

Income/Franchise:

Washington Supreme Court Grants State's Motion to Stay Capital Gains Tax Ruling While Case is Pending

Case No. 100769-8, Wash. (Order 11/30/22). The Washington Supreme Court (Court) granted Washington State's motion to stay "pending this Court's final decision in this matter" a trial court judge's ruling from earlier this year, which held that Washington's new 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 (2021) and previously issued Multistate Tax Alert for more details on this new law], constitutes an "income tax" under state caselaw (rather than an "excise tax") that does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has since appealed the trial court's ruling to the Washington Supreme Court.

URL:

<https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/1007698%20Public%20Order%20Motion%20113022.pdf>

URL: <https://app.leg.wa.gov/billssummary?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>

Note that while this appeal is pending, the Washington Department of Revenue has stated that it will continue to provide guidance to the public regarding its implementation of the tax [see *State Tax Matters*, Issue 2022-45, for more details on related administrative guidance under development]. Please contact us with any questions.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/221111_3.html

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