



This Week in State Tax (TWIST)

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WASHINGTON



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Washington State: Capital Gains Tax Payments Due April 18, 2023

In 2021, legislation was enacted in Washington State imposing a new excise tax on the sale or exchange of long-term capital assets. The tax became effective on January 1, 2022. Only individuals are subject to the tax, which is imposed at a rate of 7 percent of an individual's Washington allocated capital gains after a standard deduction of \$250,000 for both individuals and joint filers. The new tax was controversial, and opponents of the measure quickly filed a lawsuit challenging the tax. Last year, a superior court judge concluded that the tax was properly characterized as an income tax as well as a tax on property (income is considered property under prior Washington State caselaw). Washington State's Constitution includes a Uniformity Clause requiring that taxpayers be treated uniformly across all classes of taxpayers. The judge concluded that the capital gains tax violated the uniformity clause because it was imposed at a 7 percent rate on an individual's capital gains over \$250,000, but not imposed on any individual with capital gains of \$250,000 or less. The case has been appealed to the Washington State Supreme Court; however, a stay granted to the Department of Revenue allows the agency to administer the tax pending the outcome of the appeal. Although the capital gains tax return due date is extended if a taxpayer's federal income tax return is extended, there are no extensions for making payments. The first payment is due on April 18, 2023, and the Department's online system is open to make tax payments. The Department's website notes that if the Court eventually rules that the capital gains tax statute is unconstitutional, any tax payments received will be refunded with interest. If the tax is determined to be constitutional on appeal, then taxpayers that did not make required payments may be subject to late filing and late payment penalties. Collectively, these penalties can reach as high as 54 percent. Please contact [Michele Baisler](#) with questions on *Quinn/Clayton, et. al. v. State of Washington, et. al.*



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