

## Income/Franchise:

### Washington DOR Posts Draft Proposed Rule Implementing Controversial Tax on Capital Gains

*Preproposal WSR 22-18-097*, Wash. Dept. of Rev. (9/7/22). Despite pending litigation initiated by a group of taxpayers challenging the validity of state legislation enacted in 2021 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert for more details on this new law] 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, the Washington Department of Revenue (Department) posted a preproposal statement of inquiry seeking to “clarify administrative aspects of the excise tax on capital gains such as proper filing procedures and penalties related to this excise tax.”

**URL:** [https://www.dor.wa.gov/sites/default/files/2022-09/WSR\\_22-18-097.pdf](https://www.dor.wa.gov/sites/default/files/2022-09/WSR_22-18-097.pdf)

**URL:** <https://app.leg.wa.gov/bills/summary?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>

Earlier this year, a state trial court held that this new tax constitutes an “income tax” under state caselaw rather than an “excise tax” as argued by the State of Washington (State) that does *not* meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has appealed the ruling to the Washington Supreme Court. While the appeal is pending, the Department explains that it will “continue to provide guidance, such as this rule, to the public regarding the tax as a courtesy,” and that “this rule will apply only if the tax is ruled constitutional and valid by a court of final jurisdiction.” Two virtual public hearings on the draft proposed rule are scheduled for September 28, 2022, and October 5, 2022, and written comments on the draft are due by October 12, 2022. Please contact us with any questions.

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