From:	Dick Nelson <dicknels@msn.com>
Sent:	Monday, April 30, 2018 3:24 PM
To:	Pedersen, Sen. Jamie
Subject:	RE: Follow-up to tax discussion last night

Dear Jamie,

The main issue in my humble opinion is that by tieing capital gains to reductions in existing taxes gives people the false impression that low-income households will realize a significant benefit. That we will drop from the top ranking of regressive taxing states. The numbers belie this notion. The total of just sales and property tax collections by Washington's state and local governments in FY 2017 was about $25 billion. A capital gains tax would have only put a small dent in that total. We really need to put the numbers on paper. You could ask DoR to do that. Then we might be on the same page regarding remedies.

Dick

From: Pedersen, Sen. Jamie [mailto:Jamie.Pedersen@leg.wa.gov]
Sent: Monday, April 30, 2018 1:39 PM
To: 'Dick Nelson'
Subject: RE: Follow-up to tax discussion last night

Dear Dick –

The major use of new revenue from a capital gains tax would be to reduce property and/or sales taxes. Remember also that it is not the first $50,000 in income exempt from the tax – it is the first $50,000 in capital gains. Roughly 12,000 taxpayers per year would pay this tax, versus 4 million who pay property taxes directly or indirectly. That is, in my book, a significant shift.

But the more important benefit of passing a capital gains tax is on the legal side, from my perspective. The other side will challenge it as an unconstitutional property tax. This will give the Supreme Court the opportunity to revisit its bad decisions from 1934 and 1951 that income is property and will make it possible, if we succeed, to enact a progressive income tax with a simple majority vote.

Best, Jamie

Senator Jamie Pedersen
43rd Legislative District
jamie.pedersen@leg.wa.gov

Olympia Office
JAC 235
P.O. Box 40443
Olympia, WA 98504-0443
(360) 786-7628

District Office
1200 12th Ave. S, Suite 801
Seattle, WA 98144
(206) 729-3206

Legislative Assistant
Penka Jane Culevski

penka.culevski@leg.wa.gov

To subscribe to my online newsletter, please e-mail me. To send any comments, or to learn more please visit my website.

From: Dick Nelson <dicknels@msn.com>
Sent: Monday, April 30, 2018 1:13 PM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Subject: RE: Follow-up to tax discussion last night

Dear Jamie,

Thanks for responding. Here's my understanding of the capital gains issue: Unless the courts find a capital gains tax to be unconstitutional, and I haven't seen a prediction to that effect, the benefits in the form of reduced tax regressivity will be very small as I pointed out at the district meeting.

My source for this is the DoR tax alternatives model available to anyone on their website. I plugged in the following: 7.9% rate above exemption thresholds of $25K (single ratepayer) and $50K (joint ratepayers) as proposed in SB 5111. The model makes the tax calculation instantly for this alternative and compares the taxes that would be due with the taxes due under the current system. The model draws a graph that shows the percent of income paid in taxes across the income distribution range by decile, starting at $15K at the low-end and going up to $140K and above at the high end.

There is no reduction in regressivity at the bottom. There is actually a very slight increase at the very bottom that could reflect the possibility that even poor folks buy stocks. And there is the expected uptick in percentages paid by high end earners.

My conclusion: Although a tax on capital gains takes revenue from the pockets of those who can most afford to pay, it doesn't put revenue into the pockets of those who can least afford to pay. They will continue to pay a large proportion of their income in state and local taxes. Revenue from a capital gains tax, roughly $1 billion per year, will certainly be useful at budget writing time. But it will not fix the basic problem with our tax code - it's overreliance on taxes that hit low income folks the hardest. These are the sales, property, transportation, and sin (alcohol, tobacco, et el) taxes. Only a major shift from these to an income tax will solve the regressivity problem.

What have I missed?

Dick

From: Pedersen, Sen. Jamie [mailto:Jamie.Pedersen@leg.wa.gov]
Sent: Sunday, April 29, 2018 1:31 PM
To: 'Dick Nelson'
Subject: RE: Follow-up to tax discussion last night

Dear Dick –

Thanks for your message and for your steady advocacy on this issue. I do not disagree about the messaging from the Department of Commerce, but given Governor Inslee's position on an income tax, it is not surprising. I do not disagree about the end goal of reform efforts; I merely think that the intermediate step of adopting a capital gains tax is the most likely path to get us there.

Best wishes, Jamie

Senator Jamie Pedersen
43rd Legislative District
jamie.pedersen@leg.wa.gov

Olympia Office
JAC 235
P.O. Box 40443
Olympia, WA 98504-0443
(360) 786-7628

District Office
1200 12th Ave. S, Suite 801
Seattle, WA 98144
(206) 729-3206

Legislative Assistant
Penka Jane Culevski
penka.culevski@leg.wa.gov

To subscribe to my online newsletter, please e-mail me. To send any comments, or to learn more please visit my website.

From: Dick Nelson <dicknels@msn.com>
Sent: Wednesday, April 18, 2018 10:59 AM
To: frankchopp@comcast.net
Cc: Rep. Nicole Macri <RepNicoleMacri@updates.leg.wa.gov>; Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Subject: Follow-up to tax discussion last night

Legislators:

At the 43rd District meeting yesterday I tried to make the case for an in-depth look at our antiquated state tax system. That is hard to do given a couple of minutes. So here is just one example that you might take up as a problem that stands in the way of comprehensive tax reform.

"We offer businesses some competitive advantages found in few other states. This includes no personal or corporate income tax. We also offer industry-specific tax breaks to spur innovation and growth whenever possible."

This quote can be found on the State Department of Commerce's website at: choosewashingtonstate.com/why-washington/our-strengths/pro-business/

How can we expect to accomplish tax reform when a state agency advertises that one reason this is a good state to set up shop in is because we don't tax income? No mention is made of the downside, including the business tax on gross income.

If you are interested, I can offer other examples of problems that go far beyond the lack of a capital gains tax.

Dick Nelson

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 1:12 PM
To: Frockt, Sen. David
Subject: Fwd: WA capital gains tax

---------- Forwarded message ---------
From: **David Miller** <david.miller@millerforseattle.org>
Date: Tue, Dec 4, 2012 at 10:54 PM
Subject: WA capital gains tax
To: David Frockt <dsfrockt@hotmail.com>, Gerry Pollet <gerry-pollet@msn.com>

David & Gerry --

I'm aware there is a movement to try a capital gains tax in WA state. I think this is a bad idea as we already have enough trouble with VCs and angels locating here.

This article raises an unusually good point, without (mostly) the usual bombastic Fox News nonsense about wealth redistribution and trickle down economics.

http://allthingsd.com/20121204/what-proposition-30-means-for-californias-entrepreneurs/

There may be alternate ways to get at this earnings stream. A tax on dividends, for example, would be much preferable to a cap gains tax because large corporate cash balances are counterproductive to economic growth. So are dividends as both represent cash businesses are not reinvesting for business growth (you may have seen me pounding on the idea of repealing the Bush dividend tax cut in my Facebook posts).

A cap gains tax specifically limited to gains in publicly traded stocks might be another way, as this would leave our fragile VC community less impacted. An unintended consequence might be fewer WA companies going public, but honestly that might not be a bad thing.

I'd be glad to be a sounding board for ideas on this for both of you during the session.

David

--
David Frockt

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 1:20 PM
To: Frockt, Sen. David
Subject: Fwd: Revenue Model - Confidential Analysis

---------- Forwarded message ---------
From: **David Frockt** <dsfrockt@gmail.com>
Date: Thu, Jun 26, 2014 at 9:42 PM
Subject: Fwd: Revenue Model - Confidential Analysis
To: crolfes@sounddsl.com <crolfes@sounddsl.com>

to give you an idea of my conceptual thinking on a progressive approach to solving McCleary without an I.T. Keep between us for now if you wouldn't mind. Will share the numbers with you when we have them from Claire...

Lots of talk about taking the full prop tax up to 3.60 per 1000 of assessed value. Not sure that is viable. We do have local levy lids set to come down in 2018 however so in theory increased state property taxes would be offset by lower local property taxes as the McCleary court envisioned... also there are proposals out there that would replace entirely the state portion of the property tax with an income tax....

---------- Forwarded message ----------
From: **Hesselholt, Claire** <Claire.Hesselholt@leg.wa.gov>
Date: Mon, Jun 23, 2014 at 1:54 PM
Subject: RE: Revenue Model - Confidential Analysis
To: Frockt Gmail <dsfrockt@gmail.com>

We can do really, really rough numbers probably w/i a week. Won't promise that on property tax.

From: Frockt Gmail [mailto:dsfrockt@gmail.com]
Sent: Monday, June 23, 2014 1:33 PM
To: Hesselholt, Claire
Subject: Re: Revenue Model - Confidential Analysis

I was just looking for a rough conceptual snapshot of potential options. - can they get us something sooner?

Sent from my iPhone

On Jun 23, 2014, at 1:27 PM, "Hesselholt, Claire" <Claire.Hesselholt@leg.wa.gov> wrote:

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 1:18 PM
To: Frockt, Sen. David
Subject: Fwd: Revenue Model - Confidential Analysis

---------- Forwarded message ---------
From: **Hesselholt, Claire** <Claire.Hesselholt@leg.wa.gov>
Date: Sun, Jun 22, 2014 at 8:44 AM
Subject: Re: Revenue Model - Confidential Analysis
To: David Frockt <dsfrockt@gmail.com>

I can work on this.

The thing you might consider is that the investment income deduction and capital gains tax will cover a lot of the same income.

On Jun 22, 2014, at 8:28 AM, "David Frockt" <dsfrockt@gmail.com<mailto:dsfrockt@gmail.com>> wrote:

Let me modify this by one thing. Given the huge revenue loss from reducing sales tax by a full penny, lets also look at it if we reduced it by half a penny to 6.0.

They point I am getting toward is finding a way to produce a more progressive revenue structure that assesses investment income (without an income tax) while reducing regressive sales taxes at least to some degree.

On Sun, Jun 22, 2014 at 8:09 AM, David Frockt <dsfrockt@gmail.com<mailto:dsfrockt@gmail.com>> wrote:
Claire - not sure if I should request this from you or go straight to Dean Carlson. But since I know you have a clear grasp of all this.....

Wondering if you could put together a little work sheet for me with revenue options that would look something like this:

Capital Gains (Murray Bill - @5% with a 20k or 30k Exemption to insure that we are effectively reaching only the top roughly 2%)
Increase State Property Tax from $2.30 per 1000 to 2.80 per 1000 or 3.0 per 1000
Reduce State Portion of Sales Tax from 6.5% to 5.5%
Subject Invesment Income From Non-Financial Firms to B&O
Extend the R& D Exemptions that expired in some form
Close the oil exemption
Sales Tax on Bottled Water
Other Exemption Closures at 75-100 million including making the non-resident exemption program a refund or others that make sense..
Extend B&O to some services not currently taxed but reduce the rate to 1% if it is above that level. i.e. expand but potentially lower the rate....

Combine these sources with
Projected Revenue Growth over the next four years to get an overall picture of what revenues would look like. I am speculating that to meet McCleary in a real way next and not screw everything else (particularly higher ed and mental health) we are going to need to be at a box of at least $38-39 billion for the two year cycle. Maybe $40B.

--
David Frockt
State Senator, 46th District
North Seattle, Lake Forest Park, Kenmore

Legislative Email
david.frockt@leg.wa.gov<mailto:david.frockt@leg.wa.gov>

Twitter
@dsfrockt

--
David Frockt
State Senator, 46th District
North Seattle, Lake Forest Park, Kenmore

Legislative Email
david.frockt@leg.wa.gov<mailto:david.frockt@leg.wa.gov>

Twitter
@dsfrockt

10/17 Phone call

Legislators on the call - Joe Fizgibbon, David Frockt, Laurie Jinkins, Kris Lytton, Cindy Ryu, Sharon Wylie

Ideas about new bills/post caucus check in?

- Sharon - Expanding the capacity of **Credit Unions**? LJ was at the Credit Union annual meeting and they are talking about that. Sharon was thinking about this on her own – granting Credit Unions more capacity to give small business loans to members and getting houses reoccupied.
- One bill idea is making small business lending less restricted for credit unions, raising the amount of public money that can be parked at a higher interest rate. Some would do more to get the economy going if they weren't under those restrictions.
- There is a question about the limit on what public deposits can be put in to Credit Unions? Yes – this is an issue, currently it's so restrictive to the point where it's not worth it to anybody. Certainly something that stakeholders have been talking about is Chase's stranglehold on the EBT program – would it be better to have an in state entity managing that? Ditto treasury investments and bonds.
- Sharon - Part of the rules come from the federal level, part from the state. Need research to know which we can change.
- Kris meeting with her credit union person on Thursday, will gather info and send it Sharon's way
- Joe – legislation a couple of sessions ago allowing credit unions to accept public deposits, the banks have always opposed and what went through was a token amount – the chair at the time who didn't like Credit Unions is now gone. Thinks this is a great thing to work on now.
- DF – has been looking at this as well, has been getting info from OPR/Treasurer's office – state has various accounts in a variety of institutions 90% of the money is with Bank of America – DF is having a coffee with McIntire this week, should we raise anything with him? General budget stuff and this issue – State Bank issue? A little more generosity towards the credit unions?
- The current thinking/explanation for why state goes with Chase/Bank of America is that only certain banks that have the technical capacity to handle the volume in terms of disbursement etc, we don't know if this is true or not, when they had it open for bid there were only 3 banks that applied – contract with Bank of America coming up again in 2014, we should explore that – what are the parameters that should be considered and when the contract is re-upped and RFP goes out - what kind of things make sense? Do we want to have some requirement that treasurer has to factor in the reasonableness of the fees and the charges that are deposed on the citizens of WA? Some might counter by saying this is a business relationship and if you make it too hard to bid for you won't have anyone bidding on it.
- The other piece is that every few years technology changes the equation, how much size matters regarding routine processing and transaction – a lot of things become more automated and mechanized and if smaller institutions have the technology they can do things that historically only the big banks could do.
- Cindy – David, Transportation funding or lack thereof we are looking at private, public partnerships for huge transportation projects in the future –why are we looking at sending

things to the private sector instead of the state bank or a public institution – an infrastructure bank?
- Back to the Credit Union issue – what's really lacking is to take a look at the really local small business fees, when we needed some properties refinanced, it was difficult because it was below $3m and none of the banks would touch it, credit union patched us through because they have – small property owners should be able to finance through credit unions.

LJ – question related to last week's retreat – **dot exercise around revenue** – where are people in the class in terms of dollar amount on revenue, or if it depends on what will be funded on it – after the voting came out there's a pretty big appetite for something – hans and tim's proposals which were job related came out well – 1 and 2 in the vote totals.

- Cindy heard today that there was appetite for sales tax increase? True?

- Nick – a few weeks ago 2 polls, results different than last February (36%)- now 51% & 55% - there will be additional polling done, both by some of us and in conjunction with the caucus, that will be something that will be further tested. Pleasantly surprised folks that people are coming around – polling will be on a bunch of stuff

- Cindy – problem with sales tax is that soon we will be bumping up against 10% - the other side will have a field day with that sound bite.

- LJ – we can only go up .5% before King County is at 10% - hard to tell where the public is at, we have to check out specific taxes and things that we would fund with it – interested in looking at the electeds, what they are willing to do in terms of dollar amounts –

- David – Jeff Mumm says we can't get to any substantial amount without sales tax, Ross doesn't think public would approve anything that will raise $1bn or more. He thinks we ought to be bold – he's seen the proposed education cuts, we can't keep doing this to people, particularly higher ed, it's ridiculous.

- Joe – if the package is smaller than we like it to be it is because members of our caucus say that there are revenue options that we will not support – so more important than any specific revenue option is that the cuts are the worst option. One of the things that we can do as members of HDC is to not rule things out – I put my sticker on $2bn because I don't want to be someone who takes things off the table – to bring up the average. We'd all like as big a revenue package as reasonably possible. If we come up to polling that says we can't do more than $1bn we'll deal with that then – if we start ruling things out that's what will lead to the package being chump change.

- Sharon – what kinds of cuts will lead to the R's being interested in revenue options? Dedicated revenue stream issue – doesn't know how we get past the idea of a nexus – wants to change the conversation back to broad and fair and a combination of future oriented promise-keeping and safety net collection of services and obligation of government – coming up with a broad package. She struggles all the time – sent an income tax (sales tax?) out to the Oregonians, no 3 legged stool here or there – wary of using political capital that doesn't get us to the broad, fair, general as progressive as we can get in this system. Not sure what that means. Pigeonholing make things more complicated.

- Kris – agrees with Joe, looking at all of our options, timing is going to be really important to prove the case, a lot of people not convinced still that revenue is needed, looking at those cuts and getting them out there early before we say what kind of revenue package will be needed. A big disconnect in her district and further north, folks still think that revenue is not needed.

- Sharon – also a disconnect in her district – Would town halls between the 8th and the 28th help? Yes – Kris too – mobile office hours, trying to get people to talk about it. R friends are not convinced that we don't need to live within our means. Till the cuts affect their districts and they can't explain it to constituents back home – higher ed? It will be critical how we lay this out – have to look at the cuts first before we ever talk about revenue.

- Timing is likely to be shortly after Governor's road map release "all cuts" we will get a fresh impression from folks (polling)

- LJ – sounds like we are all in agreement about not taking anything off the table yet – freshmen should be consistent when talking to leadership about our positions about that – fairly clear that they don't have to vote for an all cuts budget without exploring all the other options. Sharon – is going to be looking at cuts but they're cuts she doesn't want to make but she's still a little bit open to some cuts, can't close the door to some cuts yet.

- Everyone in the same place at that.

Revenue bond idea, securitization – trying to get short term revenue boost by bonding against a known revenue stream over longer term – very scaleable – could be a few years, could be 20-30 years. The bad experience that folks had was around the tobacco settlement issue, and the governor will not bond against that again – if 1183 doesn't pass we could bond against the ongoing stream of liquor taxes (and this would prevent another 1183) could do it against lottery, etc – use this to pay of the interest and principle on a set of bonds

- $800m for this biennium by doing 20 year of $60m revenue streams. If it was shorter term you're paying more per year for debt service issues around further indebtedness but seems different than other indebtedness for capital projects, more like bonding for transportation – gas tax for covering transportation bonds. But for operating purposes instead of capital purposes.

- Sharon – have an uphill battle talking about this for services instead of capital – tough sell.

- Yes, but the reason it's attractive is you don't have to send it to the voters and you don't need 2/3rds – it's a redirection of funds.

- Sharon – applying it to human services needs that have a bulge with the aging baby boomers – support services – spread it out, have a rainy day aspect of it, would take a lot of need off the table. Give it some parameters, that might help in terms of messaging

- It's a short term option in funding – short term purpose a good idea – implementing health care reform in 2014, till then we have a funding crisis to keep people on Medicaid, we can use for that purpose

- LJ – under normal circumstances no one would be wanting to do this – not in normal circumstances to do this – thinks the bridge health reform is the perfect model for this. Wouldn't make sense to do it for ongoing costs, but for something like this it seems to really make sense.

- Sharon – have other states done it? Are there any models?

- Revenue bonding is common but there are a lot of caveats – these are interesting times…

- Cindy – revenue bonding for general fund or for capital projects only>?

- Budget & Policy center has an email out to partners in other states we will have info shortly.

- Cindy – with Wall Street will we get in to trouble on calling this "securitization"

- Yes, "revenue bonds" is what it is but doesn't tell anyone anything – securitization now has the connotation of bad fiscal instruments so we should think about messaging

- "Bridging the gap" "short term bridge funding" – will be part of the polling as well, what pays off the best in terms of messaging and what we call it.

- Cindy – how do we counteract accusations that we're eating our seed corn? Will that be part of the messaging

- LJB – if you have to do these drastic, draconian cuts you're cutting off potential –

- Lot of people don't believe the federal government will be able to deliver, so basing anything on something the federal government may or may not do is harder than the securitization.

Capital Gains Taxes -

- Create a new excise tax on capital gains in Washington State – this is not an immediate solution for revenue – would take the DoR up to a year and would probably have to go through the courts as well – long term structural fix to revenue problems – we think it's important to address both long term and short term fixes to revenue. There is a considerable amount of revenue tied to it depending on the exemption levels and the rate – you can make over $1bn a year.

- Individual tax – not on businesses - 5% rate with a $10k exclusion for joint filers $5k exclusion for folks filing singly – would exclude more than 95% of the population and raise $500m each year – by setting the exclusion level you can effectively shield a large portion of the population.

- At the rate of exclusion of $5k per year it has no impact on 90% of the population.

- Structural impact – capital gains tracks economic growth much more quickly than other things – especially retail sales which is what it is currently relied upon for economic growth tracking. It also gives you a more stable revenue stream.

- Very preliminary legal analysis by structuring this as an excise tax – as a flat tax, we can legally classify it as an excise tax and not an income tax – so we can avoid an income tax in our state – Supreme Court would have to rule on whether this is an appropriate excise tax.

- David – why would it be an excise tax? There are states that have capital gains taxes but all the ones that had no income tax had no capital gains tax.

- David – how would you do this? Every other state that taxes this does it through their personal income taxes?

- Actually NH and TN don't tax payroll income, do tax interest and dividend income – this would be similar to that system. Capital gains are not a form of income – they are a sale of an asset, because it's a sale of an asset it can be an excise tax. You would never pay it unless you sell something and enjoy a financial gain on the sale of those assets.

- Our structure suggests we couple to federal capital gains – the first 500k of GAIN on primary residence would not be taxable. Majority of the revenue would come from stock sales – with carry forwards and offsets exactly mirrored from the federal definition. Administration for taxpayer quite easy – reduces administration costs for department of revenue.

- Sharon – there are a lot of people who will need money for retirement that have dropped a lot, some people won't be able to wait to sell till they have gained, then you wouldn't get any capital gains tax on this – is there any way to calculate this and whether this means we'll not be getting as much as we had expected?

- Distribution of retirement funds and savings from 401ks are taxed as income, so they wouldn't be impacted by this proposal.

- We are going to test that this could be coupled with a short term revenue option, perhaps a spring ballot measure – a sweetener half penny sales tax increase, as soon as this capital gains tax is in place we can reduce sales tax to existing rate and the leftovers can buy back existing cuts.

- Another way in which this could be done is that it could be structured as a revenue neutral tax swap – could use all of the revenue from the capital gains tax to buy down the sales tax – if it were revenue neutral the LG might allow it to pass by majority vote only. MIGHT. Not a slam dunk, but a reasonable argument to be made.

- Sharon – very eager to hear what others think about it. Likes the capital gains better than securitization.

- Budget and Policy folks want to clarify that these are not choices between revenue bonding and capital gains –trying to pursue both short term and long term options.

- Cautions – capital gains is a volatile revenue source

- LJ – anything you're asking them to do as legislators? Think about it at this point – we're interested in feedback, related to whether there's some bandwidth to do this while pursuing some short term options.

Revenue messaging/op-eds. Sent samples from the legislator perspective, focus on the budget, tying in the occupy wall street, 2 samples and some messaging tips that were requested at the last meeting. Are folks considering writing and submitting opeds – do you need more support on that?

- Laurie – hasn't looked at them, may shop them around with some other folks.

- Joe – still thinking that message is better delivered by us – we are held in low regard rather than community folks – suggested to nursing home on Vashon to band together to write an op-ed spelling out what the cuts would mean with people, Jim happy to work with them on drafting – the other part of the equation is revenue. Especially small business folks.

- Will also send around some summary documents on revenue options as well as capital

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 1:30 PM
To: Frockt, Sen. David
Subject: Fwd: capital gains question

---------- Forwarded message ---------
From: **Kevin Ranker** <kevinr@kevinranker.com>
Date: Thu, Jan 8, 2015 at 3:46 PM
Subject: Re: capital gains question
To: Hesselholt, Claire <Claire.Hesselholt@leg.wa.gov>, Frockt, Sen. David <David.Frockt@leg.wa.gov>, Ranker, Sen. Kevin <Kevin.Ranker@leg.wa.gov>, Frockt Gmail <dsfrockt@gmail.com>, Pramila Jayapal <pjayapal@me.com>, Jayapal, Sen. Elect Pramila <Pramila.Jayapal@leg.wa.gov>
Cc: Strauss, Daniel <Daniel.Strauss@leg.wa.gov>, Farley, Kendall <Kendall.Farley@leg.wa.gov>, West, Chris <Chris.West@leg.wa.gov>

Claire,

Thanks for this, I appreciate it.

I have some thoughts on this but will think about it overnight. I will be in Olympia tomorrow by noon or so and will find you to discuss.

-Kevin

From: "Hesselholt, Claire" <Claire.Hesselholt@leg.wa.gov>
Date: Thursday, January 8, 2015 3:01 PM
To: "Frockt, Sen. David" <David.Frockt@leg.wa.gov>, "Ranker, Sen. Kevin" <Kevin.Ranker@leg.wa.gov>, Frockt Gmail <dsfrockt@gmail.com>, Kevin Ranker <kevinr@kevinranker.com>, Pramila Jayapal <pjayapal@me.com>, "Jayapal, Sen. Elect Pramila" <Pramila.Jayapal@leg.wa.gov>
Cc: "Strauss, Daniel" <Daniel.Strauss@leg.wa.gov>, Kendall Farley <kendall.farley@leg.wa.gov>, "West, Chris" <Chris.West@leg.wa.gov>
Subject: capital gains question

I've got a draft prepared of the capital gains tax. I've got a couple of questions on this draft.

On this draft, for a residence, there are two ways to exclude the gain from the sale of a principle residence.

1. If the gain would qualify for the exclusion under federal law, it qualifies for exclusion under the state capital gains tax. That requires that the property has been used as the principal residence for 2 of the last five years. In the federal system, gain up to $250,000 for a single person or $500,000 on a joint return is excluded. Gain above those amounts is subject to tax.

2. The second way it could be excluded is that the long-term ownership provision. If the property has been owned for at least 20 years, and the person has used it as their principle residence for at least 10 of the last 20 years, the gain is *entirely* exempt from the tax.

The Governor's plan appears to follow this plan. We still haven't seen a draft, but the some lobbyists are busily telling folks that the only way to exclude gain from the tax is by #2. The Governor's paperwork and staff deny that.

It is possible to draft it so that under #1, the entire gain would be excluded. It is unclear how much this would impact the revenue estimates, but it should be very small.

The existing bill provides an exemption for the sale of agricultural lands, if some conditions apply. Do you want to include timber lands in that exclusion? That also seems to have a very tiny impact and would make the timber treatment line up with the agricultural treatment.

Finally, this is the intent section from the 2013 bill:

101. *(1) Washington's economy is dependent on a thriving middle class, and the prosperity of the middle class depends on our children's access to, and ability to benefit from, high quality education at all levels. The state must provide funding for education and it must also ensure that students receive the best possible education to ensure their personal and economic success.*

(2) Therefore, this act implements a capital gains tax to provide a stable, ongoing source of funding to support educational programs and the services that make those programs work. This revenue will have a direct and positive impact on the social and economic success of the state by supporting a more effective educational system, one that engages students in the advanced fields and industries critical to the modern economy.

Intent sections are helpful but should be pretty tight. I think the first subsection is good but the second subsection needs some work. Saying a capital gains tax is stable is probably stretching credulity.

Ideas? Points you want to make?

Feedback would be welcomed.

Thanks.

Claire Hesselholt
Chief of Staff
Senate Democratic Caucus
(360) 786-7342

--
David Frockt
State Senator, 46th District

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 12:55 PM
To: Frockt, Sen. David
Subject: Fwd: Capital gains legal memo

---------- Forwarded message ---------
From: **Chris and Kim Reykdal** <reykdals2@comcast.net>
Date: Sun, Jan 1, 2012 at 7:48 PM
Subject: Re: Capital gains legal memo
To: DSF <dsfrockt@hotmail.com>

Back home. Very interesting. Let's talk tomorrow.

Chris

> ----- Original Message -----
> **From:** DSF
> **To:** Chris Reykdal
> **Sent:** Friday, December 30, 2011 1:27 PM
> **Subject:** Fwd: Capital gains legal memo
>
> I think limiting the income tax and corporate income tax to 1% is the right call. We really take a core argument away from the opponents. Eventually the courts will decide.
>
> I am back tonight and will give you a call tomorrow if you are free. I have some thoughts on the release/statement.
>
> Do not circulate Phil's comments yet until I figure out what to do with it.
>
> Sent quickly from my iPad so please forgive typos etc.
>
> Begin forwarded message:
>
> > **From:** Phil Talmadge <phil@tal-fitzlaw.com>
> > **Date:** December 27, 2011 12:38:59 PM PST
> > **To:** David Frockt <dsfrockt@hotmail.com>
> > **Subject: RE: Capital gains legal memo**
> >
> > My short response is that Hugh is dreaming. He's something of a one-man band on this issue. He keeps thinking the Court will retreat from its view that income is property. The Court had a chance to do so a few years ago in Harbour Village, a case involving an assessment on apartments in Mukilteo. Hugh cites this case deep in a footnote in the last page of his memo. It declined to do so. With Wiggins and Gonzalez's addition to the Court there might be more interest on the Court in changing the law, but the political fall out for any of the justices going that way will be immense. It opens the door to the income tax and you and I both know how little the voters want that, as Bill Gates, Sr. learned.

Stratton, Randi

From: David Frockt <dsfrockt@gmail.com>
Sent: Monday, March 16, 2020 1:26 PM
To: Frockt, Sen. David
Subject: Fwd: Capital Gains

---------- Forwarded message ---------
From: **David Frockt** <dsfrockt@gmail.com>
Date: Thu, Oct 16, 2014 at 4:23 PM
Subject: Re: Capital Gains
To: Kevin Ranker <kevinr@kevinranker.com>
Cc: Hesselholt, Claire <Claire.Hesselholt@leg.wa.gov>, Frockt, Sen. David <David.Frockt@leg.wa.gov>, Kendall Farley <kendall.farley@leg.wa.gov>

I think Dean was involved in this, but I am not sure. I had spoken to him separately as well, but wasn't sure if he was coordinating with Claire...

On Thu, Oct 16, 2014 at 11:18 AM, Kevin Ranker <kevinr@kevinranker.com> wrote:

This is very interesting Claire. Thank you.

I look forward to speaking with you more about this soon. Can you also make sure Dean has this so that he may include this detail in the deck he is preparing for me.

Thanks!

From: "Hesselholt, Claire" <Claire.Hesselholt@leg.wa.gov>
Date: Thursday, October 16, 2014 10:42 AM
To: "Ranker, Sen. Kevin" <Kevin.Ranker@leg.wa.gov>, Kevin Ranker <kevinr@kevinranker.com>
Cc: "Frockt, Sen. David" <David.Frockt@leg.wa.gov>, Frockt Gmail <dsfrockt@gmail.com>
Subject: FW: Capital Gains

This is the capital gains data that Senator Frockt had asked for; you can see it is broken down by rate & then by exemption level.

This does NOT include interest & dividends, as those are not taxed as capital gains. (Dividends were but aren't any more).

All the estimates are done using federal income tax data, so once we start manipulating the tax, we introduce uncertainty into the estimates. Of course, since these are estimates, they are uncertain by their nature.

I initially said we could not separate out tangible vs intangible assets, but that is not totally true. There is federal data that breaks out the type of gains by asset class, but it is old (the most current is 2009) and it is somewhat atypical, because 2009 was during the recession, when we had somewhat unusual capital gains patterns. So we could make some big gross claims about the type of assets, but I would not be all that confident. It is true that the assets are primarily intangibles.

This is pretty interesting in terms of rates and amounts projected.

I've asked your LAs to set up a time for us to talk.

From: Hesselholt, Claire
Sent: Monday, October 13, 2014 1:31 PM
To: Frockt, Sen. David (David.Frockt@leg.wa.gov); 'David Frockt'
Cc: Carlson, Dean
Subject: Capital Gains

I am attaching the estimates on capital gains. They used the Murray draft capital gains tax. So the tax is imposed on individuals only; gains on the sale of a principal residence is excluded, no tax on pension payouts, there's some exemptions around certain types of timber, etc.

The revenue folks called to reiterate the volatility of the tax. They actually have newer data than 2011, but because of the increases in capital gains tax rates in 2013, there was significant, atypical increase in 2012. So the estimates are calculated using a 10-year average of capital gains. They are all based on federal data, so we've no way of separating out tangible & intangible assets.

As you can see by the table the exemption level doesn't really have a huge impact of the amount of money projected. It does have a big impact on the number of people impacted . So that's worth thinking about.

Let me know if you have any questions.

Claire Hesselholt
Chief of Staff
Senate Democratic Caucus
(360) 786-7342

--
David Frockt
State Senator, 46th District
North Seattle, Lake Forest Park, Kenmore

Legislative Email
david.frockt@leg.wa.gov

Twitter
@dsfrockt

Stratton, Randi

From: David Frockt <dsfrockt@hotmail.com>
Sent: Thursday, March 19, 2020 9:05 AM
To: Frockt, Sen. David
Subject: Fw: Capital Gains Legal Analysis
Attachments: SEADOCS 51183589 State Capital Gains Tax Short Legal Analysis 3-1.pdf

---

From: David Frockt <dsfrockt@hotmail.com>
Sent: Wednesday, January 18, 2012 5:50 AM
To: davd frockt <david.frockt@leg.wa.gov>
Subject: Capital Gains Legal Analysis

I wanted to share with you the comments from Phil Talmadge. I asked him to take a look at Hugh Spitzer's analysis on the potential constitutionality of the capital gains tax proposal which I have also attached. As you can see, he was not impressed.

I recognize that the various groups are unhappy with him for his role in arguing that I-1098 was likely unconstitutional. However, I have worked with him on numerous occasions since he left the bench on appellate matters and have always found his analysis spot on. He also wrote the dissent in the Harbour Village case, which he mentions below, which was the last major case where the Court had the opportunity to evaluate whether income was still property. I think he has a pretty good read on this issue.

I want to be clear, I am willing to consider the capital gains tax proposal - but I think we need to be absolutely clear that there is no guarantee this thing will be upheld as valid under our constitution for two reasons. One - I have yet to quite understand how a tax calculated on income reported on a schedule to your federal 1040 form is going to pass the smell test of being a tax on the transaction underlying the sale of the asset. Yet, that is the foundation of Hugh's analysis. I think that is what Phil is getting at. Second, I think if it is held as income - the five percent rate takes it well above the uniformity clause rate of one percent and thus makes it vulnerable on that ground as well as on the ground that the $10,000 exclusion is not valid because it create two separate classes of taxpayers. We should probably really talk deeply with our tax experts on staff about their take.

Additionally, I think this thing would be best to be structured as a phase in revenue source down the road, because my guess is it would take at least 1 to 2 years (or more) to have the issue decided in the Courts.

So my take is this - if we want to pursue a capital gains tax - I think the smart play is to do it one of two ways. If you have a 5% rate, write into the legislation a fall back position that if the Courts rule it unconstitutional, the rate would revert to a 1% rate across the board with no exclusions. I can see how politically problematic that is in the legislation, so the other alternative is to simply structure it as a 1% tax. It doesn't raise nearly the revenue - maybe 100 to 150 million, but it could be enough to either buy down the sales tax or buy back critical funding like higher education. Even that may get a challenge, but I think its more likely to be upheld. We are playing probabilities here.

Incidentally, this is precisely why Reykdal and I limited our proposed tax on corporate and personal income to 1%. Keep it within the current constitutional parameters. The Budget and Policy Center has done great work on this, but you can't test their proposition until the cap gains tax actually passes. And one of the reasons you have a difficult time passing these things is the argument that it is likely unconstitutional. So if you keep it within the current parameters as the law exists today, it strikes me as you have a much better chance of having this policy upheld. It would still more progressive because I think something like 88% of Washington taxpayers report no capital gains income. You make it much more difficult for the Court to throw it out and you may even get a ruling from the Court that they are no longer going to adhere to the "income is property" doctrine, thereby laying the foundation for a new tax structure down the road.

Incidentally, I met with Rodney Tom and stuff the other day on K-12 finance, Ross and Zarelli's proposals etc. We need a little more guidance on what you guys are looking for in terms of an outcome- so perhaps we can all get together to discuss.

Talk to you soon.

David

From: phil@tal-fitzlaw.com
To: dsfrockt@hotmail.com
Date: Tue, 27 Dec 2011 12:38:59 -0800
Subject: RE: Capital gains legal memo

My short response is that Hugh is dreaming. He's something of a one-man band on this issue. He keeps thinking the Court will retreat from its view that income is property. The Court had a chance to do so a few years ago in Harbour Village, a case involving an assessment on apartments in Mukilteo. Hugh cites this case deep in a footnote in the last page of his memo. It declined to do so. With Wiggins and Gonzalez's addition to the Court there might be more interest on the Court in changing the law, but the political fall out for any of the justices going that way will be immense. It opens the door to the income tax and you and I both know how little the voters want that, as Bill Gates, Sr. learned.
Phil

From: David Frockt [mailto:dsfrockt@hotmail.com]
Sent: Thursday, December 22, 2011 3:44 PM
To: Phil Talmadge
Subject: FW: Capital gains legal memo

Phil

Hope you are doing well this holiday season. As you may have seen, I was appointed to fill out the year for Scott White who passed away so sadly a few weeks ago. So I am now serving the 46th in the State Senate.

I was wondering if you would be willing (and I understand completely if you prefer not to give free shorthand legal advice) as to your take on the basic question that Hugh answers in this memo. This is a proposal that is gaining some currency among some in the legislature.

Thanks again for all your work on Arnold. I heard that our client got an excellent result largely due to your work on the appeal. I am not too involved in the firm at this point, focusing most of my energy on my leg work and family. Enjoying it for now.

Hope to catch up in person soon.

Best,