

Multiple Agency Fiscal Note Summary

Bill Number: 5096 S SB	Title: Capital gains tax
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Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of Attorney General	0	0	122,000	0	0	84,000	0	0	46,000
Department of Revenue	(91,000,000)	249,000,000	522,000,000	(196,000,000)	484,000,000	1,127,000,000	(209,000,000)	469,000,000	1,197,000,000
Total \$	(91,000,000)	249,000,000	522,122,000	(196,000,000)	484,000,000	1,127,084,000	(209,000,000)	469,000,000	1,197,046,000

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of State Treasurer	Fiscal note not available											
Office of Attorney General	.4	0	0	122,000	.3	0	0	84,000	.2	0	0	46,000
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Revenue	18.9	6,667,400	6,667,400	6,667,400	18.3	6,761,600	6,761,600	6,761,600	15.0	4,059,800	4,059,800	4,059,800
Department of Corrections	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total \$	19.3	6,667,400	6,667,400	6,789,400	18.6	6,761,600	6,761,600	6,845,600	15.2	4,059,800	4,059,800	4,105,800

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of State Treasurer	Fiscal note not available								
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

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Prepared by: Ramona Nabors, OFM	Phone: (360) 902-0547	Date Published: Preliminary 3/ 1/2021
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Judicial Impact Fiscal Note

Bill Number: 5096 S SB	Title: Capital gains tax	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Contact	Phone:	Date: 02/17/2021
Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 02/18/2021
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 02/18/2021
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/18/2021

166,604.00

Request # 5096 SSB-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Please see attached Judicial Impact Note (JIN).

II. B - Cash Receipts Impact

II. C - Expenditures

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditure By Object or Purpose (County)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Expenditure By Object or Purpose (City)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

166,604.00

Form FN (Rev 1/00)

Part II: Narrative Explanation

This bill would impose a 7.0 percent capital gains tax, beginning January 1, 2022.

Part II.A – Brief Description of what the Measure does that has fiscal impact on the Courts

Section 111(1) – Would provide that any taxpayer who knowingly attempts to evade payment of the proposed capital gains tax would be guilty of a Class C felony.

Section 111(2) – Would provide that any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information regarding the proposed capital gains tax, would be guilty of a gross misdemeanor.

II.B - Cash Receipt Impact

None.

II.C – Expenditures

Indeterminate, but not expected to be significant. There is no data available to estimate the number of Class C felonies or gross misdemeanors that would result from this bill.

Judicial education would be required. This would be managed within existing resources.

Individual State Agency Fiscal Note

Bill Number: 5096 S SB	Title: Capital gains tax	Agency: 100-Office of Attorney General
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2022	FY 2023	2021-23	2023-25	2025-27
Legal Services Revolving Account-State 405-1	61,000	61,000	122,000	84,000	46,000
Total \$	61,000	61,000	122,000	84,000	46,000

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.4	0.4	0.4	0.3	0.2
Account					
Legal Services Revolving Account-State 405-1	61,000	61,000	122,000	84,000	46,000
Total \$	61,000	61,000	122,000	84,000	46,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 02/17/2021
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 02/23/2021
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/23/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 02/23/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 102 is a new section imposing an excise tax on the sale or exchange of long-term capital assets by individuals that exceed \$250,000 during a taxable year.

Section 110 is a new section providing that RCW 82.32 apply to the administration of the capital gains tax.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These costs will be billed through the revolving account to the client agency.

The client agency is the Department of Revenue (DOR). The Attorney General's Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agency's fiscal note. Appropriation authority is necessary in the AGO budget.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Attorney General's Office (AGO) Agency Assumptions:

1. This bill has an emergency clause and is assumed to be effective immediately.
2. Total workload impact in this request includes standard assumption costs for good & services, travel, and capital outlays for all FTE identified.
3. Agency administration support FTE are included in the tables below, using a Management Analyst 5 as a representative classification.

Assumptions for the AGO Revenue & Finance Division's (REV) Legal Services for the Department of Revenue (DOR):

1. The AGO will bill DOR for legal services based on the enactment of this bill.
2. Legal services associated with the enactment of this bill are assumed to begin on July 1, 2021.
3. REV assumes the new capital gains tax will result in at least one lawsuit challenging its constitutionality filed in Superior Court.

4. REV assumes the Superior Court action or actions challenging the constitutionality of the capital gains tax will be filed after the effective date of this act, and assume legal services will be required starting in FY 2022.

5. DOR estimates this bill will result in up to 41 additional administrative appeals per FY before its Administrative Review and Hearings Division (ARHD) with the first such actions being filed beginning in April 2022.

6. DOR assumes approximately ten percent of the additional administrative appeals before ARHD will be appealed to the Board of Tax Appeals (BTA) and will require representation by the AGO. Up to six additional refund actions are assumed to be filed in Superior Court with respect to the capital gains tax. REV anticipates this new work will be required beginning in FY 2023. Consequently, up to ten BTA and Superior Court actions are assumed in FY 2023.

7. REV assumes that once the initial actions are heard by the BTA and Superior Court, the number of new actions filed in subsequent years will drop to three per year beginning in FY 2025.

8. REV assumes new legal services for 0.25 Assistant Attorney General (AAG) are necessary in FY 2022, FY 2023, and FY 2024, and 0.1 AAG in FY 2025 and in each FY thereafter.

9. REV will generate direct litigation costs for transcriptions fees, copying fees, clerk’s papers, and other court related costs.

FY 2022: \$1,000;

FY 2023 and FY 2024: \$2,000;

FY 2025 and in each FY thereafter: \$500

10. Total workload impact:

FY 2022: 0.25 AAG and 0.13 Legal Assistant (LA) at a cost of \$61,000 (this includes direct litigation costs of \$1,000).

FY 2023 & FY 2024: 0.25 AAG and 0.13 LA at a cost of \$61,000 (this includes direct litigation costs of \$2,000).

FY 2025 and in each FY thereafter: 0.1 AAG and 0.05 LA at a cost of \$23,000 (this includes direct litigation costs of \$500).

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
405-1	Legal Services Revolving Account	State	61,000	61,000	122,000	84,000	46,000
Total \$			61,000	61,000	122,000	84,000	46,000

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.4	0.4	0.4	0.3	0.2
A-Salaries and Wages	40,000	40,000	80,000	55,000	30,000
B-Employee Benefits	12,000	12,000	24,000	17,000	10,000
E-Goods and Other Services	8,000	9,000	17,000	12,000	6,000
J-Capital Outlays	1,000		1,000		
Total \$	61,000	61,000	122,000	84,000	46,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Assistant Attorney General	108,600	0.3	0.3	0.3	0.2	0.1
Legal Assistant 3	54,108	0.1	0.1	0.1	0.1	0.1
Management Analyst 5	88,644	0.1	0.1	0.1	0.0	
Total FTEs		0.4	0.4	0.4	0.3	0.2

III. D - Expenditures By Program (optional)

Program	FY 2022	FY 2023	2021-23	2023-25	2025-27
Revenue & Finance Division (REV)	61,000	61,000	122,000	84,000	46,000
Total \$	61,000	61,000	122,000	84,000	46,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5096 S SB	Title: Capital gains tax	Agency: 101-Caseload Forecast Council
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 02/17/2021
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 02/19/2021
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 02/19/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/19/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

SSB 5096

CONCERNING AN EXCISE TAX ON GAINS FROM THE SALE OR EXCHANGE OF CERTAIN CAPITAL ASSETS

**101 – Caseload Forecast Council
February 18, 2021**

SUMMARY

A brief description of what the measure does that has fiscal impact.

- Section 111 Establishes the unranked Class C felony offense concerning taxpayer evasion of any tax imposed in this chapter.
- Section 111 Additionally establishes a new gross misdemeanor offense concerning taxpayer failing to pay tax, making returns, keeping records, or supplying information as required.

EXPENDITURES

Assumptions.

None.

Impact on the Caseload Forecast Council.

None.

Impacts on beds and supervision.

This bill:

- Establishes a Class C unranked felony offense and a gross misdemeanor offense.

The Caseload Forecast Council has no information concerning how many incidents of the newly established gross misdemeanor and unranked Class C felony offenses may occur. As such, the Caseload Forecast Council cannot reliably predict bed impacts resulting from the bill. However:

The newly established gross misdemeanor offense would be punishable by a term of confinement of 0-364 days in jail. Therefore, any impact would be on jail beds only.

The newly established unranked Class C felony offense would be punishable by a standard range term of confinement of 0-12 months in jail. Therefore, any impact would be on jail beds only, except in the case of an aggravated exceptional sentence.

Department of Revenue Fiscal Note

Bill Number: 5096 S SB	Title: Capital gains tax	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax		(91,000,000)	(91,000,000)	(196,000,000)	(209,000,000)
Education Legacy Trust Account-State 00 - 00 -		350,000,000	350,000,000	700,000,000	700,000,000
Workforce Educationa Investment Account-State 01 - Taxes 05 - Bus and Occup Tax		(10,000,000)	(10,000,000)	(20,000,000)	(22,000,000)
NEW-State 00 - 00 -		273,000,000	273,000,000	643,000,000	728,000,000
Total \$		522,000,000	522,000,000	1,127,000,000	1,197,000,000

Estimated Expenditures from:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	14.8	22.9	18.9	18.3	15.0
GF-STATE-State 001-1	2,489,600	4,177,800	6,667,400	6,761,600	4,059,800
Total \$	2,489,600	4,177,800	6,667,400	6,761,600	4,059,800

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 02/17/2021
Agency Preparation: Sara del Moral	Phone: 360-534-1525	Date: 02/24/2021
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 02/24/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 03/01/2021

Request # 5096-2-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

NOTE: This fiscal note reflects language in SSB 5096 (S-1047.5), 2021 Legislative Session.

CURRENT LAW: There is no capital gains tax in Washington State.

COMPARISON OF SUBSTITUTE BILL WITH THE ORIGINAL BILL:

The substitute bill:

- Lowers the tax rate from 9 percent to 7 percent.
- Increases threshold exclusion to \$250,000.
- Exempts sales or exchanges of real estate.
- Replaces sole proprietor deduction with a qualified family-owned small business deduction.
- Exempts goodwill received from the sale of a car dealership.
- Deposits the first \$350 million in revenues collected each year into the Education Legacy Trust Account and deposits the remainder into a new Taxpayer Relief Account.
- Makes other technical clarifications and corrections.

PROPOSAL:

Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals 7 percent multiplied by an individual's Washington capital gains.

After exempting certain capital gains based on the type of asset sold or exchanged, a standard deduction of \$250,000 is available for all filers, whether filing as an individual or jointly.

WASHINGTON CAPITAL GAINS

The amount of Washington capital gains is computed by making certain adjustments to an individual's federal long-term net capital gains. Only adjusted capital gains from the sale or exchange of capital assets sourced in Washington are subject to the tax. Losses resulting from the sale or exchange of assets sourced elsewhere may not reduce the taxable amount.

EXEMPTIONS BASED ON TYPE OF ASSET SOLD OR EXCHANGED

The capital gains tax does not apply to the following:

- The sale or exchange of real estate.
- The sale or exchange of assets under certain retirement savings vehicles.
- Capital gains from the sale or exchange of assets under condemnation proceedings or imminent threat of condemnation.
- The sale or exchange of cattle, horses, or breeding livestock held for more than 12 months by farmers, if more than 50 percent of the taxpayer's gross income is from farming or ranching.
- The sale or exchange of agricultural land or timberland by an individual meeting certain requirements.
- The sale or exchange of depreciable property used in a business, if it is depreciable under Internal Revenue Code section 167 or qualified for expensing under Internal Revenue Code section 179.
- The sale or exchange of timber, timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber or timberland.
- The sale or exchange of goodwill received from the sale of a franchised auto dealership.

DEDUCTIONS

Qualified Family-Owned Small Business Deduction: This bill provides a deduction for capital gains derived from the sale of substantially all of the assets, or the transfer of substantially all of a person's interest, in a qualified family owned small business.

To qualify, a taxpayer or a family member must have materially participated in the operation of the business for at least 5 of the 8 years preceding the sale or transfer. Sales or transfers to qualified heirs are exempt from the material participation requirement.

To qualify for the deduction, a taxpayer must meet several requirements.

- “Substantially all” means 90 percent.
- Sale of assets: The sale is of at least 90 percent of the fair market value of the assets of the business. Assets include real property, tangible personal property, and intangible property.
- Transfer of interest: The transfer must be of at least 90 percent of a person’s interest in a business. E.g., a person owning 50 percent of the business must transfer at least 45 percent of the business ownership (i.e., 90 percent of their share).

Qualified family-owned small business:

- Can be a sole proprietorship, or
- An interest in an entity carrying on a trade or business if at least:
 - 50 percent of the entity is owned by a taxpayer and members of their family,
 - 70 percent of the entity is owned by two families and at least 30 percent is owned by a taxpayer and their family, or
 - 90 percent of the entity is owned by three families and at least 30 percent is owned by a taxpayer and their family.

Small business: A small business must have 50 or fewer employees and gross revenue of \$6 million or less for the 12 months immediately preceding the sale or transfer.

Material participation:

- A taxpayer, or their family, owned or had a qualifying interest in the business for at least 8 years immediately prior to the sale of assets or transfer of interest.
- During the 8-year period, there must be periods aggregating to at least 5 years during which a taxpayer or a member of their family materially participated in the operation of the trade or business.
- Exception: The material participation requirement does not apply to sales of assets or transfers of interests to qualified heirs.

Legally prohibited amounts: Taxpayers can also deduct amounts the state is prohibited from taxing under federal law or the constitutions of the United States or the state of Washington.

CREDITS

B&O tax credit: A credit against the business and occupation (B&O) tax is provided to avoid taxing the same sale or exchange under both the B&O and capital gains taxes.

Out-of-state credit: A credit against the capital gains tax is provided for the amount of capital gains taxes paid to another taxing jurisdiction on capital gains derived from sources within the other taxing jurisdiction to the extent the capital gains are included in the measure of the Washington capital gains tax.

FILING DEADLINES

Washington capital gains tax returns, any required information returns, and payments are due at the same time that the taxpayer’s federal income tax return for the taxable year is due. Individuals receiving a federal tax filing extension also qualify for a state capital gains tax filing extension, but the tax is still due on the original filing date.

REVENUES

Annual revenues deposited as follows:

- The first \$350 million to the Education Legacy Trust Account, and
- The remainder to the new Taxpayer Relief Account.

EFFECTIVE DATE:

The bill takes effect 90 days after final adjournment of the session in which enacted.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:

- Approximately 8,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The NEW fund in the table above corresponds to the Taxpayer Relief Account, created under this proposal.
- The tax law takes effect on January 1, 2022, and the first payments are due on or about April 17, 2023.
- Because we do not have federal tax return data on nonresident individuals, this fiscal note assumes that the long-term net capital gains reported on Washington residents' federal tax returns is equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under sec. 107 when calculating their adjusted capital gains and Washington capital gains. Taxpayers cannot use losses not allocated to the state under sec. 107 to reduce their adjusted capital gains. Limiting available losses to losses allocated to the state would have a minimal but positive impact on revenues. However, for the purpose of this estimate, we assume the impact is zero due to a lack of information about allocation of gains and losses to the state in the data available.
- Decoupling the Federal Opportunity Zone program from the Washington capital gains tax will have a minimal but positive impact on revenues.
- It is assumed that the intent of this proposal is that the exemption for real estate does not apply to capital gains from the sale or exchange of any interest, including a controlling interest, in an entity that itself owns an interest in real estate.
- To estimate the amount of pass-through capital gains exempted, we assume:
 - The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. S-corporations and partnerships for Tax Year 2014.
 - Sales or exchanges from 89 percent of depreciable business assets are exempt.
 - Sales or exchanges from all land held by these entities are exempt.
 - Due to a lack of available information about the amount of goodwill associated with sales of franchised auto dealerships, we assume the amount of goodwill associated with the sale of a franchised auto dealership is:
 - For pass-through capital gains, the amount of amortizable intangible assets held by businesses in the "Motor vehicle dealers and parts dealers" sector, and
 - For "Other Assets" sold or exchanged for capital gains, we assume that 51 percent of sales or exchanges of such assets are exempt, rather than 50 percent. The Other Assets category is in IRS table 2A, listed in the Data Sources section.
- For all asset types excluded from the tax, the percentage of a Washington taxpayer's gains resulting from sales or exchanges of these assets aligns with percentages reported in IRS / SOI statistical tables for all taxpayers nationwide.
- No estimated payments or withholdings made during the year.
- All Washington firms with \$6 million or less in annual gross revenue will qualify as a qualified family-owned small business. To the extent that capital gains are derived from either (1) the sale of substantially all of the fair market value of the assets of a qualified family-owned small business, or (2) the sale of substantially all of a taxpayer's qualifying interest in a qualified family-owned small business, the capital gains from such a sale will qualify for a deduction.
- B&O tax credit:
 - Each taxpayer maximizes the amount of the credit by applying the standard exemption first to gains realized from personal sources, applying any remainder to gains from business sources.
 - 10 percent of taxable capital gains, resulting from business activity in the finance sector, are not subject to the B&O tax because they come from private equity firms and hedge funds, which qualify for the investment income deduction

against the B&O tax.

- The Financial Institutions Surtax for the B&O tax remains in effect.
- Future amounts of capital gains for Washington taxpayers equal the amounts reported in 2018 tax returns, adjusted by using forecasted rates of growth and decay.
- The ratio of the out-of-state credit to gross tax is the same for Tax Years 2017 and 2018.
- Compliance is 90 percent in the first year and 95 percent thereafter.

DATA SOURCES:

- Internal Revenue Service (IRS) – Individual income tax returns data, Tax Years 2017 and 2018.
- IRS: SOI Tax Stats - Sales of Capital Assets Report on Individual Tax Returns, Tables 2A and 1C, Tax Years 2008 to 2012.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120S - Table 6.1. Balance Sheet and - - Income Statement Items, by Major Industry, Tax Year 2014.
- IRS Statistics of Income: Table 3. All Partnerships: Balance Sheets by Industrial Group, Tax Year 2016.
- IRS Statistics of Income: Table 5. Partnerships with Income (or Loss) Allocated to Partners, by Selected Industrial Group, Tax Year 2014.
- Department of Revenue: Excise tax data, CY2020, Q2, used to estimate effective B&O tax rates for finance sector firms.
- Department of Revenue: Excise tax data, FY2018, used to estimate percentage of gross revenues that come from small businesses.
- Personal Income Forecast (November 2020). This includes the U.S. Congressional Budget Office: Capital gains realizations forecast (all states), August 2020, used to grow capital gains amounts.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2022 -	\$ 0
FY 2023 -	\$ 522,000
FY 2024 -	\$ 557,000
FY 2025 -	\$ 570,000
FY 2026 -	\$ 588,000
FY 2027 -	\$ 609,000

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:

- This estimate affects 8,000 taxpayers.
- Taxpayers will not be required to make estimated payments.

FIRST YEAR COSTS:

The Department will incur total costs of \$2,489,600 in Fiscal Year 2022. These costs include:

Labor Costs - Time and effort equates to 14.84 FTEs.

- Provide technical advice, interpretation and analysis during the implementation process.
- Program, setup, test and verify computer systems to accept taxpayer returns and other required information and process reporting information for collection, audit, and refund purposes.
- Develop training for processing and working with capital gains tax returns.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.

- Create a special notice and update website and published information.
- Respond to letter ruling requests and email inquiries.
- Hear additional administrative reviews.
- Adopt two new administrative rules.

Object Costs - \$607,100.

- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail a special notice to affected taxpayers.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Legal assistance from the Office of the Attorney General.

SECOND YEAR COSTS:

The Department will incur total costs of \$4,177,800 in Fiscal Year 2023. These costs include:

Labor Costs - Time and effort equates to 22.9 FTEs.

- Provide technical advice and interpretation services.
- Ongoing programming and testing of computer systems.
- Ongoing training development and training for the new tax.
- Create returns and design and develop new templates and forms.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from individuals and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.
- Establish new reporting accounts for capital gains taxpayers.
- Process paper returns and associated work items.
- Resolve error and out of balance returns, conduct desk audits, prepare refunds and assessments.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews.

Object Costs - \$1,739,300.

- Contract computer system programming.
- Purchase additional server equipment.
- Purchase additional scanning equipment.
- Acquire additional seat licenses for the Telephone Information Center.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Background checks for employees working with Internal Revenue Service data.
- Legal assistance from the Office of the Attorney General.

THIRD YEAR COSTS:

The Department will incur total costs of \$3,980,900 in Fiscal Year 2024. These costs include:

Labor Costs - Time and effort equates to 19.1 FTEs.

- Provide technical advice and interpretation services.
- Ongoing programming and testing of computer systems including receiving and processing Internal Revenue Service information for verification of reporting and tax discovery.

- Ongoing training for the new tax.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.
- Establish new reporting accounts for capital gains taxpayers.
- Process returns, payments and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews.

Object Costs - \$2,069,700.

- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Background checks for employees working with Internal Revenue Service data.
- Legal assistance from the Office of the Attorney General.

FOURTH YEAR COSTS:

The Department will incur total costs of \$2,780,700 in Fiscal Year 2025. These costs include:

Labor Costs - Time and effort equates to 17.5 FTEs.

- Provide technical advice and interpretation services.
- Ongoing programming and testing of computer systems.
- Ongoing training for the new tax.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.
- Establish new reporting accounts for capital gains taxpayers.
- Process returns, payments and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Create a tax discovery process and use desk audits to assess discovered liabilities.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews.

Object Costs - \$1,032,100.

- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Warrant filing fees and postage for collection of additional delinquent accounts.
- Background checks for employees working with Internal Revenue Service data.
- Utilize locate and research services to verify reporting and tax discovery.
- Legal assistance from the Office of the Attorney General.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	14.8	22.9	18.9	18.3	15.0
A-Salaries and Wages	1,168,700	1,527,200	2,695,900	2,360,100	1,932,500
B-Employee Benefits	420,600	549,800	970,400	849,700	695,600
C-Professional Service Contracts	500,000	1,500,000	2,000,000	3,000,000	1,000,000
E-Goods and Other Services	256,200	354,600	610,800	495,200	382,600
G-Travel	300	600	900	600	600
J-Capital Outlays	143,800	245,600	389,400	56,000	48,500
Total \$	\$2,489,600	\$4,177,800	\$6,667,400	\$6,761,600	\$4,059,800

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
COMMUNICATIONS CNSLT 4	64,332	0.5	0.5	0.5		
CUSTOMER SERV SP2	39,528		0.3	0.2	0.1	0.1
EMS BAND 4	119,061	0.0		0.0		
EMS BAND 5	139,090	0.0		0.0		
EXCISE TAX EX 1	43,392		1.0	0.5	1.0	1.0
EXCISE TAX EX 2	54,108		5.0	2.5	5.0	5.0
EXCISE TAX EX 3	59,688	1.0	1.0	1.0	1.0	1.0
FISCAL ANALYST 3	55,524		0.1	0.1	0.1	0.1
IT APP DEV-JOURNEY	85,644	1.0	1.0	1.0	0.5	0.5
IT B A-JOURNEY	85,644	0.5	0.5	0.5	0.3	0.3
IT PROJ MGT-JOURNEY	89,916	1.0	1.0	1.0	0.5	0.5
IT QA-JOURNEY	85,644	1.5	1.5	1.5	0.8	0.8
MGMT ANALYST4	70,956	3.3	3.4	3.4	2.4	1.7
MGMT ANALYST5	78,408	1.1	0.8	1.0	0.2	0.1
RECORDS MGMT SUPV	67,560		0.2	0.1		
REVENUE AGENT 4	64,332		0.3	0.2	0.3	0.3
TAX INFO SPEC 1	43,392		2.3	1.2	2.2	1.0
TAX INFO SPEC 4	64,332	0.5	1.0	0.8	1.0	0.5
TAX POLICY SP 2	72,756	0.0		0.0		
TAX POLICY SP 3	82,344	2.6	1.6	2.1	1.6	0.8
TAX POLICY SP 4	88,644	0.6	0.4	0.5	0.4	0.3
WMS BAND 2	89,018	1.1	1.0	1.1	1.0	1.0
WMS BAND 3	101,257	0.0		0.0		
Total FTEs		14.8	22.9	18.9	18.3	15.0

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

Request # 5096-2-1

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will adopt two new rules under 458-20 WAC, one using the complex process and one using the standard process.

Persons affected by this rule making would include Individuals meeting the threshold for reporting and/or paying the new capital gains tax.

Individual State Agency Fiscal Note

Bill Number: 5096 S SB	Title: Capital gains tax	Agency: 310-Department of Corrections
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 02/17/2021
Agency Preparation: Scherry Sinclair	Phone: 360-725-8846	Date: 02/25/2021
Agency Approval: Michael Steenhout	Phone: 360-725-8270	Date: 02/25/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/25/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Beginning January 1, 2022, this bill enacts an excise tax on gains from the sale or exchange of certain capital assets. Only individuals are subject to the payment of the tax.

Section 101(13) states the exclusion threshold for capital gains is \$250,000.

Section 102(1) sets the capital gains tax rate at 7 percent.

Section 103(1) excludes all real estate from capital gains.

Section 111(1) states any taxpayer who knowingly attempts to evade payment of the tax imposed is guilty of a class C felony as provided in chapter 9A.20 RCW. (2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

Section 115 states the first 350 million in revenues from taxes collected in this chapter during any calendar year must be deposited in the education legacy fund. The remainder shall be deposited into the taxpayer relief account, hereby created in the state treasury.

Section 205 states that Sections 101 through 115 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, take effect immediately.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

DOC assumes no fiscal impact as a result of this bill.

The Caseload Forecast Council has no information concerning how many incidents of the newly established gross misdemeanor and unranked Class C felony offenses may occur. As such, the Caseload Forecast Council cannot reliably predict bed impacts resulting from the bill. However:

The newly established gross misdemeanor offense would be punishable by a term of confinement of 0-364 days in jail. Therefore, any impact would be on jail beds only.

The newly established unranked Class C felony offense would be punishable by a standard range term of confinement of 0-12 months in jail. Therefore, any impact would be on jail beds only, except in the case of an aggravated exceptional sentence.

With no impacts on prison beds, DOC assumes no fiscal impact related to this bill.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

LOCAL GOVERNMENT FISCAL NOTE

Revised

Department of Commerce

Bill Number: 5096 S SB	Title: Capital gains tax
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Part I: Jurisdiction

Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities:
- Counties: Indeterminate costs incurred due to increased jail bed demands created by the new Class C felony and gross misdemeanor offenses created by this legislation
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Number of occurrences of offenses created by this legislation that will occur

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: David Rosen	Phone: 360-790-3274	Date: 03/01/2021
Leg. Committee Contact:	Phone:	Date: 02/17/2021
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 03/01/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 03/01/2021

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

Section 111 (1) dictates that any taxpayer who knowingly attempts to evade payment of the tax imposed under the chapter created by this legislation is guilty of a Class C felony.

Per RCW 9A.20.021 (Maximum sentences for crimes committed July 1, 1984, and after), a Class C felony is punishable by confinement in a state prison for up to 5 years, a fine up to \$10,000, or by both such confinement and fine.

Section 111 (2) dictates that any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor.

Per RCW 9A.20.021, a gross misdemeanor is punishable by confinement in a county jail for up to 364 days, a fine up to \$5,000, or by both such confinement and fine.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This legislation would have an indeterminate impact on local government expenditures. Please note, court impacts, including judicial costs, clerk costs, and court fees are described in fiscal notes prepared by the Administrative Office of the Courts (AOC). Local government fiscal notes include city and county expenditures for law enforcement investigations and arrests, indigent defenders, prosecutors, and jail costs.

This legislation creates new unranked class C felony and gross misdemeanor offenses.

ENFORCEMENT AND PROSECUTION COSTS:

Per the Department of Revenue (DOR), this legislation creates a new tax under RCW Title 82 (Excise Taxes). DOR will be responsible for the enforcement of this tax. Furthermore, any prosecutions that take place due to violations of Section 111 of this legislation would be the responsibility of the Attorney General's Office in consultation with the DOR.

JAIL BED IMPACTS:

At this time the exact bed impacts of this legislation cannot be reliably estimated as the number of occurrences of the newly established Class C felony and gross misdemeanor that may occur per year are unknown.

However, the newly established gross misdemeanor offense would be punishable by a term of confinement of 0 to 364 days in a county jail and the newly established unranked Class C felony offense would be punishable by a standard range term of confinement of 0 to 12 months in a county jail, except in the case of an aggravated exceptional sentence. Therefore, majority of new occurrences of the created offenses would be create impacts on county jail beds only.

Per, the 2021 Local Government Fiscal Note Program's Criminal Justice Cost Matrix, the cost of an occupied county jail bed is \$114 per day.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This legislation would have no impact on local government revenues.

SOURCES:

2021 Local Government Fiscal Note Program Criminal Justice Cost Matrix
Fiscal Note - SB 5096 (2021)
Washington Caseload Forecast Council
Washington Department of Revenue



Multiple Agency Ten-Year Analysis Summary

Bill Number 5096 S SB	Title Capital gains tax
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This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

Estimated Cash Receipts

	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	2022-31 TOTAL
Administrative Office of the Courts	0	0	0	0	0	0	0	0	0	0	0
Office of Attorney General	0	0	0	0	0	0	0	0	0	0	0
Caseload Forecast Council	0	0	0	0	0	0	0	0	0	0	0
Department of Revenue	0	623,000,000	664,000,000	679,000,000	702,000,000	726,000,000	755,000,000	786,000,000	817,000,000	850,000,000	6,602,000,000
Department of Corrections	0	0	0	0	0	0	0	0	0	0	0
Total	0	623,000,000	664,000,000	679,000,000	702,000,000	726,000,000	755,000,000	786,000,000	817,000,000	850,000,000	6,602,000,000



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 055 Administrative Office of the Courts
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts **Partially Indeterminate Cash Receipts** **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code												
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Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 2/18/2021 1:23:03 pm
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 2/18/2021 1:23:03 pm
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 100 Office of Attorney General
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts **Partially Indeterminate Cash Receipts** **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code												
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Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 2/23/2021 8:51:41 am
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 2/23/2021 8:51:41 am
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 101 Caseload Forecast Council
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts **Partially Indeterminate Cash Receipts** **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code												
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Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 2/19/2021 9:28:05 am
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 2/19/2021 9:28:05 am
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 140 Department of Revenue
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	2022-31 TOTAL
Capital Gains Tax	08A		350,000,000	350,000,000	350,000,000	350,000,000	350,000,000	350,000,000	350,000,000	350,000,000	350,000,000	3,150,000,000
Capital Gains Tax	new		273,000,000	314,000,000	329,000,000	352,000,000	376,000,000	405,000,000	436,000,000	467,000,000	500,000,000	3,452,000,000
Total			623,000,000	664,000,000	679,000,000	702,000,000	726,000,000	755,000,000	786,000,000	817,000,000	850,000,000	6,602,000,000
Biennial Totals			623,000,000	1,343,000,000	1,428,000,000	1,541,000,000	1,667,000,000	6,602,000,000				

Narrative Explanation (Required for Indeterminate Cash Receipts)

NOTE: This fiscal note reflects language in SSB 5096 (S-1047.5), 2021 Legislative Session.

CURRENT LAW: There is no capital gains tax in Washington State.

COMPARISON OF SUBSTITUTE BILL WITH THE ORIGINAL BILL:

The substitute bill:

- Lowers the tax rate from 9 percent to 7 percent.
- Increases threshold exclusion to \$250,000.
- Exempts sales or exchanges of real estate.
- Replaces sole proprietor deduction with a qualified family-owned small business deduction.
- Exempts goodwill received from the sale of a car dealership.
- Deposits the first \$350 million in revenues collected each year into the Education Legacy Trust Account and deposits the remainder into a new Taxpayer Relief Account.
- Makes other technical clarifications and corrections.



Ten-Year Analysis

Bill Number	Title	Agency
5096 S SB	Capital gains tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Narrative Explanation (Required for Indeterminate Cash Receipts)

PROPOSAL:

Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals 7 percent multiplied by an individual's Washington capital gains.

After exempting certain capital gains based on the type of asset sold or exchanged, a standard deduction of \$250,000 is available for all filers, whether filing as an individual or jointly.

WASHINGTON CAPITAL GAINS

The amount of Washington capital gains is computed by making certain adjustments to an individual's federal long-term net capital gains. Only adjusted capital gains from the sale or exchange of capital assets sourced in Washington are subject to the tax. Losses resulting from the sale or exchange of assets sourced elsewhere may not reduce the taxable amount.

EXEMPTIONS BASED ON TYPE OF ASSET SOLD OR EXCHANGED

The capital gains tax does not apply to the following:

- The sale or exchange of real estate.
- The sale or exchange of assets under certain retirement savings vehicles.
- Capital gains from the sale or exchange of assets under condemnation proceedings or imminent threat of condemnation.
- The sale or exchange of cattle, horses, or breeding livestock held for more than 12 months by farmers, if more than 50 percent of the taxpayer's gross income is from farming or ranching.
- The sale or exchange of agricultural land or timberland by an individual meeting certain requirements.
- The sale or exchange of depreciable property used in a business, if it is depreciable under Internal Revenue Code section 167 or qualified for expensing under Internal Revenue Code section 179.
- The sale or exchange of timber, timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber or timberland.
- The sale or exchange of goodwill received from the sale of a franchised auto dealership.

DEDUCTIONS

Qualified Family-Owned Small Business Deduction: This bill provides a deduction for capital gains derived from the sale of substantially all of the assets, or the transfer of substantially all of a person's interest, in a qualified family owned small business.

To qualify, a taxpayer or a family member must have materially participated in the operation of the business for at least 5 of the 8 years preceding the sale or transfer. Sales or transfers to qualified heirs are exempt from the material participation requirement.



Ten-Year Analysis

Bill Number	Title	Agency
5096 S SB	Capital gains tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Narrative Explanation (Required for Indeterminate Cash Receipts)

To qualify for the deduction, a taxpayer must meet several requirements.

- “Substantially all” means 90 percent.
- Sale of assets: The sale is of at least 90 percent of the fair market value of the assets of the business. Assets include real property, tangible personal property, and intangible property.
- Transfer of interest: The transfer must be of at least 90 percent of a person’s interest in a business. E.g., a person owning 50 percent of the business must transfer at least 45 percent of the business ownership (i.e., 90 percent of their share).

Qualified family-owned small business:

- Can be a sole proprietorship, or
- An interest in an entity carrying on a trade or business if at least:
 - 50 percent of the entity is owned by a taxpayer and members of their family,
 - 70 percent of the entity is owned by two families and at least 30 percent is owned by a taxpayer and their family, or
 - 90 percent of the entity is owned by three families and at least 30 percent is owned by a taxpayer and their family.

Small business: A small business must have 50 or fewer employees and gross revenue of \$6 million or less for the 12 months immediately preceding the sale or transfer.

Material participation:

- A taxpayer, or their family, owned or had a qualifying interest in the business for at least 8 years immediately prior to the sale of assets or transfer of interest.
- During the 8-year period, there must be periods aggregating to at least 5 years during which a taxpayer or a member of their family materially participated in the operation of the trade or business.
- Exception: The material participation requirement does not apply to sales of assets or transfers of interests to qualified heirs.

Legally prohibited amounts: Taxpayers can also deduct amounts the state is prohibited from taxing under federal law or the constitutions of the United States or the state of Washington.

CREDITS

B&O tax credit: A credit against the business and occupation (B&O) tax is provided to avoid taxing the same sale or exchange under both the B&O and capital gains taxes.

Out-of-state credit: A credit against the capital gains tax is provided for the amount of capital gains taxes paid to another taxing jurisdiction on capital gains derived from sources within the other taxing jurisdiction to the extent the capital gains are included in the measure of the Washington capital gains tax.



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Narrative Explanation (Required for Indeterminate Cash Receipts)

FILING DEADLINES

Washington capital gains tax returns, any required information returns, and payments are due at the same time that the taxpayer's federal income tax return for the taxable year is due. Individuals receiving a federal tax filing extension also qualify for a state capital gains tax filing extension, but the tax is still due on the original filing date.

REVENUES

Annual revenues deposited as follows:

- The first \$350 million to the Education Legacy Trust Account, and
- The remainder to the new Taxpayer Relief Account.

EFFECTIVE DATE:

The bill takes effect 90 days after final adjournment of the session in which enacted.

ASSUMPTIONS:

- Approximately 8,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The NEW fund in the table above corresponds to the Taxpayer Relief Account, created under this proposal.
- The tax law takes effect on January 1, 2022, and the first payments are due on or about April 17, 2023.
- Because we do not have federal tax return data on nonresident individuals, this fiscal note assumes that the long-term net capital gains reported on Washington residents' federal tax returns is equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under sec. 107 when calculating their adjusted capital gains and Washington capital gains. Taxpayers cannot use losses not allocated to the state under sec. 107 to reduce their adjusted capital gains. Limiting available losses to losses allocated to the state would have a minimal but positive impact on revenues. However, for the purpose of this estimate, we assume the impact is zero due to a lack of information about allocation of gains and losses to the state in the data available.
- Decoupling the Federal Opportunity Zone program from the Washington capital gains tax will have a minimal but positive impact on revenues.
- It is assumed that the intent of this proposal is that the exemption for real estate does not apply to capital gains from the sale or exchange of any interest, including a controlling interest, in an entity that itself owns an interest in real estate.
- To estimate the amount of pass-through capital gains exempted, we assume:
 - The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. S-corporations and partnerships for Tax Year 2014.
 - Sales or exchanges from 89 percent of depreciable business assets are exempt.
 - Sales or exchanges from all land held by these entities are exempt.
 - Due to a lack of available information about the amount of goodwill associated with sales of franchised auto dealerships, we assume the amount of goodwill



Ten-Year Analysis

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Narrative Explanation (Required for Indeterminate Cash Receipts)

associated with the sale of a franchised auto dealership is:

----- For pass-through capital gains, the amount of amortizable intangible assets held by businesses in the “Motor vehicle dealers and parts dealers” sector, and
 ----- For “Other Assets” sold or exchanged for capital gains, we assume that 51 percent of sales or exchanges of such assets are exempt, rather than 50 percent. The Other Assets category is in IRS table 2A, listed in the Data Sources section.

- For all asset types excluded from the tax, the percentage of a Washington taxpayer's gains resulting from sales or exchanges of these assets aligns with percentages reported in IRS / SOI statistical tables for all taxpayers nationwide.

- No estimated payments or withholdings made during the year.

- All Washington firms with \$6 million or less in annual gross revenue will qualify as a qualified family-owned small business. To the extent that capital gains are derived from either (1) the sale of substantially all of the fair market value of the assets of a qualified family-owned small business, or (2) the sale of substantially all of a taxpayer’s qualifying interest in a qualified family-owned small business, the capital gains from such a sale will qualify for a deduction.

- B&O tax credit:

----- Each taxpayer maximizes the amount of the credit by applying the standard exemption first to gains realized from personal sources, applying any remainder to gains from business sources.

----- 10 percent of taxable capital gains, resulting from business activity in the finance sector, are not subject to the B&O tax because they come from private equity firms and hedge funds, which qualify for the investment income deduction against the B&O tax.

- The Financial Institutions Surtax for the B&O tax remains in effect.

- Future amounts of capital gains for Washington taxpayers equal the amounts reported in 2018 tax returns, adjusted by using forecasted rates of growth and decay.

- The ratio of the out-of-state credit to gross tax is the same for Tax Years 2017 and 2018.

- Compliance is 90 percent in the first year and 95 percent thereafter.

DATA SOURCES:

- Internal Revenue Service (IRS) – Individual income tax returns data, Tax Years 2017 and 2018.

- IRS: SOI Tax Stats - Sales of Capital Assets Report on Individual Tax Returns, Tables 2A and 1C, Tax Years 2008 to 2012.

- IRS Statistics of Income: Returns of Active Corporations, Form 1120S - Table 6.1. Balance Sheet and - - Income Statement Items, by Major Industry, Tax Year 2014.

- IRS Statistics of Income: Table 3. All Partnerships: Balance Sheets by Industrial Group, Tax Year 2016.

- IRS Statistics of Income: Table 5. Partnerships with Income (or Loss) Allocated to Partners, by Selected Industrial Group, Tax Year 2014.

- Department of Revenue: Excise tax data, CY2020, Q2, used to estimate effective B&O tax rates for finance sector firms.

- Department of Revenue: Excise tax data, FY2018, used to estimate percentage of gross revenues that come from small businesses.

- Personal Income Forecast (November 2020). This includes the U.S. Congressional Budget Office: Capital gains realizations forecast (all states), August 2020, used to grow capital gains amounts.

TOTAL REVENUE IMPACT:



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 140 Department of Revenue
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Narrative Explanation (Required for Indeterminate Cash Receipts)

State Government (cash basis, \$000): FY 2022 - \$ 0 FY 2023 - \$ 522,000 FY 2024 - \$ 557,000 FY 2025 - \$ 570,000 FY 2026 - \$ 588,000 FY 2027 - \$ 609,000

Agency Preparation: Sara del Moral	Phone: 360-534-1525	Date: 2/24/2021 2:34:04 pm
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 2/24/2021 2:34:04 pm
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5096 S SB	Title Capital gains tax	Agency 310 Department of Corrections
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Name of Tax or Fee	Acct Code												
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Agency Preparation: Scherry Sinclair	Phone: 360-725-8846	Date: 2/25/2021 9:54:16 am
Agency Approval: Michael Steenhout	Phone: 360-725-8270	Date: 2/25/2021 9:54:16 am
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