

## Income/Franchise:

### Washington DOR Issues Capital Gains Tax Guidance on §1256 Contracts and Credit for Taxes Paid to Other States

*Interim statement regarding the capital gains excise tax and Section 1256 contracts*, Wash. Dept. of Rev. (10/11/23); *Interim statement regarding the capital gains excise tax and calculation of credit for taxes paid to another taxing jurisdiction*, Wash. Dept. of Rev. (10/11/23). The Washington Department of Revenue (Department) issued guidance in the form of “interim statements” intended to provide taxpayers with additional information on calculating Washington’s tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert (May 13, 2021) for more details on this state tax, as well as previously issued Multistate Tax Alert (March 27, 2023) for more details on the Washington Supreme Court’s decision upholding the validity of the tax]. One interim statement explains that for purposes of Washington’s capital gains excise tax, “Section 1256 contracts” that are treated as sold at the close of the taxable year pursuant to Internal Revenue Code section 1256(a) are considered sold for Washington capital gains excise tax purposes. Thus, any long-term capital gain or loss from such sale, as determined by Internal Revenue Code section 1256(a)(3), is included in the calculation of the individual’s adjusted capital gain and Washington capital gains to the extent such gain or loss is included in calculating the individual’s federal net long-term capital gain, and the Department provides some examples to illustrate. Another interim statement addresses computation of the Washington capital gains excise tax credit for taxes paid in another taxing jurisdiction, including two example scenarios to help illustrate this calculation. Please contact us with any questions.

**URL:** <https://dor.wa.gov/laws-rules/interim-statement-regarding-capital-gains-excise-tax-and-section-1256-contracts>

**URL:** <https://dor.wa.gov/laws-rules/interim-statement-regarding-capital-gains-excise-tax-and-calculation-credit-taxes-paid-another>

**URL:** <https://app.leg.wa.gov/bills/summary?BillNumber=5096&Year=2021&Initiative=false>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-washington-supreme-court-upholds-capital-gains-tax.pdf>

— Robert Wood (Seattle)  
Principal  
Deloitte Tax LLP  
robwood@deloitte.com

Scott Schiefelbein (Portland)  
Managing Director  
Deloitte Tax LLP  
sschiefelbein@deloitte.com

Myles Brenner (Seattle)  
Senior Manager  
Deloitte Tax LLP  
mybrenner@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).