

Income/Franchise:

Washington DOR Proposes Rule that Implements Controversial Tax on Capital Gains

Proposed New Reg. section 458-20-300 (WSR 22-22-101), Wash. Dept. of Rev. (11/2/22). 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) proposed a new rule to implement the “excise tax on capital gains” that reflects proper filing procedures and penalties related to this tax.

URL: <https://dor.wa.gov/sites/default/files/2022-11/20-300cr2frmdraftnov22.pdf?uid=636401a7bdaa3>

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 this rule “will apply only if the tax is ruled constitutional and valid by the Washington Supreme Court.” A hybrid (in-person and virtual) public hearing on the proposed rule is scheduled for December 6, 2022, and written comments on it are due by December 9, 2022. Please contact us with any questions.

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