

Income/Franchise:

Washington DOR Cancels Previously Issued Capital Gains Tax Guidance on §1256 Contracts

Interim statement regarding the capital gains excise tax and Section 1256 contracts, Wash. Dept. of Rev. (revoked on 1/26/24). The Washington Department of Revenue (Department) canceled its previously issued interim guidance statement covering “Section 1256 contracts,” which was issued in October 2023 [see *State Tax Matters*, Issue 2024-43, for details on this previously issued guidance] and 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]. The Department now states that for Section 1256 contracts, only gains and losses recognized from a taxpayer’s sale or exchange of a Section 1256 contract are included in the Washington capital gains excise tax base, and only if the contract was held for more than one year. In such situations, “the taxpayer should report the long-term capital gain or loss they recognized for federal tax purposes from the sale or exchange, *i.e.*, 60% of the total gain or loss.” 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://dhub.deloitte.com/Newsletters/Tax/2023/STM/231027_9.html

URL: <https://app.leg.wa.gov/billssummary?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 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.