

SUPREME COURT OF THE STATE OF WASHINGTON

CHRIS QUINN, an individual;
CRAIG LEUTHOLD, an
individual; SUZIE BURKE, an
individual; LEWIS and MARTHA
RANDALL, as individuals and the
marital community comprised
thereof; RICK GLENN, an
individual; NEIL MULLER, an
individual; LARRY and
MARGARET KING, as
individuals and the marital
community comprised thereof; and
KERRY COX, an individual,

Respondents,

v.

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

Appellants,

EDMONDS SCHOOL
DISTRICT, TAMARA GRUBB,
ADRIENNE STUART, MARY

MOTION FOR
STAY OF LOWER
COURT'S ORDER
PENDING REVIEW

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,
an individual; MATTHEW
SONDEREN, an individual; JOHN
MCKENNA, an individual;
WASHINGTON FARM BUREAU;
WASHINGTON STATE TREE
FRUIT ASSOCIATION;
WASHINGTON STATE DAIRY
FEDERATION,

Respondents,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE, an
agency of the State of Washington;
VIKKI SMITH, in her official
capacity as Director of the
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EDMONDS SCHOOL
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ADRIENNE STUART, MARY
CURRY, and WASHINGTON
EDUCATION ASSOCIATION,

Intervenors.

I. INTRODUCTION

Our state's elected leaders adopted a capital gains excise tax to fund education, the State's paramount duty, and to help rebalance our tax code, the nation's most regressive. The tax started applying to transactions occurring on and after January 1, 2022, and the first payments are due April 18, 2023. In this case, however, the Douglas County Superior Court erroneously ruled the tax invalid. The State's appeal of that ruling is fully briefed, with argument set for January 26. But without earlier action from this Court, the trial court's ruling risks delaying implementation of the tax and achievement of the vital goals it furthers.

This Court should stay the trial court's order until it rules on the merits. In deciding whether to stay a lower court order, this Court asks whether debatable issues are present on appeal and compares the injuries the parties would suffer from a stay. RAP 8.1(b)(3). Here, both factors strongly support a stay.

The issues presented in this appeal sharply favor the State, and are at the very least debatable. Because the capital gains tax is a properly enacted statute and because review is de novo, this Court's starting presumption is that the law is constitutional, a presumption Plaintiffs can overcome only by proving otherwise beyond a reasonable doubt. Plaintiffs cannot do so because the trial court's ruling rests on the false premise that the capital gains tax is a property tax subject to the limits in article VII of Washington's Constitution. For decades, however, this Court has held that property taxes are taxes that apply merely because a person owns property, while excise taxes are ones that apply because a person sells, transfers, or uses property. *Morrow v. Henneford*, 182 Wash. 625, 630-31,

47 P.2d 1016 (1935). As Plaintiffs concede, the capital gains tax applies only when “assets are sold or exchanged.” Quinn Br. 17. It is thus an excise, not a property tax.

The balance of harms also strongly favors the State. Granting a stay will injure no one. If the Court grants a stay and ultimately upholds the tax, taxpayers will obviously suffer no injury from a stay. But even if the court grants a stay and later invalidates the tax, taxpayers will suffer no harm: if the merits ruling comes before April 18, 2023, they won’t have to pay the tax, and if the ruling comes after April 18 and they have already paid, they will receive a refund with statutorily required interest. Either way, they suffer no ultimate harm.

By contrast, denying a stay will harm the public, the State, and even those who will owe the tax. Because this is a new tax, the Department of Revenue must set up new mechanisms and rules to collect it. Those mechanisms and rules need to be in place well before the tax due date of April 18, 2023, to ensure that taxpayers can timely file and pay thereby

avoiding statutorily mandated penalties if the tax is ultimately upheld. While the Department is currently developing those mechanisms and rules, opponents of the tax have recently initiated administrative proceedings and threatened litigation to block such efforts unless the State obtains a stay. If the Department is unable to establish the mechanisms and rules to collect the tax before the due date, there is a risk that some taxpayers will evade the tax altogether, reducing funding for the vital education programs it supports.

In short, there is no sound reason to leave the trial court's ruling in place while this Court considers the merits. This Court will review that decision de novo, starting from a presumption that the law is constitutional. Allowing the opposite assumption to persist impedes preparations to implement the tax and benefits no one. The Court should grant a stay.

II. STATEMENT OF RELIEF SOUGHT

State Appellants respectfully request that this Court stay the trial court order entered in this case, which declared the

capital gains tax unconstitutional, pending this Court’s decision on this appeal. This motion is supported by the Declaration of Alyson Fouts, Senior Assistant Director of Operations with the Department of Revenue, and by the record below.

III. FACTS RELEVANT TO MOTION

A. Enactment of the Capital Gains Tax

In April 2021, the Legislature enacted a narrowly tailored seven percent capital gains excise tax to help fund education, early learning, and child care programs and to make “material progress toward rebalancing the state’s tax code,” which disproportionately burdens low- and middle-income Washingtonians. RCW 82.87.010; *see generally* 82.87.040(1) (imposing the tax); RCW 82.87.030 (distribution of tax revenue). The tax applies only to an individual’s sale or exchange of long-term capital assets (those held for more than one year) with a physical or legal situs in Washington. RCW 82.87.040(1); RCW 82.87.100(1); RCW 82.87.020(6).

To ensure that the tax is owed only by those with the greatest ability to pay, the Legislature exempted sales of certain assets, including “qualified family-owned small businesses, all . . . real property, and retirement accounts.” RCW 82.87.010. Additionally, the tax is owed only to the extent that an individual’s non-exempt capital gains in a given year exceed \$250,000. RCW 82.87.060(1). The Department of Revenue estimates that approximately 7,000 individuals will owe the tax in the first year. CP Vol. I, p. 352.

The tax applies to sales of non-exempt capital assets occurring on or after January 1, 2022, RCW 82.87.040(1), and the first payments under the tax are due on April 18, 2023. RCW 82.87.110; Decl. of Alyson Fouts, ¶ 5. The Legislature earmarked the first \$500 million collected from the tax each year to the Education Legacy Trust Account to support K-12 education, expand access to higher education, and provide funding for early learning and child care programs. RCW 82.87.030(1)(a). Revenue above \$500 million each year is

dedicated to the Common School Construction Account to assist school districts with capital projects, such as building or renovating schools. RCW 82.87.030(1)(b). The Department forecasts that the tax will generate approximately \$2.5 billion over its first six years for these important education investments. CP Vol. I, p. 354.

B. The Trial Court Creates a New Test and Invalidates the Tax

Three days after the Legislature passed the capital gains tax, the Quinn Plaintiffs filed suit in Douglas County Superior Court seeking to invalidate the tax in its entirety. CP Vol. I, p. 1. The Clayton Plaintiffs filed a similar lawsuit soon thereafter. CP Vol. II, p. 1. The trial court consolidated the two actions. CP Vol. I, p. 107. The court also granted a motion by the Edmonds School District and other education parties to intervene as defendants. CP Vol. I, p. 136.

Both the Quinn and Clayton Plaintiffs asserted that the capital gains tax was unconstitutional on its face. Specifically, they claimed that the tax violates (1) the requirements in article

VII, sections 1 and 2 of the Washington Constitution that all taxes on property be uniform and not exceed one percent of the value of the property taxed; (2) the privileges and immunities protections in article I, section 12 of the state Constitution; and (3) the federal Commerce Clause. *See* CP Vol. I, pp. 5-8 (Quinn Plaintiffs' causes of action); CP Vol II, pp. 15-16 (Clayton Plaintiffs' causes of action).

The parties filed cross motions for summary judgment on the facial constitutionality of the capital gains tax. The trial court adopted Plaintiffs' first theory, concluding that the capital gains tax had too many of what the court deemed "hallmarks of an income tax rather than an excise tax." CP Vol. I, p. 869.

After reciting these alleged "hallmarks," the court concluded that the tax is "properly characterized as a tax on property" and, as such, "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." *Id.* at 872. Similarly, the court concluded

that the tax “violates the [levy] limitation requirement because the 7% tax exceeds the 1% maximum annual property tax rate[.]” *Id.* The court declined to reach Plaintiffs’ additional arguments. *Id.*

On March 22, 2022, the trial court entered an order granting summary judgment to Plaintiffs and denying summary judgment to State Defendants and Intervenors. CP Vol. I, p. 873. Defendants and Intervenors sought direct review, which this Court granted on July 13, 2022. The matter has been fully briefed, and the Court has set argument for January 26, 2023.

C. The Department of Revenue’s Implementation Process

The Department of Revenue is charged with administering the capital gains tax. Individuals owing the tax will be required to file “a return with the department on or before the date the taxpayer’s federal income tax return for the taxable year is required to be filed.” RCW 82.87.110(1)(a). The first payments are thus due April 18, 2023. Fouts Decl., ¶ 5.

The Department has initiated processes for implementing the capital gains tax, which will include adopting administrative rules, creating tax forms and instructions, providing letter rulings and advice to individuals who may be subject to the new tax, updating its website to inform the public about the tax and to provide general guidance, and developing internal systems to register new taxpayers and accept returns and payments. The Department's goal is to have its on-line registration system up and running by February 1, 2023. Fouts Decl., ¶ 8. And it is diligently working internally and with the public on the other key parts of the implementation process.

As noted, an important part of the Department's implementation process involves developing administrative rules. The Department began the process in September 2022 by issuing a Preproposal Statement of Inquiry inviting public

participation.¹ The Department held the first public meeting on September 28, 2022. *Id.*

Shortly after the first public meeting regarding the draft rules, the Department received a letter from the Citizen Action Defense Fund (CADF) demanding that it “cease and desist” any rulemaking activity until this Court either reverses the trial court’s order or stays that decision. Fouts Decl., ¶ 7 & Exhibit A, p. 2. The Department timely responded to the CADF’s concerns, *id.* at Exhibit B, but the organization continues to threaten litigation. *Id.* at Exhibit C. CADF is also seeking a hearing before the Joint Administrative Rules Review Committee, citing the trial court order below as its basis for objecting to the Department’s rulemaking efforts. *Id.* at p. 1.

¹ Available on-line at https://dor.wa.gov/sites/default/files/2022-09/WSR_22-18-097.pdf?uid=633b4c63c893f#:~:text=In%20March%20of%202022%2C%20the,to%20the%20Washington%20Supreme%20Court.

As the Department prepares to implement the tax if it is upheld, the Governor and Legislature are preparing for the 2023 legislative session, when the Legislature will pass a budget for the 2023-2025 biennium. As noted above, the capital gains statute directs that the first \$500 million of revenue from the tax go into the Education Legacy Trust Account, with amounts beyond that deposited into the Common School Construction Account. RCW 82.87.030. Without that revenue, the Legislature will have to provide less funding for education, find a different funding source, or cut other programs.

IV. GROUNDS FOR RELIEF

A. Standards for Granting a Stay

RAP 8.1(b)(3) and 8.3 give this Court “discretion to stay the enforcement of trial court decisions.” *Moreman v. Butcher*, 126 Wn.2d 36, 42 n.6, 891 P.2d 725 (1995); *see also In re Koome*, 82 Wn.2d 816, 818-19, 514 P.2d 520 (1973). When evaluating a request to stay enforcement under RAP 8.1(b)(3), this Court must “(i) consider whether the moving party can

demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.”

RAP 8.1(b)(3); *see Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985). A showing of debatable issues on appeal does not require the moving party to demonstrate ultimate success on the merits of the appeal, but simply that the issue is a debatable one. *Kennett v. Levine*, 49 Wn.2d 605, 607, 304 P.2d 682 (1956).

B. The Issues On Appeal Strongly Favor the State, and Are at the Very Least Debatable

As demonstrated in the now-completed merits briefing, the State is likely to prevail on the merits, and at the very least has presented debatable issues on appeal. Both the standard of review and the substance of the merits favor granting a stay.

This Court has long held that a party challenging the constitutionality of a tax statute bears a heavy burden. As in any case challenging a statute, the “statute is presumed to be

constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.” *Spokane Cnty. v. State*, 196 Wn.2d 79, 84, 469 P.3d 1173 (2020) (quoting *Island Cnty. v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998)). When the statute being challenged is a tax statute, “a particularly heavy presumption of constitutionality applies.” *Dot Foods, Inc. v. Dep't of Revenue*, 185 Wn.2d 239, 250, 372 P.3d 747, 750 (2016) (quoting *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 563, 800 P.2d 367 (1990)). And because this case presents a question of law, this Court’s review is de novo. *Spokane Cnty.*, 196 Wn.2d at 84. Thus, the starting presumption when this Court considers the merits will be that the tax is constitutional, with Plaintiffs bearing a heavy burden to prove otherwise.

Plaintiffs will not be able to meet their burden of proving beyond a reasonable doubt that the capital gains tax is unconstitutional. The trial court ruled in their favor based on the erroneous premise that the tax is a property tax subject to the

limitations in article VII of Washington's Constitution, but that conclusion was incorrect, and is at the very least debatable.

Over the course of decades, this Court has articulated a clear test for distinguishing between property taxes and excise taxes, and the capital gains tax falls on the excise side of the line. Property taxes are taxes that apply merely because a person owns property, while excise taxes are ones that apply because a person sells, transfers, or uses property. *Morrow*, 182 Wash. at 630-31. The capital gains tax does not fall on owners merely because they own property. A person can own extensive stocks, bonds, or other capital assets without owing the tax. Rather, as Plaintiffs concede, this tax applies only when “assets are sold or exchanged for gain.” Quinn Br. at 17; RCW 82.87.040(1). The capital gains tax is thus an excise tax.

Plaintiffs initially agree that *Morrow* sets out the relevant test, Quinn Br. at 14-15, but they attempt to graft new requirements onto the *Morrow* standard in asking the Court to nonetheless hold that the capital gains tax is a property tax.

None of these purported requirements finds support under this Court's decisions. *See* State's Opening Br. 33-47; State's Reply Br. 4-12. For example, Plaintiffs say that an excise tax can apply only to purely "voluntary" action, and they posit complex scenarios in which a person could receive capital gains without choosing to sell assets. Quinn Br. at 18-19. But virtually every tax this Court has deemed an excise sometimes applies where the action triggering the tax is not purely voluntary (e.g., the sales tax applies even where a person makes a purchase solely because of a legal obligation). Plaintiffs also claim that the capital gains tax cannot be an excise because it includes exemptions, but every excise tax contains exemptions (e.g., the sales tax exemption for groceries). Similarly flawed is Plaintiffs' contention that the tax is not actually "on" the sale of capital assets, but on the recognition of capital gains on one's federal tax return. That confuses what is taxed with when and how it gets reported.

Even if the Court decided to alter its longstanding test by adopting one of the new limitations Plaintiffs advocate, whether the Court should do so is at the very least debatable. It is thus beyond serious dispute that the first factor favors a stay.

C. The Balance of Harms Weighs in Favor of a Stay

Comparing the injuries of the parties from the grant or denial of a stay also strongly weighs in favor of granting a stay. Granting a stay will not harm Plaintiffs, while denying a stay will harm the State, the public, and even Plaintiffs themselves.

1. Plaintiffs Will Suffer No Harm from a Stay and Will Actually Benefit

This is the rare case where granting a stay would benefit the nonmoving party as well as the moving party, making it obvious that the balance of harms favors granting a stay.

Plaintiffs and other Washington taxpayers will be better off with a stay than without one. The only harm Plaintiffs can plausibly allege from the granting of a stay is that *if* any of them owe tax for 2022 (which none of them have yet alleged), and *if* the Court does not rule on the merits by April 2023, then

granting a stay would mean that they have to pay the tax in April 2023 even though this Court might later invalidate the tax. But if that happens, state law requires that anyone who has paid the tax receive a refund of their tax payment, *with interest*, so Plaintiffs would suffer no harm. *See* RCW 82.32.060 (mandating refunds with interest where tax is not owed); Fouts Decl., ¶ 10 (affirming that if the tax is held invalid in this appeal, the Department will issue refunds with interest as required by RCW 82.32.060). There is thus no harm in granting a stay even if this Court ultimately invalidates the tax after taxpayers have paid it.

By contrast, if the Court denies a stay and ultimately upholds the tax, the result for taxpayers will be confusion and added costs. By statute, if an excise tax is not paid when due, an automatic penalty equal to nine percent of the underpaid tax is imposed. RCW 82.32.090(1). That penalty jumps to nineteen percent if the payment is more than one month late, and twenty-nine percent if payment is more than two months late. *Id.* The

Department has no authority to extend the date upon which the tax must be paid. Fouts Decl., ¶ 9. Because of these provisions, some taxpayers would undoubtedly choose to pay the tax when due in April 2023, even if the Court has not yet ruled, knowing that they would get a refund with interest if the Court ultimately invalidates the tax. But absent a stay, some taxpayers would undoubtedly wait to see how the Court rules, and if the Court upholds the tax in an opinion after April 18, such taxpayers would then need to pay the tax *and* statutory penalties.

In short, even Plaintiffs would be better off if the Court granted a stay. In that scenario, any Plaintiff that actually owes capital gains tax in the first year will be entitled to a refund with interest if Plaintiffs ultimately prevail. And if Plaintiffs ultimately lose, they will already have paid the required tax and will not face mandatory penalties.

2. The State and Public Will Suffer Significant Harms Absent a Stay

The capital gains tax is expected to generate hundreds of millions of dollars annually to fund education, and it would

significantly harm the public interest for any of that money to be unavailable. To be prepared to collect the tax in April 2023 as the Legislature directed, the Department must take many steps, from rulemaking to website development. Opponents of the tax, however, have initiated administrative proceedings and threatened litigation to delay the Department's efforts. The resulting legal uncertainty means that, absent a stay, the State may be unable to collect and timely use some of these funds even if the Court ultimately upholds the tax. A stay would not only ensure that the Department can take the steps necessary to be prepared to collect the tax if this Court ultimately upholds it, but also allow the Governor and Legislature to use projected revenue from the capital gains tax to fund education in their proposed budgets.

It would be profoundly irresponsible for the Department to fail to prepare to collect the tax in April 2023 as directed by statute. As noted above, the tax is presumed constitutional unless Plaintiffs convince this Court otherwise beyond a

reasonable doubt, and Plaintiffs’ arguments on that score are contrary to settled precedent, as explained in the State’s merits briefing. Moreover, the tax is expected to bring in hundreds of millions of dollars annually to fund education, early learning, and childcare programs, advancing the State’s paramount duty to fund education. For these reasons and others, the Department must prepare to implement the capital gains tax in case this Court upholds it.

Implementing the tax is a significant undertaking that must start well before April 2023. For example, the Department must adopt new rules governing aspects of how the tax will be calculated and collected, a process it has just begun. *See* September 7, 2022, Preproposal Statement of Inquiry filed in WSR 22-18-097 (*see* footnote 1). The Department also must develop an on-line tax reporting system, which it hopes to make available to the public on February 1, 2023. *See* Fouts Decl., ¶¶ 8-10. Doing so will ensure that all impacted taxpayers have adequate time to set up their “Secure Access Washington”

accounts, complete the registration process, and remit returns and payments. *Id.*, ¶ 8. The Department estimates that the last day it “feasibly could go ‘live’ with its on-line system is March 13, 2023,” which is only 37 days prior to the April 18, 2023, reporting due date. *Id.* Further, because the capital gains tax is a brand new tax program, the Department anticipates a high level of interaction with the public to field questions and provide tax reporting instructions. *Id.*, ¶ 9.

Opponents of the tax, however, are using the trial court’s order to create substantial uncertainty over what the Department is permitted to do to implement the tax before this Court rules. For example, opponents of the tax recently filed an administrative request with the Joint Administrative Rules Review Committee of the Legislature arguing that the Department’s rulemaking process is invalid because of the trial court’s order and asking the Committee to block the rulemaking. Fouts Decl., Ex. C, p. 2. That same group of opponents previously sent a letter to the Department demanding

that it “cease and desist” all rulemaking activity or face potential litigation. Fouts Decl., Ex. A, p. 2.

While the Department believes that these objections to its rulemaking process are legally flawed, they threaten significant harm. If the Department’s rulemaking is blocked or delayed by administrative or court action, the Department may be unable to have the rules and payment mechanisms in place before the tax is due. In that event, if this Court later upheld the tax, the Department would do its utmost to collect all tax that was due in April 2023, but significant revenue would undoubtedly be lost because the rules and mechanisms to collect the tax would not have been in place when it was due. Some taxpayers who should have paid the tax may seek to use the lack of reporting and tax payment processes, and the lack of Department rulemaking, as a means of avoiding the tax, and significant revenue that should have gone to fund education would be lost. And even if tax opponents’ efforts to block the Department’s

preparations fail, absent a stay the Department and its counsel will have to devote resources to defeating these efforts.

A stay of the trial court order would resolve any uncertainty over the Department's authority to move forward with its implementation plan and rulemaking. Even with a stay, the Department would of course continue to advise the public of this on-going appeal and that this Court's decision will be the final word, but implementation efforts could continue unencumbered so that the tax can ultimately be collected and used for education purposes if the Court upholds the tax.

A similar but related concern is that, absent a stay, opponents of the tax may seek to block the Governor and Legislature from allocating funding from the tax in the fast-approaching budget process for the 2023-2025 biennium. If this funding is not included in the budget, it cannot be spent for its statutorily mandated education purposes, even if the Court later upholds the tax. Again, though the Department believes any such challenge would lack a legal basis, granting a stay would

eliminate any doubt about the propriety of allocating funds from the duly enacted tax for the purposes specified by law: to fund education.

In sum, given the significant harms the State and public will suffer absent a stay, and the net benefit Plaintiffs would receive from a stay, the balance of harms here tips sharply in favor of granting a stay.

V. CONCLUSION

Because the State has demonstrated that this appeal presents at least debatable issues, and because the balance of harms favors a stay, this Court should stay the trial court's ruling until this Court decides the merits of this case.

This document contains 4,187 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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RESPECTFULLY SUBMITTED this 3rd day of
November, 2022.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read 'R. W. Ferguson', written in a cursive style.

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PROOF OF SERVICE

I certify that, through my legal assistant, I electronically filed and served this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal and thus served the following:

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

DATED this 3rd day of November, 2022, at Tumwater,
WA.

s/Cameron Comfort
Cameron G. Comfort
Sr. Assistant Attorney General

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Intervenors.

I, ALYSON FOUTS, declare as follows:

1. I am the Senior Assistant Director of Operations with the Washington Department of Revenue. I have served in this position since August 1, 2019. I have been employed by the Department for 32 years.

2. The Department of Revenue's top administrator is acting Director John Ryser. As the Senior Assistant Director of Operations, I report directly to acting Director Ryser.

3. My duties and responsibilities as Senior Assistant Director of Operations include overseeing operational matters in the Department. This includes direct oversight of the Department's five largest divisions consisting of 80 percent of the agency's staff to ensure effective application of Washington

tax laws and quality service to all customers. In addition, I am the Executive Sponsor of the Capital Gains Project Team, which is a group organized within the Department to ensure all necessary steps are taken to implement the Capital Gains Tax. This includes hiring staff, integrating the new tax into the Department's existing tax and licensing system, developing program processes and controls, issuing administrative rules, as well as providing taxpayer education and guidance. Once the new tax is fully implemented, my responsibilities as Senior Assistant Director of Operations will include overseeing the Capital Gains Tax Program.

4. I am providing this declaration in support of appellants' motion to stay the superior court's order declaring the capital gains tax unconstitutional.

5. The Department of Revenue is responsible for administering the capital gains tax. The Department's responsibilities include developing tax forms and implementing

processes for receiving tax payments from taxpayers, the first of which are due April 18, 2023.

6. The capital gains tax is an entirely new tax, and for the most part will be owed by taxpayers who do not currently file tax returns with the Department. Because the capital gains tax is an entirely new tax, the Department is developing a communications plan to inform taxpayers of their capital gains tax reporting obligations, including information about the on-line system developed by the Department to report and pay the tax.

7. Many Washington residents who may owe the tax have already contacted the Department seeking guidance about whether they will owe the tax, how much they might owe, and how to pay it. Through October 20, 2022, the Department has received 183 letter ruling requests from taxpayers with inquiries about the tax. These letters involve a wide variety of issues, including the sale of a business, taxability of mutual funds and

long-term gains from installment sales, and questions regarding real estate exemptions and charitable donation deductions.

8. To comply with the Legislature's directive to be ready to collect the tax in April 2023, the Department has expended and continues to expend considerable hours and resources to develop and put in place the necessary infrastructure to implement the capital gains tax, if the tax ultimately is held constitutional. To provide taxpayers adequate time to prepare and file capital gains tax returns by the April 18, 2023, due date, the Department plans to make its on-line capital gains tax system available to taxpayers on February 1, 2023. Any delay beyond February 1, 2023, would make it difficult for taxpayers to take steps needed to set up a Secure Access Washington logon, register a capital gains account with the Department, and take other actions such as requesting an extension, filing a return, and making payments by the April 18, 2023, due date. The Department estimates that the latest date it feasibly could go "live" with its on-line system is March 13,

2023, which would provide taxpayers just 37 days to take the steps needed to timely meet their capital gains tax obligations.

9. The capital gains tax is a brand-new tax program that will impact a group of taxpayers that do not have an existing reporting relationship with the Department today. We anticipate a high level of customer assistance will be needed. The capital gains tax's filing due date coincides with the Annual Combined Excise Tax Return due date for businesses that owe business and occupation tax on an annual basis, which is already a busy customer service time for the agency. As such, long wait times are expected for customer assistance and will continue to grow as the due date approaches. If the Department does not make the on-line system available by February 1, 2023 (or, at the latest, March 13, 2023), the window of time for taxpayers to receive the necessary assistance will be greatly diminished and could impact their ability to file and pay timely. While the Department may grant extensions for filing the Capital Gains Tax Return in certain circumstances, current law

does not authorize the Department to provide an extension for the *payment* of the tax. Thus, if taxpayers are unable to make their payment by the due date, they will be subject to late payment penalties and interest.

10. A stay of the superior court's order would clarify for the Department and the public the date on which tax payments are due. If the Washington Supreme Court ultimately determines that the tax is invalid in an opinion issued after April 18, 2023, the stay can be lifted and the Department will issue refunds (with interest) as required by statute. See RCW 82.32.060.

11. Additionally, to implement the capital gains tax should the Washington Supreme Court uphold it, the Department has undertaken a rulemaking process to promulgate necessary administrative rules, and has started creating necessary tax forms and instructions. During the ruling making hearing, the Department received several requests from stakeholders to see a draft of the capital gains tax return to help

them better understand the types of information they will need to have prepared to file the return. The Department anticipates that the draft tax forms and instructions will be available to share by the end of November 2022.

12. On October 5, 2022, the Citizen Action Defense Fund (CADF) sent a letter to acting Director John Ryser demanding, among other things, that the Department cease any rulemaking regarding the capital gains tax until the Washington Supreme Court either reverses the superior court's order declaring the capital gains tax unconstitutional or stays that decision. The Department responded on October 19, 2022, stating its view that the superior court's ruling did not prohibit it "from taking actions to prepare to implement the capital gains tax if it is ultimately upheld." A true and accurate copy of the CADF letter is attached as Exhibit A. A true and accurate copy of the Department's response is attached as Exhibit B.

13. Attached as Exhibit C is a true and accurate copy of a CADF letter, dated October 20, 2022, addressed to the

Joint Administrative Rules Review Committee requesting that JARRC review the Department's proposed rule implementing the capital gains tax. This CADF's letter also is available on-line at:

[221020CADFLtrJARRCFINAL.pdf \(washingtonpolicy.org\).](#)

14. Although the Department is confident that the superior court's order does not bar it from taking necessary action to implement the capital gains tax if it is upheld, the threat and possible burden of litigation will impact the very people within the Department who are working to implement the tax if it is upheld. A stay of the superior court's order would clarify for the Department and the public that the Department's administrative actions—including the on-going rulemaking process—are permissible. This would eliminate the risk of needless litigation and provide helpful clarity to the Department and the public.

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

EXECUTED in Tumwater, Washington, this 1st day of
November, 2022.



ALYSON FOUTS

PROOF OF SERVICE

I certify that, through my legal assistant, I electronically filed and served this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal and thus served the following:

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EdwardsS@lanepowell.com
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Attorney for Co-Respondents Washington State Tree
Fruit Association and Washington State Dairy
Federation

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

DATED this 3rd day of November, 2022, at Tumwater,
WA.

s/Cameron Comfort
Cameron G. Comfort
Sr. Assistant Attorney General

EXHIBIT A



October 5, 2022

Mr. John Ryser
Acting Director
Department of Revenue
6500 Linderson Way SW,
Tumwater, WA 98501

VIA EMAIL AT JohnRy@dor.wa.gov

Dear Mr. Ryser,

On behalf of the Citizen Action Defense Fund (“CADF”) - a nonprofit, public interest law firm based in Washington state- I am writing with concern in response to the proposed rule published by the Department of Revenue (“the Department”) implementing the capital gains income tax provided in SB 5096 (2021) (“SB 5096”) that was recently declared unconstitutional in our state by the Douglas County Superior Court in *Quinn v. State of Washington*. See proposed rule at WAC 458-20-300 as provided in WSR 22-18-097.

It is black letter law that statutes declared unconstitutional are deemed void “from the beginning” or *ab initio* – they have no legal effect whatsoever and the law treats them as if they never existed. Despite this, the Department is proceeding with rulemaking and, according to its website, the new rule could be adopted as soon as “the 4th quarter of 2022.” I understand that the State has appealed this matter and the state supreme court has accepted jurisdiction. However, the State did not seek a stay of the lower court order on appeal so it is therefore still in full force and effect.

The Department’s haste to proceed with rulemaking and potential collection of a tax based on a statute that is now a legal nullity is itself illegal for the following reasons:

First, it’s unconstitutional. The Department’s actions to ignore a valid ruling from another branch of government serves to undermine the rule of law and respect for the judiciary.

Second, it’s outside the statutory authority of the agency or the authority conferred by a provision of law. Because a state trial court with jurisdiction over this matter has ruled that SB 5096 “unconstitutional and invalid,” there is no current law authorizing the Department to create rules governing or to collect the tax.

Third, it’s arbitrary or capricious. Contrary to the Department’s public assertions that rulemaking would be “guidance” and “a courtesy,” new rules enforcing a statute that has been struck down and is undergoing judicial review could only serve to confuse, not help, the public. Such illegal agency action would be clearly “taken without regard to surrounding facts and circumstances.”

The bottom line is that I am concerned that political pressure may have been brought to bear on the Department. I therefore request:

- a legal justification for the Department's actions in this matter;
- that the Department cease and desist any rulemaking regarding the implementation of SB 5096 or collection of any tax authorized under that legislation until:
 - such time as an appellate court has rendered a final decision reversing the lower court ruling in *Quinn* and the time for appeal or reconsideration has elapsed, or
 - a stay of the lower court decision in *Quinn* is entered by a court of competent jurisdiction; and
- that the Department accept this letter as a public records request for the following documents and records pursuant to the Washington Public Records Act (RCW 42.56):
 - the complete rulemaking file as of the date of this letter;
 - all communications - including emails, notes, records of phone calls, physical letters, and other correspondence—sent, prepared, or received by any employee of the Department of Revenue from March 1, 2022 through the date of this letter regarding rulemaking to implement (or provide guidance regarding) SB 5096; and
 - any communications- including emails, notes, records of phone calls, physical letters, and other correspondence—sent, prepared, or received by any employee of the Department of Revenue from March 1, 2022 through the date of this letter from the Governor or staff of his office, a member of the legislature or legislative staff, the attorney general or his staff or any other person, group, or organization providing comments, analysis, critiques, suggestions or changes to the timing of promulgation or text of proposed rule WAC 458-20-300 as provided in in WSR 22-18-097.

The above requests for records are intended to include copies of all drafts of documents. If not specified, the term “records” is also intended to include all communications, including emails, text messages, and other electronic communications (e.g., Facebook Messenger, Twitter public and direct messages, etc.) regardless of whether they are contained on the personal or work devices or accounts of employees of the Department of Revenue.

Please produce any responsive records in electronic format via email to jackson@citizenactiondefense.org or through a file sharing service. If you do not have a cloud-based sharing method and the responsive records are too large to send via email, please let me know and my office will coordinate with you to utilize a file-sharing service. If records responsive to these requests may be produced in installments, please do so as soon as they are available. If there are any fees associated with searching for and copying the requested records, please inform me if those costs exceed \$100 prior to producing those documents to my office.

If all or any part of this public records request is denied, please provide a statement citing the specific exemptions that you believe justify the refusal to release the documents or communications and an explanation of how that exemption applies to this request. RCW 42.56.210(3). Additionally, if only portions of a document are exempt, only the exempt portions may be redacted, and the remainder of the record provided. RCW 42.56.210(1).

These requests concern a matter of great public importance and a speedy response would be appreciated. I therefore look forward to receiving your response within five days of the date of

this letter. Please be advised that if the Department persists in implementation of SB 5096 that CADF will take whatever actions it deems necessary in accordance with the law to protect the public interest in our state.

Sincerely,

A handwritten signature in blue ink, reading "Jackson Maynard, Jr." in a cursive style.

Jackson Maynard
Executive Director
Citizen Action Defense Fund
300 Deschutes Way SW
Tumwater, WA 98501
(360) 878-9206
jackson@citizenactiondefense.org

EXHIBIT B



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

P.O. Box 47454 • Olympia, Washington 98504-7454 • (360) 534-1600 • FAX (360) 534-1606

October 19, 2022

Jackson Maynard, Executive Director
Citizen Action Defense Fund
300 Deschutes Way SW
Tumwater, WA 98501

Dear Mr. Maynard,

Thank you for your letter of October 5, 2022. The Department has previously acknowledged receipt of the public records request included in a separate letter. This response addresses the concerns you raise relating to the Department's current rule-making process pertaining to the capital gains tax. You argue that the Department should pause its rule-making process until a final appellate court decision is issued upholding the tax, or a stay of the lower court decision is entered. The Department disagrees with both points.

First, the Department disagrees that its rule-making activities are unconstitutional, outside its statutory authority, or arbitrary and capricious. The Department has not taken any actions to enforce the capital gains tax. Rather, it simply is taking reasonable steps to be prepared to administer the capital gains tax *if* the Washington Supreme Court reverses the superior court and upholds the tax's constitutionality. And, contrary to your concern, the Department's actions should not confuse anyone, as its website on the capital gains tax prominently states:

In March of 2022, the Douglas County Superior Court ruled in *Quinn v. State of Washington* that the capital gains excise tax (ESSB 5096) does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has appealed the ruling to the Washington Supreme Court. While the appeal is pending, the Department will continue to provide guidance to the public regarding the tax as a courtesy. ***Any guidance provided herein will apply only if the tax is ruled constitutional and valid, in its entirety, by a court of final jurisdiction.***

(Emphases added).

Second, while the superior court declared ESSB 5096 unconstitutional, its ruling did not include injunctive relief prohibiting the Department from taking actions to prepare to implement the capital gains tax if it is ultimately upheld. As detailed in the Department's website—quoted

Jackson Maynard, Executive Director

October 19, 2022

Page 2

above—the Department believes that it has a duty to provide guidance to the public regarding the tax and to take reasonable steps to be prepared to administer the tax *if* the Washington Supreme Court upholds its constitutionality.

We hope this information is useful.

Sincerely,

A handwritten signature in cursive script that reads "John Ryser". The signature is fluid and elegant, with a long, sweeping underline that extends to the right.

John Ryser
Acting Director

EXHIBIT C



October 20, 2022

Chair My-Linh Thai
Joint Administrative Rules Review Committee
c/o Office of Program Research
P.O. Box 40600
Olympia, WA 98504

VIA EMAIL at jarrc_petition@leg.wa.gov

RE: Department of Revenue Proposed Rule at WAC 458-20-300

Dear Chair Thai,

On behalf of the Citizen Action Defense Fund ("CADF") - a nonprofit, public interest law firm based in Washington state- please accept this letter as petition for the Joint Administrative Rules Review Committee ("JARRC") to review the proposed rule published by the Department of Revenue ("the Department") implementing the capital gains income tax provided in SB 5096 (2021) ("SB 5096") that was recently declared unconstitutional in our state by the Douglas County Superior Court in *Quinn v. State of Washington*. A copy of proposed rule at WAC 458-20-300 as provided in WSR 22-18-097 is attached to this petition.

RCW 34.05.655 provides that "[a]ny person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent." The committee is then required to acknowledge receipt of the petition and describe any initial action taken. RCW 34.05.620 also provides that "[i]f the rule review committee finds by a majority vote of its members that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements or that an agency may not be adopting a proposed rule in accordance with all applicable provisions of law, the committee shall give the affected agency written notice of its decision." The committee is then required to send notice with a statement of the review committee's findings and reasons seven days in advance of any hearing scheduled for consideration or adoption of the proposed rule. The agency is required to consider the Committee's decision.

The simple question for the committee is whether void provisions of law (including intent language) are applicable to a proposed rule. The agency relies upon RCW 82.87.110 and RCW 82.87.130 as authority to adopt rules implementing the capital gains income tax in SB 5096. Both sections of law originated in the bill as sections 12 and 14, respectively. The problem for the

Governor and his Department of Revenue is that these sections of law no longer exist as a matter of law. As noted above, a court struck down SB 5096 and therefore these provisions are deemed void “from the beginning” or *ab initio* – they have no legal effect whatsoever and the law treats them as if they never existed. It now falls to JARRC to determine if these void provisions are still to be considered part of the intent of the legislature and “applicable” to the adoption of the rule. If not, the agency is without authority and the committee should inform it as required under RCW 34.05.620.

I raised concerns regarding the legality of the proposed rule in a letter to Acting Director Ryser. He responded by denying my request to cease rulemaking and pointing to the Department’s website that states: “[a]ny guidance provided herein will apply only if the tax is ruled constitutional and valid, in its entirety, by a court of final jurisdiction.” While I appreciate that the Acting Director’s was prompt in responding and denying my request that that the agency abstain from rulemaking, it does not adequately address the concerns.

Unfortunately, the Department’s actions on this matter speak louder than its website’s words. The actual language in the proposed rule indicates that it is anything but “guidance” but instead imposes the tax January 1, 2022 and provides a due date for submission of returns “on or before the date your federal income tax return is required to be filed for the same taxable year” which multiple examples within the rule itself identify as April 17, 2023. The website also identifies the last quarter of 2022 for when the final rule will be adopted. Another telling sign of the Department’s intent is its recent budget request to the legislature seeking IT funding to implement the tax in the next biennium. Both letters and the budget request are attached. Finally, I would note that the Department maintains on its website a list of interim guidance statements. <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/interim-guidance-statements>. The Department could certainly issue interim guidance in this matter as well without having to go through the formal rulemaking process if that was its goal.

The bottom line is that the proposed rule is inconsistent with current legal authority- a matter clearly within the jurisdiction of JARRC. I respectfully request an opportunity at a hearing to address these concerns and allow the agency to explain its position regarding this petition now pending before the Committee.

Sincerely,

A handwritten signature in blue ink that reads "Jackson Maynard, Jr." with a stylized, cursive script.

Jackson Maynard
Executive Director
Citizen Action Defense Fund
300 Deschutes Way SW
Tumwater, WA 98501
(360) 878-9206
jackson@citizenactiondefense.org



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 07, 2022

TIME: 9:22 AM

WSR 22-18-097

Agency: Department of Revenue

Subject of possible rule making: Chapter 82.87 RCW - Excise Tax on Capital Gains

Statutes authorizing the agency to adopt rules on this subject: RCW 82.87.110; RCW 82.87.130

Reasons why rules on this subject may be needed and what they might accomplish: Effective January 1, 2022, Chapter 82.87 RCW imposes an excise tax on sales or exchanges of long-term capital assets. This proposed rule seeks to clarify administrative aspects of the excise tax on capital gains such as proper filing procedures and penalties related to this excise tax.

In March of 2022, the Douglas County Superior Court ruled in *Quinn v. State of Washington* that the excise tax on capital gains does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has appealed the ruling to the Washington Supreme Court. While the appeal is pending, the Department will continue to provide guidance, such as this rule, to the public regarding the tax as a courtesy. This rule will apply only if the tax is ruled constitutional and valid by a court of final jurisdiction.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study

☒ Other (describe) Parties interested in this rule making may contact the individual listed below. The public may

also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

(If necessary)

Name: Michael Hwang
Address: 6400 Linderson Way SW,
PO Box 47453, Tumwater, WA 98504
Phone: 360-534-1575
Fax:
TTY:
Email: MichaelHw@dor.wa.gov.
Web site: dor.wa.gov
Other:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Additional comments: Written comments may be submitted by mail or email and should be directed to Michael Hwang using one of the contact methods above by October 12, 2022. Written and oral comments will be accepted at the Public Meeting.

Date: Wednesday, September 28, 2022

Time: 10:00 A.M.

Public Meeting Location: virtual meeting

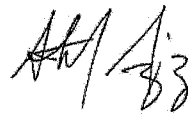
Contact Sierra Crumbaker at SierraC@dor.wa.gov for dial-in/login information

Date: September 7, 2022

Name: Atif Aziz

Title: Rules Coordinator

Signature:

A handwritten signature in black ink, appearing to read 'Atif Aziz', is written over the signature line.

NEW SECTION

WAC 458-20-300 Capital gains excise tax—Overview and administration. (1) **Introduction and overview.** Beginning January 1, 2022, Washington law imposes an excise tax on individuals with sales or exchanges of long-term capital assets (capital gains excise tax). See RCW 82.87.040. This rule provides information regarding the administration of the capital gains excise tax and is divided into six subsections as follows: Introduction and overview; returns; extensions; payment of tax; penalties and interest; and general administration.

(a) **Imposition.** The capital gains excise tax is imposed on the sale or exchange of long-term capital assets. The capital gains excise tax is not imposed on any sale or exchange occurring prior to January 1, 2022. A "long-term capital asset" is a capital asset that is held for more than one year. A "capital asset" has the same meaning as provided by section 1221 of the federal Internal Revenue Code and 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 section 1231 or any other provision of the federal Internal Revenue Code.

(b) **Who is taxable?** Only individual natural persons (referred to in this rule as "taxpayer," "you," or "your") are subject to the capital gains excise tax.

(c) **What is the tax rate?** The tax rate is seven percent. The tax is calculated by multiplying a taxpayer's Washington capital gains by the seven percent tax rate.

(d) **Washington capital gains.** Washington capital gains is your federal net long-term capital gain with certain adjustments made under RCW 82.87.020 (1)(a) through (c) and further modified by the deductions in RCW 82.87.060. The adjustments are primarily aimed at removing capital gains and losses allocated to places outside of Washington from your Washington capital gains figure.

(i) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes, determined as if Title 26 U.S.C. Secs. 55 through 59 and 1400Z-1 and 1400Z-2 of the federal Internal Revenue Code did not exist. Title 26 U.S.C. Secs. 55 through 59 relate to the alternative minimum tax and Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 relate to opportunity zones.

(ii) The deductions in RCW 82.87.060 are as follows:

(A) A standard deduction. If you are married or a state-registered domestic partner, the total combined standard deduction for both you and your spouse or domestic partner is \$250,000, regardless of whether you and your spouse or domestic partner file a joint or separate return. In all other cases, the standard deduction is \$250,000 per individual natural person. The \$250,000 deduction amount may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(B) Amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(C) Adjusted capital gain derived from the sale or transfer of your interest in a qualified family-owned small business pursuant to RCW 82.87.070.

(D) Charitable donations deductible under RCW 82.87.080. The charitable donation deduction cannot exceed \$100,000. The \$100,000 de-

duction cap may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(e) **Exemptions.** Certain sales or exchanges, such as sales of real estate, are exempt from the capital gains excise tax. See RCW 82.87.050 for additional information.

(f) **Examples.** This rule contains examples. These examples identify a number of facts and then state a conclusion. They are provided only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Returns.**

(a) **Filing obligation and due date.** Only taxpayers owing Washington's capital gains excise tax in a taxable year are required to file a capital gains excise tax return with the department.

(i) If you are required to file a capital gains excise tax return, you must file the return with the department on or before the date your federal income tax return is required to be filed for the same taxable year.

(ii) If you owe capital gains excise tax, you are required to file a capital gains excise tax return whether or not you filed a federal income tax return.

(iii) If you did not file a federal income tax return, the due date for your capital gains excise tax return is the date your federal income tax return would have been due.

Example 1 – Return due date

Facts: The due date for Michael's federal income tax return is April 17, 2023. Michael has a Washington capital gains excise tax liability.

Result: The capital gains excise tax return due date is April 17, 2023, which is the date Michael's federal income tax return is due. Michael must file his capital gains excise tax return on or before April 17, 2023, or the return will be late and penalties will apply.

(b) **Separate and joint filers, single filers.** If you are required to file a capital gains excise tax return, your federal income tax filing status may affect how you must file your capital gains excise tax return as follows:

(i) Spouses filing jointly. Spouses who file a joint federal income tax return for the taxable year must file a joint capital gains excise tax return for the same taxable year. Accordingly, if you are married, and file a joint federal income tax return with your spouse, you must file a joint capital gains excise tax return with your spouse.

(ii) Spouses filing separately. If a spouse files a separate federal income tax return for the taxable year, each spouse that owes capital gains excise tax must file a separate capital gains excise tax return for the same taxable year. Accordingly, if you are married and file a separate federal income tax return from your spouse, you must file a separate capital gains excise tax return.

(iii) State-registered domestic partners. State-registered domestic partners may file a joint capital gains excise tax return even if they filed separate federal income tax returns for the taxable year. Accordingly, if you are a state-registered domestic partner and file a separate federal income tax return from your partner, you may elect either to file a joint or separate capital gains excise tax return.

(iv) Single filers. Any individual that is not married and is not a state-registered domestic partner must file their capital gains excise tax returns as a single individual.

(c) **Required documentation with the capital gains excise tax return.** All taxpayers required to file a capital gains excise tax return for a taxable year must submit, along with the capital gains excise tax return form, all of the following:

(i) A copy of the complete, filed federal individual income tax return, including all supporting schedules and documentation filed with the Internal Revenue Service (IRS), for the taxable year.

(ii) For any claim for exemption under RCW 82.87.050(2), which may exempt the sale or exchange of an interest in a privately held entity directly owning real estate, documentation that substantiates the following:

(A) The fair market value and basis of the real estate held directly by the privately held entity;

(B) The percentage of the ownership interest sold or exchanged in the privately held entity that owns the real estate; and

(C) The methodology established by the privately held entity for allocating gains or losses from the sale of real estate among the owners, partners, or shareholders of the entity.

(d) **Incomplete returns.** A capital gains excise tax return is considered complete only if the return is filed in accordance with the filing requirements described in RCW 82.87.110 and subsection (2) of this rule. If a complete capital gains excise tax return is not filed on or before the due date for the capital gains excise tax return, the return will be late and the late filing penalty may apply. See subsection (5) of this rule for more information.

Example 2 - Incomplete return

Facts: Jane filed her federal income tax return on April 17, 2023. Jane owes capital gains excise tax and is required to file a capital gains excise tax return. She filed the return on April 17, 2023, but did not provide the department with a copy of her federal income tax return until April 30, 2023.

Result: Jane was required to file a complete return by April 17, 2023. Jane did not file a complete return on April 17, 2023, because she failed to include a copy of her federal individual income tax return along with the capital gains excise tax return. Jane's return is late. See subsection (5) of this rule for additional information on the late filing penalty.

(e) **Electronic filing.** All taxpayers must electronically file their capital gains excise tax returns and all required documentation identified in subsection (2)(c) of this rule. Electronic filings must be submitted to the department via the "My DOR" portal at www.secure.dor.wa.gov. The department may waive the electronic filing requirement for good cause as provided in RCW 82.32.080. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic filing and the good cause waiver.

(f) **Amended returns.**

(i) **Amended return required.** If you or the IRS make any changes to your federal income tax return for any reason, and the changes affect the reported capital gains or the capital gains excise tax liability, you must file an amended capital gains excise tax return reflecting all changes made to the federal income tax return. You must also file an amended capital gains excise tax return if the original capital gains excise tax return needs to be corrected for errors identified after the due date for the original capital gains excise tax return.

(ii) **Filing and payment requirements for amended returns.** The documentation requirements described in subsection (2) of this rule

apply to amended returns. This means, for instance, a copy of the complete, filed amended federal individual income tax return and all supporting amended schedules and documentation must be filed along with the amended return. You must also file your amended capital gains excise tax return electronically and electronically pay any additional tax due unless granted a waiver from the electronic filing/payment requirements by the department.

(3) **Extensions.**

(a) **Extension period; timely payment still required.** If a taxpayer obtains an extension of time for filing the federal income tax return for the taxable year and provides the department proof of the extension, the capital gains excise tax return is considered due on or before the extended due date for the federal income tax return. However, an extension for filing the capital gains excise tax return does not extend the due date for paying the capital gains excise tax.

Extension request certification required. Taxpayers must submit an extension request certification with the department on or before the original due date. Taxpayers must also attach a copy of the federal form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return* or Form 2350, *Application for Extension of Time to File U.S. Income Tax Return*, when filing the capital gains excise tax return.

(4) **Payment of tax.**

(a) **Due date.** If you owe the capital gains excise tax, you must remit the tax to the department on or before the date your federal income tax return is required to be filed without regard to any extension granted to you for the filing of your federal income tax return. The extension of time for filing the federal income tax return or capital gains excise tax return does not extend the due date for paying your capital gains excise tax. If you pay your capital gains excise tax late, the late payment penalty and interest may apply. See subsection (5) of this rule for more information.

Example 3 - Late payment - No federal extension

Facts: Jeannette filed her federal income tax return on April 17, 2023. Jeannette files a capital gains excise tax return on April 17, 2023. She later remits her capital gains excise tax to the department on April 20, 2023.

Result: Jeannette was required to pay the capital gains excise tax on April 17, 2023, when her federal income tax return was due. Jeannette paid the capital gains excise tax late and is subject to penalties and interest.

Example 4 - Late payment - Federal income tax return extension

Facts: Gil requested a federal income tax return extension on April 12, 2023, and received an automatic extension of time to file his federal tax return to October 13, 2023. Gil properly submits an extension request certification to the department before April 17, 2023, the original due date for the federal tax return and capital gains excise tax return. Gil files a capital gains excise tax return and pays his capital gains excise tax on October 13, 2023.

Result: Gil paid his capital gains excise tax late and is subject to penalties and interest with respect to the late payment. While Gil extended the date for filing the capital gains excise tax return, the due date for the payment of the capital gains excise tax remained April 17, 2023.

(b) **Electronic payment.** Capital gains excise tax must be paid by electronic funds transfer or other form of department authorized electronic payment, such as by credit card. The department may waive the

electronic payment requirement for good cause. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic payment requirements and the good cause waiver.

(c) **Joint and several liability.** The capital gains excise tax liability of each spouse or state-registered domestic partner filing a capital gains excise tax return is joint and several unless one of the spouses is relieved of liability for federal tax purposes as provided under section 6015 of the federal Internal Revenue Code or the department determines that the domestic partner would qualify for relief under the same parameters provided in section 6015.

(5) **Penalties and interest**

(a) **Late filing penalty.** If you do not file a complete capital gains excise tax return by the due date, the department will assess a late filing penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. See RCW 82.87.110. The total late filing penalty may not exceed 25 percent of the tax due for the taxable year covered by the late return.

(b) **Late payment penalty.** If you do not remit your capital gains excise tax on or before the due date for payment of the capital gains excise tax, you are subject to the late payment penalty. If payment is not received by the department on the due date, the department will assess a penalty of nine percent of the amount of the tax due; if the tax is not received on or before the last day of the month following the due date, the department will assess a total penalty of 19 percent of the amount of the tax due; and if the tax is not received on or before the last day of the second month following the due date, the department will assess a total penalty of 29 percent of the amount of the tax due. See RCW 82.32.090(1) and WAC 458-20-228 for more information regarding late payment penalties.

(c) **Other penalties.**

(i) Other penalties imposed under chapter 82.32 RCW may apply. These penalties include the penalties for substantial underpayment of tax, disregard of specific written instructions, and intent to evade tax. See RCW 82.32.090 and WAC 458-20-228 for additional information.

(ii) Any taxpayer who knowingly attempts to evade payment of the capital gains excise tax is guilty of a class C felony as provided in chapter 9A.20 RCW. Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information required under the capital gains excise tax, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW. RCW 82.87.140.

(d) **Amended returns.** The penalties described in this subsection may apply to amended capital gains excise tax returns, except the department will not assess late return or late payment penalties on increased amounts of tax due as a result of the amendment if the original capital gains excise tax return and tax due were timely filed and paid, and the increased amounts are paid on the same calendar day as the amended return was filed.

(e) **Penalty waivers.**

(i) The department will waive the late filing penalty only if the department determines that:

(A) The taxpayer's failure to timely file the return was due to circumstances beyond their control; or

(B) The taxpayer has not been delinquent in filing any capital gains excise tax returns due during the preceding five calendar years.

(ii) The department will waive the late payment (RCW 82.32.090(1)) and substantial underpayment penalties (RCW

82.32.090(2)), if the department determines that the taxpayer's failure to timely pay was due to circumstances beyond their control. See RCW 82.32.105 and WAC 458-20-228 for additional information regarding waivers due to circumstances beyond the taxpayer's control.

(f) **Interest.**

(i) If you do not pay your capital gains excise tax by the due date described in subsection (4) of this rule, you will be assessed interest on the unpaid amounts. See RCW 82.32.050 and WAC 458-20-228 for additional information on interest assessed on underpayments and interest waivers.

(ii) If you have paid more tax than is properly due, you will receive interest for your overpayment. See RCW 82.32.060 and WAC 458-20-229 for information on interest on tax overpayments.

(6) **General administration**

(a) **Application of chapter 82.32 RCW.** The department administers the capital gains excise tax in accordance with chapter 82.32 RCW except as otherwise provided by law and to the extent not inconsistent with chapter 82.87 RCW.

(b) **Preserving accurate and complete records.** You have the burden of proving any claimed deductions, exemptions, and credits. Washington law requires you to keep accurate and complete records and timely respond to communications from the department. You must preserve records that substantiate the amounts of all deductions, exemptions, or credits claimed, as well as any documentation that substantiates your allocation of capital gains and losses. Claims for exemptions, deductions, and credits from the capital gains excise tax may require additional documents to be submitted to the department at the department's request. See RCW 82.32.070 and WAC 458-20-254 for additional information on recordkeeping requirements.

(c) **Refunds.** If you discover that you have overpaid taxes, penalties, or interest, you may file an amended capital gains excise tax return or apply for a refund or credit. The provisions under WAC 458-20-229 apply to refunds of overpaid capital gains excise tax.

(d) **Informal administrative reviews.** If you disagree with the department's assessment of tax, penalties, or interest; a department letter ruling; or the department's denial of a refund, you may seek an informal review of that action by submitting a petition for review with the department's administrative review and hearings division. The petition must be filed within 30 days of the department action. See WAC 458-20-100 for additional information.

(e) **Nonclaim period.** The nonclaim period provided under RCW 82.32.050 and 82.32.060 for deficient tax or penalty payments and excess payment of tax, penalty, or interest, respectively, apply to the capital gains excise tax. However, there is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. See RCW 82.32.050 and WAC 458-20-230.



October 5, 2022

Mr. John Ryser
Acting Director
Department of Revenue
6500 Linderson Way SW,
Tumwater, WA 98501

VIA EMAIL C/O MICHAEL HWANG AT MICHAELHW@DOR.WA.GOV

Dear Mr. Ryser,

On behalf of the Citizen Action Defense Fund ("CADF") - a nonprofit, public interest law firm based in Washington state- I am writing with concern in response to the proposed rule published by the Department of Revenue ("the Department") implementing the capital gains income tax provided in SB 5096 (2021) ("SB 5096") that was recently declared unconstitutional in our state by the Douglas County Superior Court in *Quinn v. State of Washington*. See proposed rule at WAC 458-20-300 as provided in WSR 22-18-097.

It is black letter law that statutes declared unconstitutional are deemed void "from the beginning" or *ab initio* – they have no legal effect whatsoever and the law treats them as if they never existed. Despite this, the Department is proceeding with rulemaking and, according to its website, the new rule could be adopted as soon as "the 4th quarter of 2022." I understand that the State has appealed this matter and the state supreme court has accepted jurisdiction. However, the State did not seek a stay of the lower court order on appeal so it is therefore still in full force and effect.

The Department's haste to proceed with rulemaking and potential collection of a tax based on a statute that is now a legal nullity is itself illegal for the following reasons:

First, it's unconstitutional. The Department's actions to ignore a valid ruling from another branch of government serves to undermine the rule of law and respect for the judiciary.

Second, it's outside the statutory authority of the agency or the authority conferred by a provision of law. Because a state trial court with jurisdiction over this matter has ruled that SB 5096 "unconstitutional and invalid," there is no current law authorizing the Department to create rules governing or to collect the tax.

Third, it's arbitrary or capricious. Contrary to the Department's public assertions that rulemaking would be "guidance" and "a courtesy," new rules enforcing a statute that has been struck down and is undergoing judicial review could only serve to confuse, not help, the public. Such illegal agency action would be clearly "taken without regard to surrounding facts and circumstances."

The bottom line is that I am concerned that political pressure may have been brought to bear on the Department. I therefore request:

- a legal justification for the Department's actions in this matter;
- that the Department cease and desist any rulemaking regarding the implementation of SB 5096 or collection of any tax authorized under that legislation until:
 - such time as an appellate court has rendered a final decision reversing the lower court ruling in *Quinn* and the time for appeal or reconsideration has elapsed, or
 - a stay of the lower court decision in *Quinn* is entered by a court of competent jurisdiction; and
- that the Department accept this letter as a public records request for the following documents and records pursuant to the Washington Public Records Act (RCW 42.56):
 - the complete rulemaking file as of the date of this letter;
 - all communications - including emails, notes, records of phone calls, physical letters, and other correspondence—sent, prepared, or received by any employee of the Department of Revenue from March 1, 2022 through the date of this letter regarding rulemaking to implement (or provide guidance regarding) SB 5096; and
 - any communications- including emails, notes, records of phone calls, physical letters, and other correspondence—sent, prepared, or received by any employee of the Department of Revenue from March 1, 2022 through the date of this letter from the Governor or staff of his office, a member of the legislature or legislative staff, the attorney general or his staff or any other person, group, or organization providing comments, analysis, critiques, suggestions or changes to the timing of promulgation or text of proposed rule WAC 458-20-300 as provided in in WSR 22-18-097.

The above requests for records are intended to include copies of all drafts of documents. If not specified, the term “records” is also intended to include all communications, including emails, text messages, and other electronic communications (e.g., Facebook Messenger, Twitter public and direct messages, etc.) regardless of whether they are contained on the personal or work devices or accounts of employees of the Department of Revenue.

Please produce any responsive records in electronic format via email to jackson@citizenactiondefense.org or through a file sharing service. If you do not have a cloud-based sharing method and the responsive records are too large to send via email, please let me know and my office will coordinate with you to utilize a file-sharing service. If records responsive to these requests may be produced in installments, please do so as soon as they are available. If there are any fees associated with searching for and copying the requested records, please inform me if those costs exceed \$100 prior to producing those documents to my office.

If all or any part of this public records request is denied, please provide a statement citing the specific exemptions that you believe justify the refusal to release the documents or communications and an explanation of how that exemption applies to this request. RCW 42.56.210(3). Additionally, if only portions of a document are exempt, only the exempt portions may be redacted, and the remainder of the record provided. RCW 42.56.210(1).

These requests concern a matter of great public importance and a speedy response would be appreciated. I therefore look forward to receiving your response within five days of the date of

this letter. Please be advised that if the Department persists in implementation of SB 5096 that CADF will take whatever actions it deems necessary in accordance with the law to protect the public interest in our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Jackson Maynard, Jr.", with a stylized, cursive script.

Jackson Maynard
Executive Director
Citizen Action Defense Fund
300 Deschutes Way SW
Tumwater, WA 98501
(360) 878-9206
jackson@citizenactiondefense.org



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

P.O. Box 47454 • Olympia, Washington 98504-7454 • (360) 534-1600 • FAX (360) 534-1606

October 19, 2022

Jackson Maynard, Executive Director
Citizen Action Defense Fund
300 Deschutes Way SW
Tumwater, WA 98501

Dear Mr. Maynard,

Thank you for your letter of October 5, 2022. The Department has previously acknowledged receipt of the public records request included in a separate letter. This response addresses the concerns you raise relating to the Department's current rule-making process pertaining to the capital gains tax. You argue that the Department should pause its rule-making process until a final appellate court decision is issued upholding the tax, or a stay of the lower court decision is entered. The Department disagrees with both points.

First, the Department disagrees that its rule-making activities are unconstitutional, outside its statutory authority, or arbitrary and capricious. The Department has not taken any actions to enforce the capital gains tax. Rather, it simply is taking reasonable steps to be prepared to administer the capital gains tax *if* the Washington Supreme Court reverses the superior court and upholds the tax's constitutionality. And, contrary to your concern, the Department's actions should not confuse anyone, as its website on the capital gains tax prominently states:

In March of 2022, the Douglas County Superior Court ruled in *Quinn v. State of Washington* that the capital gains excise tax (ESSB 5096) does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has appealed the ruling to the Washington Supreme Court. While the appeal is pending, the Department will continue to provide guidance to the public regarding the tax as a courtesy. ***Any guidance provided herein will apply only if the tax is ruled constitutional and valid, in its entirety, by a court of final jurisdiction.***

(Emphases added).

Second, while the superior court declared ESSB 5096 unconstitutional, its ruling did not include injunctive relief prohibiting the Department from taking actions to prepare to implement the capital gains tax if it is ultimately upheld. As detailed in the Department's website—quoted

Jackson Maynard, Executive Director
October 19, 2022
Page 2

above—the Department believes that it has a duty to provide guidance to the public regarding the tax and to take reasonable steps to be prepared to administer the tax *if* the Washington Supreme Court upholds its constitutionality.

We hope this information is useful.

Sincerely,

A handwritten signature in black ink that reads "John Ryser". The signature is written in a cursive, flowing style with a long, sweeping underline.

John Ryser
Acting Director



Department of Revenue
2023-25 Regular Budget Session
Maintenance Level - CG - Capital Gains Carryforward Funding

Agency Recommendation Summary

In the 2021 Legislative Session, ESSB 5096 - Capital Gains Tax, was passed by the Legislature. Funds for IT implementation were appropriated to the Department of Revenue (DOR) with oversight by the OCIO, along with funds to administer the capital gains tax. In carry forward, funding is provided only for the contracted maintenance and operations related to the portion of the IT system that is developed through FY23. Funding was not provided for the remaining IT implementation costs or for costs associated with administering the tax. This request is for funding not included in carryforward level to be reestablished as identified in the fiscal note. The department is not asking for additional funding outside of what was already identified in the fiscal note.

Fiscal Summary

Fiscal Summary <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Staffing						
FTEs	20.0	18.4	19.2	15.7	15.7	15.7
Operating Expenditures						
Fund 001 - 1	\$3,952	\$2,621	\$6,573	\$1,981	\$1,856	\$3,837
Total Expenditures	\$3,952	\$2,621	\$6,573	\$1,981	\$1,856	\$3,837
Revenue						
001 - 0105	\$420,000	\$420,000	\$840,000	\$432,500	\$432,500	\$865,000
001 - 0150	\$67,000	\$67,000	\$134,000	\$94,000	\$94,000	\$188,000
Total Revenue	\$487,000	\$487,000	\$974,000	\$526,500	\$526,500	\$1,053,000

Decision Package Description

A Capital Gains Tax (ESSB 5096) was passed by the legislature in the 2021 session. This tax took effect on January 1, 2022. The first payments are due to the Department of Revenue on or about April 17, 2023. To implement this program, the department was provided funding in FY22 and FY23 for:

- Information service costs to program, setup and test a computer system to accept taxpayer returns and other required information; process reporting information for collection, audit, and refund purposes; and purchase additional server equipment.
- Implementation costs for technical advice, interpretation, and analysis for internal use; adopt new administrative rules.
- Administrative costs for staff to prepare tax returns; process and work with returns; answer phone calls, email, and in person inquiries; create special notices, update the website and published information; respond to tax ruling requests.

Funding for FY22 \$2,489,000 and FY23 \$4,189,000 was appropriated directly to the department, with the requirement that the project be under the oversight of the OCIO. This funding includes the costs necessary to support information services and implementation efforts as well as the administrative costs necessary to administer the capital gains tax.

During the development of the 2023-25 carry forward level of the budget, the department was informed that projects under OCIO oversight requiring funding, not under a contractual obligation, to be reevaluated and requested again each biennium. Therefore, the only funding carried forward for this project is the \$125,000 for FY24, and \$250,000 for FY25 for the contracted operational cost to support the portion of the IT systems built up through FY23 and placed into operation. This request is for reinstatement of funds for this project as are identified in the final fiscal note for Capital Gains tax. Without funding, the department will not be able to complete the IT implementation required in FY24 & FY25 and will not be able to administer the program beyond June 30, 2023.

Assumptions and Calculations

Expansion, Reduction, Elimination or Alteration of a current program or service:

As the Capital Gains Tax proposal was modified throughout the legislative session, the department also modified the fiscal estimates. When the legislation passed, funding was provided to the department based off version seven (7) of the department's fiscal notes. There were however several changes made to the legislation, and the department responded with additional versions of the fiscal note. The final version the department submitted was version 12. The expenditure estimate from version seven (7) to version 12 is less than \$100,000 each year. This request is to continue funding for the Capital Gains project as identified in version 12 of the fiscal notes.

Detailed Assumptions and Calculations:

The fiscal detail in this request aligns with the department's fiscal note # 5096-12 submitted on 5/27/2021 less the amount provided in carry forward.

Funded fiscal note vs. final fiscal note:

	FTE	FY24	FTE	FY25
Fiscal Note - ESSB 5096-7	19.2	\$3,991,600	17.6	\$2,791,200
Fiscal Note - ESSB 5096-12	20.0	\$4,077,000	18.4	\$2,871,100
Difference	0.8	\$85,400	0.8	\$79,900

The department is requesting funding for version 12 of the Capital Gains Tax fiscal estimate, minus the amount provided in carry forward level.

	FTE	FY24	FTE	FY25
Fiscal Note - ESSB 5096-12	20.0	\$4,077,000	18.4	\$2,871,000
Carry Forward level Funding	0.0	\$125,000	0.0	\$250,000
Funding needed	20.0	\$3,952,000	18.4	\$2,621,000

Workforce Assumptions:

See Fiscal Note ESSB 5096-12

	FY 2024	FY 2025	FY 2026	FY 2027
Adm Asst 3	0.1	0.1	0.0	0.0
Customer Serv Sp2	0.1	0.1	0.1	0.1
Excise Tax Ex 1	1.0	1.0	1.0	1.0
Excise Tax Ex 2	5.0	5.0	5.0	5.0
Excise Tax Ex 3	1.0	1.0	1.0	1.0
Fiscal Analyst 3	0.5	0.5	0.5	0.5
IT App Dev Journey	0.5	0.5	0.5	0.5
IT BA Journey	0.3	0.3	0.3	0.3
IT Proj Mgt Journey	0.5	0.5	0.5	0.5
IT QA Journey	0.8	0.8	0.8	0.8
Mgmt Analyst 4	3.0	1.8	1.8	1.8
Mgmt Analyst 5	0.5	0.3	0.1	0.1
Revenue Agent 4	0.3	0.3	0.3	0.3
Tax Info Spec 1	2.2	2.0	1.0	1.0
Tax Info Spec 4	1.0	1.0	0.5	0.5
Tax Policy Sp 3	1.8	1.8	1.1	1.1
Tax Policy Sp 4	0.4	0.4	0.2	0.2
WMS Band 2	1.0	1.0	1.0	1.0
	20.0	18.4	15.7	15.7

Strategic and Performance Outcomes

Strategic Framework:

How this package relates to, or affects, the Governor's Results Washington goal areas and statewide priorities was evaluated by the legislature prior to passing this bill in the 2021 session.

Performance Outcomes:

If the department receives funding, as we estimated in the fiscal note, there are no anticipated changes to performance outcomes. If not funded, the department will be unable to fully implement this legislation without impacting revenue collections in other areas.

Equity Impacts

Community outreach and engagement:

This package was evaluated by the legislature prior to passing this bill in the 2021 session.

Disproportional Impact Considerations:

This package was evaluated by the legislature prior to passing this bill in the 2021 session.

Target Populations or Communities:

How this package relates to, or affects, the target populations or communities was evaluated by the legislature prior to passing this bill in the 2021 session.

Other Collateral Connections

Puget Sound Recovery:

N/A

State Workforce Impacts:

No change anticipated.

Intergovernmental:

No additional intergovernmental impacts are anticipated.

Stakeholder Response:

No additional stakeholder impacts are anticipated.

State Facilities Impacts:

No change anticipated.

Changes from Current Law:

No change anticipated.

Legal or Administrative Mandates:

This request is in response to legislation passed in 2021.

Reference Documents

2021 5096-12 E SSB FiscalNote Cap Gains.pdf
2021 5096-7 E SSB FiscalNote.pdf
23-25 CG Gap Gains Carry Forward DP.pdf
Cap Gains Bill 5096-S.SL.pdf
CapGains CFL IT Addendum 2023-2025.docx

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

Yes

Objects of Expenditure

Objects of Expenditure <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Obj. A	\$1,296	\$1,186	\$2,482	\$1,015	\$1,015	\$2,030
Obj. B	\$466	\$427	\$893	\$365	\$365	\$730
Obj. C	\$1,875	\$750	\$2,625	\$375	\$250	\$625
Obj. E	\$285	\$230	\$515	\$201	\$201	\$402
Obj. G	\$0	\$0	\$0	\$0	\$0	\$0
Obj. J	\$30	\$28	\$58	\$25	\$25	\$50

Agency Contact Information

Sherry Cave
(360) 704-5771
SherryC@dor.wa.gov

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

November 03, 2022 - 4:36 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,769-8
Appellate Court Case Title: Chris Quinn et al. v. State of Washington et al.
Superior Court Case Number: 21-2-00075-8

The following documents have been uploaded:

- 1007698_Motion_20221103162315SC039838_8590.pdf
This File Contains:
Motion 1 - Stay
The Original File Name was MotForStay.pdf
- 1007698_Other_20221103162315SC039838_8515.pdf
This File Contains:
Other - Declaration of Alyson Fouts
The Original File Name was FoutsDecl.pdf

A copy of the uploaded files will be sent to:

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