruling on this issue, picking one
4 side of the fight, such as using a ballot title that labels RCW 82.87 an excise tax, will carry a
5 substantial risk of being incorrect and misleading at the time of the vote. In contrast, because
6 this tax is measured by an individual's annual capital gains income, Petitioner's proposed ballot
7 title and ballot measure summary provide an undeniably accurate description of the measure of
8 RCW 82.87's tax—regardless of the outcome of the pending litigation. Petitioner's proposed
9 ballot title and ballot measure summary will remain accurate regardless of whether RCW 82.87's
10 tax is ultimately held to be an income tax or an excise tax.

11 25. The Attorney General's proposed ballot title states RCW 82.87's capital gains tax
12 is "from the sale/exchange of stocks" and the ballot measure summary states that RCW 82.87's
13 capital gains tax is imposed on the "sale or exchange of certain long-term capital assets." These
14 are inaccurate statements. The tax is levied on receipt of net long-term capital gains income.
15 The proposed ballot title and ballot measure summary will mislead voters by suggesting that the
16 tax operates on a per transaction basis. But the capital gains tax is annual, derives from net
17 capital gains income, and is subject to a number of credits, deductions, and exemptions. The
18 Douglas County Superior Court pointed to all these facts in finding that "the new tax is not
19 levied upon 'the sale or transfer' of capital assets." Ex. C. Therefore, the Attorney General's
20 proposed ballot title and ballot measure summary fail to inform voters about the true nature of
21 how the tax is computed, and thus imposed.

22 26. The Attorney General's proposed ballot title and ballot measure summary also
23 create prejudice against the initiative measure by cherry-picking two exemptions that benefit
24 opponents of the measure. The reference to two exemptions in the ballot title is misleading
25 because it gives the impression that these two exemptions are the entire universe of credits,
26 deductions, and exemptions from this tax. Furthermore, the reference to the two exemptions in
27 both the ballot title and ballot measure are likely to cause prejudice against the initiative measure

1 because they are unqualified and imprecise. The tax in RCW 82.87 lays out specific types of
2 retirement accounts and annuities that qualify for an exemption. But the ballot title and ballot
3 measure summary reference “retirement account” generally without any qualifications or
4 precision, which could easily lead voters to believe that any stocks set aside for retirement are
5 exempt from this tax. This possible confusion will prejudice the initiative measure and can
6 easily be avoided.

7 **VI. RELIEF REQUESTED**

8 Petitioners respectfully request that this Court grant the following relief:

9 (a) that the Court, pursuant to RCW 29A.72.080, file with the Secretary of State a
10 certified copy of the Ballot Title and Ballot Measure Summary, in the amended form set forth
11 below:

12 **BALLOT TITLE**

13 Statement of Subject: Initiative Measure No. 1929 concerns taxes.

14 Concise Description: This measure would repeal a 7% tax on individuals
15 with annual capital gains income above \$250,000, subject to certain
credits, deductions, and exemptions.

16 Should this measure be enacted into law? Yes [] No []

17 **BALLOT MEASURE SUMMARY**

18 This measure would repeal a 7% tax on annual capital gains income above
19 \$250,000. The tax is levied only on natural persons, not on corporations,
20 and is based upon an individual’s annual federal income tax filing. The
21 tax contains a number of credits and deductions; and it exempts capital
gains from defined real estate transactions, qualified retirement accounts,
22 and certain other assets. This repeal would operate retroactively to
January 1, 2022, as well as prospectively.

1 and

2 (b) such other legal and equitable relief as this court deems just and proper.

3 Respectfully submitted this 11th day of April, 2022.

4
5 Davis Wright Tremaine LLP
6 *Attorneys for Petitioners*

7
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16
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22 Telephone: 206-757-8094
23 Fax: 206-757-7094
24 E-mail: robmaguire@dwt.com

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under the penalty of perjury under the laws of the State of
3 Washington that I am now and at all times herein mentioned a citizen of the United States, a
4 resident of the State of Washington, over the age of eighteen years, not a party to or interested in
5 the above-entitled action, and competent to be a witness herein.

6 On this date I caused to be served in the manner noted below a copy of the document
7 entitled *Petition of Ballot Title and Summary for Initiative No. 1929* on the following:

8 Via E-mail on April 11, 2022

9 Steve Hobbs, Secretary of State
10 State of Washington
11 416 Sid Snyder Ave. SW
12 Olympia, WA 98504-0220
secretaryofstate@sos.wa.gov
serviceATG@atg.wa.gov

13 Robert Ferguson, Attorney General
14 State of Washington
15 1125 Washington St. SE
16 Olympia, WA 98504-0100
alan.copsey@atg.wa.gov
serviceATG@atg.wa.gov

17 DATED this 11th day of April, 2022.

18
19 s/Lesley Smith
20 Lesley Smith
21 Legal Assistant
22
23
24
25
26
27

EXHIBIT A

Initiative No. 1929

March 21, 2022

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-4446.1/22

ATTY/TYPIST: CL:eab

BRIEF DESCRIPTION:

Initiative No. 1929

March 21, 2022

AN ACT Relating to repealing the tax on capital gains income authorized in chapter 82.87 RCW; creating new sections; repealing RCW 82.87.010, 82.87.020, 82.87.030, 82.87.040, 82.87.050, 82.87.060, 82.87.070, 82.87.080, 82.87.090, 82.87.100, 82.87.110, 82.87.120, 82.87.130, 82.87.140, 82.87.150, and 82.04.4497; and repealing 2021 c 196 ss 18 and 20 (uncodified).

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The people find that:

(1) Voters in the state of Washington have rejected proposals to impose a personal or corporate income tax 10 times between 1934 and 2010;

(2) In 2021, the legislature passed and the governor signed a bill imposing a tax on certain capital gains income, codified as chapter 82.87 RCW;

(3) In a November 2021 advisory vote, voters rejected the new tax by over 60 percent;

(4) Despite this advisory vote, the legislature has not repealed the new tax on capital gains income; and

(5) The people of the state of Washington are concerned the legislature will continue to try to impose taxes on different forms of income, despite the voters repeatedly rejecting such taxes.

NEW SECTION. **Sec. 2.** The following acts or parts of acts are each repealed:

(1)RCW 82.87.010 (Findings—Intent—2021 c 196) and 2021 c 196 s 1;

(2)RCW 82.87.020 (Definitions) and 2021 c 196 s 4;

(3)RCW 82.87.030 (Distribution of revenues) and 2021 c 196 s 2;

(4)RCW 82.87.040 (Tax imposed—Long-term capital assets) and 2021 c 196 s 5;

(5)RCW 82.87.050 (Exemptions) and 2021 c 196 s 6;

(6)RCW 82.87.060 (Deductions) and 2021 c 196 s 7;

(7)RCW 82.87.070 (Qualified family-owned small business deduction) and 2021 c 196 s 8;

(8)RCW 82.87.080 (Charitable donation deduction) and 2021 c 196 s 9;

(9)RCW 82.87.090 (Other taxes) and 2021 c 196 s 10;

(10)RCW 82.87.100 (Allocation of long-term capital gains and losses—Credit) and 2021 c 196 s 11;

(11)RCW 82.87.110 (Filing of returns—Additional documentation—Penalty) and 2021 c 196 s 12;

(12)RCW 82.87.120 (Joint filers—Separate filers—Tax liability) and 2021 c 196 s 13;

(13)RCW 82.87.130 (Administration of taxes) and 2021 c 196 s 14;

(14)RCW 82.87.140 (Tax criminal penalties) and 2021 c 196 s 15;

(15)RCW 82.87.150 (Annual adjustments) and 2021 c 196 s 17; and

(16)RCW 82.04.4497 (Credit—Sale or exchange of long-term capital assets) and 2021 c 196 s 16.

NEW SECTION. **Sec. 3.** The following acts or parts of acts are each repealed:

- (1)2021 c 196 s 18 (uncodified); and
- (2)2021 c 196 s 20 (uncodified).

NEW SECTION. **Sec. 4.** This act applies retroactively to January 1, 2022, as well as prospectively.

--- END ---

EXHIBIT B



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-6200

April 6, 2022

The Honorable Steve Hobbs
Elections Division
ATTN: Initiative and Referendum
PO Box 40220
Olympia, WA 98504-0220

Re: Initiative No. 1929

Dear Secretary Hobbs:

Pursuant to RCW 29A.72.060, we supply herewith the ballot title and ballot measure summary for Initiative No. 1929 to the People (an act relating to repealing the tax on capital gains income authorized in chapter 82.87 RCW).

BALLOT TITLE

Statement of Subject: Initiative Measure No. 1929 concerns taxes.

Concise Description: This measure would repeal a 7% excise tax on annual capital-gains above \$250,000 by individuals from the sale/exchange of stocks and certain other capital assets (the tax exempts real estate and retirement accounts).

Should this measure be enacted into law? Yes [] No []

BALLOT MEASURE SUMMARY

This measure would repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over \$250,000. The tax applies to the sale or exchange of stocks, bonds, and certain other long-term capital assets, but exempts real estate, retirement accounts, and certain other assets. This repeal would operate retroactively to January 1, 2022, as well as prospectively.

Sincerely,

s/ Jeffrey T. Even
JEFFREY T. EVEN
Deputy Solicitor General
(360) 586-0728

EXHIBIT C

1
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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,

EDMONDS SCHOOL DISTRICT, TAMARA
GRUBB, ADRIENNE STUART, MARY
CURRY, and WASHINGTON EDUCATION
ASSOCIATION,

Intervenors.

APRIL CLAYTON, an individual; KEVIN
BOUCHEY, an individual; RENEE BOUCHEY,
an individual; JOANNA CABLE, an individual;
ROSELLA MOSBY, an individual; BURR
MOSBY, an individual; CHRISTOPHER
SENSKE, an individual; CATHERINE SENSKE,

NO. 21-2-00075-09

NO. 21-2-00087-09

NOTICE OF APPEAL TO THE
WASHINGTON SUPREME
COURT

1 an individual; MATTHEW SONDEREN, an
2 individual; JOHN MCKENNA, an individual;
3 WASHINGTON FARM BUREAU;
4 WASHINGTON STATE TREE FRUIT
5 ASSOCIATION; WASHINGTON STATE
6 DAIRY FEDERATION,

7
8 Plaintiffs,

9 v.

10 STATE OF WASHINGTON, DEPARTMENT OF
11 REVENUE, an agency of the State of Washington;
12 VIKKI SMITH, in her official capacity as Director
13 of the Department of Revenue,

14 Defendants.

15 EDMONDS SCHOOL DISTRICT, TAMARA
16 GRUBB, ADRIENNE STUART, MARY
17 CURRY, and WASHINGTON EDUCATION
18 ASSOCIATION,

19 Intervenor.

20 Pursuant to RAP 4.2(b), 5.1, and 5.2(a), Defendants State of Washington, State
21 Department of Revenue, and Vikki Smith as Director of the State Department of Revenue
22 (collectively State Defendants) and Intervenor Edmonds School District, Tamara Grubb,
23 Adrienne Stuart, Mary Curry, and Washington Education Association (collectively Education
24 Intervenor) seek direct review by the Washington Supreme Court of the Douglas County
25 Superior Court's March 22, 2022 Order Granting Plaintiffs' Motion for Summary Judgment
26 and Denying Defendants' Motion for Summary Judgment (Order). A copy of the above-
referenced Order is attached hereto as Exhibit A. A copy of the Superior Court's March 1,
2022, letter ruling—which is incorporated by reference into the Order is attached hereto as
Exhibit B.

The name and address of the attorneys of record are:

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1 Pacifica Law Group LLP
2 1191 2nd Ave, Suite 2000
3 Seattle, WA 98101-3404

4 DATED this 25 day of March, 2022.

5 ROBERT W. FERGUSON
6 Attorney General

7 
8 NOAH G. PURCELL, WSBA No. 43492
9 Solicitor General

10 JEFFREY T. EVEN, WSBA No. 20367

11 Deputy Solicitor General

12 PETER B. GONICK, WSBA No. 25616

13 Deputy Solicitor General

14 CAMERON G. COMFORT, WSBA No. 15188

15 Sr. Assistant Attorney General

16 CHARLES ZALESKY, WSBA No. 37777

17 Assistant Attorney General

18 Attorneys for State Defendants

19 OID Nos. 91027 and 91087

20 PACIFICA LAW GROUP LLP

21 s/Charles Zalesky for Education Intervenor Attorneys

22 PAUL J. LAWRENCE, WSBA No. 13557

23 SARAH S. WASHBURN, WSBA No. 44418

24 Attorneys for Education Intervenors

I certify that I caused to be served a copy of this document, through my legal assistant,
through electronic mail, per agreement, to:

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The Freedom Foundation
ESTahlfeld@freedomfoundation.com
KElder@freedomfoundation.com

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12 Attorney for Amicus

13 A copy of this document with proof of service has also been provided to the Supreme Court
14 via the Court's electronic filing portal.

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

17 DATED this 25 day of March, 2022, at Tumwater, WA.


18 s/Charles Zalesky
19 Charles Zalesky, Assistant Attorney General
20
21
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23
24
25
26

EXHIBIT

A

FILED

MAR 22 2022

JENN BIGGAR
DOUGLAS COUNTY CLERK
WATERVILLE, WA
BY  DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR DOUGLAS COUNTY

RECEIVED

ATTORNEY GENERALS OFFICE
REVENUE AND FINANCE DIVISION

3/23/2022

CHRIS QUINN, *et al.*,
Plaintiffs.

v.

STATE OF WASHINGTON, DEPARTMENT OF
REVENUE, *et al.*,

Defendants.

and

EDMONDS SCHOOL DISTRICT, *et al.*

Intervenors.

Case No. 21-2-00075-09

Case No. 21-2-00087-09

ORDER
GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

APRIL CLAYTON, *et al.*

Plaintiffs.

v.

STATE OF WASHINGTON, DEPARTMENT OF
REVENUE, *et al.*

Defendants.

and

EDMONDS SCHOOL DISTRICT, *et al.*

Intervenors.

[PROPOSED] ORDER
GRANTING/DENYING SUMMARY
JUDGMENT MOTIONS
Case No: 21-2-00087-09

1 THIS MATTER came before the Court on Defendants' Motion for Summary Judgment
2 filed December 2, 2021, and Plaintiffs' Motion for Summary Judgment filed December 6,
3 2021.

4 The Court considered the following pleadings and documents:

- 5 • Defendants' Motion for Summary Judgment, filed December 2, 2021;
- 6 • Declaration of Kathy L. Oline in Support of Defendants' Motion for Summary
7 Judgment, filed December 2, 2021;
- 8 • Intervenor Education Parties' Joinder in Defendants' Motion for Summary
9 Judgment and Supplement Brief, filed December 6, 2021;
- 10 • Plaintiffs' Motion for Summary Judgment, filed December 6, 2021;
- 11 • Declaration of Jason Mercier in Support of Plaintiffs' Motion for Summary
12 Judgment, filed December 6, 2021;
- 13 • *Amici Curiae* Brief of The Building Industry Association of Washington and
14 Washington Cattlemen's Association in Support of Plaintiffs' Motion for
15 Summary Judgment, filed December 20, 2021;
- 16 • Brief of *Amici Curiae* Mrs. Mary Ann Warren, Meliesa Tigard, Kristen
17 Cameron, and Dr. Katherine Baird, filed December 20, 2021;
- 18 • *Amici Curiae* Brief of National Taxpayers Union Foundation, Washington
19 Policy Center, Adam Hoffer, Randall G. Holcombe, Jeremy Horpedahl, Todd
20 Nesbit, Justin M. Ross, William F. Shughart II, and Jared Waleczak ("Tax
21 Economists and Policy Analysts") in Support of Plaintiffs, filed December 20,
22 2021;
- 23 • Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary
24 Judgment, filed January 7, 2022;
- 25 • Intervenor Education Parties' Joinder in Defendants' Memorandum in
26 Opposition to Plaintiffs' Motion for Summary Judgment and Supplemental
27 Brief, filed January 7, 2022;
- 28

- 1 • Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed
- 2 January 7, 2022;
- 3 • Declaration of Chris Quinn, filed January 7, 2022;
- 4 • Declaration of Christopher Senske in Support of Plaintiffs' Opposition to
- 5 Defendants' Motion for Summary Judgment, filed January 7, 2022;
- 6 • Declaration of Craig Leuthold, filed January 7, 2022;
- 7 • Declaration of Washington State Dairy Federation in Support of Plaintiffs'
- 8 Opposition to Defendants' Motion for Summary Judgment, filed January 7,
- 9 2022;
- 10 • Declaration of Joanna Cable in Support of Plaintiffs' Opposition to Defendants'
- 11 Motion for Summary Judgment, filed January 7, 2022;
- 12 • Declaration of John McKenna in Support of Plaintiffs' Opposition to
- 13 Defendants' Motion for Summary Judgment, filed January 7, 2022;
- 14 • Declaration of Kerry Cox, filed January 7, 2022;
- 15 • Declaration of Kevin Bouchey in Support of Plaintiffs' Opposition to
- 16 Defendants' Motion for Summary Judgment, filed January 7, 2022;
- 17 • Declaration of Larry King, filed January 7, 2022;
- 18 • Declaration of Lewis E. Randall, filed January 7, 2022;
- 19 • Declaration of Neil Allen Muller, filed January 7, 2022;
- 20 • Declaration of Rick Glenn, filed January 7, 2022;
- 21 • Declaration of Suzie Burke, filed January 7, 2022;
- 22 • Declaration of Matthew Sonderer in Support of Plaintiffs' Opposition to
- 23 Defendants' Motion for Summary Judgment, filed January 7, 2022;
- 24 • Declaration of Washington State Tree Fruit Association in Support of
- 25 Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed
- 26 January 7, 2022;
- 27 • Declaration of Washington Farm Bureau in Support of Plaintiffs' Opposition to
- 28 Defendants' Motion for Summary Judgment, filed January 7, 2022;

- Amended Declaration of Joanna Cable in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed January 14, 2022;
- Defendants' Reply in Support of Summary Judgment, filed January 21, 2022;
- Intervenor Education Parties' Joinder in Defendants' Reply in Support of Motion for Summary Judgment and Supplemental Brief, filed January 21, 2022; and,
- Plaintiffs' Reply in Support of Motion for Summary Judgment, filed January 21, 2022.

In addition to consideration of the filed materials, on February 4, 2022, the Court heard oral argument on the parties' respective motions from all parties and from interested *amici*.

THE COURT FINDS that there are no genuine issues of material fact in dispute and that Plaintiffs are entitled to judgment as a matter of law. The Court's letter ruling dated March 1, 2022, is attached and incorporated into this Order by reference.

NOW THEREFORE, it is ORDERED that:

1. Plaintiffs' Motion for Summary Judgment is GRANTED.
2. Defendants' and Intervenor's Motion for Summary Judgment is DENIED.
3. ESSB 5096 is declared unconstitutional and invalid and, therefore, is void and inoperable as a matter of law.

Dated this 22 of March, 2022.



HONORABLE BRIAN C. HUBER
SUPERIOR COURT JUDGE

1 ***Presented by:***

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EXHIBIT

B

RECEIVED

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3-2-22

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Douglas County Superior Court Judge



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Court Commissioner

Phil Safar
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Steve Clem
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FILED

March 1, 2022

MAR 01 2022

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**Re: Quinn/Clayton, et. al. v. State of Washington, et. al.
Douglas County Cons. Cause Nos. 21-2-0075-09 & 21-2-00087-09**

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Page 2

Dear Counsel,

This letter sets forth the Court's rulings on the parties' Cross Motions for Summary Judgment which were argued at the February 4, 2022 hearing.

In this letter the Court will start by discussing its analysis and rulings on the State's Motion to Strike the Declaration of Jason Mercier. Then the Court will address the State's argument that the Plaintiffs lack standing to bring this lawsuit. Finally, the Court will outline its rulings on the parties' Cross Motions for Summary Judgment.

State's Motion to Strike Mercier Declaration

The State and the Plaintiffs have each filed a Motion for Summary Judgment under CR 56. That rule states that affidavits or declarations must set forth facts showing that the affiant is competent to testify as a witness, and must be limited to "such facts as would be admissible in evidence." Billings v. Town of Steilacoom, 2 Wash. App. 2d 1 (Div. 2 2017). Factual matters that would be inadmissible if offered at trial will be disregarded by the court in a summary judgment proceeding. See, e.g., Germain v. Pullman Baptist Church, 96 Wash. App. 826 (Div. 3 1999) (trial court properly refused to consider affidavit from unqualified expert). If a declaration or affidavit contains both admissible and inadmissible portions, only the inadmissible portions should be stricken. See, e.g., Simmons v. City of Othello, 199 Wash. App. 384 (Div. 3 2017) (irrelevant statements and legal conclusions in summary judgment affidavit properly stricken).

The State has moved to strike the Declaration of Jason Mercier from the record, arguing that it is inadmissible and cannot be considered under CR 56. The State's argument is that Mr. Mercier's statements, as well as the declaration exhibits, constitute inadmissible hearsay. State's Opp. Brief filed 1-10-22 at n. 4 on p. 18.

The Plaintiffs counter by arguing as follows:

Mr. Mercier testifies as an expert on tax policy. Mercier Decl. ¶ 2. His opinions on taxing capital gains are based on a state-by-state survey he conducted. See id. ¶¶ 1, 4-5. The survey results are "of a type

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March 1, 2022
Page 3

reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject.” See State v. Mohamed, 186 Wn.2d 235, 242, 375 P.3d 1068 (2016) (quoting ER 703). His general opinion is admissible even if the underlying correspondence is not. Additionally, Exhibit C to the Mercier declaration is a report on ESSB 5096 prepared by the Department of Revenue that is an admission of a party-opponent. ER 801(d)(2).

Plaintiffs’ Reply filed 1-21-22, at n. 9 on p. 11.

The Motion to Strike is granted in part and denied in part. The following portions of the Mercier declaration are hereby deemed to be inadmissible hearsay and will be stricken:

- The last two sentences of paragraph 4 (“A true and correct copy of all written responses I received is attached as **Exhibit B**. The responses for every state are summarized in the table below:”)
- The table that follows paragraph 4 at page 2 line 1 through page 4 line 22.
- Paragraph 7 and the referenced **Exhibit D** (letter from IRS to U.S. Congressman Dan Newhouse).

Paragraphs 1 and 2 contain no inadmissible hearsay. Nor does paragraph 3 which merely attaches a copy of ESSB 5096. The first two sentences of paragraph 4 contain no inadmissible hearsay, although they describe how Mr. Mercier gathered the data underlying his expert testimony under ER 702. This Court deems paragraphs 1 through 3 and the first two sentences of paragraph 4 to be admissible.

The last two sentences of paragraph 4, as well as the table that follows paragraph 4, are deemed to be inadmissible and will be stricken even though Mr. Mercier appears to have considered the various states’ survey responses as a basis for his testimony in paragraph 5. See ER 703 (providing in part that “[i]f reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject, the facts or data [upon which the expert bases his/her opinion or inference] need not be admissible in evidence.”) In other words, this Court may consider any properly admitted expert

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March 1, 2022
Page 4

testimony from Mr. Mercier, but the data underlying that testimony need not be admissible.

In Paragraph 5 Mr. Mercier testifies that while some states responded that they did not tax capital gains at all, no state that was surveyed taxed capital gains through an excise tax or in any way other than through an income tax. This Court deems Paragraph 5 to be admissible expert testimony under ER 702 which provides as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ER 702. This Court finds that paragraph 5 sets forth “scientific, technical, or other specialized knowledge” that satisfies the requirements of ER 702. To the extent the State argues paragraph 5 should be disregarded because Washington’s tax statutes may be different from the tax statutes in those other states, such objection goes to the weight of the evidence rather than to its admissibility.

Paragraph 6 and the referenced Exhibit C are both deemed to be admissible. The Washington State Department of Revenue’s (DOR’s) analysis of ESSB 5096 provides in pertinent part as follows:

Another issue with the charitable deduction [set forth in Section 9 of ESSB 5096] is that, because it is a common feature of income taxes, it may increase the chance that the courts will determine that the Washington capital gains tax is an income tax. At least one lawsuit has already been filed seeking to invalidate the capital gains tax on several grounds, including that the tax is an income tax and, as such, violates article VII, sections 1 and 2 of the Washington Constitution, because the tax is non-uniform and the tax rate exceeds the 1% aggregate limit.

It is impossible to quantify the extent to which the charitable deduction may strengthen the argument that the capital gains tax is an income tax.

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March 1, 2022
Page 5

All we can say is that the charitable deduction likely incrementally strengthens the argument that the capital gains tax is an income tax. The charitable deduction is not the only provision in the bill that opponents of the capital gains tax can point to in support of their argument that the capital gains tax is an income tax.

DOR Bill Report on ESSB 5096, at pp. 5-6, attached as Exhibit C to Mercier declaration. This Court deems the DOR Bill Report to be admissible as an admission of a party-opponent under ER 801(d)(2).

As mentioned above, paragraph 7 and the referenced Exhibit D (the letter from the IRS to Rep. Newhouse stating, *inter alia*, that under federal law “capital gains are treated as income under the tax code and taxed as such”) is inadmissible hearsay and will be stricken. Mr. Mercier’s declaration merely attaches a copy of Exhibit D without providing any testimony or other information relating to it, other than a statement that it was obtained through a public records request. This Court finds no basis to deem paragraph 7 or Exhibit D to be admissible.

Cross Motions for Summary Judgment

1. The State’s Objection Re: Plaintiffs’ Standing.

This Court once again rejects the State’s argument that none of the Plaintiffs have standing to bring this facial challenge to the constitutionality of ESSB 5096. The Court previously rejected the State’s arguments on standing that were asserted as part of the State’s Rule 12 Motion to Dismiss.

It is true that the pending Cross Motions for Summary Judgment have been brought under CR 56 rather than under CR 12. However, under CR 56 the Court must still view the evidence in a light most favorable to the non-moving party for purposes of the motion. See, e.g., Afoa v. Port of Seattle, 176 Wn.2d 460 (2013).

The Court incorporates by this reference its analysis as set forth in its letter ruling dated September 10, 2021 in which it rejected the State’s prior arguments and objections

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March 1, 2022
Page 6

regarding Plaintiffs' standing to bring this lawsuit. The Court also notes that multiple additional sworn declarations filed since this Court issued that letter ruling only further support this Court's finding that the Plaintiffs have standing.

2. The Scope of Matters Considered by this Court.

The Court has reviewed a wealth of material filed in connection with the pending motions. Much of the information and argument, particularly in some of the amicus briefs but also in the State's filings,¹ centered around discussions involving policy considerations such as whether schools are appropriately funded and whether the new tax statute makes Washington's tax structure more fair.

This Court is not permitted to consider such policy considerations when ruling on the constitutionality of ESSB 5096.

It is not the function of [the courts] . . . to consider the propriety of the tax, or to seek for the motives or to criticize the public policy which may have prompted adoption of the legislation. [Citation omitted.]

State ex rel Namer Inv. Corp. v. Williams, 73 Wn.2d 1, 7 (1968). Accordingly, this Court's sole function in these consolidated cases is to provide a ruling, at the trial court level, whether ESSB 5096 is unconstitutional pursuant to established Washington caselaw, without any regard to any motives or public policy considerations that may have led to the adoption of ESSB 5096.

3. Analysis of Cross Motions for Summary Judgment.

Under Washington law, it is up to the courts to decide whether a tax law is constitutional. Kunath v. City of Seattle, 10 Wn.App.2d 205 (2019) involved a challenge to a city ordinance that imposed a graduated income tax on high-income residents. Division I of the Washington State Court of Appeals stated in Kunath:

¹ See, e.g., State's MSJ filed 12-6-21, at 2-6.

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March 1, 2022
Page 7

Before addressing the tax's statutory and constitutional validity, we must address [plaintiff] Shock's threshold contention that these issues are nonjusticiable political questions. Shock contends: "The City's request that this Court reverse nearly a century of case law holding that income is personal property, and therefore subject to the Constitution's uniformity requirement, is not appropriate for judicial determination." But it is well settled that Washington courts have the power to hear constitutional challenges to tax laws, which is why we are guided by "nearly a century of case law" on these issues. The issues raised in this case are justiciable. [Emphasis supplied; internal citations omitted.]

Kunath, at 216. See also Wash. Const. art. IV § 6 and RCW 2.08.010 (both of which provide that superior courts have original jurisdiction over "the legality of any tax").

This Court has reviewed the "nearly a century of case law" as referenced by the Kunath court, see list of appellate decisions recited in Kunath at p. 213-16. That caselaw makes clear that the starting point for this Court's analysis is certain language that was added to the Washington State Constitution by a constitutional amendment adopted in 1930. The Kunath court stated:

Since 1930, article VII, section 1 of our state constitution has required that "[a]ll taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership."

Kunath, at 213. See also article VII, section 2 of the Washington State Constitution (placing 1% annual limit on the aggregate of all tax levied on real and personal property).

Three years after article VII, section 1 was adopted, Washington voters passed a statewide initiative levying a graduated tax on net income. Taxpayers challenged the new graduated tax statute, arguing it was unconstitutional because it taxed property and

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March 1, 2022
Page 8

therefore violated the uniformity requirement set forth in article VII, section 1. In Culliton v. Chase, 174 Wash. 363 (1933), the Washington Supreme Court declared the statute to be unconstitutional. In so doing, the Culliton court made clear that income taxes are different from excise taxes inasmuch as excise taxes are levied on an activity (e.g., the sale, consumption or manufacture of goods) rather than on income generated by an activity. Culliton, at 377. Next the Culliton court characterized income as within the broad definition of “property” and ruled the new statute to be unconstitutional because the graduated income tax was not uniform as required by article VII, section 1. Culliton, at 378-79.

The Washington Supreme Court’s decision in Jensen v. Henneford, 185 Wash. 209 (1936) was issued only three years after Culliton. Jensen involved a challenge to a 1935 tax statute that levied a graduated income tax on every Washington resident “for the privilege of receiving income therein while enjoying the protection of its laws.” Jensen, at 212 (quoting Laws of 1935, ch. 178, Sec. 2). As in the instant case, the State in Jensen argued that the new tax statute should be deemed an excise tax (which would be constitutional) and not an income tax (which would be unconstitutional). The Jensen court rejected the State’s argument, stating that “[t]he character of a tax is determined by its incidents, not by its name.” Jensen, at 217. Because the new statute taxed income below \$4,000 at three percent and income above \$4,000 at four percent, and because Culliton had established that income constitutes property for purposes of Article VII, Section 1, the Jensen court ruled the 1935 tax statute to be an unconstitutional non-uniform tax on property. Jensen, at 220.

These principles were revisited in 1951 when the Washington Supreme Court decided the case of Power, Inc. v. Huntley, 39 Wn.2d 191 (1951). In 2019 the Kunath court summarized Power as follows:

In 1951, Power, Inc. v. Huntley evaluated a statewide “corporation excise tax” that levied a four percent tax on a corporation’s net income “for the privilege of exercising its corporate franchise in this state or for the privilege of doing business in this state.” The tax did not apply to sole proprietorships or partnerships. The central question before the court was whether the tax fell on income rather than being a true excise. If a tax on

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March 1, 2022
Page 9

income, then it violated the uniformity clause of article VII, section 1 by affecting only certain forms of corporations and not other companies in competition with them. The Power court set aside the language of the tax, analyzed its incidents, and concluded it was “a mere property tax masquerading as an excise.” Under the taxing scheme, a Washington corporation with zero net income would not pay any income tax, while a foreign corporation doing business in Washington would pay taxes on activities unconnected to the privilege of conducting business in Washington. Also, the scheme hewed closely to federal corporate income tax law, illustrating its true nature as an income tax. The court concluded the tax was a nonuniform property tax and therefore unconstitutional. [Citations omitted.]

Kunath, at 215. One way to summarize Power would be to say that when deciding a challenge as to the facial constitutionality of a tax statute (specifically including where the State argues it is an excise tax and not an income tax), the court must look through any labels the State has used to describe the statute, analyze the “incidents” of the statute, and determine whether it is a “property tax masquerading as an excise.” *Id.*

As Power makes clear, rather than merely relying upon whatever label or characterization the State has used to describe a tax statute, it is the State’s choices about “who is being taxed, what is being taxed, and how the tax is measured” that determine its “incidents” and whether it should be deemed a tax on income as opposed to an excise. See Kunath, at 221. In the instant case, some of the most significant “incidents” of ESSB 5096 show the hallmarks of an income tax rather than an excise tax. They include the following:

- It relies upon federal IRS income tax returns that Washington residents must file and is thus derived from a taxpayer’s annual federal income tax reporting. See Kunath, at 215 (“scheme [that] hewed closely to federal corporate income tax law” held to be an unconstitutional property tax).
- It levies a tax on the same long-term capital gains that the IRS characterizes as “income” under federal law.

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Steve Crossland
March 1, 2022
Page 10

- It is levied annually (like an income tax), not at the time of each transaction (like an excise tax).
- It is levied not on the gross value of the property sold in a transaction (like an excise tax as demonstrated by the examples cited by the State²), but on an individual's net capital gain (like an income tax).
- Like an income tax, it is based on an *aggregate* calculation of an individual's capital gains over the course of a year from all sources, taking into consideration various deductions and exclusions, to arrive at a single annual taxable dollar figure.
- Like an income tax, it is levied on all long-term capital gains of an individual, regardless whether those gains were earned within Washington and thus without concern whether the State conferred any right or privilege to facilitate the underlying transfer that would entitle the State to charge an excise. See, e.g., Jensen, at 218 ("When a tax is, in truth, levied for the exercise of a substantive privilege granted or permitted by the state, the tax may be considered as an excise tax.")
- Like an income tax and unlike an excise tax, the new tax statute includes a deduction for certain charitable donations the taxpayer has made during the tax year.³

² See, e.g., State's MSJ filed 12-6-21, at pp. 11-16, discussing *inter alia*, Morrow v. Henneford, 182 Wash. 625, 631 (1935) (upholding business and occupation tax imposed on the privilege of engaging in business activity in the state and measured by the total gross income earned from business activity in Washington); Mahler v. Tremper, 40 Wn.2d 405 (1952) (upholding real estate excise tax measured by selling price of the property); Black v. State, 67 Wn.2d 97, 98 (1965) (upholding sales tax imposed on lease and measured by total cost of the lease); Wash. Pub. Ports Ass'n v. Dept of Revenue, 148 Wn.2d 637, 642-43 (2003) (upholding leasehold excise tax measured by total taxable rent); High Tide Seafoods v. State, 106 Wn.2d 695, 700 (1986) (measure of tax on enhanced fish food was total value of the fish at first possession); Sheehan v. Cent. Puget Sound Reg'l Transit Auth., 155 Wn.2d 790, 800 (2005) (measure of motor vehicle excise tax was value of the vehicle at registration); In re Estate of Hambleton, 181 Wn.2d 802 (2014) (upholding estate tax that was measured by the value of the property at the time of decedent's death and is apportioned to the extent any of the property was located outside Washington).

³ See Section 9 of ESSB 5096, entitled "Additional Deduction for Charitable Donations." See also, Washington State Department of Revenue (DOR) bill report on ESSB 5096, at 5-6, attached at Exhibit C to Declaration of Jason Mercier, which as explained earlier, the Court deems to be admissible as an admission of a party opponent under ER 801(d)(2). The DOR bill report states in part:

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March 1, 2022
Page 11

- If the legal owner of the asset who transfers title or ownership is not an individual, then the legal owner is not liable for the tax generated in connection with the transaction, unlike the excise taxes identified by the State.

The State characterizes the new tax statute as a “tax that applies on the sale or transfer of property” and argues that such taxes are excise taxes. State’s MSJ filed 12-6-21, at 1. But as noted above, the new tax is not levied upon “the sale or transfer” of capital assets. Instead, the new tax statute levies a tax on receipt, and thus ownership, of capital gains. See Jensen v. Henneford, 185 Wash. 209, 219 (1936) (“The right to receive” is an incident of property ownership).

In attempting to label the new tax as an excise and not an income tax, the State also argues that the tax “applies only upon the voluntary sale of a long-term asset.” State’s MSJ filed 12-6-21 at 9-10. However, the new tax would be levied not only upon capital gains from voluntary transactions, but also in a number of scenarios where the sale or transfer of a capital asset would occur without any voluntary act by the transfer, e.g., transactions involving a minority shareholder, non-managing member of a limited liability company, or trust beneficiary. To the extent the new tax is unavoidable – at least for some taxpayers – it constitutes an “absolute and unavoidable” tax that meets the definition of a property tax, see authorities cited in Plaintiff’s MSJ filed 12-6-21 at 9-

Another issue with the charitable deduction is that, because it is a common feature of income taxes, it may increase the chance that the courts will determine that the Washington capital gains tax is an income tax. At least one lawsuit has already been filed seeking to invalidate the capital gains tax on several grounds, including that the tax is an income tax and, as such, violates articles VII, sections 1 and 2 of the Washington Constitution, because the tax is non-uniform and the tax rate exceeds the 1% aggregate rate limit.

It is impossible to quantify the extent to which the charitable deduction may strengthen the argument that the capital gains tax is an income tax. All we can say is that the charitable deduction likely incrementally strengthens the argument that the capital gains tax is an income tax. The charitable donation deduction is not the only provision in the bill that opponents of the capital gains tax can point to in support of their argument that the capital gains tax is an income tax.

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Page 12

10, that is subject to the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution.

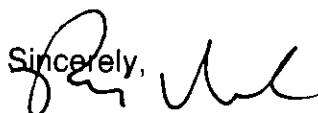
ESSB 5096 is properly characterized as an income tax pursuant to Culliton, Jensen, Power and other applicable Washington caselaw, rather than as an excise tax as argued by the State. As a tax on the receipt of income, ESSB 5096 is also properly characterized as a tax on property pursuant to that same caselaw.

This Court concludes that ESSB 5096 violates the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution. It violates the uniformity requirement by imposing a 7% tax on an individual's long-term capital gains exceeding \$250,000 but imposing zero tax on capital gains below that \$250,000 threshold. It violates the limitation requirement because the 7% tax exceeds the 1% maximum annual property tax rate of 1%.

CONCLUSION

For the reasons set forth above, this Court grants Plaintiffs' Motion for Summary Judgment and denies the State's Motion for Summary Judgment. Having ruled that ESSB 5096 is invalid because it violates the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution, this Court does not reach the additional arguments raised by the parties.

It is hoped that the parties will seek to agree upon the form of the written orders that will memorialize the Court's rulings set forth in this letter. If a presentment hearing is needed, it may be scheduled as a special set hearing by emailing the Court Administrator.

Sincerely, 

Brian C. Huber
Judge of the Superior Court
BCH/jlj
cc: Court File