



# Update on Capital Gains Tax Proposal

# SB 5096: Concerning an excise tax on gains from the sale or exchange of certain capital assets

## Bill History

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### 2021 REGULAR SESSION

- Jan 6 Prefiled for introduction.
- Jan 11 First reading, referred to Ways & Means. ([View Original Bill](#))
- Jan 14 Public hearing in the Senate Committee on Ways & Means at 4:00 PM.  
([Committee Materials](#))

# SB 5096 – Key Findings

1. There is no question SB 5096 would impose a 9% income tax in Washington state. The Federal Internal Revenue Service (IRS) unequivocally says a capital gains tax is an income tax.
2. If enacted, SB 5096 would be the first stand-alone income tax on capital gains in the country.
3. No other state without a personal income tax has a capital gains tax, and those states that do tax capital gains income collect the tax through their state income tax code.

# SB 5096 – Key Findings

4. Officials in every state revenue department across the country agree that income taxes on capital gains are extremely volatile and unpredictable.
5. If enacted, the income tax on capital gains would certainly face legal challenges for being an unconstitutional tax on income.
6. Washington’s Department of Commerce has made the state’s lack of an income tax a major selling point for its “Choose Washington” campaign.

# What's the Emergency?

NEW SECTION. **Sec. 20.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**Although the proposed 9% income tax on capital gains is not owed until April 2023, the bill includes an emergency clause. This prevents the people from exercising their constitutional right of referendum on the proposal.**



## “Excise Tax” on Capital Gains?

# What Type of Tax is a Capital Gains Tax? It is an Income Tax.



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,

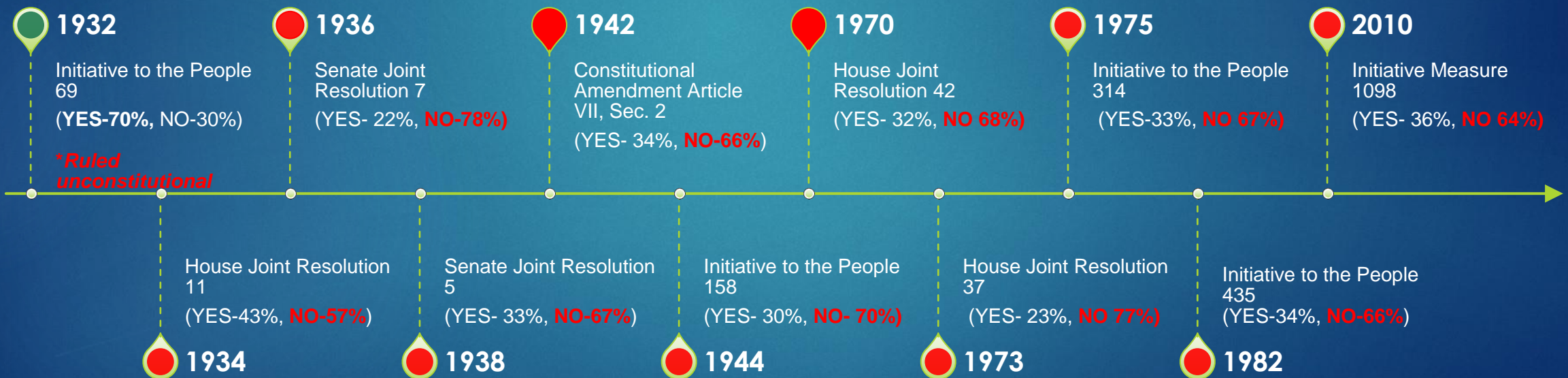
This is in response to your inquiry regarding the tax treatment of capital gains. You ask whether tax on capital gains is considered an excise tax or an income tax? It is an income tax. More specifically, capital gains are treated as income under the tax code and taxed as such.

# WA Department of Revenue:

- “The federal capital gains tax is characterized as an income tax. One potential challenge to a capital gains tax proposal is that opponents may characterize the Washington capital gains tax as an income tax and argue that it is not allowed under the Washington constitution”
- "The IRS considers taxes on investment income (dividends, a tax on net gains from the sale or exchange of a capital asset, or tax on the net taxable income of an unincorporated business) an income tax"
- “susceptible to constitutional challenge as an income tax prohibited by the Washington state constitution”



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



# Setting Up Income Tax Lawsuit

**From:** Pedersen, Sen. Jamie  
**Sent:** Saturday, December 15, 2018 3:09 PM  
**To:** Paul Janos  
**Subject:** RE: Copy of email to Inslee re capital gains tax

Dear Mr. Janos –

Thanks for your message and your support for an income tax. 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.

Best wishes, Jamie

Senator Jamie Pedersen  
43rd Legislative District  
[jamie.pedersen@leg.wa.gov](mailto:jamie.pedersen@leg.wa.gov)

Olympia Office  
JAC 235  
P.O. Box 40443

# State Supreme Court Ruling on Income Taxes 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."

# Capital Gains are Extremely Volatile




# CA 2014 Constitutional Amendment

“California's revenue system is notoriously volatile. This results in large part from reliance on income tax. While income tax rates are not dramatically progressive, the incomes of wealthy Californians do fluctuate and therefore their income taxes they pay also fluctuate.”

“This constitutional amendment separates state spending from the rollercoaster of revenue volatility. This measure takes capital gains revenues that make up more than 8% of the General Fund - the average for the last 10 years - off the table rather than being used for unsustainable permanent tax cuts or ongoing programs.”

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0001-0050/acax2\\_1\\_cfa\\_20140515\\_091436\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/acax2_1_cfa_20140515_091436_asm_floor.html)

# Do Taxes Matter?



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**CHOOSE Washington**  
Washington State Department of Commerce

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**A competitive tax rate.**

**W**ashington State offers businesses many tax advantages, including no personal or corporate income tax and tax incentives, deferrals and credits for specific high growth industries.

**About Washington**

Translate »

# Budget Outlook

## 2021 Session (Assembly Days Outlook)

### Near General Fund; \$ in billions

	<u>2019-21</u>	<u>2021-23</u>	<u>2023-25</u>
1. Beginning Balance	\$2.0	\$0.9	-\$0.6
2. Revenue Forecast (Nov 2020)	\$51.0	\$54.7	\$58.0
3. 4.5% Growth Rate Assumption	-	-	\$1.4
4. Other Resource Changes	<u>-\$0.2</u>	<u>-\$0.5</u>	<u>-\$0.5</u>
<b>5. Total Revenue &amp; Resources</b>	<b>\$52.8</b>	<b>\$55.1</b>	<b>\$58.3</b>
6. Enacted Appropriations	\$53.7	\$53.7	\$56.1
7. CFL Adjustments	-	\$1.6	-\$0.1
8. ML Adjustments	-\$1.1	\$0.7	\$3.0
9. Policy Level Adjustments	\$0	\$0	\$0
10. Reversions	<u>-\$0.7</u>	<u>-\$0.3</u>	<u>-\$0.3</u>
<b>11. Revised Appropriations</b>	<b>\$51.9</b>	<b>\$55.7</b>	<b>\$58.7</b>
<b>12. Projected Ending Balance</b>	<b>\$0.9</b>	<b>-\$0.6</b>	<b>-\$0.4</b>
<b>13. Budget Stabilization Account</b>	<b>\$1.9</b>	<b>\$2.5</b>	<b>\$3.1</b>
<b>14. Total Reserves</b>	<b>\$2.8</b>	<b>\$1.9</b>	<b>\$2.7</b>



# Historical Spending Increases

**Statewide  
Expenditure History - Operating  
Funds Subject to Outlook (NGF-O)**  
(Dollars in Thousands)

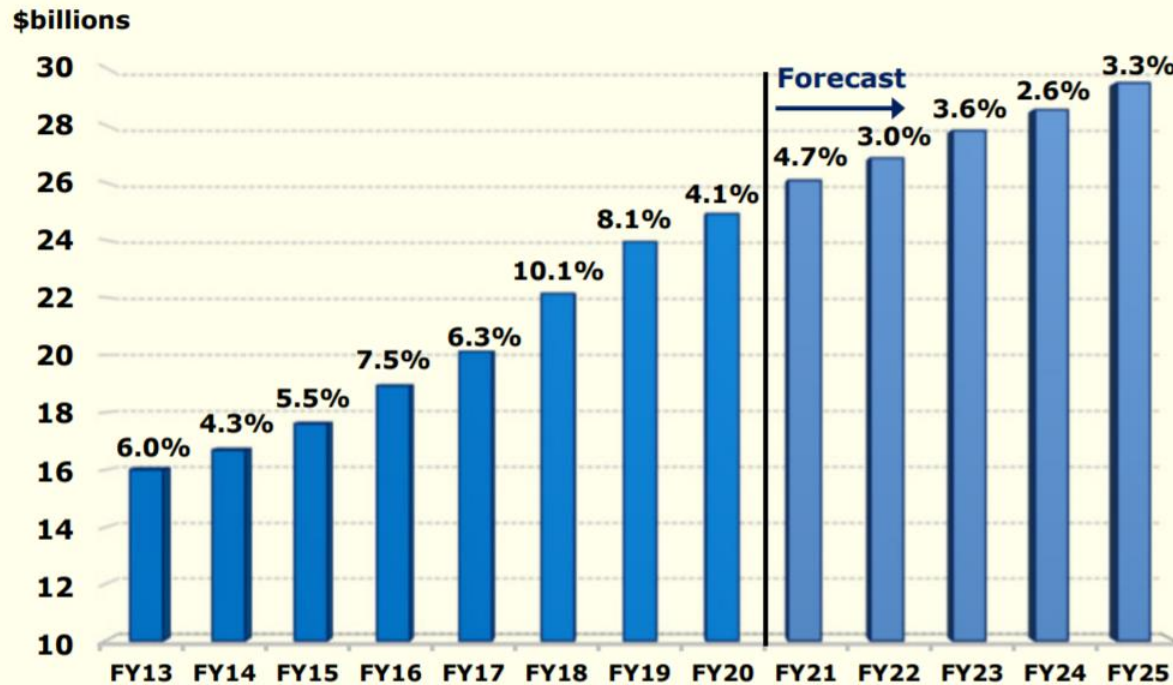
	<b>2007-09</b>	<b>2009-11</b>	<b>2011-13</b>	<b>2013-15</b>	<b>2015-17</b>	<b>Final 2017-19</b>	<b>Enacted 2019-21</b>
⊕ Legislative	154,856	145,583	134,436	135,242	149,341	152,475	194,153
⊕ Judicial	243,709	222,860	221,371	241,689	269,103	289,964	340,797
⊕ Governmental Operations	566,365	473,505	467,753	529,572	563,470	602,460	766,204
⊕ Other Human Services	7,137,731	6,274,355	6,729,297	6,886,534	6,863,046	7,552,016	10,637,039
⊕ DSHS	4,780,223	4,441,639	4,545,034	4,946,284	5,534,607	6,498,532	6,469,997
⊕ Natural Resources	512,247	360,199	298,942	260,775	289,757	351,731	500,460
⊕ Transportation	80,965	73,410	77,417	69,014	82,361	92,915	126,118
⊕ Public Schools	12,942,831	12,945,292	13,549,500	15,265,522	18,122,604	22,654,762	27,248,209
⊕ Higher Education	3,516,215	3,090,908	2,731,171	3,083,559	3,552,665	3,711,185	4,051,203
⊕ Other Education	181,295	161,170	159,916	202,288	342,241	222,477	69,744
⊕ Special Appropriations	1,998,358	2,195,175	2,331,010	2,023,177	2,436,298	2,555,086	2,906,277
<b>Total</b>	<b>32,114,794</b>	<b>30,384,095</b>	<b>31,245,848</b>	<b>33,643,658</b>	<b>38,205,492</b>	<b>44,683,604</b>	<b>53,310,201</b>



# Revenues Growing



## Forecast of funds subject to the budget outlook process\* by fiscal year



\*Funds subject to the budget outlook process are General Fund-State plus Education Legacy Trust, Washington Opportunities Pathway and Workforce Education Investment Accounts  
Source: ERFC forecast, November 2020

WASHINGTON STATE ECONOMIC AND REVENUE FORECAST COUNCIL

# Revenue Still Increasing Overall

From the November 2020 Revenue Forecast:

**“Total state revenues are now expected to grow 10.7% between the 2017-19 and 2019-21 biennia and 7.2% between the 2019-21 and 2021-23 biennia.”**

# 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. Graduated income taxes, however, are the most volatile taxes.

# Standard & Poor's 2020 Bond Rating for the State:

**“Washington's revenues have historically exhibited less cyclicity than others (due in part to the lack of a personal income tax) . . . we have observed that capital gains-related tax revenues are among the most cyclical and difficult to forecast revenues in numerous other states.”**

# Resources

<https://www.washingtonpolicy.org/publications/detail/sb-5096-would-impose-a-9-income-tax-on-capital-gains-in-washington-state>

<https://www.washingtonpolicy.org/publications/detail/choose-washington-no-income-tax>

<https://www.washingtonpolicy.org/publications/detail/lots-of-income-tax-discussion-in-nonpartisan-bill-report-for-sb-5096-capital-gains>

<https://www.washingtonpolicy.org/publications/detail/governor-says-capital-gains-tax-not-an-income-tax-rest-of-the-country-disagrees>

<https://www.washingtonpolicy.org/publications/detail/lawmakers-emails-confirm-goal-for-capital-gains-proposal-is-broad-income-tax>

<https://www.washingtonpolicy.org/publications/detail/a-warning-from-france-on-wealth-taxes>

# Questions? Want to receive updates or a free 6-month WPC membership?

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