

State Senator: “We don’t care whether a capital gains tax is an income tax”

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Special to the WPC Blog

With the state’s budget outlook in the news, discussion of a capital gains tax is occurring with greater frequency. There is one piece of information that is consistently left out, however: the fact that a capital gains tax is an income tax. This important detail dramatically changes the political and legal framework for the debate.

On the political side is the fact the voters have rejected 10 straight income tax proposals, including 6 proposed constitutional amendments. On the legal side is the fact a graduated income tax would require a constitutional amendment.

There is near universal agreement that adopting a constitutional amendment to allow a graduated income tax is extremely unlikely. So, what is the motivation with these perennial proposals for a capital gains income tax?

Let’s see what the advocates of the tax proposal say.

Sen. Jamie Pedersen (D-Seattle) was recently quoted in an interview saying:

“Republicans and Jason Mercier and company have been agitating for years that a capital gains tax is an income tax, and expressing horror and disbelief that anyone could claim that it’s not an income tax. That’s not actually the question. We don’t care whether a capital gains tax is an income tax because an income tax is not something that shows up in our constitution.”

Washington’s state Supreme Court has consistently ruled that income is property (meaning you own it). This is why a graduated income tax has been prohibited without a constitutional amendment and a tax on income must conform with the constitutional restrictions on property taxes.

As for those who unequivocally says a capital gains tax is an income tax, I’m in good company. Every

June, 29, 2020

state in the country and the federal Internal Revenue Service (IRS) agree. According to the 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.”

Whether or not the advocates of this tax proposal care that it is an income tax, this fact is not in dispute anywhere outside of Washington state. So, what is the real goal? Thanks to public records we can clearly answer that question.

Here are a couple of emails that Sen. Pedersen sent discussing his support for a capital gains income tax:

April 30, 2018: “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.” (emphasis added)

December 15, 2018: “I personally believe that adopting a capital gains tax is one of the best things we could do to help advance the possibility of an income tax in our state, because it could help resolve the legal uncertainty about whether an income tax is a ‘property tax’ subject to constitutional limitations. Until that happens, it would take 2/3 majorities in the legislature (and a vote of the people) to adopt an income tax, which makes it very unlikely to happen.”(emphasis added)

About that legal “uncertainty,” here is what the state Supreme Court said in 1960:

“The argument is again pressed upon us that these cases were wrongly decided. The court is unwilling,

however, to recede from the position announced in its repeated decisions. Among other things, the attorney general urges that the result should now be different because the state is confronted with a financial crisis. If so, the constitution may be amended by vote of the people. Such a constitutional amendment was rejected by popular vote in 1934.”

Not liking the consistent message from the courts does not make the legal facts uncertain.

Remember, the voters have already rejected 6 constitutional amendments to allow a graduated income tax. The state Supreme Court this year also refused to hear the Seattle income tax case that was trying to challenge these prior court rulings.

The proponents of a capital gains tax may not care that it is an income tax, but this fact is not in dispute beyond those trying to set up a legal case with the hope that judges will now do what the voters have consistently refused.



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