

## Income/Franchise:

### Washington County Court Says New Tax on Capital Gains is an Invalid Individual Income Tax

*Case No. 21-2-00075-09*, Wash. Super. Ct., Douglas County (3/1/22). In a lawsuit filed by a group of taxpayers challenging the validity of state legislation enacted in 2021 that imposes a new Washington tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert for more details on this new law], a state trial court recently held that the new tax constitutes an “income tax” under state caselaw rather than an “excise tax” as argued by the State of Washington. Furthermore, as a tax on the receipt of income, the court concluded that the new tax is properly characterized as a tax on property pursuant to the same caselaw. The court therefore reasoned that the 2021 legislation “violates the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution.” Specifically, the court explained that the 2021 legislation violates:

**URL:** [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/21-2-00075-09%20-.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/21-2-00075-09%20-.pdf)

**URL:** <https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf>

1. The uniformity requirement by “imposing a 7% tax on an individual’s long-term capital gains exceeding \$250,000 but imposing zero tax on capital gains below that \$250,000 threshold,” and
2. The limitation requirement because “the 7% tax exceeds the 1% maximum annual property tax rate of 1%.”

Washington State Attorney General Bob Ferguson subsequently released a statement indicating that its office respectfully disagrees with the court’s ruling and will appeal. Please contact us with any questions.

**URL:** <https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-statement-after-ruling-capital-gains-tax>

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