Initiative Measure No. 1025

Equitable Public Education Support Act of 2020
AN ACT Relating to investing in quality prekindergarten, K-12, and postsecondary opportunities throughout Washington with excise taxes on sales and extraordinary profits of high valued assets; amending RCW 83.100.230; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

Part I Intent

NEW SECTION. Sec. 101. (1) Washington's tax system is the most upside down and regressive in the nation, allowing those who earn the most to pay the least percentage of their income in taxes. As a percentage of household income, middle-income families in Washington pay two to four times the amount of taxes as compared to top earners in the state. Low-income Washingtonians pay six times more in taxes than our wealthiest residents. Building a tax system that is fair, balanced, and works for everyone is imperative. The people find that a tax system that strengthens the middle-class economy, helps low-income and senior residents, and asks the wealthiest among us, who are benefiting the most from our economy and system of laws and government, to contribute their fair share is essential to help all Washingtonians grow and thrive.

(2) The people find that the state faces increasingly complex funding obligations, including the constitutional duty to amply fund basic education for K-12 students, the need for continued support of both the earliest learners and higher education, and the challenges working families face in affording quality child care and prekindergarten. It is the state's duty and is necessary for the support of state government and its existing institutions to generate revenue for these vital public services.
(3) The excise tax on capital gains is a tax on the one-time, voluntary sale or transfer of a capital asset, not a tax on ownership of the asset itself. This excise tax is paid only by those Washington residents who engage in such voluntary sales or transfers and is measured by the realization of gain on the transaction. In order to protect against further regressive impacts of the tax system, encourage the everyday investments Washingtonians of all income levels strive for, and support our economy, this excise tax will not apply to capital gains realized by certain sales and transfers. All revenue collected from this excise tax will be dedicated to the education of Washingtonians through deposit in the state's education legacy trust account.

(4) The revenue collected as the result of taxes imposed on the sale or transfer of capital assets will be deposited in the education legacy trust account and dedicated to the education of Washingtonians from our earliest learners to our college and university students.

Part II Distribution of Revenue

NEW SECTION. Sec. 201. All revenue from taxes collected under part III of this act, including penalties and interest on such taxes, must be deposited into the education legacy trust account created in RCW 83.100.230.

Sec. 202. RCW 83.100.230 and 2017 3rd sp.s. c 1 s 991 are each amended to read as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for support of the common schools, for support of early learning programs, and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. ([During the 2015-2017 and 2017-2019 fiscal Equitable Public Education Support Act of 2020] 2
biennia appropriations from the account may be made for support of early learning programs. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia.

**Part III Capital Gains Tax on Extraordinary Profits**

**NEW SECTION.** Sec. 301. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accessory dwelling unit" means a separate habitable living area that is subordinate to the principal single-family dwelling unit, which is either internal to, attached to, or located on the same property tax parcel as, the principal single-family dwelling unit.

(2) "Adjusted capital gain" means federal net long-term capital gain:

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

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

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

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

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

"Long-term capital asset" means a capital asset that is held for more than one year.

(8)(a) "Resident" means an individual:

(i) Who is domiciled in this state during the taxable year, unless the individual (A) maintained no permanent place of abode in this state during the entire taxable year, (B) maintained a permanent place of abode outside of this state during the entire taxable year, and (C) spent in the aggregate not more than thirty days of the taxable year in this state; or

(ii) Who is not domiciled in this state during the taxable year but maintained a place of abode and was physically present in this state for more than one hundred eighty-three days during the taxable year.

(b) For purposes of this subsection, "day" includes any portion of a day, except that a continuous period of twenty-four hours or less may not constitute more than one day.

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

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

(10) "Taxpayer" means an individual subject to tax under this chapter.

(11) "Washington capital gains" means an individual's adjusted capital gains allocated to this state as provided in section 307 of this act, less two hundred and fifty thousand dollars.

NEW SECTION. Sec. 302. (1) Beginning July 1, 2021, a tax is imposed on all individuals for the privilege of selling or
exchanging long-term capital assets, or receiving Washington capital gains. The tax equals seven and nine-tenths percent multiplied by the individual's Washington capital gains.

(2) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section. No such losses may be carried back or carried forward to another taxable year.

(3)(a) The tax imposed in this section applies to (i) the sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or a beneficial owner of such assets at the time of the sale or exchange, or (ii) Washington capital gains otherwise realized by the taxpayer.

(b) For purposes of this chapter, an individual is a beneficial owner of long-term capital assets held by an entity that is a passthrough or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S corporation, or trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

NEW SECTION. Sec. 303. This chapter does not apply to the sale or exchange of:

(1) Any residential dwelling along with the land upon which the dwelling is located. For the purposes of this subsection (1), "residential dwelling" means property consisting solely of (a) a single-family residence, a residential condominium unit, or a residential cooperative unit, including any accessory dwelling unit associated with such residence or residential unit, (b) a multifamily residential building consisting of one or more common walls and fewer than four units, or (c) a floating home as defined in RCW 82.45.032;

(2) Assets held under a retirement savings account under Title 26 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered annuity or custodial account described in Title 26 U.S.C. Sec.
403(b) of the internal revenue code, a deferred compensation plan under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an individual retirement account or individual retirement annuity described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a Roth individual retirement account described in Title 26 U.S.C. Sec. 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;

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

(4) Cattle, horses, or breeding livestock held for more than twelve months if for the taxable year of the sale or exchange, more than fifty percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;

(5) Agricultural land by an individual who has regular, continuous, and substantial involvement in the operation of the agriculture that meets the criteria for material participation in an activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue code for the ten years prior to the date of the sale or exchange of the agricultural land;

(6) Property used in a trade or business if the property is defined under Title 26 U.S.C. Sec. 167 or 179 of the internal revenue code; and

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

**NEW SECTION. Sec. 304.** The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in or under the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

**NEW SECTION. Sec. 305.** In computing tax, there may be deducted from the measure of tax amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

**NEW SECTION. Sec. 306.** (1) In computing tax under this chapter for a taxable year, a taxpayer may deduct from the measure of tax the amount of adjusted capital gain derived in the taxable year from the sale of substantially all of the fair market value of the assets of, or the transfer of substantially all of the taxpayer's interest in, a qualified family-owned small business.

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

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

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

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

(ii) The term "materially participated" must be interpreted consistently with the applicable treasury regulations for section 469 of the internal revenue code, to the extent that such interpretation does not conflict with any provision of this section.
(d) "Qualified family-owned small business" means a business:

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

(ii) In which the taxpayer or his or her family member materially participated in operating the business for at least five of the eight years immediately preceding the sale or transfer described in subsection (1) of this section, unless such sale or transfer was to a qualified heir;

(iii)(A) That had no more than fifty full-time employees at any time during the twelve-month period immediately preceding the sale or transfer described in subsection (1) of this section.

(B) For purposes of this subsection (2)(d)(iii), "full-time employee" means an employee who is, or any combination of employees who are, paid by the business for at least one thousand eight hundred twenty hours of employment, including paid leave, for the twelve-month period described in (d)(iii)(A) of this subsection (2); and

(iv) That had worldwide gross revenue of seven million dollars or less in the twelve-month period immediately preceding the sale or transfer described in subsection (1) of this section.

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

(f) "Qualifying interest" means:

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

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

(A) Fifty percent of the business is owned, directly or indirectly, by the taxpayer and members of the taxpayer's family;

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

(I) Seventy percent of the business is owned, directly or indirectly, by members of two families; or
(II) Ninety percent of the business is owned, directly or indirectly, by members of three families.

(g) “Substantially all” means at least ninety percent.

NEW SECTION. Sec. 307. (1) For purposes of the tax imposed under this chapter, adjusted capital gains are allocated as follows:

(a) Adjusted capital gains from the sale or exchange of real property are allocated to this state if the real property is located in this state or a majority of the fair market value of the real property is located in this state.

(b) Adjusted capital gains from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Adjusted capital gains from the sale or exchange of tangible personal property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

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

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

(iii) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the adjusted capital gain by another taxing jurisdiction.

(c) Adjusted capital gains derived from intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the sale or exchange occurred.

(2) (a) A credit is allowed against the tax imposed in section 302 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the
taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

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

NEW SECTION. Sec. 308. (1)(a) Except as otherwise provided in this section or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed.

(b) A taxpayer must file an annual capital gains return, along with any other documents required by the department, if no tax is owed, but the taxpayer has a Washington capital gain of at least seventy-five thousand dollars, or one hundred fifty-thousand dollars if filing a joint return, for the taxable year.

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

(3) Each taxpayer required to file a return under this section must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return, regardless of any filing extension. If any tax due under this chapter is not paid by the due date, interest and penalties as provided in chapter 82.32 RCW apply to the deficiency.
(4) The department may by rule require that certain individuals and other persons file, at times and on forms prescribed by the department, informational returns for any period.

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

(6)(a) If any return due under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed twenty-five percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

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

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

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

NEW SECTION. Sec. 309. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return...
for the taxable year, they must file a joint return under this chapter.

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

(3) In any case in which a joint return is filed under this section, the liability of each spouse or state registered domestic partner is joint and several, unless:

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

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

NEW SECTION. Sec. 310. To the extent not inconsistent with the provisions of this chapter, the following statutes apply to the administration of taxes imposed under this chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, 82.32.805, 82.32.808, and section 313 of this act.

NEW SECTION. Sec. 311. (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.
(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

NEW SECTION. Sec. 312. Notwithstanding any common law rule of strict construction of statutes imposing taxes, this chapter, being necessary for the welfare of the state and its inhabitants, must be liberally construed in support of application of the tax.

NEW SECTION. Sec. 313. A new section is added to chapter 82.04 RCW to read as follows:

A deduction is allowed against a person's gross income of the business to the extent necessary to avoid taxing the same amounts under this chapter and section 302 of this act.

NEW SECTION. Sec. 314. A new section is added to chapter 82.32 RCW to read as follows:

(1) The department may enter into reciprocal tax collection agreements with the taxing officials of any other state imposing a specified tax. Agreements authorized under this section must require each state to offset delinquent specified taxes owed by a taxpayer to one party to the agreement, including any associated penalties, interest, or other additions, against refunds of overpaid specified taxes owed to the taxpayer by the other party to the agreement. Such agreements may also include provisions governing the sharing of information relevant to the administration of specified taxes. However, the department may not share return or tax information with other states except as allowed under RCW 82.32.330. Likewise, the department may not share federal tax information with other states without the express written consent of the internal revenue service.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Specified taxes" means generally applicable state and local sales taxes and use taxes, broad-based state gross receipts Equitable Public Education Support Act of 2020
taxes, state income taxes, and stand-alone state taxes on capital gains or interest and dividends. "Specified taxes" include, but are not limited to, the taxes imposed in or under the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter created in section 402 of this act), and similar taxes imposed by another state. For purposes of this subsection (2)(a), "gross receipts tax," "income tax," "sales tax," and "use tax" have the same meanings as provided in RCW 82.56.010.

(b) "State" has the same meaning as provided in RCW 82.56.010.

Part IV Miscellaneous Provisions

NEW SECTION. Sec. 401. The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. Sec. 402. Sections 201 and 301 through 312 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 403. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 404. This act is known and may be cited as the equitable public education support act.

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