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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 FOR DOUGLAS COUNTY
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9 CHRIS QUINN, an individual; CRAIG
10 LEUTHOLD, an individual; SUZIE BURKE, an
11 individual; LEWIS and MARTHA RANDALL, as
12 individuals and the marital community comprised
13 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,

14 Plaintiffs,

15 v.

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

18 Defendants.

19 APRIL CLAYTON, an individual; KEVIN
20 BOUCHEY, an individual; RENEE BOUCHEY,
an individual; JOANNA CABLE, an individual;
21 ROSELLA MOSBY, an individual; BURR
MOSBY, an individual; CHRISTOPHER
22 SENSKE, an individual; CATHERINE SENSKE,
an individual; MATTHEW SONDEREN, an
individual; WASHINGTON FARM BUREAU;

23 Plaintiffs,

24 v.

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

27 Defendants.
28

Case No. 21-2-00075-09

Case No. 21-2-00087-09

**DECLARATION OF JASON
MERCIER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

MERCIER DECLARATION RE:
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

1 I, Jason Mercier, declare as follows:

2 1. I have personal knowledge of the facts below, and if called as a witness, I could
3 and would testify competently thereto.

4 2. I am the Director of the Center for Government Reform at Washington Policy
5 Center. I have worked on fiscal public policy issues for more than 20 years in Washington
6 State and was an appointed advisor to the 2002 Washington State Tax Structure Committee. I
7 am an ex-officio member of the Tri-City Regional Chamber of Commerce. In June 2010,
8 Governor Gregoire appointed me as Washington Policy Center's representative on her Fiscal
9 Responsibility and Reform Panel. In January 2019, the House Finance Committee invited me
10 to present during a legislative work session on options to reform the state's tax structure. For
11 the last decade, I have been actively researching the topic of capital gains taxes, including by
12 personally surveying the directors of revenue departments for every state and working with
13 legislative and congressional staff on receiving direct comments from other tax professionals
14 such as the Federal Internal Revenue Service on how capital gains taxes are treated under the
15 tax code.

16 3. Attached as **Exhibit A** is a true and correct copy of Washington's Engrossed
17 Substitute Senate Bill 5096.

18 4. In April 2017, I surveyed the revenue departments of every U.S. state to
19 determine whether the state taxed capital gains as a tax on income or as an excise tax. If I did
20 not receive a written response from a state's revenue department, I followed up telephonically
21 to obtain an answer from an appropriate official responsible for and knowledgeable about state
22 tax policy and administration and included those responses in my survey results. A true and
23 correct copy of all written responses I received is attached as **Exhibit B**. The responses for
24 every state are summarized in the table below:

Responding Agency	Response
Alabama Department of Revenue	“Capital gains are reported on the income tax returns.”
Alaska Department of Revenue	“No personal capital gains tax. Alaska currently does not have a personal income tax.”
Arizona Department of Revenue	“Arizona taxes capital gains as an income tax.”
Arkansas Department of Finance and Administration	“[Capital gains taxed] as income tax.”
California Franchise Tax Board	“California taxes capital gains as an income tax and they are taxed at the same rate as ordinary income.”
Colorado Department of Revenue	“Colorado treats qualified capital gains as an income tax deduction.”
Connecticut Department of Revenue Services	“For Connecticut tax purposes, capital gains are part of income tax.”
Delaware Division of Revenue	“Capital gains are reported on income taxes in Delaware.”
Florida Department of Revenue	“There is currently no Florida income tax for individuals and, therefore, no Florida capital gains tax for individuals.”
Georgia Department of Revenue	“No separate tax on capital gains. Income reported for federal income taxes, however, is taxed via Georgia income tax.”
Hawaii Department of Taxation	“Capital gains are taxed as an income tax in Hawaii.”
Idaho State Tax Commission	“Idaho taxes capital gains as income tax.”
Illinois Department of Revenue	“Capital gains are included in federal taxable income, against which Illinois income tax is determined. Illinois does not impose an excise tax on any form of income. Excise taxes are imposed on items of consumption, such as the liquor tax, cigarette tax and utilities taxes.”
Indiana Department of Revenue	“[Capital gains] taxed as income at Indiana’s flat rate.”
Iowa Department of Revenue	“[Capital gains are] part of the income tax system.”
Kansas Department of Revenue	“Kansas taxes capital gains as an income tax.”
Kentucky Department of Revenue	“Capital gains are subject to Kentucky income tax. For resident individuals, Kentucky capital gains are included in income and taxed as such.”
Louisiana Department of Revenue	“Capital gains are taxed as income.”
Maine Revenue Services	“Capital gain, to the extent that it is included in the federal adjusted gross income, is taxed as part of the taxable income, at the same tax rate as other income tax.”

1	Maryland Comptroller	“Maryland generally includes capital gain (or losses) in income to the extent such income or losses were included in federal adjusted gross income. There is no preferential treatment accorded them by Maryland by taxing them at a different rate.”
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4	Massachusetts Department of Revenue	“Massachusetts gross income includes capital gains. Capital gains are taxed as income rather than a separate excise tax on each transaction.”
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6	Michigan Department of Revenue	“Michigan taxes capital gains through an income tax.”
7		
8	Minnesota Department of Revenue	“Minnesota taxes capital gains like income. The rate for capital gains income is the same in Minnesota as wage income.”
9		
10	Mississippi Department of Revenue	“Capital gains are taxed as part of Mississippi income tax code.”
11	Missouri Department of Revenue	“Capital gains are taxed as normal income as part of Missouri income taxes.”
12	Montana Department of Revenue	“Montana taxes capital gains as an income tax, however, taxpayers receive a nonrefundable credit against their entire tax liability that is equal to 2% of the amount of capital gains reported on the taxpayer’s income tax return.”
13		
14	Nebraska Department of Revenue	“Nebraska taxes capital gains as an income tax—both corporate and individual income taxes.”
15		
16	Nevada Department of Taxation	“Nevada does NOT have a capital gains tax similar to federal income tax.”
17		
18	New Hampshire Department of Revenue Administration	“No capital gains tax in New Hampshire.”
19	New Jersey Division of Taxation	“Capital gains are subject to income tax in New Jersey.”
20	New Mexico Taxation and Revenue	“New Mexico doesn’t have a capital gains tax.”
21	New York Department of Taxation and Finance	“New York taxes capital gains as an income tax.”
22	North Carolina Department of Revenue	“In North Carolina, capital gains are a component of a taxpayer’s adjusted gross income for individual income tax purposes and federal taxable income for corporate income purposes.”
23		
24	North Dakota State Tax Department	“North Dakota essentially levies an income tax on capital gains to the same extent the federal government does.”
25		
26	Ohio Department of Taxation	“Capital gains are taxed as an income tax.”
27	Oklahoma Tax Commission	“Capital gains are treated as ordinary income and are taxable under our Income Tax Code.”
28		

Oregon Department of Revenue	"If it's a capital gain for your personal income tax then it would be taxed under your Oregon personal income tax."
Pennsylvania Department of Revenue	"For Pennsylvania personal income tax purposes, PA [sic] taxes gains on the sale, exchange or disposition of property at the same tax rate (3.07%) as all other taxable income for personal income tax purposes."
Rhode Island Division of Taxation	"RI does not tax capital gains as a separate tax. Taxed as income by income tax code."
South Carolina Department of Revenue	"[Tax capital gains] as income tax."
South Dakota Department of Revenue	"South Dakota does not have an income tax and does not tax capital gains income."
Tennessee Department of Revenue	"Tennessee does not have a general income tax. Instead, the Hall income tax [sic] is imposed only on bond interest and dividends from stock. Capital gains are therefore generally not subject to taxation in Tennessee."
Texas Comptroller's Office	"No capital gains tax. Texas does not have a state income tax."
Utah State Tax Commission	"Utah taxes capital gains as an income tax."
Vermont Department of Taxes	"Capital gains are taxed as income. Vermont does not have an excise tax."
Virginia Department of Taxation	"Virginia doesn't have a special capital gains rate. Capital gains are subject to income taxation at the same rates as all other income."
Washington Department of Revenue	"Washington does not currently tax capital gains, and it does not have an income tax." <i>Note: Survey conducted before passage of ESSB 5096.</i>
West Virginia Department of Revenue	"We tax it [capital gains] as income tax."
Wisconsin Department of Revenue	"Capital gains are taxed as part of the income tax computation."
Wyoming Department of Revenue	"No capital gains tax because Wyoming does not have an income tax."

5. While some jurisdictions responded that they did not tax capital gains at all, no state that was surveyed taxed capital gains through an excise tax or in any way other than through a tax on income.

