



# Washington State Tax Structure

# Principles of Taxation

The proper function of taxation is to raise money for core functions of government in a neutral way. A “fair field and no favors” is a good motto for a strong tax system.

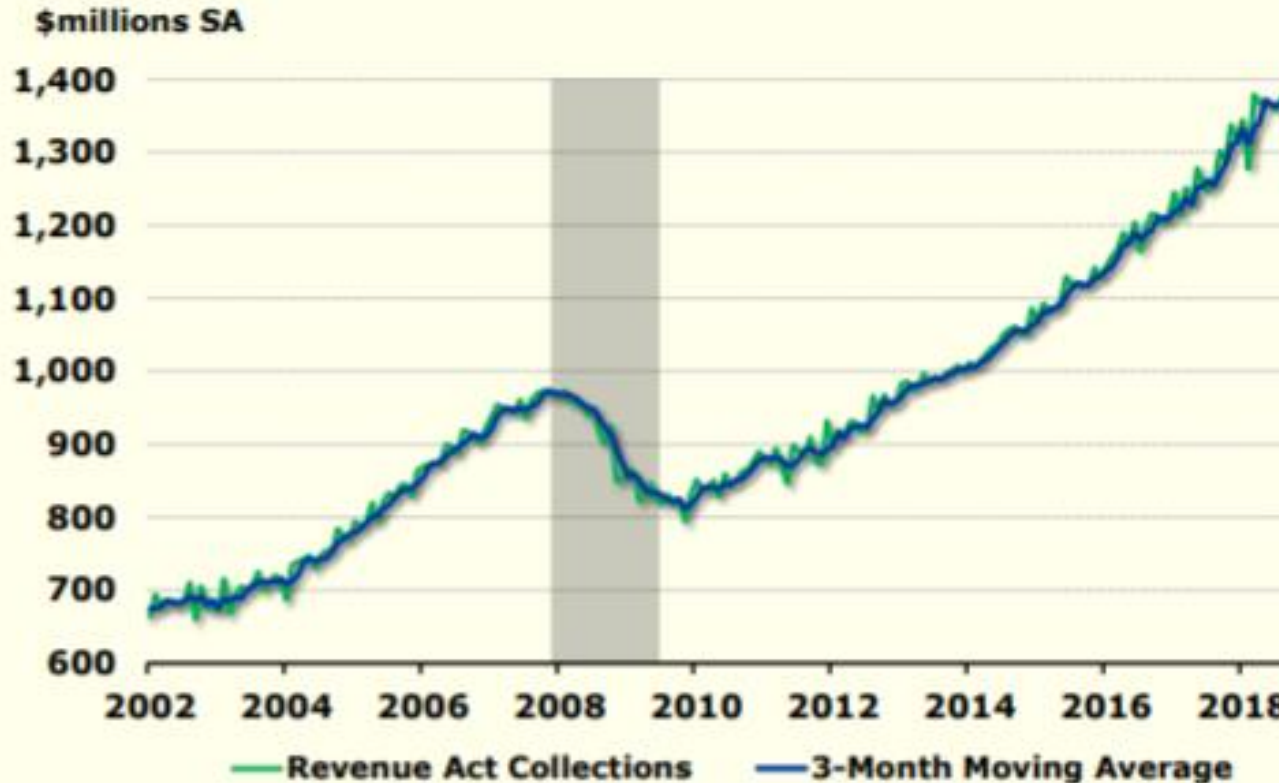
- ▶ Simplicity
- ▶ Accountability
- ▶ Economic Neutrality
- ▶ Equity
- ▶ Complementary
- ▶ Competitiveness
- ▶ Reliability
- ▶ Transparency



## Revenue Act collections growth has been strong

Adjusted year-over-year collections growth (by quarter of activity):

2017Q4: 8.3%  
2018Q1: 8.2%  
2018Q2: 8.8%  
2018Q3: 7.6%



\* Adjusted for large one-time transactions, amnesty payments and reporting frequency change, current definition of Revenue Act

Source: DOR and ERFC; monthly data through September 2018 activity

**WASHINGTON STATE ECONOMIC AND REVENUE FORECAST COUNCIL**

Revenue Review  
November 20, 2018


Slide 16

# Reliable Revenue Growth

# Tax Structure and Volatility

Though there is no recession proof tax structure, Washington has consistently ranked as having relatively stable tax collections compared to other states. The reason for this is Washington's three major tax sources (sales, gross receipts, and property) are among the least volatile taxes. Progressive income taxes, however, are the most volatile taxes.





**The relative stability of Washington's tax collections has also been noted by Standard & Poor's. From S&P's August 2018 bond rating for the state:**

**“Good recent economic growth relative to that of the nation and a sales tax-based revenue structure that has demonstrated less sensitivity to economic cycles than income tax-reliant states . . . The state's reliance on retail sales, and business and occupation taxes for a combined 69% of general fund revenues (on a budgetary basis) typically affords Washington more revenue stability than other states that rely on personal income tax revenues.”**

# The “Temporary” B&O tax

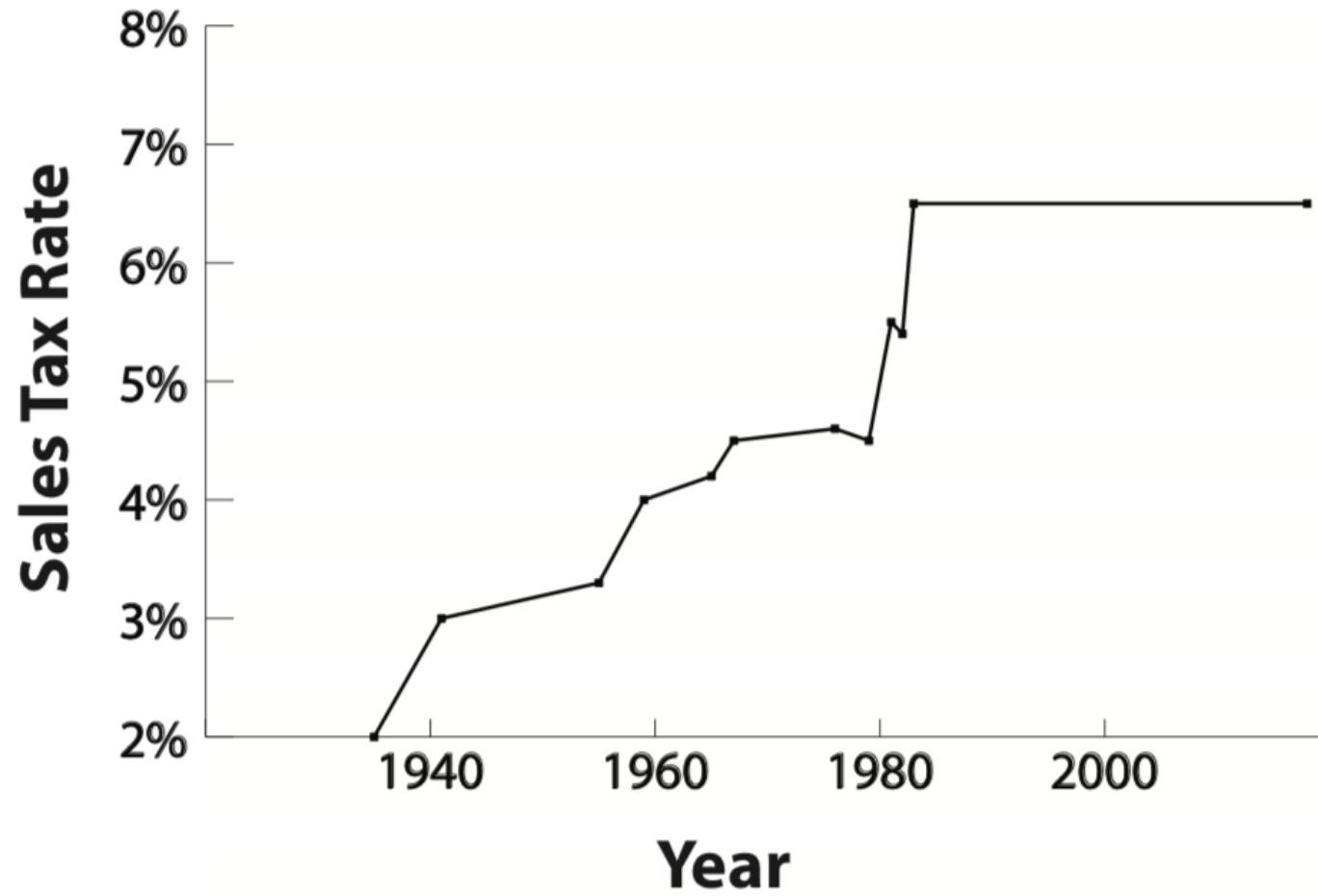
“This law is, perhaps, not perfect. No tax law yet devised has been entirely fair and just to all in its practical workings. This is an emergency measure, limited by its terms to a two-year period. If it works injustice to some, it will be but temporary, and such temporary injustice, if any, must be borne for the common good.” – 5-4 majority in *State ex rel. Stiner v. Yelle* (1933)

# Single Business Tax

The business owner would be given a choice of three ways to calculate their taxable margins, and would be allowed to choose the one that results in the lowest tax burden. A uniform discount would also be applied. Calculating the taxable margins could be based on either the business':

1. Total gross receipts minus labor costs
2. Total gross receipts minus all production costs except labor
3. 60% of total gross receipts

## WA Sales Tax Rate History





# Take advantage of *Wayfair* to provide sales tax relief

When it was first imposed in 1935, Washington's sales tax rate was just two percent. It is currently at 6.5% and citizens have not seen a rate reduction since 1982.

Washington's growing economy, the continued increases in state revenue growth (with over 9% forecasted for the 2019-21 budget), and the U.S Supreme Court's *Wayfair* ruling that allows states to impose sales taxes on out-of-state businesses, provides the opportunity to make tax relief for Washington families a priority during the 2019 Legislative Session.

# Very High Excise Taxes

(2018 national rankings)

- ▶ 1<sup>st</sup> highest liquor tax (\$32.52 per gallon)
- ▶ 1<sup>st</sup> highest cell phone tax (19.24%)
- ▶ 3<sup>rd</sup> highest gas tax (\$49.4 cents per gallon)
- ▶ 8<sup>th</sup> highest tobacco tax (\$3.02 per 20 pack)



**“Excise tax” on  
capital gains?**

# What type of tax is a capital gains tax? It is an income tax.

Internal Revenue Service (IRS): “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.”





COMMUNICATIONS AND LIAISON

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

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





**Jared Walczak**

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Following

This isn't pass interference in the same way that a capital gains tax isn't an income tax.  
[#waleg](#) [@OlympiaWatch](#) [@awbolympia](#)



7:45 AM · 21 Jan 2019

**Every state revenue department across the country describes 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.”**

# What do states without a capital gains tax have in common? No personal income tax.

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

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

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.*

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.”

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



# 2019 capital gains tax bills refer to income taxes (HB 1343/SB 5129)

**Bill definition of taxable capital gain:** “Federal net long-term capital gain’ means the net long-term capital gain reportable for federal income tax purposes.”

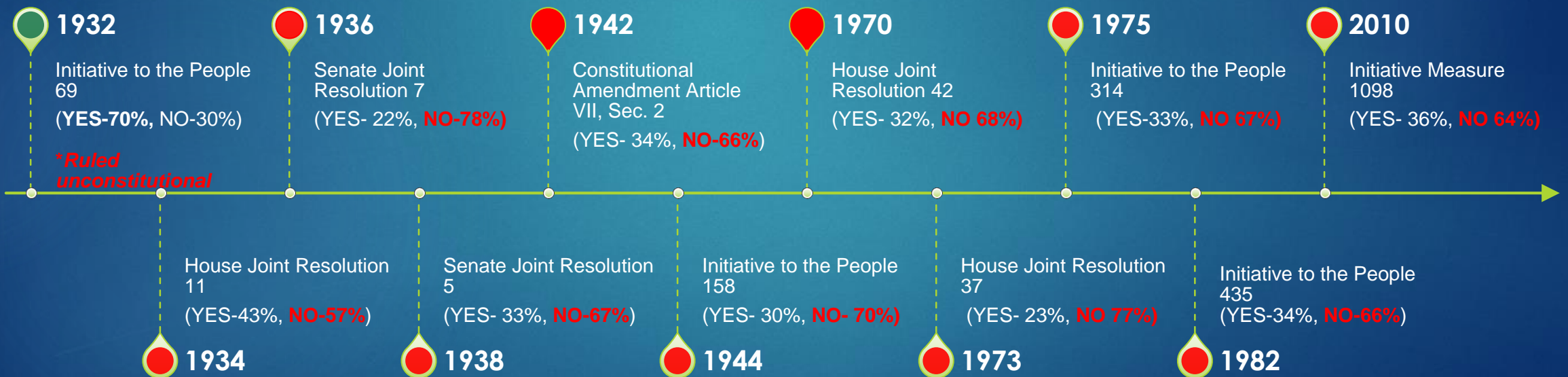
**State reporting requirement:** “In addition to the Washington return required to be filed under subsection (1) of this section, taxpayers owing tax under this chapter must file with the department on or before the date the federal return is required to be filed a copy of the federal income tax return along with all schedules and supporting documentation.”

**State Supreme Court has repeatedly made clear you can't call an income tax an "excise tax" to avoid the state's graduated income tax ban. As explained by former Justice Talmadge:**

**"The Legislature attempted to describe the income tax as an excise tax on the 'privilege of receiving income' in the State of Washington. The Supreme Court was unmoved. The *Jensen* court stated that the 1935 Legislature's effort to rename the tax did not make it an excise tax . . . Subsequently, in *Power, Inc v. Huntley*, the Legislature enacted what it described as a corporate excise tax, which was actually a graduated new income tax on corporations. Again, the Supreme Court indicated that legislative labels for a tax are not controlling."**




# Voters have rejected 10 straight income tax proposals, including 6 constitutional amendments





Income taxes  
on capital  
gains are  
extremely  
volatile



**Heeding Governor Brown's warning about the volatility of capital gains, California voters in 2014 approved a constitutional amendment to restrict the use of capital gains for state spending.**

**Explaining the impact of the constitutional amendment, the California Legislative Analyst's Office (LAO) said: "This constitutional amendment separates state spending from the rollercoaster of revenue volatility. "**



**More from CA LAO: “Probably the single most direct way to limit the state’s exposure to the kind of extreme revenue volatility experienced in the past decade would be to reduce its dependence on the source of income that produced the greatest portion of this revenue volatility—namely, capital gains and perhaps stock options.”**

**There was also this warning from the Washington Department of Revenue (DOR) on the 2012 capital gains income tax proposal (House Bill 2563):**

**“Capital gains are extremely volatile from year to year. Revenue from this proposal will depend entirely on fluctuations in the financial markets and can be expected to vary greatly from the amounts presented here.”**



If enacted, Washington would be the only state in the country with a stand-alone income tax on capital gains.

Doing this would throw away what the state Department of Commerce says is not only a “competitive advantage” for the state but also “is great marketing” for Washington.

If an income tax is imposed, Commerce warned that would mean “one less tool that we have in our economic development tool box.”

# Tax Transparency

Another important principle for elected officials to embrace is tax transparency. Individuals and business owners should be able to quickly and easily learn about how much officials in each taxing district add to their total tax burden. This is especially true when considering there are nearly 1,800 taxing districts in the state.

# Tax Transparency Website

SB 6032 Sec 135 (4) of 2018 supplemental budget would have created a tax transparency website (SB 6590). It was vetoed, however, by the Governor.

“... make publicly available an online searchable database of all taxes and tax rates in the state for each taxing district. The information must be aggregated by type of tax and accessible by entering a physical address for each residency or business. In addition to searching by physical address for each residence or business, searches must be accommodated by navigating through a map of the state as a whole and down to the level of each taxing district.”

# Questions?

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