7.9 Percent Capital Gains Tax on Individuals

Description

This proposal imposes a tax on individuals for the privilege of selling or exchanging capital assets. The tax is equal to 7.9 percent multiplied by a person's Washington capital gains for each taxable year.

The following threshold exemptions are allowed in determining the tax:
- $25,000 or
- $50,000 for individuals filing joint returns.

The capital gains tax does not apply to any of the following:
- The gain on the sale of all single family residential real property.
- Capital gains received from retirement accounts.
- Capital gains from the sale or exchange of assets subject to eminent domain or sold or exchanged under imminent threat of eminent domain.
- The sale or exchange of cattle, horses or breeding livestock held for more than 12 months by farmers.
- The sale of agricultural land that meets the criteria under IRC section 469(h) for the 10 years prior to the date of the sale.
- The sale of tangible personal property used in a business and that would qualify for an income tax deduction under IRC sections 167 or 179.
- The sale of timber for which the taxpayer makes an election under IRC section 631(a) or (b).

Individuals are allowed a credit equal to the amount of tax 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.

A business and occupation (B&O) tax deduction is created to avoid taxing the same amounts under both the B&O and capital gains taxes.

Washington capital gains tax 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.

A statutory deduction is provided for amounts that the state is prohibited from taxing under federal law or the constitutions of the United States or state of Washington.

Continued on next page

7.9 Percent Capital Gains Tax on Individuals

Current Law

There is no capital gains tax on individuals in current law.

Revenue Impact

This proposal affects approximately 48,000 taxpayers and has the following State General Fund impacts:

	FY 2018	FY 2019	FY 2020	FY 2021
Capital Gains Tax	$0	$850,000,000	$933,000,000	$981,000,000
B&O Tax	$0	($29,000,000)	($32,000,000)	($34,000,000)
Fiscal Year Total	$0	$821,000,000	$901,000,000	$947,000,000
Biennial Total	$0	$821,000,000		$1,848,000,000

- *Estimates assume a January 1, 2018, effective date, with the first annual returns due in April 2019.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council forecast.*

Extend economic nexus for retailing B&O tax purposes

Description

This proposal modifies nexus requirements for retailing business and occupation (B&O) tax purposes by supplementing the current physical presence nexus standard with an economic nexus standard.

Under this proposal, out-of-state businesses making retail sales to Washington purchasers would be subject to retailing B&O tax on such sales if they:

1. Have a sufficient physical presence in this state, or
2. Meet either of the following economic nexus thresholds:
   - More than $267,000 of their gross receipts are sourced to Washington, or
   - At least 25 percent of their receipts are sourced to Washington.

Note:

- The $267,000 threshold is periodically adjusted for inflation.
- This proposal applies only to the general retailing B&O tax classification, which includes retail sales taxable under RCW 82.04.250(1) and 82.04.257.

Current Law

Washington imposes B&O tax on businesses that have a nexus with this state. Depending on the type of activity a business engages in, a business has nexus for B&O tax purposes if it has a sufficient physical presence in Washington or derives a specified amount of gross income from this state.

For out-of-state businesses that earn income from royalties, most wholesaling activity or most service activities nexus requires the business to have one of the following:

- More than $267,000 of gross receipts from this state
- More than $53,000 of property in this state
- More than $53,000 of payroll in this state
- At least 25 percent of its gross receipts, property or payroll in this state

For out-of-state businesses that engage in any other activities, including making retail sales in this state, nexus requires the business to have something more than a slightest physical presence in this state. A business may establish physical presence nexus by having employees or property in this state for business purposes. A business may also establish physical presence nexus by engaging in activities in this state, either directly or through an agent or other representative, that are significantly associated with the business' ability to establish or maintain a market for its products in this state.

Revenue Impact

This proposal has the following state impacts:

	FY 2018	FY 2019	FY 2020	FY 2021
B&O Retailing	$ 4,400,000	$ 7,700,000	$ 10,900,000	$ 11,600,000
Fiscal Year Totals	$ 4,400,000	$ 7,700,000	$ 10,900,000	$ 11,600,000
Biennial Totals		$ 12,100,000		$ 22,500,000

- *Estimates assume a July 1, 2017, effective date, representing 11 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*

Limit REET foreclosure exemption

Description	This proposal would require that real estate excise tax (REET) be paid on transfers of real property occurring in a judicial or non-judicial foreclosure proceeding or a judgment enforcement proceeding, unless: • The transfer is to a person other than the creditor, and the selling price exceeds the amount of the creditor's lien, security interest, or judgment encumbering the real property; or. • The transfer is to the United States, or to this state or a local government of this state. The transferee/grantee (new owner of the property) would be responsible for payment of the REET.
Current Law	The REET is imposed on each sale of real property, including transfers of ownership and transfers of controlling interests in entities that own property in the state. Real property includes any interest in land or anything affixed to land. The state tax rate is 1.28 percent. Additional local rates are allowed. The combined state and local rate in most areas is 1.78 percent. The REET does not apply to transfers made in foreclosure proceedings or through enforcement of a judgment, including foreclosures that occur through auction without court oversight. (RCW 82.45.010(3(j)). REET also does not apply to a deed given in lieu of foreclosure to satisfy a mortgage or deed of trust.
Original Purpose and Current Analysis	To exclude the transfer of real property through foreclosure from the definition of a taxable "sale" for REET purposes.
Citizen Commission Recommendation	The Joint Legislative Audit & Review Committee reviewed RCW 82.45.010(3) in 2011 and recommended the preferences be continued. The Citizen Commission endorsed the recommendation without comment.
Revenue Impact	This proposal affects approximately 5,000 taxpayers and has the following state impacts:

Fund	FY 2018	FY 2019	FY 2020	FY 2021
General Fund	$29,400,000	$30,000,000	$31,000,000	$32,000,000
City/County Assistance	$500,000	$500,000	$500,000	$600,000
Education Legacy	$1,300,000	$1,300,000	$0	$0
Public Works	$600,000	$700,000	$2,000,000	$2,100,000
Fiscal Year Total	$31,800,000	$32,500,000	$33,500,000	$34,700,000
Biennial Total		$64,300,000		$68,200,000

- *Estimates assume a July 1, 2017, effective date with 12 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*

Increase service B&O tax rate to 2.5 percent, increase the tax filing threshold and small business credit for all taxpayers

Description

Effective July 1, 2017, this proposal:

- Increases the service and other activities business and occupation (B&O) tax rate by 1.0 percent, increasing the rate from 1.5 percent to 2.5 percent.
- Increases the tax filing threshold to $100,000 and the small business credit for service businesses to $125 per month.

Effective July 1, 2018, this proposal:

- Increases the registration threshold for all businesses subject to the B&O tax to $100,000 per year.
- Increases the tax filing threshold to $100,000 and small business credit to $125 per month for all businesses.

Current Law

Persons engaged in business in Washington state are subject to the B&O tax. The measure of tax is the value of products, gross proceeds of sales or the gross income of the business.

The service and other activities classification has a tax rate of 1.5 percent and applies to income from:

- Service activities, such as medical, architectural, legal and janitorial services, and
- Activities that are not specifically taxed under another B&O tax classification, such as commissions, solid waste collection charges and movie admission charges.

A $70 per month B&O small business credit is available for service-oriented businesses. All other businesses are eligible for a $35 per month credit.

Revenue Impact

This proposal affects approximately 170,000 taxpayers who pay service B&O tax and has the following state impacts:

	FY 2018	FY 2019	FY 2020	FY 2021
B&O Tax	$1,062,000,000	$1,214,000,000	$1,273,000,000	$1,336,000,000
B&O Tax Credits	($22,700,000)	($69,200,000)	($74,700,000)	($76,300,000)
Fiscal Year Total	$1,039,300,000	$1,144,800,000	$1,198,300,000	$1,259,700,000
Biennial Total		$2,184,100,000		$2,458,000,000

- *The service B&O tax rate and small business credit increase for service businesses assume a July 1, 2017 effective date, resulting in 11 months of increased collections for FY 2018.*
- *The small business credit increase for all other businesses assumes a July 1, 2018 effective date.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council forecast.*

Refund state portion of sales tax to nonresidents

Description	This proposal would change the current nonresident sales tax exemption to a refund program for the state portion (6.5 percent) of the sales tax only. This would require qualified nonresidents (both businesses and individuals) to apply for a refund of state sales tax (not local sales tax) from the Department of Revenue instead of receiving the exemption at the point of sale. The sales tax exemption at the point of sale would cease. In addition: • Applications for state sales tax refunds would be made electronically once a year for purchases made in the preceding calendar year; • Applications would be accepted only for refunds of $25 or more; and • Sales receipts, addresses of the places of purchase and other documentation as required by the Department of Revenue would need to be submitted.
Current Law	Under RCW 82.08.0273, bona fide residents of a state, U.S. possession or territory, or province of Canada that does not impose a sales tax or similar consumer tax of 3 percent or more, may purchase tangible personal property for use outside this state without paying Washington's sales tax. The seller is not required to make a tax-free sale to a nonresident, but if the seller does: • The purchaser must provide proof of exemption to the seller, and • The seller must retain a record of the proof.
Original Purpose and Current Analysis	To enable Washington sellers, especially along the Oregon border, to compete with merchants in other states that either do not levy a retail sales tax or levy a sales tax with a low rate.
Citizen Commission Recommendation	The Citizen Commission recommended the Legislature review and clarify this preference because there is no explicitly stated public policy objective.

Revenue Impact

This proposal affects approximately 130,000 taxpayers and has the following state impacts:

Fund	FY 2018	FY 2019	FY 2020	FY 2021
General Fund	$23,110,000	$26,078,000	$26,949,000	$27,697,000
Performance Audit	$37,000	$42,000	$43,000	$45,000
Fiscal Year Total	$23,147,000	$26,120,000	$26,992,000	$27,742,000
Biennial Total		$49,267,000		$54,734,000

- *Estimates assume a July 1, 2017, effective date, representing 11 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*

Repeal sales tax exemption for trade-ins valued over $10,000

Description

This proposal would limit the exclusion of trade-in value from retail sales and use tax to $10,000 for motor vehicles, recreational vehicles, boats and other items.

Current Law

When a consumer purchases tangible personal property, the measure of sales or use tax excludes the value of like-kind property traded in at the time of sale. Consequently, the trade-in value is deducted from the selling price that is subject to sales tax. (RCW 82.08.010(1) and 82.12.010(1))

Original Purpose and Current Analysis

The trade-in exclusion was approved by voter initiative in 1984 to encourage purchases of new items, especially motor vehicles.

Trade-ins of motor vehicles average $7,500, so limiting deductible trade-in values to $10,000 benefits most households. The current unlimited deduction primarily benefits high-income purchasers with the lowest tax burdens in Washington. Setting a limit would reduce the regressivity of the current tax system.

Citizen Commission Recommendation

The Citizen Commission has not reviewed the trade-in exclusion.

Revenue Impact

This proposal has the following state impacts:

Fund	FY 2018	FY 2019	FY 2020	FY 2021
General Fund	$43,342,000	$47,514,000	$47,358,000	$46,773,000
Multimodal Tran	$1,740,000	$1,898,000	$1,881,000	$1,844,000
Performance Audit	$134,000	$150,000	$152,000	$154,000
Fiscal Year Total	$45,216,000	$49,562,000	$49,391,000	$48,771,000
Biennial Total		$94,778,000		$98,162,000

- *Estimates assume a July 1, 2017, effective date, representing 11 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*

Repeal sales tax exemption on bottled water

Description

This proposal would repeal the sales tax exemption on sales of bottled water to consumers. The tax would apply to both portable-sized bottles and to bulk bottled water sales (sales of water in large, reusable containers).

- An exemption in the form of a refund would apply to sales of bottled water for human use pursuant to a prescription.
- An exemption in the form of a refund would apply to sales of bottled water to persons lacking readily available potable water.

Current Law

Under current law, sales tax does not apply to retail sales of bottled water.

- Until Jan. 1, 2004, sales of bottled water were subject to sales tax. At that time, legislation to conform to the Streamlined Sales and Use Tax Agreement (SSUTA) took effect and sales of bottled water became exempt from sales tax. In 2010, SSUTA was amended to allow member states to separately tax bottled water sales.
- In 2010, Senate Bill 6143 imposed sales tax on sales of bottled water beginning July 1, 2010, until Dec. 2, 2010, when the sales tax on bottled water was repealed by Initiative 1107.

Original Purpose and Current Analysis

To conform to definitions of SSUTA. However, SSUTA has been amended to allow taxation of bottled water.

Citizen Commission Recommendation

Not reviewed by the Citizen Commission.

Revenue Impact

This proposal affects approximately 200,000 taxpayers and has the following state impacts:

Fund	FY 2018	FY 2019	FY 2020	FY 2021
General Fund	$26,990,000	$30,110,000	$30,800,000	$31,500,000
Performance Audit	$40,000	$50,000	$50,000	$50,000
Fiscal Year Total	$27,030,000	$30,160,000	$30,850,000	$31,550,000
Biennial Total		$57,190,000		$62,400,000

- *Estimates assume a July 1, 2017, effective date, representing 11 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*

Repeal use tax exemption for extracted fuel, except hog fuel

Description

This proposal would limit the use tax exemption for fuel produced by the extractor or manufacturer when the fuel is directly used in the same extracting or manufacturing operation that produced the fuel. Only wood byproducts, also referred to as "hog fuel," would be eligible for the exemption.

Current Law

Fuel consumed by manufacturers or extractors is exempt from use tax when the fuel is used in the process of manufacturing or extracting at the same plant.

- The fuels for which the exemption applies are generally wood byproducts, also referred to as "hog fuel," and refinery fuel.
- Approximately 180 wood product manufacturers and five petroleum products refineries are eligible for the exemption.
- In its preliminary 2011 Tax Preference Review Report, the Joint Legislative Audit and Review Committee notes that while no refineries existed in the state when the exemption was enacted in 1949, refinery fuels account for approximately 98 percent of the estimated value of the exemption.

Original Purpose and Current Analysis

To support certain manufacturing and extracting industries.

However, the biggest beneficiaries of this exemption are oil refineries that did not exist when this statute was originally enacted. Other industries pay tax when they use materials they manufacture themselves.

Citizen Commission Recommendation

The Citizen Commission recommended that the Legislature review and clarify this preference because the public policy objective and intended beneficiaries are not clear.

Revenue Impact

This proposal affects five taxpayers and has the following state impacts:

Fund	FY 2018	FY 2019	FY 2020	FY 2021
General Fund	$23,270,000	$28,560,000	$31,970,000	$35,420,000
Performance Audit	$40,000	$50,000	$50,000	$60,000
Fiscal Year Total	$23,310,000	$28,610,000	$32,020,000	$35,480,000
Biennial Total		$51,920,000		$67,500,000

- *Estimates assume a July 1, 2017, effective date, representing 11 months of collections for FY 2018.*
- *Estimates reflect the November 2016 Economic and Revenue Forecast Council revenue forecast.*