

## Income/Franchise:

### Washington DOR Adopts Rule that Implements Controversial Tax on Capital Gains

*New Reg. section 458-20-300 (WSR 23-02-025), Wash. Dept. of Rev. (12/28/22).* 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 state 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) adopted 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/2023-01/20-300cr3frmdraftdec22.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>

In 2022, a state superior (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 since appealed the ruling to the Washington Supreme Court. The Department explains that the validity of the tax is currently under review by the Washington Supreme Court, “which has stayed the superior court decision.” As a result, the Department states that the new tax is in effect, and “this rule is effective January 28, 2023, unless determined otherwise by the Washington Supreme Court.” Please contact us with any questions.

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