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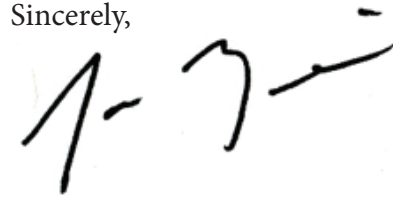
Dear Legislator, member of the media, or policy analyst,

Attached are documents that definitively prove proposed capital gains taxes in Washington are income taxes. These documents include:

1. A letter from the IRS to Congressman Dan Newhouse clarifying that a capital gains tax is an income tax.
2. Responses from the revenue departments of all 50 states that show that every state revenue department that taxes capital gains taxes it as income, and those that do not tax it do not because it is income.
3. A timeline and a description of income tax ballot measures in Washington state showing voters have rejected every form of income tax since 1932.

I hope this information is helpful to you.

Sincerely,



Jason Mercier  
Director, Center for Government Reform  
Washington Policy Center





DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

COMMUNICATIONS AND LIAISON

September 25, 2018

Rep. Dan Newhouse  
1318 Longworth HOB  
15 Independence Ave SE  
Washington, D.C. 20515

Dear Representative Newhouse,

This is in response to your inquiry regarding the tax treatment of capital gains. You ask whether tax on capital gains is considered an excise tax or an income tax? It is an income tax. More specifically, capital gains are treated as income under the tax code and taxed as such.

The Internal Revenue Code, Subtitle A – Income Taxes, covers capital gains. At § 61, Gross Income Defined, the code says gross income means all income from whatever source derived, including (but not limited to) gains derived from dealings in property (capital gains).

Gross income is the starting point for determining taxable income. The various forms Schedule D, Capital Gains and Losses, are all used in conjunction with income tax returns, individual, corporate and so on. More on gains and losses is in Part 3 of IRS [Publication 17, Your Federal Income Tax](#).

On the IRS website, Excise Taxes are defined as: Taxes paid when purchases are made on a specific good, such as gasoline. There are also excise taxes on activities, such as on wagering or on highway usage by trucks. Excise taxes are often included in the price of a product or service.

Internal Revenue Code [Subtitle D – Miscellaneous Excise Taxes](#), covers excise taxes on retail sales, manufacturing, facilities and services, and a myriad of other purchases and activities.

Subtitle E – Alcohol, Tobacco, and Certain Other Excise Taxes, covers taxes on the named items and related products along with taxes on certain firearms, destructive devices, greenmail and structured settlement factoring transactions.

IRS [Publication 510, Excise Taxes](#), has more information including 11 chapters on the items subject to federal excise taxes. Note that the words capital and gain do not appear in the publication.

I hope this addresses your question. If I can provide more information, Elizabeth Daniels of your staff knows how to reach me.

Sincerely,

*Paul Axelson*

Paul Axelson  
IRS Legislative Affairs Office



## State Revenue Departments Describe Capital Gains Income Taxes

All state revenue departments describe capital gains as income. Those that tax capital gains do so via their income tax codes. No state taxes capital gains as an excise tax. States without income taxes described their treatment of capital gains income like Florida did:

"There is currently no Florida income tax for individuals and, therefore, no Florida capital gains tax for individuals."

The best response differentiating between what an excise tax is versus income tax was Illinois:

"Capital gains are included in federal taxable income, against which Illinois income tax is determined. Illinois does not impose an excise tax on any form of income. Excise taxes are imposed on items of consumption, such as the liquor tax, cigarette tax and utilities taxes."

Here are direct quotes from each state revenue department on how they treat capital gains income:

*(Answers compiled by Jason Mercier - Current as of April 10, 2017)*

Alabama Department of Revenue: "Capital gains are reported on the income tax returns."

Alaska Department of Revenue: "No personal capital gains tax. Alaska currently does not have a personal income tax."

Arizona Department of Revenue: "Arizona taxes capital gains as an income tax."

Arkansas Department of Finance and Administration: "[Capital gains taxed] as income tax."

California Franchise Tax Board: "California taxes capital gains as an income tax and they are taxed at the same rate as ordinary income."

Colorado Department of Revenue: "Colorado treats qualified capital gains tax as an income tax deduction." *Note: This mean qualified capital gains are not taxed in Colorado.*

Connecticut Department of Revenue Services: "For Connecticut tax purposes, capital gains are part of income tax."

Delaware Division of Revenue: "Capital gains are reported on income taxes in Delaware."

Florida Department of Revenue: "There is currently no Florida income tax for individuals and, therefore, no Florida capital gains tax for individuals."

Georgia Department of Revenue: "No separate tax on capital gains. Income reported for federal income taxes, however, is taxed via Georgia income tax."

Hawaii Department of Taxation: "Capital gains are taxed as an income tax in Hawaii."

Idaho State Tax Commission: "Idaho taxes capital gains as income tax."

Illinois Department of Revenue: "Capital gains are included in federal taxable income, against which Illinois income tax is determined. Illinois does not impose an excise tax on any form of income. Excise taxes are imposed on items of consumption, such as the liquor tax, cigarette tax and utilities taxes."

Indiana Department of Revenue: "[Capital gains] taxed as income at Indiana's flat rate."

Iowa Department of Revenue: "[Capital gains are] part of the income tax system."

Kansas Department of Revenue: "Kansas taxes capital gains as an income tax."

Kentucky Department of Revenue: "Capital gains are subject to Kentucky income tax. For resident individuals, Kentucky capital gains are included in income and taxed as such."

Louisiana Department of Revenue: "Capital gains are taxed as income."

Maine Revenue Services: "Capital gain, to the extent that it is included in the federal adjusted gross income, is taxed as part of the taxable income, at the same tax rate as other income tax."

Maryland Comptroller: "Maryland generally includes capital gain (or losses) in income to the extent such income or losses were included in federal adjusted gross income. There is no preferential treatment accorded them by Maryland by taxing them at a different rate."

Massachusetts Department of Revenue: "Massachusetts gross income includes capital gains. Capital gains are taxed as income rather than a separate excise tax on each transaction."

Michigan Department of Treasury: "Michigan taxes capital gains through an income tax."

Minnesota Department of Revenue: "Minnesota taxes capital gains like income. The rate for capital gains income is the same in Minnesota as wage income."

Mississippi Department of Revenue: "Capital gains are taxed as part of Mississippi income tax code."

Missouri Department of Revenue: "Capital gains are taxed as normal income as part of Missouri income taxes."

Montana Department of Revenue: "Montana taxes capital gains as an income tax, however, taxpayers receive a nonrefundable credit against their entire tax liability that is equal to 2% of the amount of capital gains reported on the taxpayer's income tax return."

Nebraska Department of Revenue: "Nebraska taxes capital gains as an income tax - both corporate and individual income taxes."

Nevada Department of Taxation: "Nevada does NOT have a capital gains tax similar to federal income tax."

New Hampshire Department of Revenue Administration: "No capital gains tax in New Hampshire."  
*Note: NH does not have general income taxes.*

New Jersey Division of Taxation: "Capital gains are subject to income tax in New Jersey."

New Mexico Taxation and Revenue: "New Mexico doesn't have a capital gains tax." *Note: State income tax but no capital gains tax since they are subject to deduction.*

New York Department of Taxation & Finance: "New York taxes capital gains as an income tax."

North Carolina Department of Revenue: "In North Carolina, capital gains are a component of a taxpayer's adjusted gross income for individual income tax purposes and federal taxable income for corporate income tax purposes."

North Dakota State Tax Department: "North Dakota essentially levies an income tax on capital gains to the same extent the federal government does."

Ohio Department of Taxation: "Capital gains are taxed as an income tax."

Oklahoma Tax Commission: "Capital gains are treated as ordinary income and are taxable under our Income Tax Code."

Oregon Department of Revenue: "If it's a capital gain for your personal income tax then it would be taxed under your Oregon personal income tax."

Pennsylvania Department of Revenue: "For Pennsylvania personal income tax purposes, PA taxes gains on the sale, exchange or disposition of property at the same tax rate (3.07%) as all other taxable income for personal income tax purposes."

Rhode Island Division of Taxation: "RI does not tax capital gains as a separate tax. Taxed as income by income tax code."

South Carolina Department of Revenue: "[Tax capital gains] as income tax."

South Dakota Department of Revenue: "South Dakota does not have an income tax and does not tax capital gains income."

Tennessee Department of Revenue: "Tennessee does not have a general income tax. Instead, the Hall income tax is imposed only on bond interest and dividends from stock. Capital gains are therefore generally not subject to taxation in Tennessee." *Note: TN is phasing out the Hall tax by 2022.*

Texas Comptrollers Office: "No capital gains tax. Texas does not have a state income tax."

Utah State Tax Commission: "Utah taxes capital gains as an income tax."

Vermont Department of Taxes: "Capital gains are taxed as income. Vermont does not have an excise tax."

Virginia Department of Taxation: "Virginia doesn't have a special capital gains rate. Capital gains are subject to income taxation at the same rates as all other income."

Washington Department of Revenue: "Washington does not currently tax capital gains, and it does not have an income tax."

West Virginia Department of Revenue: "We tax it [capital gains] as income tax."

Wisconsin Department of Revenue: "Capital gains are taxed as part of the income tax computation."

Wyoming Department of Revenue: "No capital gains tax because Wyoming does not have an income tax."

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# Income Tax Ballot Measures

Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in 1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

Year	Title	Description	Yes	No
1932	Initiative to the People 69	An Act relating to and requiring the payment of a graduated tax on the incomes of persons, firms, corporations, associations, joint stock companies and common law trusts, the proceeds therefrom to be placed in the state current school fund and other state funds, as a means of reducing or eliminating the annual tax on general property which now provides revenues for such funds; providing penalties for violation; and making an appropriation from the general fund of the state treasury for paying expenses of administration of the act.	70%	30%
1934	House Joint Resolution 11	A resolution amending section 1 of Article VII of the constitution by providing that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only; providing that there shall be such exemptions from taxation as the legislature may by general law provide; and providing that nothing contained in this section shall be construed to prevent the enactment of a graduated net income tax law.	43%	57%
1936	Senate Joint Resolution 7	A Proposal to repeal section 12, article XI and amend sections 1 and 9, article VII of the constitution by providing: uniform taxation upon the same class of subjects; that the legislature may provide exemptions and graduated net income tax, may vest municipalities with power to make local improvements by special assessment or taxation; cannot require counties or municipalities to tax for county or municipal purposes but may under legislative restriction, vest them with such authority.	22%	78%
1938	Senate Joint Resolution 5	A Proposal to amend Section 1, Article VII of the Constitution of the State of Washington relating to taxation by providing that nothing contained in said section shall be construed to prevent the enactment of a graduated net income tax law.	33%	67%
1942	Constitutional Amendment Article VII, Sec. 2	A Proposal to amend Article VII of the Constitution by adding a new section, section 2, providing that income shall not be construed as property for the purpose of taxation, and empowering the legislature to enact graduated net income taxes, and to provide exemptions, offsets and deductions.	34%	66%

1944	Initiative to the People 158	An act relating to revenue and taxation; providing for the levy and collection of a three per cent tax on gross income; providing for certain exemptions and deductions; providing for the disposition of revenue derived hereunder; prescribing monthly payments of not less than sixty dollars to certain aged, blind, disabled or widowed persons from an Employment and Retirement Mutual Insurance Fund, herein created; prescribing duties of officers and procedure in relation hereto; regulating disposition of payments by beneficiaries; defining terms and prescribing penalties.	30%	70%
1970	House Joint Resolution 42	Shall the state constitution be amended to reduce the maximum allowable rate of taxation against property to 1 percent of true and fair value in the absence of authorized excess levies, and to permit the legislature to tax income at a single rate without regard to this limitation or, after 1975, at a graduated rate if the voters in that year or thereafter approve the removal of the single rate limitation?	32%	68%
1973	House Joint Resolution 37	Shall a graduated net income tax be authorized, excess levies for school operations be prohibited, and some excise taxes limited?	23%	77%
1975	Initiative to the People 314	Shall corporations pay a 12% excise tax measured by income so that special school levies may be reduced or eliminated?	33%	67%
1982	Initiative to the People 435	Shall corporate franchise taxes, measured by net income, replace sales taxes on food and state corporate business and occupation taxes?	34%	66%
2010	Initiative Measure 1098	Initiative Measure No. 1098 concerns establishing a state income tax and reducing other taxes. This measure would tax 'adjusted gross income' above \$200,000 (individuals) and \$400,000 (joint-filers), reduce state property tax levies, reduce certain business and occupation taxes, and direct any increased revenues to education and health.	36%	64%