

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 6248 SB	<b>Title:</b> Capital gains tax
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## Estimated Cash Receipts

NONE

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of State Treasurer	Fiscal note not available											
Department of Revenue	1.7	538,200	538,200	538,200	1.8	356,500	356,500	356,500	1.3	251,600	251,600	251,600
<b>Total \$</b>	<b>1.7</b>	<b>538,200</b>	<b>538,200</b>	<b>538,200</b>	<b>1.8</b>	<b>356,500</b>	<b>356,500</b>	<b>356,500</b>	<b>1.3</b>	<b>251,600</b>	<b>251,600</b>	<b>251,600</b>

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of State Treasurer	Fiscal note not available								
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
<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>

## Estimated Capital Budget Breakout

This preliminary package is incomplete and may not reflect the total fiscal impact. Other agencies' fiscal notes will be distributed as soon as possible.

<b>Prepared by:</b> Amy Hatfield, OFM	<b>Phone:</b> (360) 280-7584	<b>Date Published:</b> Preliminary 2/ 1/2024
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# Department of Revenue Fiscal Note

<b>Bill Number:</b> 6248 SB	<b>Title:</b> Capital gains tax	<b>Agency:</b> 140-Department of Revenue
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## Part I: Estimates

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No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax				18,200,000	39,500,000
GF-STATE-State 01 - Taxes 52 - State Lands Stewards				(18,200,000)	(39,500,000)
<b>Total \$</b>					

### Estimated Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.4	2.9	1.7	1.8	1.3
<b>Account</b>					
GF-STATE-State 001-1	136,400	401,800	538,200	356,500	251,600
<b>Total \$</b>	136,400	401,800	538,200	356,500	251,600

### 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:

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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.

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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: 01/16/2024
Agency Preparation: Sara del Moral	Phone: (360) 534-1525	Date: 01/25/2024
Agency Approval: Valerie Torres	Phone: (360) 534-1521	Date: 01/25/2024
OFM Review: Amy Hatfield	Phone: (360) 280-7584	Date: 01/25/2024

Request # 6248-1-1

## Part II: Narrative Explanation

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

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

#### CURRENT LAW:

Washington enacted a capital gains tax in the 2021 Legislative Session effective January 1, 2022. The 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% multiplied by an individual's Washington capital gains.

An individual computes the amount of Washington capital gains by making certain adjustments to their federal net long-term capital gains. The tax only applies to capital gains from the sale or exchange of capital assets sourced in Washington.

The tax does not apply to certain types of transactions, including but not limited to:

- The sale or exchange of real estate.
- The sale or exchange of an interest in a privately held entity to the extent long-term capital gains or losses from such sale or exchange are directly attributable to the real estate owned directly by the entity.
- The sale or exchange of assets under certain retirement savings vehicles.

A standard deduction of \$250,000 per individual applied for tax year 2022. Each December, the Department of Revenue (department) must adjust this deduction and certain other parameters for inflation.

A credit is allowed against the business and occupation (B&O) tax to avoid taxing the same sale or exchange under both the B&O tax and the Washington capital gains tax. If the credit reduces the amount deposited in the Workforce Education Investment Account (WEIA), the state treasurer must transfer this amount from the General Fund to the WEIA.

Individuals with capital gains tax due must file a Washington capital gains tax return and must also provide the department with a copy of their entire federal income tax return.

#### PROPOSAL:

Each October, the department must adjust the standard deduction and certain other parameters for inflation.

If the credit against the B&O tax reduces the amount deposited to the WEIA, the department, rather than the state treasurer, must transfer this amount from the General Fund to the WEIA.

The B&O tax credit expires January 1, 2025.

Beginning January 1, 2025, for taxes due in 2026, a credit against the capital gains tax replaces the credit against the B&O tax. The state treasurer must periodically transfer an amount equal to this credit from the General Fund to the Education Legacy Trust Account and the Common School Construction Fund.

Requires individuals to disregard, when calculating their Washington capital gains, any loss carryforwards from the following sales or exchanges:

- Sales or exchanges that are exempt from the capital gains tax.
- Sales or exchanges that occurred prior to January 1, 2022.

Clarifies that certain contracts that are deemed to be sold, under federal law, due to being held at the end of a tax year are considered sold for Washington capital gain tax purposes.

Clarifies how the holding period is impacted, for qualified family-owned small business deduction purposes, when an entity merely changes form or makes a nonmaterial change during the owner's holding period.

Individuals who claim the exemption for the sale or exchange of an interest in a privately held entity, to the extent a gain or loss is attributable to real estate owned by that entity, must file a Washington capital gains tax return, regardless of whether they have capital gains tax due.

Requires individuals to attach all federal tax forms, schedules, and supporting documents that are related to capital gains to their Washington capital gains tax return and filed with the IRS. Grants the department the authority to prescribe additional filing requirements to substantiate an individual's federal net long-term capital gain.

Clarifies that spouses and domestic partners are treated consistently for Washington capital gains tax purposes regardless of whether they file jointly or separately.

Clarifies the calculation of interest when a taxpayer underestimates tax due when making an estimated payment.

Creates a discretionary one-time penalty waiver that may be granted if the individual demonstrates they made a good faith effort to pay their capital gains tax timely.

Makes various technical corrections, including clarifying ambiguities, adding definitions, and correcting drafting errors.

#### EFFECTIVE DATE:

Changes relating to the credit against the B&O tax expire on January 1, 2025 (section 1).

Changes relating to the B&O tax credit against the capital gains tax take effect on January 1, 2025 (sections 2).

Changes to definitions take effect on January 1, 2025 (section 3).

The default rule that spouses and domestic partners are treated as one individual takes effect on January 1, 2025 (section 9).

All other sections take effect 90 days after final adjournment of the session.

## II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

#### ASSUMPTIONS:

- Taxpayers with estimated payments receive refunds in the fall of 2023, amounting to 12% of the estimated payments.
- Businesses amend returns to apply the credit against the B&O tax in October following each tax year. For instance, for tax year 2022, businesses apply the credit in October 2023.
- Beginning with tax year 2025, individuals apply the B&O credit against the capital gains tax in October following each tax year.
- Fifty percent of taxpayers with capital gains from the sale or exchange of interest in a privately held entity use the privately held entity exemption, because not all privately held entities own real estate.
- Changing the definition of "adjusted capital gain" will have a positive but indeterminate impact due to a lack of available data relating to loss carryforwards.
- Growth rate for capital gains mirrors the long-term capital gains growth rate reflected in the Economic and Revenue Forecast Council's June 2023 forecast.
- Compliance: 95% revenue collections in fiscal year 2025 and thereafter.
- This legislation passes by March 7, 2024, and the new provisions first apply to tax year 2025.

#### DATA SOURCES:

- Department of Revenue, Excise tax data
- Economic and Revenue Forecast Council, June 2023 forecast
- Internal Revenue Service (2022), Publication 6149 calendar year return projections by state: 2021–2028
- Internal Revenue Service (2022), Sales of Capital Assets Reported on Individual Tax Returns
- Internal Revenue Service (n.d.), Historic Table 2, tax year 2015

#### REVENUE ESTIMATES:

This bill changes the source of the credit from B&O tax to the capital gains tax, so the net change in revenues for the general fund is zero.

#### TOTAL REVENUE IMPACT:

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

FY 2024 -	\$ 0
FY 2025 -	\$ 0
FY 2026 -	\$ 0
FY 2027 -	\$ 0
FY 2028 -	\$ 0
FY 2029 -	\$ 0

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

#### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

#### ASSUMPTIONS:

This estimate affects an additional 2,500 taxpayers required to file a tax return because of the changes to the filing requirements for individuals who claim the exemption for the sale or exchange of an interest in a privately held entity, to the extent a gain or loss is attributable to real estate owned by that entity, regardless of whether they have capital gains tax due.

#### FIRST YEAR COSTS:

The department will incur total costs of \$136,400 in fiscal year 2024. These costs include:

Labor Costs – Time and effort equate to 0.4 FTE.  
- Program, setup, test and verify computer systems.

Object Costs - \$77,000.  
- Contract computer system programming.

#### SECOND YEAR COSTS:

The department will incur total costs of \$401,800 in fiscal year 2025. These costs include:

Labor Costs – Time and effort equate to 2.93 FTEs.  
- Ongoing testing of computer systems.  
- Create special notice and update relevant information on the department's website.  
- Provide technical advice and interpretation services for internal use.  
- Respond to tax ruling requests and email inquiries.

Request # 6248-1-1

- Answer phone calls and counter inquiries on tax questions and tax return preparation from individuals and accountants.
  - 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.
- Hear additional administrative reviews.
- Amend one administrative rule.

### THIRD YEAR COSTS:

The department will incur total costs of \$230,700 in fiscal year 2026. These costs include:

Labor Costs - Time and effort equate to 2.2 FTEs.

- Answer phone calls and counter inquiries on tax questions and tax return preparation from individuals and accountants.
  - 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.
- Hear additional administrative reviews.

### ONGOING COSTS:

Ongoing costs for fiscal year 2027 and beyond equal \$125,800 and include similar activities described in the third-year costs. Time and effort equate to 1.3 FTEs.

## Part III: Expenditure Detail

### III. A - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.4	2.9	1.7	1.8	1.3
A-Salaries and Wages	37,700	253,700	291,400	219,700	162,000
B-Employee Benefits	12,500	83,800	96,300	72,500	53,400
C-Professional Service Contracts	77,000		77,000		
E-Goods and Other Services	6,400	44,200	50,600	45,900	28,000
G-Travel				200	200
J-Capital Outlays	2,800	20,100	22,900	18,200	8,000
<b>Total \$</b>	<b>\$136,400</b>	<b>\$401,800</b>	<b>\$538,200</b>	<b>\$356,500</b>	<b>\$251,600</b>

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

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
EMS BAND 4	131,684		0.0	0.0		
EMS BAND 5	153,836		0.0	0.0		
EXCISE TAX EX 2	58,104		0.1	0.1	1.2	0.9
EXCISE TAX EX 3	64,092		0.1	0.1	0.3	0.2
EXCISE TAX EX 4	70,800				0.2	0.1
FINANCIAL EX 3	88,416				0.1	0.1
IT B A-JOURNEY	91,968	0.2	0.1	0.2		
IT SYS ADM-JOURNEY	96,552	0.2		0.1		
MGMT ANALYST4	76,188		0.0	0.0		
TAX POLICY SP 2	78,120		0.5	0.3		
TAX POLICY SP 3	88,416		1.6	0.8	0.1	
TAX POLICY SP 4	95,184		0.3	0.2		
WMS BAND 2	98,456		0.2	0.1		
WMS BAND 3	111,992		0.0	0.0		
<b>Total FTEs</b>		<b>0.4</b>	<b>2.9</b>	<b>1.7</b>	<b>1.8</b>	<b>1.3</b>

Request # 6248-1-1

**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**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

Should this legislation become law, the department will use the complex process to amend WAC 458-20-300, titled: "Capital gains excise tax - Overview and administration." Persons affected by this rulemaking would include individuals reporting and/or paying capital gains tax.



# Ten-Year Analysis

<b>Bill Number</b> 6248 SB	<b>Title</b> Capital gains tax	<b>Agency</b> 140 Department of Revenue
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

## Estimates

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No Cash Receipts

☐

Partially Indeterminate Cash Receipts

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Indeterminate Cash Receipts

## Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	Fiscal Year 2032	Fiscal Year 2033	2024-33 TOTAL
Business and occupation tax	001				18,200,000	19,100,000	20,400,000	21,400,000	22,500,000	23,700,000	24,900,000	150,200,000
Capital gains	001				(18,200,000)	(19,100,000)	(20,400,000)	(21,400,000)	(22,500,000)	(23,700,000)	(24,900,000)	(150,200,000)
<b>Total</b>												

## Biennial Totals

## Narrative Explanation (Required for Indeterminate Cash Receipts)

### CURRENT LAW:

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A standard deduction of \$250,000 per individual applied for tax year 2022. Each December, the Department of Revenue (department) must adjust this deduction and certain other parameters for inflation.





# Ten-Year Analysis

Bill Number	Title	Agency
6248 SB	Capital gains tax	140 Department of Revenue

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

## Narrative Explanation (Required for Indeterminate Cash Receipts)

A credit is allowed against the business and occupation (B&O) tax to avoid taxing the same sale or exchange under both the B&O tax and the Washington capital gains tax. If the credit reduces the amount deposited in the Workforce Education Investment Account (WEIA), the state treasurer must transfer this amount from the General Fund to the WEIA.

Individuals with capital gains tax due must file a Washington capital gains tax return and must also provide the department with a copy of their entire federal income tax return.

### PROPOSAL:

Each October, the department must adjust the standard deduction and certain other parameters for inflation.

If the credit against the B&O tax reduces the amount deposited to the WEIA, the department, rather than the state treasurer, must transfer this amount from the General Fund to the WEIA.

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Clarifies the calculation of interest when a taxpayer underestimates tax due when making an estimated payment.

Creates a discretionary one-time penalty waiver that may be granted if the individual demonstrates they made a good faith effort to pay their capital gains tax timely.

Makes various technical corrections, including clarifying ambiguities, adding definitions, and correcting drafting errors.

### EFFECTIVE DATE:

Changes relating to the credit against the B&O tax expire on January 1, 2025 (section 1).

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Changes to definitions take effect on January 1, 2025 (section 3).

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All other sections take effect 90 days after final adjournment of the session.

### ASSUMPTIONS:

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## Narrative Explanation (Required for Indeterminate Cash Receipts)

held entities own real estate.

- Changing the definition of "adjusted capital gain" will have a positive but indeterminate impact due to a lack of available data relating to loss carryforwards.
- Growth rate for capital gains mirrors the long-term capital gains growth rate reflected in the Economic and Revenue Forecast Council's June 2023 forecast.
- Compliance: 95% revenue collections in fiscal year 2025 and thereafter.
- This legislation passes by March 7, 2024, and the new provisions first apply to tax year 2025.

### DATA SOURCES:

- Department of Revenue, Excise tax data
- Economic and Revenue Forecast Council, June 2023 forecast
- Internal Revenue Service (2022), Publication 6149 calendar year return projections by state: 2021–2028
- Internal Revenue Service (2022), Sales of Capital Assets Reported on Individual Tax Returns
- Internal Revenue Service (n.d.), Historic Table 2, tax year 2015

### REVENUE ESTIMATES:

This bill changes the source of the credit from B&O tax to the capital gains tax, so the net change in revenues for the general fund is zero.

### TOTAL REVENUE IMPACT:

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

FY 2024 - \$ 0  
FY 2025 - \$ 0  
FY 2026 - \$ 0  
FY 2027 - \$ 0  
FY 2028 - \$ 0  
FY 2029 - \$ 0

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

Agency Preparation: Sara del Moral	Phone: 360-534-1525	Date: 1/25/2024 3:19:32 pm
Agency Approval: Valerie Torres	Phone: 360-534-1521	Date: 1/25/2024 3:19:32 pm
OFM Review:	Phone:	Date: