

**ESSB 5096** - CONF REPT  
By Conference Committee

**HOUSE ADOPTED 04/24/2021; SENATE ADOPTED 04/25/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** INTENT. The legislature finds that it is  
4 the paramount duty of the state to amply provide every child in the  
5 state with an education, creating the opportunity for the child to  
6 succeed in school and thrive in life. The legislature further finds  
7 that high quality early learning and child care is critical to a  
8 child's success in school and life, as it supports the development of  
9 the child's social-emotional, physical, cognitive, and language  
10 skills. Therefore, the legislature will invest in the ongoing support  
11 of K-12 education and early learning and child care by dedicating  
12 revenues from this act to the education legacy trust account and the  
13 common school construction account.

14 The legislature further recognizes that a tax system that is  
15 fair, balanced, and works for everyone is essential to help all  
16 Washingtonians grow and thrive. But Washington's tax system today is  
17 the most regressive in the nation because it asks those making the  
18 least to pay the most as a percentage of their income. Middle-income  
19 families in Washington pay two to four times more in taxes, as a  
20 percentage of household income, as compared to top earners in the  
21 state. Low-income Washingtonians pay at least six times more than do  
22 our wealthiest residents.

23 To help meet the state's paramount duty, the legislature intends  
24 to levy a seven percent tax on the voluntary sale or exchange of  
25 stocks, bonds, and other capital assets where the profit is in excess  
26 of \$250,000 annually to fund K-12 education, early learning, and  
27 child care, and advance our paramount duty to amply provide an  
28 education to every child in the state. The legislature recognizes  
29 that levying this tax will have the additional effect of making  
30 material progress toward rebalancing the state's tax code.

31 The legislature further intends to exempt certain assets from the  
32 tax including, but not limited to, qualified family-owned small

1 businesses, all residential and other real property, and retirement  
2 accounts.

3 NEW SECTION. **Sec. 2.** DISTRIBUTION OF REVENUES. (1) All taxes,  
4 interest, and penalties collected under this chapter shall be  
5 distributed as follows:

6 (a) The first \$500,000,000 collected each fiscal year shall be  
7 deposited into the education legacy trust account created in RCW  
8 83.100.230; and

9 (b) Any remainder collected each fiscal year shall be deposited  
10 into the common school construction account.

11 (2) The amounts specified under subsection (1)(a) of this section  
12 shall be adjusted annually as provided under section 17 of this act.

13 **Sec. 3.** RCW 83.100.230 and 2019 c 415 s 990 are each amended to  
14 read as follows:

15 The education legacy trust account is created in the state  
16 treasury. Money in the account may be spent only after appropriation.  
17 Expenditures from the account may be used only for support of the  
18 common schools, and for expanding access to higher education through  
19 funding for new enrollments and financial aid, early learning and  
20 child care programs, and other educational improvement efforts.  
21 (~~During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia~~  
22 ~~appropriations from the account may be made for support of early~~  
23 ~~learning programs. It is the intent of the legislature that this~~  
24 ~~policy will be continued in subsequent fiscal biennia.))~~

25 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this  
26 section apply throughout this chapter unless the context clearly  
27 requires otherwise.

28 (1) "Adjusted capital gain" means federal net long-term capital  
29 gain:

30 (a) Plus any amount of long-term capital loss from a sale or  
31 exchange that is exempt from the tax imposed in this chapter, to the  
32 extent such loss was included in calculating federal net long-term  
33 capital gain;

34 (b) Plus any amount of long-term capital loss from a sale or  
35 exchange that is not allocated to Washington under section 11 of this  
36 act, to the extent such loss was included in calculating federal net  
37 long-term capital gain;

1 (c) Plus any amount of loss carryforward from a sale or exchange  
2 that is not allocated to Washington under section 11 of this act, to  
3 the extent such loss was included in calculating federal net long-  
4 term capital gain;

5 (d) Less any amount of long-term capital gain from a sale or  
6 exchange that is not allocated to Washington under section 11 of this  
7 act, to the extent such gain was included in calculating federal net  
8 long-term capital gain; and

9 (e) Less any amount of long-term capital gain from a sale or  
10 exchange that is exempt from the tax imposed in this chapter, to the  
11 extent such gain was included in calculating federal net long-term  
12 capital gain.

13 (2) "Capital asset" has the same meaning as provided by Title 26  
14 U.S.C. Sec. 1221 of the internal revenue code and also includes any  
15 other property if the sale or exchange of the property results in a  
16 gain that is treated as a long-term capital gain under Title 26  
17 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

18 (3) "Federal net long-term capital gain" means the net long-term  
19 capital gain reportable for federal income tax purposes determined as  
20 if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the  
21 internal revenue code did not exist.

22 (4) "Individual" means a natural person.

23 (5) "Internal revenue code" means the United States internal  
24 revenue code of 1986, as amended, as of the effective date of this  
25 section, or such subsequent date as the department may provide by  
26 rule consistent with the purpose of this chapter.

27 (6) "Long-term capital asset" means a capital asset that is held  
28 for more than one year.

29 (7) "Long-term capital gain" means gain from the sale or exchange  
30 of a long-term capital asset.

31 (8) "Long-term capital loss" means a loss from the sale or  
32 exchange of a long-term capital asset.

33 (9) "Real estate" means land and fixtures affixed to land. "Real  
34 estate" also includes used mobile homes, used park model trailers,  
35 used floating homes, and improvements constructed upon leased land.

36 (10)(a) "Resident" means an individual:

37 (i) Who is domiciled in this state during the taxable year,  
38 unless the individual (A) maintained no permanent place of abode in  
39 this state during the entire taxable year, (B) maintained a permanent  
40 place of abode outside of this state during the entire taxable year,

1 and (C) spent in the aggregate not more than 30 days of the taxable  
2 year in this state; or

3 (ii) Who is not domiciled in this state during the taxable year,  
4 but maintained a place of abode and was physically present in this  
5 state for more than 183 days during the taxable year.

6 (b) For purposes of this subsection, "day" means a calendar day  
7 or any portion of a calendar day.

8 (c) An individual who is a resident under (a) of this subsection  
9 is a resident for that portion of a taxable year in which the  
10 individual was domiciled in this state or maintained a place of abode  
11 in this state.

12 (11) "Taxable year" means the taxpayer's taxable year as  
13 determined under the internal revenue code.

14 (12) "Taxpayer" means an individual subject to tax under this  
15 chapter.

16 (13) "Washington capital gains" means an individual's adjusted  
17 capital gain, as modified in section 7 of this act, for each return  
18 filed under this chapter.

19 NEW SECTION. **Sec. 5.** TAX IMPOSED. (1) Beginning January 1,  
20 2022, an excise tax is imposed on the sale or exchange of long-term  
21 capital assets. Only individuals are subject to payment of the tax,  
22 which equals seven percent multiplied by an individual's Washington  
23 capital gains.

24 (2) The tax levied in subsection (1) of this section is necessary  
25 for the support of the state government and its existing public  
26 institutions.

27 (3) If an individual's Washington capital gains are less than  
28 zero for a taxable year, no tax is due under this section and no such  
29 amount is allowed as a carryover for use in the calculation of that  
30 individual's adjusted capital gain, as defined in section 4(1) of  
31 this act, for any taxable year. To the extent that a loss  
32 carryforward is included in the calculation of an individual's  
33 federal net long-term capital gain and that loss carryforward is  
34 directly attributable to losses from sales or exchanges allocated to  
35 this state under section 11 of this act, the loss carryforward is  
36 included in the calculation of that individual's adjusted capital  
37 gain for the purposes of this chapter. An individual may not include  
38 any losses carried back for federal income tax purposes in the

1 calculation of that individual's adjusted capital gain for any  
2 taxable year.

3 (4) (a) The tax imposed in this section applies to the sale or  
4 exchange of long-term capital assets owned by the taxpayer, whether  
5 the taxpayer was the legal or beneficial owner of such assets at the  
6 time of the sale or exchange. The tax applies when the Washington  
7 capital gains are recognized by the taxpayer in accordance with this  
8 chapter.

9 (b) For purposes of this chapter:

10 (i) An individual is considered to be a beneficial owner of long-  
11 term capital assets held by an entity that is a pass-through or  
12 disregarded entity for federal tax purposes, such as a partnership,  
13 limited liability company, S corporation, or grantor trust, to the  
14 extent of the individual's ownership interest in the entity as  
15 reported for federal income tax purposes.

16 (ii) A nongrantor trust is deemed to be a grantor trust if the  
17 trust does not qualify as a grantor trust for federal tax purposes,  
18 and the grantor's transfer of assets to the trust is treated as an  
19 incomplete gift under Title 26 U.S.C. Sec. 2511 of the internal  
20 revenue code and its accompanying regulations. A grantor of such  
21 trust is considered the beneficial owner of the capital assets of the  
22 trust for purposes of the tax imposed in this section and must  
23 include any long-term capital gain or loss from the sale or exchange  
24 of a capital asset by the trust in the calculation of that  
25 individual's adjusted capital gain, if such gain or loss is allocated  
26 to this state under section 11 of this act.

27 NEW SECTION. **Sec. 6.** EXEMPTIONS. This chapter does not apply to  
28 the sale or exchange of:

29 (1) All real estate transferred by deed, real estate contract,  
30 judgment, or other lawful instruments that transfer title to real  
31 property and are filed as a public record with the counties where  
32 real property is located;

33 (2) (a) An interest in a privately held entity only to the extent  
34 that any long-term capital gain or loss from such sale or exchange is  
35 directly attributable to the real estate owned directly by such  
36 entity.

37 (b) (i) Except as provided in (b) (ii) and (iii) of this  
38 subsection, the value of the exemption under this subsection is equal  
39 to the fair market value of the real estate owned directly by the

1 entity less its basis, at the time that the sale or exchange of the  
2 individual's interest occurs, multiplied by the percentage of the  
3 ownership interest in the entity which is sold or exchanged by the  
4 individual.

5 (ii) If a sale or exchange of an interest in an entity results in  
6 an amount directly attributable to real property and that is  
7 considered as an amount realized from the sale or exchange of  
8 property other than a capital asset under Title 26 U.S.C. Sec. 751 of  
9 the internal revenue code, such amount must not be considered in the  
10 calculation of an individual's exemption amount under (b)(i) of this  
11 subsection (2).

12 (iii) Real estate not owned directly by the entity in which an  
13 individual is selling or exchanging the individual's interest must  
14 not be considered in the calculation of an individual's exemption  
15 amount under (b)(i) of this subsection (2).

16 (c) Fair market value of real estate may be established by a fair  
17 market appraisal of the real estate or an allocation of assets by the  
18 seller and the buyer made under Title 26 U.S.C. Sec. 1060 of the  
19 internal revenue code, as amended. However, the department is not  
20 bound by the parties' agreement as to the allocation of assets,  
21 allocation of consideration, or fair market value, if such  
22 allocations or fair market value do not reflect the fair market value  
23 of the real estate. The assessed value of the real estate for  
24 property tax purposes may be used to determine the fair market value  
25 of the real estate, if the assessed value is current as of the date  
26 of the sale or exchange of the ownership interest in the entity  
27 owning the real estate and the department determines that this method  
28 is reasonable under the circumstances.

29 (d) The value of the exemption under this subsection (2) may not  
30 exceed the individual's long-term capital gain or loss from the sale  
31 or exchange of an interest in an entity for which the individual is  
32 claiming this exemption;

33 (3) Assets held under a retirement savings account under Title 26  
34 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
35 annuity or custodial account described in Title 26 U.S.C. Sec. 403(b)  
36 of the internal revenue code, a deferred compensation plan under  
37 Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
38 individual retirement account or individual retirement annuity  
39 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
40 Roth individual retirement account described in Title 26 U.S.C. Sec.

1 408A of the internal revenue code, an employee defined contribution  
2 program, an employee defined benefit plan, or a similar retirement  
3 savings vehicle;

4 (4) Assets pursuant to, or under imminent threat of, condemnation  
5 proceedings by the United States, the state or any of its political  
6 subdivisions, or a municipal corporation;

7 (5) Cattle, horses, or breeding livestock if for the taxable year  
8 of the sale or exchange, more than 50 percent of the taxpayer's gross  
9 income for the taxable year, including from the sale or exchange of  
10 capital assets, is from farming or ranching;

11 (6) Property depreciable under Title 26 U.S.C. Sec. 167(a)(1) of  
12 the internal revenue code, or that qualifies for expensing under  
13 Title 26 U.S.C. Sec. 179 of the internal revenue code;

14 (7) Timber, timberland, or the receipt of Washington capital  
15 gains as dividends and distributions from real estate investment  
16 trusts derived from gains from the sale or exchange of timber and  
17 timberland. "Timber" means forest trees, standing or down, on  
18 privately or publicly owned land, and includes Christmas trees and  
19 short-rotation hardwoods. The sale or exchange of timber includes the  
20 cutting or disposal of timber qualifying for capital gains treatment  
21 under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue  
22 code;

23 (8)(a) Commercial fishing privileges.

24 (b) For the purposes of this subsection (8), "commercial fishing  
25 privilege" means a right, held by a seafood harvester or processor,  
26 to participate in a limited access fishery. "Commercial fishing  
27 privilege" includes and is limited to:

28 (i) In the case of federally managed fisheries, quota and access  
29 to fisheries assigned pursuant to individual fishing quota programs,  
30 limited entry and catch share programs, cooperative fishing  
31 management agreements, or similar arrangements; and

32 (ii) In the case of state-managed fisheries, quota and access to  
33 fisheries assigned under fishery permits, limited entry and catch  
34 share programs, or similar arrangements; and

35 (9) Goodwill received from the sale of an auto dealership  
36 licensed under chapter 46.70 RCW whose activities are subject to  
37 chapter 46.96 RCW.

38 NEW SECTION. **Sec. 7.** DEDUCTIONS. In computing tax for a taxable  
39 year, a taxpayer may deduct from his or her Washington capital gains:

1 (1) A standard deduction of \$250,000 per individual, or in the  
2 case of spouses or domestic partners, their combined standard  
3 deduction is limited to \$250,000, regardless of whether they file  
4 joint or separate returns. The amount of the standard deduction shall  
5 be adjusted pursuant to section 17 of this act;

6 (2) Amounts that the state is prohibited from taxing under the  
7 Constitution of this state or the Constitution or laws of the United  
8 States;

9 (3) The amount of adjusted capital gain derived from the sale or  
10 transfer of the taxpayer's interest in a qualified family-owned small  
11 business pursuant to section 8 of this act; and

12 (4) Charitable donations deductible under section 9 of this act.

13 NEW SECTION. **Sec. 8.** QUALIFIED FAMILY-OWNED SMALL BUSINESS  
14 DEDUCTION. (1) In computing tax under this chapter for a taxable  
15 year, a taxpayer may deduct from his or her Washington capital gains  
16 the amount of adjusted capital gain derived in the taxable year from  
17 the sale of substantially all of the fair market value of the assets  
18 of, or the transfer of substantially all of the taxpayer's interest  
19 in, a qualified family-owned small business, to the extent that such  
20 adjusted capital gain would otherwise be included in the taxpayer's  
21 Washington capital gains.

22 (2) For purposes of this section, the following definitions  
23 apply:

24 (a) "Assets" means real property and personal property, including  
25 tangible personal property and intangible property.

26 (b) "Family" means the same as "member of the family" in RCW  
27 83.100.046.

28 (c)(i) "Materially participated" means an individual was involved  
29 in the operation of a business on a basis that is regular,  
30 continuous, and substantial.

31 (ii) The term "materially participated" must be interpreted  
32 consistently with the applicable treasury regulations for Title 26  
33 U.S.C. Sec. 469 of the internal revenue code, to the extent that such  
34 interpretation does not conflict with any provision of this section.

35 (d) "Qualified family-owned small business" means a business:

36 (i) In which the taxpayer held a qualifying interest for at least  
37 five years immediately preceding the sale or transfer described in  
38 subsection (1) of this section;

1 (ii) In which either the taxpayer or members of the taxpayer's  
2 family, or both, materially participated in operating the business  
3 for at least five of the 10 years immediately preceding the sale or  
4 transfer described in subsection (1) of this section, unless such  
5 sale or transfer was to a qualified heir; and

6 (iii) That had worldwide gross revenue of \$10,000,000 or less in  
7 the 12-month period immediately preceding the sale or transfer  
8 described in subsection (1) of this section. The worldwide gross  
9 revenue amount under this subsection (2)(d)(iii) shall be adjusted  
10 annually as provided in section 17 of this act.

11 (e) "Qualified heir" means a member of the taxpayer's family.

12 (f) "Qualifying interest" means:

13 (i) An interest as a proprietor in a business carried on as a  
14 sole proprietorship; or

15 (ii) An interest in a business if at least:

16 (A) Fifty percent of the business is owned, directly or  
17 indirectly, by any combination of the taxpayer or members of the  
18 taxpayer's family, or both;

19 (B) Thirty percent of the business is owned, directly or  
20 indirectly, by any combination of the taxpayer or members of the  
21 taxpayer's family, or both, and at least:

22 (I) Seventy percent of the business is owned, directly or  
23 indirectly, by members of two families; or

24 (II) Ninety percent of the business is owned, directly or  
25 indirectly, by members of three families.

26 (g) "Substantially all" means at least 90 percent.

27 NEW SECTION. **Sec. 9.** ADDITIONAL DEDUCTION FOR CHARITABLE  
28 DONATIONS. (1) In computing tax under this chapter for a taxable  
29 year, a taxpayer may deduct from his or her Washington capital gains  
30 the amount donated by the taxpayer to one or more qualified  
31 organizations during the same taxable year in excess of the minimum  
32 qualifying charitable donation amount. For the purposes of this  
33 section, the minimum qualifying charitable donation amount equals  
34 \$250,000. The minimum qualifying charitable donation amount under  
35 this subsection (1) shall be adjusted pursuant to section 17 of this  
36 act.

37 (2) The deduction authorized under subsection (1) of this section  
38 may not exceed \$100,000 for the taxable year. The maximum amount of

1 the available deduction under this subsection (2) shall be adjusted  
2 pursuant to section 17 of this act.

3 (3) The deduction authorized under subsection (1) of this section  
4 may not be carried forward or backward to another tax reporting  
5 period.

6 (4) For the purposes of this section, the following definitions  
7 apply:

8 (a) "Nonprofit organization" means an organization exempt from  
9 tax under Title 26 U.S.C. Sec. 501(c)(3) of the internal revenue  
10 code.

11 (b) "Qualified organization" means a nonprofit organization, or  
12 any other organization, that is:

13 (i) Eligible to receive a charitable deduction as defined in  
14 Title 26 U.S.C. Sec. 170(c) of the internal revenue code; and

15 (ii) Principally directed or managed within the state of  
16 Washington.

17 NEW SECTION. **Sec. 10.** OTHER TAXES. The tax imposed under this  
18 chapter is in addition to any other taxes imposed by the state or any  
19 of its political subdivisions, or a municipal corporation, with  
20 respect to the same sale or exchange, including the taxes imposed in,  
21 or under the authority of, chapter 82.04, 82.08, 82.12, 82.14, 82.45,  
22 or 82.46 RCW.

23 NEW SECTION. **Sec. 11.** ALLOCATION OF GAINS AND LOSSES. (1) For  
24 purposes of the tax imposed under this chapter, long-term capital  
25 gains and losses are allocated to Washington as follows:

26 (a) Long-term capital gains or losses from the sale or exchange  
27 of tangible personal property are allocated to this state if the  
28 property was located in this state at the time of the sale or  
29 exchange. Long-term capital gains or losses from the sale or exchange  
30 of tangible personal property are also allocated to this state even  
31 though the property was not located in this state at the time of the  
32 sale or exchange if:

33 (i) The property was located in the state at any time during the  
34 taxable year in which the sale or exchange occurred or the  
35 immediately preceding taxable year;

36 (ii) The taxpayer was a resident at the time the sale or exchange  
37 occurred; and

1 (iii) The taxpayer is not subject to the payment of an income or  
2 excise tax legally imposed on the long-term capital gains or losses  
3 by another taxing jurisdiction.

4 (b) Long-term capital gains or losses derived from intangible  
5 personal property are allocated to this state if the taxpayer was  
6 domiciled in this state at the time the sale or exchange occurred.

7 (2)(a) A credit is allowed against the tax imposed in section 5  
8 of this act equal to the amount of any legally imposed income or  
9 excise tax paid by the taxpayer to another taxing jurisdiction on  
10 capital gains derived from capital assets within the other taxing  
11 jurisdiction to the extent such capital gains are included in the  
12 taxpayer's Washington capital gains. The amount of credit under this  
13 subsection may not exceed the total amount of tax due under this  
14 chapter, and there is no carryback or carryforward of any unused  
15 credits.

16 (b) As used in this section, "taxing jurisdiction" means a state  
17 of the United States other than the state of Washington, the District  
18 of Columbia, the Commonwealth of Puerto Rico, any territory or  
19 possession of the United States, or any foreign country or political  
20 subdivision of a foreign country.

21 NEW SECTION. **Sec. 12.** FILING OF RETURNS. (1)(a) Except as  
22 otherwise provided in this section or RCW 82.32.080, taxpayers owing  
23 tax under this chapter must file, on forms prescribed by the  
24 department, a return with the department on or before the date the  
25 taxpayer's federal income tax return for the taxable year is required  
26 to be filed.

27 (b)(i) Except as provided in (b)(ii) of this subsection (1),  
28 returns and all supporting documents must be filed electronically  
29 using the department's online tax filing service or other method of  
30 electronic reporting as the department may authorize.

31 (ii) The department may waive the electronic filing requirement  
32 in this subsection for good cause as provided in RCW 82.32.080.

33 (2) In addition to the Washington return required to be filed  
34 under subsection (1) of this section, taxpayers owing tax under this  
35 chapter must file with the department on or before the date the  
36 federal return is required to be filed a copy of the federal income  
37 tax return along with all schedules and supporting documentation.

38 (3) Each taxpayer required to file a return under this section  
39 must, without assessment, notice, or demand, pay any tax due thereon

1 to the department on or before the date fixed for the filing of the  
2 return, regardless of any filing extension. The tax must be paid by  
3 electronic funds transfer as defined in RCW 82.32.085 or by other  
4 forms of electronic payment as may be authorized by the department.  
5 The department may waive the electronic payment requirement for good  
6 cause as provided in RCW 82.32.080. If any tax due under this chapter  
7 is not paid by the due date, interest and penalties as provided in  
8 chapter 82.32 RCW apply to the deficiency.

9 (4) (a) In addition to the Washington return required to be filed  
10 under subsection (1) of this section, an individual claiming an  
11 exemption under section 6(2) of this act must file documentation  
12 substantiating the following:

13 (i) The fair market value and basis of the real estate held  
14 directly by the entity in which the interest was sold or exchanged;

15 (ii) The percentage of the ownership interest sold or exchanged  
16 in the entity owning real estate; and

17 (iii) The methodology, if any, established by the entity in which  
18 the interest was sold or exchanged, for allocating gains or losses to  
19 the owners, partners, or shareholders of the entity from the sale of  
20 real estate.

21 (b) The department may by rule prescribe additional filing  
22 requirements to substantiate an individual's claim for an exemption  
23 under section 6(2) of this act. Prior to adopting any rule under this  
24 subsection (4) (b), the department must allow for an opportunity for  
25 participation by interested parties in the rule-making process in  
26 accordance with the administrative procedure act, chapter 34.05 RCW.

27 (5) If a taxpayer has obtained an extension of time for filing  
28 the federal income tax return for the taxable year, the taxpayer is  
29 entitled to the same extension of time for filing the return required  
30 under this section if the taxpayer provides the department, before  
31 the due date provided in subsection (1) of this section, the  
32 extension confirmation number or other evidence satisfactory to the  
33 department confirming the federal extension. An extension under this  
34 subsection for the filing of a return under this chapter is not an  
35 extension of time to pay the tax due under this chapter.

36 (6) (a) If any return due under subsection (1) of this section,  
37 along with a copy of the federal income tax return, is not filed with  
38 the department by the due date or any extension granted by the  
39 department, the department must assess a penalty in the amount of  
40 five percent of the tax due for the taxable year covered by the

1 return for each month or portion of a month that the return remains  
2 unfiled. The total penalty assessed under this subsection may not  
3 exceed 25 percent of the tax due for the taxable year covered by the  
4 delinquent return. The penalty under this subsection is in addition  
5 to any penalties assessed for the late payment of any tax due on the  
6 return.

7 (b) The department must waive or cancel the penalty imposed under  
8 this subsection if:

9 (i) The department is persuaded that the taxpayer's failure to  
10 file the return by the due date was due to circumstances beyond the  
11 taxpayer's control; or

12 (ii) The taxpayer has not been delinquent in filing any return  
13 due under this section during the preceding five calendar years.

14 NEW SECTION. **Sec. 13.** JOINT FILERS. (1) If the federal income  
15 tax liabilities of both spouses are determined on a joint federal  
16 return for the taxable year, they must file a joint return under this  
17 chapter.

18 (2) Except as otherwise provided in this subsection, if the  
19 federal income tax liability of either spouse is determined on a  
20 separate federal return for the taxable year, they must file separate  
21 returns under this chapter. State registered domestic partners may  
22 file a joint return under this chapter even if they filed separate  
23 federal returns for the taxable year.

24 (3) The liability for tax due under this chapter of each spouse  
25 or state registered domestic partner is joint and several, unless:

26 (a) The spouse is relieved of liability for federal tax purposes  
27 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue  
28 code; or

29 (b) The department determines that the domestic partner qualifies  
30 for relief as provided by rule of the department. Such rule, to the  
31 extent possible without being inconsistent with this chapter, must  
32 follow Title 26 U.S.C. Sec. 6015.

33 NEW SECTION. **Sec. 14.** ADMINISTRATION OF TAXES. Except as  
34 otherwise provided by law and to the extent not inconsistent with the  
35 provisions of this chapter, chapter 82.32 RCW applies to the  
36 administration of taxes imposed under this chapter.

1        NEW SECTION.    **Sec. 15.**    CRIMINAL ACTIONS. (1) Any taxpayer who  
2 knowingly attempts to evade payment of the tax imposed under this  
3 chapter is guilty of a class C felony as provided in chapter 9A.20  
4 RCW.

5        (2) Any taxpayer who knowingly fails to pay tax, make returns,  
6 keep records, or supply information, as required under this title, is  
7 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

8        NEW SECTION.    **Sec. 16.**    A new section is added to chapter 82.04  
9 RCW to read as follows:

10        BUSINESS AND OCCUPATION TAX CREDIT. (1) To avoid taxing the same  
11 sale or exchange under both the business and occupation tax and  
12 capital gains tax, a credit is allowed against taxes due under this  
13 chapter on a sale or exchange that is also subject to the tax imposed  
14 under section 5 of this act. The credit is equal to the amount of tax  
15 imposed under this chapter on such sale or exchange.

16        (2) The credit may be used against any tax due under this  
17 chapter.

18        (3) The credit under this section is earned in regards to a sale  
19 or exchange, and may be claimed against taxes due under this chapter,  
20 for the tax reporting period in which the sale or exchange occurred.  
21 The credit claimed for a tax reporting period may not exceed the tax  
22 otherwise due under this chapter for that tax reporting period.  
23 Unused credit may not be carried forward or backward to another tax  
24 reporting period. No refunds may be granted for unused credit under  
25 this section.

26        (4) The department must apply the credit first to taxes deposited  
27 into the general fund. If any remaining credit reduces the amount of  
28 taxes deposited into the workforce education investment account  
29 established in RCW 43.79.195, the department must notify the state  
30 treasurer of such amounts monthly, and the state treasurer must  
31 transfer those amounts from the general fund to the workforce  
32 education investment account.

33        NEW SECTION.    **Sec. 17.**    ANNUAL ADJUSTMENTS. (1) Beginning  
34 December 2023 and each December thereafter, the department must  
35 adjust the applicable amounts by multiplying the current applicable  
36 amounts by one plus the percentage by which the most current consumer  
37 price index available on December 1st of the current year exceeds the  
38 consumer price index for the prior 12-month period, and rounding the

1 result to the nearest \$1,000. If an adjustment under this subsection  
2 (1) would reduce the applicable amounts, the department must not  
3 adjust the applicable amounts for use in the following year. The  
4 department must publish the adjusted applicable amounts on its public  
5 website by December 31st. The adjusted applicable amounts calculated  
6 under this subsection (1) take effect for taxes due and distributions  
7 made, as the case may be, in the following calendar year.

8 (2) For purposes of this section, the following definitions  
9 apply:

10 (a) "Applicable amounts" means:

11 (i) The distribution amount to the education legacy trust account  
12 as provided in section 2(1)(a) of this act;

13 (ii) The standard deduction amount in sections 4(13) and 7(1) of  
14 this act;

15 (iii) The worldwide gross revenue amount under section 8 of this  
16 act; and

17 (iv) The minimum qualifying charitable donation amount and  
18 maximum charitable donation amount under section 9 of this act.

19 (b) "Consumer price index" means the consumer price index for all  
20 urban consumers, all items, for the Seattle area as calculated by the  
21 United States bureau of labor statistics or its successor agency.

22 (c) "Seattle area" means the geographic area sample that includes  
23 Seattle and surrounding areas.

24 NEW SECTION. **Sec. 18.** The provisions of RCW 82.32.805 and  
25 82.32.808 do not apply to this act.

26 NEW SECTION. **Sec. 19.** Sections 1, 2, 4 through 15, and 17 of  
27 this act constitute a new chapter in Title 82 RCW.

28 NEW SECTION. **Sec. 20.** (1) If a court of competent jurisdiction,  
29 in a final judgment not subject to appeal, adjudges section 5 of this  
30 act unconstitutional, or otherwise invalid, in its entirety, section  
31 16 of this act is null and void in its entirety. Any credits  
32 previously claimed under section 16 of this act must be repaid within  
33 30 days of the department of revenue's notice to the taxpayer of the  
34 amount due.

35 (2) If the taxpayer fails to repay the credit by the due date,  
36 interest and penalties as provided in chapter 82.32 RCW apply to the  
37 deficiency.

1        NEW SECTION.    **Sec. 21.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected."

5        Correct the title.

--- **END** ---