

# Multiple Agency Fiscal Note Summary

|  |                                 |
|--|---------------------------------|
| <b>Bill Number:</b> 5096 E S SB AMH FIN<br>H1547.5 | <b>Title:</b> Capital gains tax |
|--|---------------------------------|

## 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 State Treasurer  | (8,000,000)         | 0                  | 0                  | (18,000,000)         | 0                  | 0                  | (20,000,000)         | 0                    | 0                    |
| Office of Attorney General | 0                   | 0                  | 122,000            | 0                    | 0                  | 84,000             | 0                    | 0                    | 46,000               |
| Department of Revenue      | (77,000,000)        | 445,000,000        | 445,000,000        | (171,000,000)        | 981,000,000        | 981,000,000        | (185,000,000)        | 1,061,000,000        | 1,061,000,000        |
| <b>Total \$</b>            | <b>(85,000,000)</b> | <b>445,000,000</b> | <b>445,122,000</b> | <b>(189,000,000)</b> | <b>981,000,000</b> | <b>981,084,000</b> | <b>(205,000,000)</b> | <b>1,061,000,000</b> | <b>1,061,046,000</b> |

| Agency Name         | 2021-23                   |       | 2023-25   |       | 2025-27   |       |
|---------------------|---------------------------|-------|-----------|-------|-----------|-------|
|                     | GF- State                 | Total | GF- State | Total | GF- State | Total |
| Local Gov. Total    |                           |       |           |       |           |       |
| Local Gov. Courts   |                           |       |           |       |           |       |
| Loc School dist-SPI |                           |       |           |       |           |       |
| Local Gov. Other    | Fiscal note not available |       |           |       |           |       |

## 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 | .0                        | 0                | 0                | 0                | .0          | 0                | 0                | 0                | .0          | 0                | 0                | 0                |
| Office of State Treasurer           | .0                        | 0                | 0                | 0                | .0          | 0                | 0                | 0                | .0          | 0                | 0                | 0                |
| 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               | 19.9                      | 6,896,100        | 6,896,100        | 6,896,100        | 19.2        | 6,948,100        | 6,948,100        | 6,948,100        | 15.7        | 4,211,600        | 4,211,600        | 4,211,600        |
| Department of Corrections           | Fiscal note not available |                  |                  |                  |             |                  |                  |                  |             |                  |                  |                  |
| <b>Total \$</b>                     | <b>20.3</b>               | <b>6,896,100</b> | <b>6,896,100</b> | <b>7,018,100</b> | <b>19.5</b> | <b>6,948,100</b> | <b>6,948,100</b> | <b>7,032,100</b> | <b>15.9</b> | <b>4,211,600</b> | <b>4,211,600</b> | <b>4,257,600</b> |

| Agency Name         | 2021-23                   |          |       | 2023-25 |          |       | 2025-27 |          |       |
|---------------------|---------------------------|----------|-------|---------|----------|-------|---------|----------|-------|
|                     | FTEs                      | GF-State | Total | FTEs    | GF-State | Total | FTEs    | GF-State | Total |
| Local Gov. Courts   |                           |          |       |         |          |       |         |          |       |
| Loc School dist-SPI |                           |          |       |         |          |       |         |          |       |
| Local Gov. Other    | Fiscal note not available |          |       |         |          |       |         |          |       |
| 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           | .0                        | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| 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           | Fiscal note not available |          |          |            |          |          |            |          |          |
| <b>Total \$</b>                     | <b>0.0</b>                | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> |

| Agency Name         | 2021-23                   |          |       | 2023-25 |          |       | 2025-27 |          |       |
|---------------------|---------------------------|----------|-------|---------|----------|-------|---------|----------|-------|
|                     | FTEs                      | GF-State | Total | FTEs    | GF-State | Total | FTEs    | GF-State | Total |
| Local Gov. Courts   |                           |          |       |         |          |       |         |          |       |
| Loc School dist-SPI |                           |          |       |         |          |       |         |          |       |
| Local Gov. Other    | Fiscal note not available |          |       |         |          |       |         |          |       |
| Local Gov. Total    |                           |          |       |         |          |       |         |          |       |

## Estimated Capital Budget Breakout

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|  |
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|  |                                 |   |
|--|---------------------------------|---|
| <b>Prepared by:</b> Ramona Nabors, OFM | <b>Phone:</b><br>(360) 902-0547 | <b>Date Published:</b><br>Preliminary 4/21/2021 |
|--|---------------------------------|---|

# Judicial Impact Fiscal Note

|  |                                 |   |
|--|---------------------------------|---|
| <b>Bill Number:</b> 5096 E S SB AMI<br>FIN H1547.5 | <b>Title:</b> Capital gains tax | <b>Agency:</b> 055-Administrative Office<br>of the Courts |
|--|---------------------------------|---|

## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

NONE

**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 for 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: 04/19/2021 |
| Agency Preparation: Sam Knutson | Phone: 360-704-5528   | Date: 04/20/2021 |
| Agency Approval: Ramsey Radwan  | Phone: 360-357-2406   | Date: 04/20/2021 |
| OFM Review: Gaius Horton        | Phone: (360) 819-3112 | Date: 04/20/2021 |

169,817.00

Request # 5096 STRK-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)

NONE

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

NONE

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

NONE

### 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

169,817.00

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 14(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 14(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. 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

|   |                                 |   |
|---|---------------------------------|---|
| <b>Bill Number:</b> 5096 E S SB<br>AMH FIN<br>H1547.5 | <b>Title:</b> Capital gains tax | <b>Agency:</b> 090-Office of State<br>Treasurer |
|---|---------------------------------|---|

## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

| ACCOUNT   | FY 2022 | FY 2023     | 2021-23     | 2023-25      | 2025-27      |
|---|---------|-------------|-------------|--------------|--------------|
| General Fund-State 001-1                              |         | (8,000,000) | (8,000,000) | (18,000,000) | (20,000,000) |
| Workforce Education Investment<br>Account-State 24J-1 |         | 8,000,000   | 8,000,000   | 18,000,000   | 20,000,000   |
| <b>Total \$</b>                                       |         |             |             |              |              |

### 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: 04/19/2021 |
| Agency Preparation: Dan Mason | Phone: (360) 902-8990 | Date: 04/20/2021 |
| Agency Approval: Dan Mason    | Phone: (360) 902-8990 | Date: 04/20/2021 |
| OFM Review: Ramona Nabors     | Phone: (360) 902-0547 | Date: 04/21/2021 |

## 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.*

ESSB 5096 AMH FIN H1547.5 imposes a capital gains tax. Under section 15 (4), the state treasurer is directed to transfer money from the general fund to the workforce education investment account. This fiscal note was coordinated with DOR.

### 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.*

DOR provided the transfer estimates.

Projected cash flows are currently unavailable; therefore, estimated earnings from investments are indeterminable.

There may be an impact on the debt service limitation calculation. Any change to the earnings credited to the general fund will change, by an equal amount, general state revenues.

### 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.*

## 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**

# Individual State Agency Fiscal Note

|   |                                 |  |
|---|---------------------------------|--|
| <b>Bill Number:</b> 5096 E S SB<br>AMH FIN<br>H1547.5 | <b>Title:</b> Capital gains tax | <b>Agency:</b> 100-Office of Attorney<br>General |
|---|---------------------------------|--|

## 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<br>405-1 | 61,000  | 61,000  | 122,000 | 84,000  | 46,000  |
| <b>Total \$</b>                                 | 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     |
| <b>Account</b>                                  |         |         |         |         |         |
| Legal Services Revolving<br>Account-State 405-1 | 61,000  | 61,000  | 122,000 | 84,000  | 46,000  |
| <b>Total \$</b>                                 | 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: 04/19/2021 |
| Agency Preparation: Cam Comfort | Phone: (360) 664-9429 | Date: 04/20/2021 |
| Agency Approval: Dianna Wilks   | Phone: 360-709-6463   | Date: 04/20/2021 |
| OFM Review: Tyler Lentz         | Phone: (360) 790-0055 | Date: 04/20/2021 |

## 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 4 is a new section that defines various terms, including defining “individual” as “a natural person” and “Washington capital gains” as “an individual’s adjusted capital gains less \$250,000 as provided in Section 7 of this act and adjusted annually under Section 16 of this act.”

Section 5 is a new section imposing an excise tax on the sale or exchange of long-term capital assets beginning January 1, 2022. The tax is imposed only on individuals and is equal to seven percent multiplied by the individual’s Washington capital gains.

Section 6 is a new section providing exemptions.

Sections 7 and 8 are new sections providing deductions.

Section 10 is a new section addressing the allocation of long-term capital gains and losses to Washington.

Section 11 is a new section addressing the filing of returns.

Section 12 is a new section addressing joint filers.

Section 13 is a new section providing that RCW 82.32 apply to the administration of the capital gains tax.

Section 14 is a new section making it a class C felony for a taxpayer to knowingly attempt to evade the tax imposed by this act and a gross misdemeanor to knowingly failing to pay the tax, make returns, keep records, or supply information as required by RCW 82.32.

Section 15 is a new section providing a business & occupation tax credit.

Section 16 is a new section requiring the Department of Revenue to annually adjust the standard deduction amount in Sections 4(13) and 7(1) and the worldwide gross revenue amount in Section 8.

Section 20 is a severability clause.

### 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 cost estimates. These costs will be billed through the revolving account to the client agency.

The client agency is the Department of Revenue. 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<br>Revolving Account | State | 61,000  | 61,000  | 122,000 | 84,000  | 46,000  |
| <b>Total \$</b> |                                     |       | 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   |         |         |
| <b>Total \$</b>            | 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     |         |
| <b>Total FTEs</b>          |         | 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  |
| <b>Total \$</b>                  | 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

|   |                                 |  |
|---|---------------------------------|--|
| <b>Bill Number:</b> 5096 E S SB<br>AMH FIN<br>H1547.5 | <b>Title:</b> Capital gains tax | <b>Agency:</b> 101-Caseload Forecast Council |
|---|---------------------------------|--|

## 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: 04/19/2021 |
| Agency Preparation: Clela Steelhammer | Phone: 360-664-9381   | Date: 04/19/2021 |
| Agency Approval: Clela Steelhammer    | Phone: 360-664-9381   | Date: 04/19/2021 |
| OFM Review: Cynthia Hollimon          | Phone: (360) 810-1979 | Date: 04/20/2021 |

## 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**

# **ESSB 5096 (FIN H1547.5)**

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

**101 – Caseload Forecast Council**  
**April 19, 2021**

### **SUMMARY**

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

Section 112 Establishes the unranked Class C felony offense concerning taxpayer evasion of any tax imposed in this chapter.

Section 112 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

|  |                                 |  |
|--|---------------------------------|--|
| <b>Bill Number:</b> 5096 E S SB AMI<br>FIN H1547.5 | <b>Title:</b> Capital gains tax | <b>Agency:</b> 140-Department of Revenue |
|--|---------------------------------|--|

## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

| Account   | FY 2022 | FY 2023      | 2021-23      | 2023-25       | 2025-27       |
|---|---------|--------------|--------------|---------------|---------------|
| GF-STATE-State<br>01 - Taxes 05 - Bus and Occup Tax                                   |         | (77,000,000) | (77,000,000) | (171,000,000) | (185,000,000) |
| Education Legacy Trust Account-State<br>00 - 00 -                                     |         | 530,000,000  | 530,000,000  | 1,170,000,000 | 1,266,000,000 |
| Workforce Educationa Investment<br>Account-State<br>01 - Taxes 05 - Bus and Occup Tax |         | (8,000,000)  | (8,000,000)  | (18,000,000)  | (20,000,000)  |
| <b>Total \$</b>   |         | 445,000,000  | 445,000,000  | 981,000,000   | 1,061,000,000 |

### Estimated Expenditures from:

| Account              | FY 2022   | FY 2023   | 2021-23   | 2023-25   | 2025-27   |
|----------------------|-----------|-----------|-----------|-----------|-----------|
| FTE Staff Years      | 15.4      | 24.3      | 19.9      | 19.2      | 15.7      |
| GF-STATE-State 001-1 | 2,561,900 | 4,334,200 | 6,896,100 | 6,948,100 | 4,211,600 |
| <b>Total \$</b>      | 2,561,900 | 4,334,200 | 6,896,100 | 6,948,100 | 4,211,600 |

### 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: 04/19/2021 |
| Agency Preparation: Sara del Moral | Phone: 360-534-1525   | Date: 04/20/2021 |
| Agency Approval: Don Gutmann       | Phone: 360-534-1510   | Date: 04/20/2021 |
| OFM Review: Ramona Nabors          | Phone: (360) 902-0547 | Date: 04/21/2021 |

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## 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.*

#### CURRENT LAW:

There is no capital gains tax in Washington State.

#### PROPOSAL:

This fiscal note reflects a striking amendment to Engrossed Substitute Senate Bill (ESSB) 5096 as passed out of the Senate on March 6, 2021, and makes the following changes:

----- Revises "intent" language.

----- All revenues are deposited to the Education Legacy Trust Account.

----- Removes the exemption for sales of controlling interests which are subject to real estate excise tax (REET).

----- Provides an exemption for the sale of an interest in a privately-held entity to the extent that capital gains or losses from such sales are directly attributable to the real estate owned by the entity.

----- Provides an exemption for commercial fishing privileges.

----- Clarifies that the total standard deduction, when used by married couples or domestic partners who file federal taxes separately, must total no more than \$250,000.

#### Full description:

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, for all filers except married couples filing separately and registered domestic partners filing separately, a standard deduction of \$250,000 is available. For married couples filing separately and registered domestic partners filing separately, the combined standard deduction is limited to \$250,000. The standard deduction is adjusted annually for inflation.

#### 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 transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where the real property is located. "Real estate" means land and fixtures affixed to land. The term also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

-The sale or exchange of an interest in a privately-held entity to the extent that capital gains or losses from such sales or exchange are directly attributable to the real estate owned by the entity.

- The sale or exchange of assets under certain retirement savings vehicles.

- Capital gains from the sale or exchange of assets sold or exchanged under condemnation proceedings or imminent threat of condemnation.

- The sale or exchange of cattle, horses, or breeding livestock by farmers if more than 50 percent of the taxpayer's gross income is from farming or ranching.

- The sale or exchange of property depreciable under Internal Revenue Code section 167 (a)(1) or that qualifies for expensing under Internal Revenue Code section 179.

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- The sale or exchange of timber or 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 from the sale of an auto dealership licensed under chapter 46.70 RCW.
- The sale or exchange of commercial fishing privileges.

## DEDUCTIONS

**Qualified Family-Owned Small Business Deduction:** A deduction is provided for capital gains derived from the sale of substantially all of the assets of, 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 five of the eight 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:**

- The taxpayer, or their family, owned or had a qualifying interest in the business for at least eight years immediately prior to the sale of assets or transfer of interest.
- During the eight-year period, there must be periods aggregating at least five years during which the 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 (certain family members of the taxpayer).
- The small business must have worldwide gross revenue of \$10 million or less for the 12 months immediately preceding the sale or transfer. This gross revenue limit is adjusted annually for inflation.

**Qualified interest:**

- 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 the taxpayer and /or members of the taxpayer's family,
  - 70 percent of the entity is owned by two families and at least 30 percent is owned by the taxpayer and /or their family, or
  - 90 percent of the entity is owned by three families and at least 30 percent is owned by the taxpayer and /or their family.

**Legally prohibited amounts:** A deduction is allowed for 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 allowed, 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 allowed 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

All revenues will be deposited to the Education Legacy Trust Account.

## EFFECTIVE DATE:

The bill takes effect 90 days after final adjournment of the session in which it is 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 7,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The tax 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 estimate assumes that the long-term net capital gains reported on Washington residents' federal tax returns are equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under section 108 when calculating their adjusted capital gains and Washington capital gains. Losses not allocated to the state under section 108 cannot be used to reduce a taxpayer's adjusted capital gains. Limiting available losses to losses allocated to the state would have a minimal but positive impact on revenues. For the purpose of this estimate, we assume the impact is zero due to a lack of information about how gains and losses are allocated 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.
- Determining federal net long-term capital gains as if the alternative minimum tax did not exist will have a minimal but indeterminate impact on revenues.
- No estimated payments or withholdings are made during the year.
- 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.
- 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 85 percent in the first year, 90 percent in the second year, and 95 percent thereafter.

For the purpose of the real estate exemption, we estimate the amount of corporate stock capital gains exempted using the following assumptions:

- 87 percent of corporate stock capital gains are associated with privately held firms.
- 89 percent of depreciable business assets held by C-corporations consists of real estate.
- The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. C-corporations for Tax Year 2013, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets. For instance, if 16 percent of C-corporation assets are real property, then 16 percent of corporate stock capital gains result from the sale or exchange of real property.

For the purpose of estimating 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, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets.
- Sales or exchanges from 89 percent of depreciable business assets consists of real estate improvements.
- Sales or exchanges from all real estate 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 the purpose of estimating the amount of the \$250,000 standard deduction, we assume this amount is available for all filers.

For the purpose of estimating the amount of the qualified family-owned small business deduction, we assume:

- All Washington firms with \$10 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.
- The percentage of all capital gains qualifying for the qualified family-owned small business deduction remains constant year-to-year. This assumption has the same revenue impact as annually inflating the gross revenue limitation would have.

B&O tax credit:

- Each taxpayer maximizes the amount of the credit by applying the standard exemption first to gains realized from personal sources, then applying any remainder to gains from business sources.
- 10 percent of taxable capital gains resulting from business activity in the finance sector is not subject to the B&O tax, because it comes 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.

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.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120 - Table 16. Balance Sheet, Income Statement, Tax,

and Selected Other Items, by Major Industry, Tax Year 2013.

- Department of Revenue: Excise tax data, Calendar Year 2020, Q2, used to estimate effective B&O tax rates for finance sector firms.
- Department of Revenue: Excise tax data, Fiscal Year 2018, 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.
  - Economic and Revenue Forecast Council, November 2020, Seattle CPI-Urban (U.S. BLS) forecast, used to adjust amounts for inflation.

## REVENUE ESTIMATES

### TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

|           |            |
|-----------|------------|
| FY 2022 - | \$ 0       |
| FY 2023 - | \$ 445,000 |
| FY 2024 - | \$ 473,000 |
| FY 2025 - | \$ 508,000 |
| FY 2026 - | \$ 522,000 |
| FY 2027 - | \$ 539,000 |

Local Government, if applicable (cash basis, \$000): 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*

### ASSUMPTIONS:

- This estimate affects 7,000 taxpayers.
- Taxpayers will not be required to make estimated payments.

### FIRST YEAR COSTS:

The Department will incur total costs of \$2,561,900 in Fiscal Year 2022. These costs include :

Labor Costs - Time and effort equates to 15.44 FTEs.

- Provide technical advice, interpretation and analysis for internal use 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 tax ruling requests and email inquiries.
  - Adopt two new administrative rules.

Object Costs - \$606,600.

- Contract computer system programming.

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- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence and notices to paper filers.
- Legal assistance from the Office of the Attorney General.

#### SECOND YEAR COSTS:

The Department will incur total costs of \$4,334,200 in Fiscal Year 2023. These costs include :

Labor Costs - Time and effort equates to 24.3 FTEs.

- Provide technical advice and interpretation services for internal use.
- 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 that provide taxpayers with an informal, non-adversarial dispute resolution process for the review of a disputed action by the Department, such as an assessment of taxes, notice of taxes due, denial of a refund request, or tax ruling.

Object Costs - \$1,737,500.

- Contract computer system programming.
- Purchase additional server equipment.
- Purchase additional scanning equipment.
- Acquire additional seat licenses for the Telephone Information Center.
- Print and mail a special notice to affected taxpayers.
- 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 \$4,077,000 in Fiscal Year 2024. These costs include :

Labor Costs - Time and effort equates to 20.0 FTEs.

- Provide technical advice and interpretation services for internal use.
- 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 - \$2,069,500.

- 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 \$2,871,100 in Fiscal Year 2025. These costs include :

Labor Costs - Time and effort equates to 18.4 FTEs.

- Provide technical advice and interpretation services for internal use.
- 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                  | 15.4               | 24.3               | 19.9               | 19.2               | 15.7               |
| A-Salaries and Wages             | 1,213,500          | 1,627,100          | 2,840,600          | 2,481,400          | 2,029,800          |
| B-Employee Benefits              | 436,700            | 585,800            | 1,022,500          | 893,300            | 730,800            |
| C-Professional Service Contracts | 500,000            | 1,500,000          | 2,000,000          | 3,000,000          | 1,000,000          |
| E-Goods and Other Services       | 263,400            | 370,000            | 633,400            | 514,700            | 400,800            |
| G-Travel                         | 300                | 600                | 900                | 600                | 600                |
| J-Capital Outlays                | 148,000            | 250,700            | 398,700            | 58,100             | 49,600             |
| <b>Total \$</b>                  | <b>\$2,561,900</b> | <b>\$4,334,200</b> | <b>\$6,896,100</b> | <b>\$6,948,100</b> | <b>\$4,211,600</b> |

**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 |
|------------------------|---------|---------|---------|---------|---------|---------|
| ADM ASST 3             | 43,392  |         | 0.1     | 0.1     | 0.1     |         |
| 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  |         | 0.5     | 0.3     | 0.5     | 0.5     |
| 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  | 3.6     | 3.7     | 3.7     | 2.4     | 1.8     |
| MGMT ANALYST5          | 78,408  | 1.4     | 1.1     | 1.3     | 0.4     | 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  |         | 2.2     | 1.1     | 2.1     | 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     | 2.0     | 2.3     | 1.8     | 1.1     |
| TAX POLICY SP 4        | 88,644  | 0.6     | 0.4     | 0.5     | 0.4     | 0.2     |
| WMS BAND 2             | 89,018  | 1.1     | 1.0     | 1.1     | 1.0     | 1.0     |
| WMS BAND 3             | 101,257 | 0.0     |         | 0.0     |         |         |
| <b>Total FTEs</b>      |         | 15.4    | 24.3    | 19.9    | 19.2    | 15.7    |

## 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

**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.



# Multiple Agency Ten-Year Analysis Summary

|                             |                   |
|-----------------------------|-------------------|
| <b>Bill Number</b>          | <b>Title</b>      |
| 5096 E S SB AMH FIN H1547.5 | Capital gains tax |

This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

## Estimated Cash Receipts

|                                     | Fiscal Year<br>2022 | Fiscal Year<br>2023 | Fiscal Year<br>2024 | Fiscal Year<br>2025 | Fiscal Year<br>2026 | Fiscal Year<br>2027 | Fiscal Year<br>2028 | Fiscal Year<br>2029 | Fiscal Year<br>2030 | Fiscal Year<br>2031 | 2022-31<br>TOTAL     |
|-------------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|
| Administrative Office of the Courts | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                    |
| Office of State Treasurer           | 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                   | 530,000,000         | 564,000,000         | 606,000,000         | 623,000,000         | 643,000,000         | 665,000,000         | 689,000,000         | 713,000,000         | 739,000,000         | 5,772,000,000        |
| <b>Total</b>                        | <b>0</b>            | <b>530,000,000</b>  | <b>564,000,000</b>  | <b>606,000,000</b>  | <b>623,000,000</b>  | <b>643,000,000</b>  | <b>665,000,000</b>  | <b>689,000,000</b>  | <b>713,000,000</b>  | <b>739,000,000</b>  | <b>5,772,000,000</b> |



# Ten-Year Analysis

|   |                                   |  |
|---|-----------------------------------|--|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>055 Administrative Office of the Courts |
|---|-----------------------------------|--|

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 |  |  |  |  |  |  |  |  |  |  |  |
|--------------------|-----------|--|--|--|--|--|--|--|--|--|--|--|
|                    |           |  |  |  |  |  |  |  |  |  |  |  |

|                                 |                     |                             |
|---------------------------------|---------------------|-----------------------------|
| Agency Preparation: Sam Knutson | Phone: 360-704-5528 | Date: 4/20/2021 10:12:35 am |
| Agency Approval: Ramsey Radwan  | Phone: 360-357-2406 | Date: 4/20/2021 10:12:35 am |
| OFM Review:                     | Phone:              | Date:                       |



# Ten-Year Analysis

|   |                                   |  |
|---|-----------------------------------|--|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>090 Office of State Treasurer |
|---|-----------------------------------|--|

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**

|                           |                  |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|
| <b>Name of Tax or Fee</b> | <b>Acct Code</b> |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|

|                               |                       |                             |
|-------------------------------|-----------------------|-----------------------------|
| Agency Preparation: Dan Mason | Phone: (360) 902-8990 | Date: 4/20/2021 10:19:14 am |
| Agency Approval: Dan Mason    | Phone: (360) 902-8990 | Date: 4/20/2021 10:19:14 am |
| OFM Review:                   | Phone:                | Date:                       |



# Ten-Year Analysis

|   |                                   |   |
|---|-----------------------------------|---|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>100 Office of Attorney General |
|---|-----------------------------------|---|

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**

|                           |                  |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|
| <b>Name of Tax or Fee</b> | <b>Acct Code</b> |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|

|                                 |                       |                            |
|---------------------------------|-----------------------|----------------------------|
| Agency Preparation: Cam Comfort | Phone: (360) 664-9429 | Date: 4/20/2021 8:45:52 am |
| Agency Approval: Dianna Wilks   | Phone: 360-709-6463   | Date: 4/20/2021 8:45:52 am |
| OFM Review:                     | Phone:                | Date:                      |



# Ten-Year Analysis

|   |                                   |  |
|---|-----------------------------------|--|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>101 Caseload Forecast Council |
|---|-----------------------------------|--|

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**

|                           |                  |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|
| <b>Name of Tax or Fee</b> | <b>Acct Code</b> |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|

|                                       |                     |                            |
|---------------------------------------|---------------------|----------------------------|
| Agency Preparation: Clela Steelhammer | Phone: 360-664-9381 | Date: 4/19/2021 4:24:32 pm |
| Agency Approval: Clela Steelhammer    | Phone: 360-664-9381 | Date: 4/19/2021 4:24:32 pm |
| OFM Review:                           | Phone:              | Date:                      |



# Ten-Year Analysis

|   |                                   |  |
|---|-----------------------------------|--|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>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>.

## 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       |                  | 530,000,000        | 564,000,000          | 606,000,000        | 623,000,000          | 643,000,000        | 665,000,000          | 689,000,000        | 713,000,000          | 739,000,000        | 5,772,000,000        |
| <b>Total</b>           |           |                  | <b>530,000,000</b> | <b>564,000,000</b>   | <b>606,000,000</b> | <b>623,000,000</b>   | <b>643,000,000</b> | <b>665,000,000</b>   | <b>689,000,000</b> | <b>713,000,000</b>   | <b>739,000,000</b> | <b>5,772,000,000</b> |
| <b>Biennial Totals</b> |           |                  | <b>530,000,000</b> | <b>1,170,000,000</b> |                    | <b>1,266,000,000</b> |                    | <b>1,354,000,000</b> |                    | <b>1,452,000,000</b> |                    | <b>5,772,000,000</b> |

## Narrative Explanation (Required for Indeterminate Cash Receipts)

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

**PROPOSAL:**  
This fiscal note reflects a striking amendment to Engrossed Substitute Senate Bill (ESSB) 5096 as passed out of the Senate on March 6, 2021, and makes the following changes:

- Revises "intent" language.
- All revenues are deposited to the Education Legacy Trust Account.
- Removes the exemption for sales of controlling interests which are subject to real estate excise tax (REET).
- Provides an exemption for the sale of an interest in a privately-held entity to the extent that capital gains or losses from such sales are directly attributable to the real estate owned by the entity.
- Provides an exemption for commercial fishing privileges.
- Clarifies that the total standard deduction, when used by married couples or domestic partners who file federal taxes separately, must total no more than \$250,000.

**Full description:**  
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



# Ten-Year Analysis

| Bill Number                 | Title             | Agency                    |
|-----------------------------|-------------------|---------------------------|
| 5096 E S SB AMH FIN H1547.5 | 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)

percent multiplied by an individual's Washington capital gains.

After exempting certain capital gains based on the type of asset sold or exchanged, for all filers except married couples filing separately and registered domestic partners filing separately, a standard deduction of \$250,000 is available. For married couples filing separately and registered domestic partners filing separately, the combined standard deduction is limited to \$250,000. The standard deduction is adjusted annually for inflation.

### 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 transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where the real property is located. "Real estate" means land and fixtures affixed to land. The term also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.
- The sale or exchange of an interest in a privately-held entity to the extent that capital gains or losses from such sales or exchange are directly attributable to the real estate owned by the entity.
- The sale or exchange of assets under certain retirement savings vehicles.
- Capital gains from the sale or exchange of assets sold or exchanged under condemnation proceedings or imminent threat of condemnation.
- The sale or exchange of cattle, horses, or breeding livestock by farmers if more than 50 percent of the taxpayer's gross income is from farming or ranching.
- The sale or exchange of property depreciable under Internal Revenue Code section 167 (a)(1) or that qualifies for expensing under Internal Revenue Code section 179.
- The sale or exchange of timber or timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gain from the sale or exchange of timber or timberland.
- The sale or exchange of goodwill from the sale of an auto dealership licensed under chapter 46.70 RCW.
- The sale or exchange of commercial fishing privileges.

### DEDUCTIONS

Qualified Family-Owned Small Business Deduction: A deduction is provided for capital gains derived from the sale of substantially all of the assets of, 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



# Ten-Year Analysis

| Bill Number                 | Title             | Agency                    |
|-----------------------------|-------------------|---------------------------|
| 5096 E S SB AMH FIN H1547.5 | 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)

operation of the business for at least five of the eight 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:

- The taxpayer, or their family, owned or had a qualifying interest in the business for at least eight years immediately prior to the sale of assets or transfer of interest.
- During the eight-year period, there must be periods aggregating at least five years during which the 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 (certain family members of the taxpayer).
- The small business must have worldwide gross revenue of \$10 million or less for the 12 months immediately preceding the sale or transfer. This gross revenue limit is adjusted annually for inflation.

Qualified interest:

- 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 the taxpayer and/or members of the taxpayer’s family,
  - 70 percent of the entity is owned by two families and at least 30 percent is owned by the taxpayer and/or their family, or
  - 90 percent of the entity is owned by three families and at least 30 percent is owned by the taxpayer and/or their family.

Legally prohibited amounts: A deduction is allowed for 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 allowed, to avoid taxing the same sale or exchange under both the B&O and capital gains taxes.



# Ten-Year Analysis

| Bill Number                 | Title             | Agency                    |
|-----------------------------|-------------------|---------------------------|
| 5096 E S SB AMH FIN H1547.5 | 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)

**Out-of-state credit:** A credit against the capital gains tax is allowed 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

All revenues will be deposited to the Education Legacy Trust Account.

### EFFECTIVE DATE:

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

### ASSUMPTIONS:

- Approximately 7,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The tax 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 estimate assumes that the long-term net capital gains reported on Washington residents' federal tax returns are equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under section 108 when calculating their adjusted capital gains and Washington capital gains. Losses not allocated to the state under section 108 cannot be used to reduce a taxpayer's adjusted capital gains. Limiting available losses to losses allocated to the state would have a minimal but positive impact on revenues. For the purpose of this estimate, we assume the impact is zero due to a lack of information about how gains and losses are allocated 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.
- Determining federal net long-term capital gains as if the alternative minimum tax did not exist will have a minimal but indeterminate impact on revenues.
- No estimated payments or withholdings are made during the year.
- 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.
- 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.



# Ten-Year Analysis

| Bill Number                 | Title             | Agency                    |
|-----------------------------|-------------------|---------------------------|
| 5096 E S SB AMH FIN H1547.5 | 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)

- Compliance is 85 percent in the first year, 90 percent in the second year, and 95 percent thereafter.

For the purpose of the real estate exemption, we estimate the amount of corporate stock capital gains exempted using the following assumptions:

- 87 percent of corporate stock capital gains are associated with privately held firms.
- 89 percent of depreciable business assets held by C-corporations consists of real estate.
- The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. C-corporations for Tax Year 2013, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets. For instance, if 16 percent of C -corporation assets are real property, then 16 percent of corporate stock capital gains result from the sale or exchange of real property.

For the purpose of estimating 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, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets.
- Sales or exchanges from 89 percent of depreciable business assets consists of real estate improvements.
- Sales or exchanges from all real estate 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 the purpose of estimating the amount of the \$250,000 standard deduction, we assume this amount is available for all filers.

For the purpose of estimating the amount of the qualified family -owned small business deduction, we assume:

- All Washington firms with \$10 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.
- The percentage of all capital gains qualifying for the qualified family -owned small business deduction remains constant year -to-year. This assumption has the same rever impact as annually inflating the gross revenue limitation would have.



# Ten-Year Analysis

| Bill Number                 | Title             | Agency                    |
|-----------------------------|-------------------|---------------------------|
| 5096 E S SB AMH FIN H1547.5 | 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)

### B&O tax credit:

- Each taxpayer maximizes the amount of the credit by applying the standard exemption first to gains realized from personal sources, then applying any remainder to gains from business sources.
- 10 percent of taxable capital gains resulting from business activity in the finance sector is not subject to the B&O tax, because it comes 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.

### 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 1 C, 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.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120 - Table 16. Balance Sheet, Income Statement, Tax, and Selected Other Items, by Major Industry, Tax Year 2013.
- Department of Revenue: Excise tax data, Calendar Year 2020, Q2, used to estimate effective B&O tax rates for finance sector firms.
- Department of Revenue: Excise tax data, Fiscal Year 2018, 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.
  - Economic and Revenue Forecast Council, November 2020, Seattle CPI-Urban (U.S. BLS) forecast, used to adjust amounts for inflation.

### REVENUE ESTIMATES

#### TOTAL REVENUE IMPACT:

##### State Government (cash basis, \$000):

|           |            |
|-----------|------------|
| FY 2022 - | \$ 0       |
| FY 2023 - | \$ 445,000 |
| FY 2024 - | \$ 473,000 |
| FY 2025 - | \$ 508,000 |
| FY 2026 - | \$ 522,000 |
| FY 2027 - | \$ 539,000 |

Local Government, if applicable (cash basis, \$000): None



# Ten-Year Analysis

|   |                                   |  |
|---|-----------------------------------|--|
| <b>Bill Number</b><br>5096 E S SB AMH FIN H1547.5 | <b>Title</b><br>Capital gains tax | <b>Agency</b><br>140 Department of Revenue |
|---|-----------------------------------|--|

|                                    |                     |                            |
|------------------------------------|---------------------|----------------------------|
| Agency Preparation: Sara del Moral | Phone: 360-534-1525 | Date: 4/20/2021 8:58:18 am |
| Agency Approval: Don Gutmann       | Phone: 360-534-1510 | Date: 4/20/2021 8:58:18 am |
| OFM Review:                        | Phone:              | Date:                      |