Summary of Initiative 2109

BRIEF SUMMARY

- Repeals the state capital gains tax, which is imposed annually on the sale or exchange of long-term Washington capital assets when an individual has an adjusted annual Washington capital gain in excess of $250,000.

BACKGROUND

Initiative 2109

Initiative 2109 was filed in 2023 as an initiative to the Legislature. Once certified, an initiative to the Legislature is submitted to the Legislature at its next regular session, at which time the Legislature must take one of three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

The Legislature did not act on Initiative 2109 during its 2024 Regular Session. This initiative is, therefore, being submitted to the people for approval or rejection at the November 2024 general election.

The ballot title and ballot measure summary are as follows:

Ballot Title
Statement of Subject: Initiative Measure No. 2109 concerns taxes.

Concise Description: This measure would repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over $250,000.

Should this measure be enacted into law? Yes [ ] No [ ]

Ballot Measure Summary
This measure would repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over $250,000.

Capital Gains

Most property owned by an individual for personal purposes is considered a capital asset, including houses, furniture, cars, stocks, and bonds. The sale of these items may result in a capital loss or a capital gain. Short-term capital gains or losses are gains or losses from assets held for one year or less. Long-term capital gains or losses are gains or losses from assets held for more than one year. These capital gains and losses may have federal and state tax implications for an individual.

Federal Capital Gains Tax

For the purposes of federal income tax, the gains on capital assets may generate tax liability. However, an individual's tax liability can be reduced by deducting any losses on capital assets when computing the individual's net capital gain. Short-term capital gains are taxed at the individual's ordinary income tax rate. Long-term capital gains are generally taxed at a preferential rate in comparison to ordinary income.

Some property is exempted from the federal capital gains tax. This includes: stock in trade and other inventory, accounts or notes receivable, depreciable property, real estate used in a trade or business, and certain hedging transactions. In addition, an individual does not need to report the sale or exchange of a main home in some circumstances.

Washington Capital Gains Tax

The state imposes a 7 percent excise tax on the adjusted capital gains of an individual for the privilege of selling or exchanging long-term capital assets less a standard deduction of $250,000

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for all filers, whether filing as an individual or jointly. The standard deduction is adjusted annually for inflation. The tax applies only to those capital gains allocated to Washington, which mean the long-term capital assets for the taxpayer must have certain ties to Washington.

For intangible personal property, the state capital gains tax will apply if the taxpayer was domiciled in Washington at the time of the sale or exchange. A "resident" is a person:

1. domiciled in Washington during the entire taxable year; or
2. not domiciled in Washington during the taxable year but who maintained a place of abode and was physically present in Washington for more than 183 days during the taxable year. Such a person will be a resident for that portion of the year in which they were domiciled or maintained a place of abode.

If a person maintained no permanent place of abode in this state during the entire taxable year, maintained a permanent place of abode outside of Washington for an entire taxable year, and spent an aggregate of no more than 30 days in Washington, the person is considered a nonresident.

The state capital gains tax applies to tangible personal property if:

1. the property was located in Washington at the time of the sale or exchange; or
2. the property was located in Washington at any time during the current or immediately preceding taxable year, the taxpayer was a Washington resident at the time of the sale or exchange, and the sale was not subject to income or excise tax on the adjusted capital gain by another taxing jurisdiction.

The sales or exchanges of the following types of assets are exempt from the state capital gains tax:

- real estate;
- interest in an entity owning real property, but only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity;
- common types of retirement assets;
- assets condemned by the government;
- cattle, horses, or breeding livestock, if 50 percent of the taxpayer's gross income for the year is from farming or ranching;
- commercial fishing privileges;
- certain depreciable property used in a trade or business;
- goodwill received from the sale of an automobile dealership; and
- timber, timberlands, or receipts from a real estate investment trust.

There are credits and deductions available to reduce or eliminate a person's tax liability, which include:

- a credit to reduce business and occupation tax liability based on the payment of the Washington capital gains tax;
- a credit to reduce a person's Washington capital gains tax liability based on the payment of income or excise tax imposed on the asset and paid by the person to another jurisdiction;
- a deduction for taxes prohibited by the United States or Washington constitutions or laws;
- a deduction from the amount of adjusted capital gain for qualified charitable donations; and
- a deduction from the amount of adjusted capital gain for the sale of a qualified family-owned small business.

Tax Revenues Dedicated to Education Legacy Trust Account and Common School Construction Account

The Education Legacy Trust Account (ELTA) is used to fund kindergarten through grade 12 and higher education purposes as well as child care and early learning programs. The Common School Construction Account is appropriated through the biennial state capital budget to provide financing for the construction of facilities for common schools.

The first $500 million in taxes, penalties, and interest collected from the state capital gains tax each fiscal year must be deposited into the ELTA. Any remaining proceeds are deposited into the Common School Construction Account. The amount deposited in the ELTA is adjusted annually for inflation.

SUMMARY

The state capital gains tax is repealed. The accompanying statutes providing definitions, exemptions, credits, and deductions; governing administration and enforcement; and distribution of the revenues are repealed.

Effective Date: The measure takes effect 30 days after the election at which it is approved.

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