

Proposed Substitute House Bill 2156

By Representative Tarleton

H-2741.1

HB 2156 is an act relating to investing in quality prekindergarten, K-12 and post-secondary opportunities throughout Washington with excise taxes on sales and extraordinary profits of high valued assets. The bill includes changes to the Real Estate Excise Tax (REET), authorizes a tax on capital gains, and makes changes to the Education Legacy Trust Account.

Proposed Substitute House Bill 2156

The following changes are made in the proposed substitute:

- Changes the exemption for "property used in a trade or business" to apply to tangible property which is subject to wear, tear, decay or decline from natural causes, exhaustion, or obsolescence, including tangible personal property, real property excluding land, and intangible property having a definable life.
- Modifies the REET revenue distribution schedule to reduce the impact to accounts that currently receive a REET revenue distribution.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2741.1/19

ATTY/TYPIST: JA:amh

BRIEF DESCRIPTION: Investing in quality prekindergarten, K-12, and postsecondary opportunities throughout Washington with excise taxes on sales and extraordinary profits of high valued assets.

1 AN ACT Relating to investing in quality prekindergarten, K-12,
2 and postsecondary opportunities throughout Washington with excise
3 taxes on sales and extraordinary profits of high valued assets;
4 amending RCW 83.100.230 and 82.45.060; adding new sections to chapter
5 82.45 RCW; adding a new section to chapter 82.04 RCW; adding a new
6 section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW;
7 creating new sections; prescribing penalties; and declaring an
8 emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **Part I**

11 **Intent**

12 NEW SECTION. **Sec. 101.** (1) Washington's tax system is the most
13 upside down and regressive in the nation, allowing those who earn the
14 most to pay the least percentage of their income in taxes. As a
15 percentage of household income, middle-income families in Washington
16 pay two to four times the amount of taxes as compared to top earners
17 in the state. Low-income Washingtonians pay six times more in taxes
18 than our wealthiest residents. Building a tax system that is fair,
19 balanced, and works for everyone is imperative. The legislature finds
20 a tax system that strengthens the middle-class economy, helps low-

1 income and senior residents, and asks the wealthiest among us, who
2 are benefiting the most from our strong economy and system of laws
3 and government, to contribute their fair share is essential to help
4 all Washingtonians grow and thrive.

5 (2) The legislature finds that the state faces increasingly
6 complex funding obligations, including the constitutional duty to
7 amply fund basic education for K-12 students, the need for continued
8 support of both the earliest learners and higher education, and the
9 challenges working families face in affording quality child care and
10 prekindergarten. It is the state's duty and is necessary for the
11 support of state government and its existing institutions to generate
12 revenue for these vital public services.

13 (3) The excise tax on capital gains is a tax on the one-time,
14 voluntary sale or transfer of a capital asset, not a tax on ownership
15 of the asset itself. This excise tax is paid only by those Washington
16 residents who engage in such voluntary sales or transfers and is
17 measured by the realization of gain on the transaction. In order to
18 protect against further regressive impacts of the tax system,
19 encourage the everyday investments Washingtonians of all income
20 levels strive for, and support our economy, this excise tax will not
21 apply to capital gains realized by certain sales and transfers. All
22 revenue collected from this excise tax will be dedicated to the
23 education of Washingtonians through deposit in the state's education
24 legacy trust account.

25 (4) The legislature finds that the flat real estate excise tax
26 rate structure disproportionately impacts the long-term financial
27 well-being of working families and communities of color. The
28 legislature finds that home equity constitutes the largest share of
29 household net worth for the average American. The legislature finds
30 that many senior citizens rely on the profits from the sale of their
31 owned home to support themselves in retirement. The legislature
32 concludes that changing the flat real estate excise tax rate
33 structure to a marginal and progressive structure will provide
34 revenues for state programs while, at the same time, benefiting
35 working families.

36 (5) The revenue collected as the result of taxes imposed on the
37 sale or transfer of capital assets will be deposited in the education
38 legacy trust account and dedicated to the education of Washingtonians
39 from our earliest learners to our college and university students.
40 Changing the real estate excise tax to a graduated tax will raise

revenue to continue support of safe, affordable, and healthy communities.

Part II
Distribution of Revenue

NEW SECTION. **Sec. 201.** All revenue from taxes collected under part IV of this act, including penalties and interest on such taxes, must be deposited into the education legacy trust account created in RCW 83.100.230.

NEW SECTION. **Sec. 202.** A new section is added to chapter 82.45 RCW to read as follows:

(1) Subject to the transfers required by this section, all proceeds of the tax imposed under RCW 82.45.060 must be deposited into the general fund as provided in RCW 82.45.180.

(2)(a) By the twenty-fifth day of every March, June, September, and December, beginning March 25, 2020, the department must:

(i) Calculate the proceeds of the tax imposed under RCW 82.45.060 and collected during the most recently completed three calendar-month period. However, for the calculation due March 25, 2020, the department must calculate the proceeds of the tax collected during the most recently completed two calendar-month period;

(ii) Estimate the amount of proceeds of the tax imposed under RCW 82.45.060 that would have been generated during the most recently completed three calendar-month period, if the rate of this tax had been one and twenty-eight one-hundredths percent for all taxable transactions during the most recently completed three calendar-month period. However, for the estimate due March 25, 2020, the department must base its estimate on the most recently completed two calendar-month period. In making its estimates under this subsection (2)(a)(ii), the department must use as much actual tax collection data as practicable and estimate the tax proceeds for counties that do not submit real estate excise tax affidavit data electronically to the department; and

(iii) Calculate the amount determined by subtracting the estimated amount pursuant to (a)(ii) of this subsection (2) from the amount calculated pursuant to (a)(i) of this subsection (2).

(b) The department must notify the state treasurer as soon as practicable of the amounts required to be transferred from the general fund pursuant to subsection (3) of this section.

(3) By the last working day of every March, June, September, and December, the state treasurer must transfer from the general fund:

(a) Beginning March 31, 2020, through June 30, 2023, an amount equal to:

(i) Two percent of the estimated amount under subsection (2)(a)(ii) of this section into the public works assistance account created in RCW 43.155.050;

(ii) Four and one-tenth percent of the estimated amount under subsection (2)(a)(ii) of this section into the education legacy trust account created in RCW 83.100.230;

(iii) One and six-tenths percent of the estimated amount under subsection (2)(a)(ii) of this section into the city-county assistance account created in RCW 43.08.290; and

(iv) Fifty-five and one-half percent of the amount calculated pursuant to subsection (2)(a)(iii) of this section into the education legacy trust account created in RCW 83.100.230.

(b) Beginning September 30, 2023, an amount equal to:

(i) Six and one-tenth percent of the estimated amount under subsection (2)(a)(ii) of this section into the public works assistance account created in RCW 43.155.050;

(ii) One and six-tenths percent of the estimated amount under subsection (2)(a)(ii) of this section into the city-county assistance account created in RCW 43.08.290; and

(iii) Fifty-five and one-half percent of the amount calculated pursuant to subsection (2)(a)(iii) of this section into the education legacy trust account created in RCW 83.100.230.

(4) Once the state treasurer makes the distributions required under this section, the department's calculations and estimates upon which the distributions were based are final and may not be adjusted for any reason.

(5) For purposes of this section, "proceeds" means taxes collected by the department and county treasurers under this chapter, less the counties' share of proceeds used to defray their costs of collection as provided in RCW 82.45.180.

Sec. 203. RCW 83.100.230 and 2017 3rd sp.s. c 1 s 991 are each amended to read as follows:

1 The education legacy trust account is created in the state
2 treasury. Money in the account may be spent only after appropriation.
3 Expenditures from the account may be used only for support of the
4 common schools, for support of early learning programs, and for
5 expanding access to higher education through funding for new
6 enrollments and financial aid, and other educational improvement
7 efforts. ~~((During the 2015-2017 and 2017-2019 fiscal biennia~~
8 ~~appropriations from the account may be made for support of early~~
9 ~~learning programs. It is the intent of the legislature that this~~
10 ~~policy will be continued in subsequent fiscal biennia.))~~

11 **Part III**
12 **Real Estate Excise Tax**
13

14 **Sec. 301.** RCW 82.45.060 and 2017 3rd sp.s. c 10 s 13 are each
15 amended to read as follows:

16 (1) There is imposed an excise tax upon each sale of real
17 property ((at the rate of)). Through December 31, 2019, the rate of
18 this tax is one and twenty-eight one-hundredths percent of the
19 selling price. ((Beginning July 1, 2013, and ending June 30, 2023,))
20 Beginning January 1, 2020, the tax under this section is computed
21 based on the selling price, or portion thereof, multiplied by the
22 applicable rate or rates provided in subsection (3) of this section.

23 (2)(a) Beginning July 1, 2013, through December 31, 2019, the
24 proceeds of the tax under this section must be deposited as follows:

25 (i) An amount equal to two percent of the proceeds of this tax
26 must be deposited in the public works assistance account created in
27 RCW 43.155.050 ((, and));

28 (ii) An amount equal to four and one-tenth percent must be
29 deposited in the education legacy trust account created in RCW
30 83.100.230 ((. Thereafter, an amount equal to six and one-tenth
31 percent of the proceeds of this tax to the state treasurer must be
32 deposited in the public works assistance account created in RCW
33 43.155.050. Except as otherwise provided in this section,));

34 (iii) An amount equal to one and six-tenths percent of the
35 proceeds of this tax to the state treasurer must be deposited in the
36 city-county assistance account created in RCW 43.08.290; and

37 (iv) The remainder of this tax must be deposited in the general
38 fund.

1 (b) Beginning January 1, 2020, the proceeds of the tax imposed in
2 this section must be deposited as provided in section 202 of this
3 act.

4 (3) Beginning January 1, 2020, the rate of the tax imposed under
5 this section is as follows:

6 (a) For the sale of real property that is classified as
7 undeveloped land, timberland, agricultural land, or water or mineral
8 rights, one and twenty-eight one-hundredths percent of the selling
9 price.

10 (b) For the sale of real property with any classification other
11 than those provided in (a) of this subsection:

12 (i) If the selling price is equal to or less than five hundred
13 thousand dollars, nine-tenths percent of the selling price;

14 (ii) If the selling price is greater than five hundred thousand
15 dollars:

16 (A) One and twenty-eight one-hundredths percent of any portion of
17 the selling price that is equal to or less than one million five
18 hundred thousand dollars;

19 (B) Two percent of any portion of the selling price that is
20 greater than one million five hundred thousand dollars and equal to
21 or less than seven million dollars; and

22 (C) Three percent of any portion of the selling price that is
23 greater than seven million dollars.

24 (4) Beginning July 1, 2022, and every fourth year thereafter:

25 (a) The department must adjust the selling price threshold in
26 subsection (3)(b)(i) of this section to reflect the lesser of the
27 growth of the consumer price index for shelter or five percent. If
28 the growth is equal to or less than zero percent, the current selling
29 price threshold continues to apply.

30 (b) The department must adjust the selling price thresholds in
31 subsection (3)(b)(ii)(A) through (C) of this section by the dollar
32 amount the selling price threshold in subsection (3)(b)(i) of this
33 section if increased under (a) of this subsection (4).

34 (c) The department must publish updated selling price thresholds
35 by September 1, 2022, and September 1st of every fourth year
36 thereafter. Updated selling price thresholds will apply beginning
37 January 1st of every fourth year, beginning January 1, 2023. Adjusted
38 selling price thresholds must be rounded to the nearest one thousand
39 dollars. No changes may be made to adjusted selling price thresholds
40 once such adjustments take effect.

1 (d) The most recent selling price threshold becomes the base for
2 subsequent adjustments.

3 (e) The department must report the updated selling price
4 thresholds to the fiscal committees of the legislature within six
5 months of publication.

6 (5) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Agricultural land" means farm and agricultural land and farm
9 and agricultural conservation land, as those terms are defined in RCW
10 84.34.020, including any structures on such land.

11 (b) "Consumer price index for shelter" means the most current
12 seasonally adjusted index for the shelter expenditure category of the
13 consumer price index for all urban consumers (CPI-U) as published by
14 July 31st by the bureau of labor statistics of the United States
15 department of labor.

16 (c) "Development" means any improvement, alteration,
17 modification, maintenance, or use of land that requires a permit or
18 approval from a state or local government permitting authority,
19 including, but not limited to, a building permit, grading permit,
20 shoreline substantial development permit, conditional use permit,
21 special use permit, zoning variance or reclassification, subdivision,
22 short subdivision, urban planned development, binding site plan, site
23 development permit, right-of-way use permit, or hydraulic project
24 approval.

25 (d) "Growth of the consumer price index for shelter" means the
26 percentage increase in the consumer price index for shelter as
27 measured from data published by the bureau of labor statistics of the
28 United States department of labor by July 31st for the most recent
29 three-year period for the selling price threshold adjustment in 2022,
30 and the most recent four-year period for subsequent selling price
31 threshold adjustments.

32 (e) "Impervious surface" means a hard surface area that either
33 prevents or retards the entry of water into the soil mantle as under
34 natural conditions before development or that causes water to run off
35 the surface in greater quantities or at an increased rate of flow
36 from the flow present under natural conditions before development.
37 "Impervious surface" includes, but is not limited to, roofs,
38 walkways, patios, driveways, parking lots, storage areas, areas that
39 are paved, graveled or made of packed or oiled earthen materials or
40 other surfaces that similarly impede the natural infiltration of

1 surface water or stormwater. "Impervious surfaces" include areas
2 covered with any type of permeable pavement, such as porous asphalt,
3 pervious concrete, permeable interlocking concrete pavers, and other
4 permeable pavers.

5 (f) "Open space land" means land classified as open space land
6 under chapter 84.34 RCW, including any structures on such land.

7 (g) "Timberland" means land classified under chapter 84.34 RCW or
8 designated under chapter 84.33 RCW, including any structures on such
9 land, and standing timber sold apart from the land upon which it
10 sits.

11 (h) "Undeveloped land" means any land unaltered from the natural
12 state by the construction, creation, or addition of structures or
13 impervious surfaces.

14 NEW SECTION. Sec. 302. A new section is added to chapter 82.45
15 RCW to read as follows:

16 The department may treat multiple sales as a single sale as
17 necessary to prevent the parties from reducing the tax liability
18 under this chapter when it appears that the parties have engaged in a
19 concerted plan intended from the outset to achieve a reduced
20 effective tax rate than had the parties collapsed the separate sales
21 into a single sale at the outset. The department is encouraged to
22 provide guidance to the public concerning the department's
23 implementation of this section, whether by rule or otherwise.

24 **Part IV**
25 **Capital Gains Tax**

26 NEW SECTION. Sec. 401. The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Accessory dwelling unit" means a separate habitable living
30 area that is subordinate to the principal single-family dwelling
31 unit, which is either internal to, attached to, or located on the
32 same property tax parcel as, the principal single-family dwelling
33 unit.

34 (2) "Adjusted capital gain" means federal net long-term capital
35 gain:

1 (a) Plus any amount of loss from a sale or exchange that is
2 exempt from the tax imposed in this chapter, to the extent such loss
3 was included in calculating federal net long-term capital gain; and

4 (b) Less any amount of gain from a sale or exchange that is
5 exempt from the tax imposed in this chapter, to the extent such gain
6 was included in calculating federal net long-term capital gain.

7 (3) "Capital asset" has the same meaning as provided by Title 26
8 U.S.C. Sec. 1221 of the internal revenue code and also includes any
9 other property if the sale or exchange of the property results in a
10 gain that is treated as a long-term capital gain under Title 26
11 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

12 (4) "Federal net long-term capital gain" means the net long-term
13 capital gain reportable for federal income tax purposes determined as
14 if Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 of the internal revenue
15 code did not exist.

16 (5) "Individual" means a natural person.

17 (6) "Internal revenue code" means the United States internal
18 revenue code of 1986, as amended, as of the effective date of this
19 section, or such subsequent date as the department may provide by
20 rule consistent with the purpose of this chapter.

21 (7) "Long-term capital asset" means a capital asset that is held
22 for more than one year.

23 (8)(a) "Resident" means an individual:

24 (i) Who is domiciled in this state during the taxable year,
25 unless the individual (A) maintained no permanent place of abode in
26 this state during the entire taxable year, (B) maintained a permanent
27 place of abode outside of this state during the entire taxable year,
28 and (C) spent in the aggregate not more than thirty days of the
29 taxable year in this state; or

30 (ii) Who is not domiciled in this state during the taxable year
31 but maintained a place of abode and was physically present in this
32 state for more than one hundred eighty-three days during the taxable
33 year.

34 (b) For purposes of this subsection, "day" includes any portion
35 of a day, except that a continuous period of twenty-four hours or
36 less may not constitute more than one day.

37 (c) An individual who is a resident under (a) of this subsection
38 is a resident for that portion of a taxable year in which the
39 individual was domiciled in this state or maintained a place of abode
40 in this state.

(9) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(10) "Taxpayer" means an individual subject to tax under this chapter.

(11) "Washington capital gains" means an individual's adjusted capital gains allocated to this state as provided in section 407 of this act, less:

(a) One hundred thousand dollars; or

(b) Two hundred thousand dollars for individuals filing joint returns under this chapter.

NEW SECTION. Sec. 402. (1) Beginning January 1, 2020, a tax is imposed on all individuals for the privilege of selling or exchanging long-term capital assets, or receiving Washington capital gains. The tax equals nine and nine-tenths percent multiplied by the individual's Washington capital gains.

(2) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section. No such losses may be carried back or carried forward to another taxable year.

(3)(a) The tax imposed in this section applies to (i) the sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or a beneficial owner of such assets at the time of the sale or exchange, or (ii) Washington capital gains otherwise realized by the taxpayer.

(b) For purposes of this chapter, an individual is a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S corporation, or trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

NEW SECTION. Sec. 403. This chapter does not apply to the sale or exchange of:

(1) Any residential dwelling along with the land upon which the dwelling is located. For the purposes of this subsection (1), "residential dwelling" means property consisting solely of (a) a single-family residence, a residential condominium unit, or a residential cooperative unit, including any accessory dwelling unit associated with such residence or residential unit, (b) a multifamily

1 residential building consisting of one or more common walls and fewer
2 than four units, or (c) a floating home as defined in RCW 82.45.032;

3 (2) Assets held under a retirement savings account under Title 26
4 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
5 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)
6 of the internal revenue code, a deferred compensation plan under
7 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
8 individual retirement account or individual retirement annuity
9 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
10 Roth individual retirement account described in Title 26 U.S.C. Sec.
11 408A of the internal revenue code, an employee defined contribution
12 program, an employee defined benefit plan, or a similar retirement
13 savings vehicle;

14 (3) Assets pursuant to or under imminent threat of condemnation
15 proceedings by the United States, the state or any of its political
16 subdivisions, or a municipal corporation;

17 (4) Cattle, horses, or breeding livestock held for more than
18 twelve months if for the taxable year of the sale or exchange, more
19 than fifty percent of the taxpayer's gross income for the taxable
20 year, including from the sale or exchange of capital assets, is from
21 farming or ranching;

22 (5) Agricultural land by an individual who has regular,
23 continuous, and substantial involvement in the operation of the
24 agriculture that meets the criteria for material participation in an
25 activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue
26 code for the ten years prior to the date of the sale or exchange of
27 the agricultural land;

28 (6) Property used in a trade or business if the property is
29 defined under Title 26 U.S.C. Sec. 167 or 179 of the internal revenue
30 code; and

31 (7) Timber, timberland, or the receipt of Washington capital
32 gains as dividends and distributions from real estate investment
33 trusts derived from gains from the sale or exchange of timber and
34 timberland. "Timber" means forest trees, standing or down, on
35 privately or publicly owned land, and includes Christmas trees and
36 short-rotation hardwoods. The sale or exchange of timber includes the
37 cutting or disposal of timber qualifying for capital gains treatment
38 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue
39 code.

1 NEW SECTION. **Sec. 404.** The tax imposed under this chapter is in
2 addition to any other taxes imposed by the state or any of its
3 political subdivisions, or a municipal corporation, with respect to
4 the same sale or exchange, including the taxes imposed in or under
5 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
6 RCW.

7 NEW SECTION. **Sec. 405.** In computing tax, there may be deducted
8 from the measure of tax amounts that the state is prohibited from
9 taxing under the Constitution of this state or the Constitution or
10 laws of the United States.

11 NEW SECTION. **Sec. 406.** (1) In computing tax under this chapter
12 for a taxable year, a taxpayer may deduct from the measure of tax the
13 amount of adjusted capital gain derived in the taxable year from the
14 sale of substantially all of the fair market value of the assets of,
15 or the transfer of substantially all of the taxpayer's interest in, a
16 qualified family-owned small business.

17 (2) For purposes of this section, the following definitions
18 apply:

19 (a) "Assets" means real property and personal property, including
20 tangible personal property and intangible property.

21 (b) "Family" means the same as "member of the family" in RCW
22 83.100.046.

23 (c)(i) "Materially participated" means an individual was involved
24 in the operation of a business on a basis that is regular,
25 continuous, and substantial.

26 (ii) The term "materially participated" must be interpreted
27 consistently with the applicable treasury regulations for section 469
28 of the internal revenue code, to the extent that such interpretation
29 does not conflict with any provision of this section.

30 (d) "Qualified family-owned small business" means a business:

31 (i) In which the taxpayer held a qualifying interest for at least
32 eight years immediately preceding the sale or transfer described in
33 subsection (1) of this section;

34 (ii) In which the taxpayer or his or her family member materially
35 participated in operating the business for at least five of the eight
36 years immediately preceding the sale or transfer described in
37 subsection (1) of this section, unless such sale or transfer was to a
38 qualified heir;

(iii)(A) That had no more than fifty full-time employees at any time during the twelve-month period immediately preceding the sale or transfer described in subsection (1) of this section.

(B) For purposes of this subsection (2)(d)(iii), "full-time employee" means an employee who is, or any combination of employees who are, paid by the business for at least one thousand eight hundred twenty hours of employment, including paid leave, for the twelve-month period described in (d)(iii)(A) of this subsection (2); and

(iv) That had worldwide gross revenue of seven million dollars or less in the twelve-month period immediately preceding the sale or transfer described in subsection (1) of this section.

(e) "Qualified heir" means a member of the taxpayer's family.

(f) "Qualifying interest" means:

(i) An interest as a proprietor in a business carried on as a sole proprietorship; or

(ii) An interest in a business if at least:

(A) Fifty percent of the business is owned, directly or indirectly, by the taxpayer and members of the taxpayer's family;

(B) Thirty percent of the business is owned, directly or indirectly, by the taxpayer and members of the taxpayer's family, and at least:

(I) Seventy percent of the business is owned, directly or indirectly, by members of two families; or

(II) Ninety percent of the business is owned, directly or indirectly, by members of three families.

(g) "Substantially all" means at least ninety percent.

NEW SECTION. **Sec. 407.** (1) For purposes of the tax imposed under this chapter, adjusted capital gains are allocated as follows:

(a) Adjusted capital gains from the sale or exchange of real property are allocated to this state if the real property is located in this state or a majority of the fair market value of the real property is located in this state.

(b) Adjusted capital gains from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Adjusted capital gains from the sale or exchange of tangible personal property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

1 (i) The property was located in the state at any time during the
2 taxable year in which the sale or exchange occurred or the
3 immediately preceding taxable year;

4 (ii) The taxpayer was a resident at the time the sale or exchange
5 occurred; and

6 (iii) The taxpayer is not subject to the payment of an income or
7 excise tax legally imposed on the adjusted capital gain by another
8 taxing jurisdiction.

9 (c) Adjusted capital gains derived from intangible personal
10 property are allocated to this state if the taxpayer was domiciled in
11 this state at the time the sale or exchange occurred.

12 (2)(a) A credit is allowed against the tax imposed in section 402
13 of this act equal to the amount of any legally imposed income or
14 excise tax paid by the taxpayer to another taxing jurisdiction on
15 capital gains derived from capital assets within the other taxing
16 jurisdiction to the extent such capital gains are included in the
17 taxpayer's Washington capital gains. The amount of credit under this
18 subsection may not exceed the total amount of tax due under this
19 chapter, and there is no carryback or carryforward of any unused
20 credits.

21 (b) As used in this section, "taxing jurisdiction" means a state
22 of the United States other than the state of Washington, the District
23 of Columbia, the Commonwealth of Puerto Rico, any territory or
24 possession of the United States, or any foreign country or political
25 subdivision of a foreign country.

26 NEW SECTION. **Sec. 408.** (1)(a) Except as otherwise provided in
27 this section or RCW 82.32.080, taxpayers owing tax under this chapter
28 must file, on forms prescribed by the department, a return with the
29 department on or before the date the taxpayer's federal income tax
30 return for the taxable year is required to be filed.

31 (b) A taxpayer must file an annual capital gains return, along
32 with any other documents required by the department, if no tax is
33 owed, but the taxpayer has a Washington capital gain of at least
34 seventy-five thousand dollars, or one hundred fifty-thousand dollars
35 if filing a joint return, for the taxable year.

36 (2) In addition to the Washington return required to be filed
37 under subsection (1) of this section, taxpayers owing tax under this
38 chapter must file with the department on or before the date the

1 federal return is required to be filed a copy of the federal income
2 tax return along with all schedules and supporting documentation.

3 (3) Each taxpayer required to file a return under this section
4 must, without assessment, notice, or demand, pay any tax due thereon
5 to the department on or before the date fixed for the filing of the
6 return, regardless of any filing extension. If any tax due under this
7 chapter is not paid by the due date, interest and penalties as
8 provided in chapter 82.32 RCW apply to the deficiency.

9 (4) The department may by rule require that certain individuals
10 and other persons file, at times and on forms prescribed by the
11 department, informational returns for any period.

12 (5) If a taxpayer has obtained an extension of time for filing
13 the federal income tax return for the taxable year, the taxpayer is
14 entitled to the same extension of time for filing the return required
15 under this section if the taxpayer provides the department, before
16 the due date provided in subsection (1) of this section, the
17 extension confirmation number or other evidence satisfactory to the
18 department confirming the federal extension. An extension under this
19 subsection for the filing of a return under this chapter is not an
20 extension of time to pay the tax due under this chapter.

21 (6)(a) If any return due under subsection (1) of this section,
22 along with a copy of the federal income tax return, is not filed with
23 the department by the due date or any extension granted by the
24 department, the department must assess a penalty in the amount of
25 five percent of the tax due for the taxable year covered by the
26 return for each month or portion of a month that the return remains
27 unfiled. The total penalty assessed under this subsection may not
28 exceed twenty-five percent of the tax due for the taxable year
29 covered by the delinquent return. The penalty under this subsection
30 is in addition to any penalties assessed for the late payment of any
31 tax due on the return.

32 (b) The department must waive or cancel the penalty imposed under
33 this subsection if:

34 (i) The department is persuaded that the taxpayer's failure to
35 file the return by the due date was due to circumstances beyond the
36 taxpayer's control; or

37 (ii) The taxpayer has not been delinquent in filing any return
38 due under this section during the preceding five calendar years.

1 NEW SECTION. **Sec. 409.** (1) If the federal income tax
2 liabilities of both spouses are determined on a joint federal return
3 for the taxable year, they must file a joint return under this
4 chapter.

5 (2) Except as otherwise provided in this subsection, if the
6 federal income tax liability of either spouse is determined on a
7 separate federal return for the taxable year, they must file separate
8 returns under this chapter. State registered domestic partners may
9 file a joint return under this chapter even if they filed separate
10 federal returns for the taxable year.

11 (3) In any case in which a joint return is filed under this
12 section, the liability of each spouse or state registered domestic
13 partner is joint and several, unless:

14 (a) The spouse is relieved of liability for federal tax purposes
15 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue
16 code; or

17 (b) The department determines that the domestic partner qualifies
18 for relief as provided by rule of the department. Such rule, to the
19 extent possible without being inconsistent with this chapter, must
20 follow Title 26 U.S.C. Sec. 6015.

21 NEW SECTION. **Sec. 410.** To the extent not inconsistent with the
22 provisions of this chapter, the following statutes apply to the
23 administration of taxes imposed under this chapter: RCW 82.32.050,
24 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
25 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
26 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
27 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
28 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
29 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
30 82.32.805, 82.32.808, and section 413 of this act.

31 NEW SECTION. **Sec. 411.** (1) Any taxpayer who knowingly attempts
32 to evade payment of the tax imposed under this chapter is guilty of a
33 class C felony as provided in chapter 9A.20 RCW.

34 (2) Any taxpayer who knowingly fails to pay tax, make returns,
35 keep records, or supply information, as required under this title, is
36 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

1 NEW SECTION. **Sec. 412.** Notwithstanding any common law rule of
2 strict construction of statutes imposing taxes, this chapter, being
3 necessary for the welfare of the state and its inhabitants, must be
4 liberally construed in support of application of the tax.

5 NEW SECTION. **Sec. 413.** A new section is added to chapter 82.04
6 RCW to read as follows:

7 A deduction is allowed against a person's gross income of the
8 business to the extent necessary to avoid taxing the same amounts
9 under this chapter and section 402 of this act.

10 NEW SECTION. **Sec. 414.** A new section is added to chapter 82.32
11 RCW to read as follows:

12 (1) The department may enter into reciprocal tax collection
13 agreements with the taxing officials of any other state imposing a
14 specified tax. Agreements authorized under this section must require
15 each state to offset delinquent specified taxes owed by a taxpayer to
16 one party to the agreement, including any associated penalties,
17 interest, or other additions, against refunds of overpaid specified
18 taxes owed to the taxpayer by the other party to the agreement. Such
19 agreements may also include provisions governing the sharing of
20 information relevant to the administration of specified taxes.
21 However, the department may not share return or tax information with
22 other states except as allowed under RCW 82.32.330. Likewise, the
23 department may not share federal tax information with other states
24 without the express written consent of the internal revenue service.

25 (2) The definitions in this subsection apply throughout this
26 section unless the context clearly requires otherwise.

27 (a) "Specified taxes" means generally applicable state and local
28 sales taxes and use taxes, broad-based state gross receipts taxes,
29 state income taxes, and stand-alone state taxes on capital gains or
30 interest and dividends. "Specified taxes" include, but are not
31 limited to, the taxes imposed in or under the authority of chapters
32 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
33 created in section 502 of this act), and similar taxes imposed by
34 another state. For purposes of this subsection (2)(a), "gross
35 receipts tax," "income tax," "sales tax," and "use tax" have the same
36 meanings as provided in RCW 82.56.010.

37 (b) "State" has the same meaning as provided in RCW 82.56.010.

1 **Part V**

2 **Miscellaneous Provisions**

3 NEW SECTION. **Sec. 501.** The provisions of RCW 82.32.805 and
4 82.32.808 do not apply to this act.

5 NEW SECTION. **Sec. 502.** Sections 201 and 401 through 412 of this
6 act constitute a new chapter in Title 82 RCW.

7 NEW SECTION. **Sec. 503.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 504.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

--- END ---