



All about the income tax – Dec. 17, 2021

# Income tax now a matter of state law – courts and people will decide its fate



The income tax bill, SB 5096, was passed in the Senate April 25, 2021, during a legislative session in which the people were barred from the Washington State Capitol due to COVID restrictions, public seating galleries remained empty, and public participation was limited. KIRO-TV reporter Essex Porter summed up the session: "Democrats locked in their agenda by locking the public out."

**Washington voters spoke loud and clear on Nov. 2, 2021, when they said no to an income tax for the 11<sup>th</sup> straight time. Unfortunately, the people's vote didn't count.**

**That's the saddest thing of all** about the new income tax approved in 2021 by Washington's Democratic lawmakers and signed into law by Gov. Jay Inslee -- over the dead-set opposition of the people they represent.

The people's opinion doesn't matter to those who wish to force this new tax on Washington state. Sixty-one percent of Washington voters voted for repeal of this new income tax when the question appeared on the general election ballot in November 2021. Unfortunately, your vote meant nothing. **The income tax bill was written specifically to prevent a public referendum that would carry the force of law.**

The November 2021 vote was merely "advisory." An advisory vote is required under state law whenever the Legislature votes to raise taxes without the approval of the people. This is the result of an initiative approved by voters in 2007 – a pesky reminder that the people have a voice, even if many lawmakers choose not to listen.

Make no mistake – this wasn't our doing. **Every Republican in the Washington Legislature voted against the income tax**, as did a handful of thoughtful Democrats. Unfortunately, advocates of higher taxes and spending had more votes than we did. They were unwilling to accept the answer the people have given them, time and again. **The people have said no to an income tax every time the question has appeared on a Washington ballot since 1934.**

Here you will see the arguments Republicans offered when the income tax bill, Senate Bill 5096, was debated on the Senate floor March 6 and April 25, 2021. We recognize the devastating effect the income tax will have on the hardworking people of the state of Washington, as well as on specific sectors of our economy – particularly the tech industry, the dynamic force that drives Washington's current prosperity.

### **Here's what you need to know about Washington's new income tax:**

- **Watch it grow.** The income tax bill passed by the Legislature is narrowly focused, on capital gains income, with exemptions including real estate and the first \$250,000 of income. As the law now stands, taxes will be due and payable for the first time in 2023. **Nothing will prevent a future Legislature from expanding its reach to every resident of Washington state.** Many income-tax advocates have stated they consider this outcome desirable.
- **Supreme Court could give thumbs-up.** The Washington Supreme Court ruled in 1933 that a graduated income tax violates the state constitution, meaning that Washington voters must approve a constitutional amendment before such a tax can be imposed. The 2021 income tax legislation is designed to present a "test case" before Washington's current liberal activist Supreme Court. Income tax advocates believe the court will overturn its ruling.
- **'Fairness' arguments are false.** Advocates of higher taxes and spending maintain an income tax would make our tax system 'more fair.' Yet our current system *is* fair to all economic classes. It has allowed business to prosper, generating vast tax collections. The single study cited by income tax advocates is fatally flawed. The new law will not reduce a single tax already on the books, and already tax collections generated by the new income tax are earmarked for an expansion of state spending.
- **Democrats blocked a public referendum.** Supporters of an income tax adopted a last-minute amendment to SB 5096, declaring the need for an

income tax to be an “emergency.” This prevented the public from filing a referendum to overturn the law. The public still has the option of filing an initiative, but to appear on the ballot, double the number of petition signatures will be required, a much more difficult hurdle.

**In the months since the Legislature passed the income tax,** the case for an income tax has become even weaker. Our state’s very-healthy and not-at-all broken tax system has been generating ever-greater tax collections, mainly due to taxes on business as our economy recovers from our COVID shutdown. State economists have increased their projections of state tax collections by more than \$7 billion since the Legislature adjourned its 2021 session – that’s without the new income tax included.

Meanwhile, the inevitable legal challenge has been filed, and the case is making its way to the Supreme Court. If the court reverses 88 years of precedent and permits the income tax to stand, an initiative to repeal the tax remains a possibility. Should the public choose to file an initiative, legislative rules prevent us from using state resources to take a position for or against a specific ballot proposition.

**To inform public understanding about the new Washington state income tax legislation,** here are links to the public briefing papers we posted prior to the 2021 debate. These briefing papers, originally posted Jan. 10, 2021, have been updated with current information as of December 2021.

## **[What’s the problem with an income tax?](#)**

Washington is one of nine states without an income tax. We should be glad of that.

## **[Tax advocates created a phony crisis](#)**

Voters keep saying no, so a new strategy aims to cut them out of the loop.

## **[It’s not about fairness — it’s about more-ness](#)**

This isn’t about redistributing the tax burden. It’s about making it bigger.

## **[A capital gains income tax would eventually hit all of us](#)**

It wouldn’t stop with the wealthy. Taxes on high earners would plummet in the next recession. Where do you think the Legislature would find the money?

## [A capital gains income tax is an income tax — and why it matters](#)

Semantic games allow the Legislature to avoid an open and honest debate.

## [You can't trust what tax advocates say](#)

This issue has a long history, and actions speak louder than words.

*Just to make everything clear —*

## **Seven Big Myths about the Income Tax**

### **1. The income tax on capital gains is not an income tax.**

This curious belief is held only by a handful of people, and oddly enough, every single one of them appears to be a member of the Washington Legislature. Under definitions used by every other state, the IRS, even the courts of the state of Washington – yes, it's an income tax.

### **2. It would make our tax system “more fair.”**

Our system *isn't* unfair – it does a pretty good job of spreading the burden. It gets a bad rap because of high excise taxes on gasoline, beer, wine, liquor and marijuana. Nobody is talking about cutting those. Meanwhile, legislative Democrats advocate measures that would slam the poor with higher gas and electricity prices. This is hard to square with a “fairness” argument.

### **3. It would only hurt the rich.**

Tax advocates say a capital gains income tax would only hurt the rich. That's not true. Farmers and small business also would be hit. But it's the next move that ought to worry us. Tax collections would plummet in the next recession. The next move would be to expand the income tax to the middle class. You can ask every state that tried to “soak the rich.”

### **4. It would cause other taxes to be reduced.**

The 2021 income tax legislation does not reduce other taxes. They all remain on the books. In the future, when the Legislature expands this income tax to the middle class, it could offer to reduce other taxes – which might make it sound more attractive. But nothing would prevent it from raising taxes again.

## **5. The state needs the money.**

The state never has enough money to do everything everybody wants. That's politics for you. But tax collections skyrocketed \$20 billion between 2013 and 2020, enough to cover every need. We saw a temporary pause during the COVID shutdown – then our economy boomed again. Since the 2021 session ended, projections of future tax collections have increased more than \$7 billion, not counting this new income tax. Surely that's enough to cover every need.

## **6. It wouldn't drive businesses out of state.**

This argument requires us to suspend belief in basic economic principles and ignore the fact that Amazon already has one foot out the door. The state Department of Commerce understood the importance of a favorable tax code. No income tax used to be a big point in its business-recruitment ads -- until the Legislature began debating the income tax bill in early 2021 and the state agency quietly dropped the claim from its advertising.

## **7. Only Republicans are talking about an income tax.**

Of all the claims in this debate, this one was the silliest. Democrats preferred to refer to their income tax as a "capital gains tax." Everyone was talking about an income tax. Republicans were just being honest about it. We still are.



## What's the problem with an income tax?

Washington is one of just nine states without an income tax. If it's good enough for the other 41, why not us? Plenty of reasons. An income tax would create severe problems for all of us.

- **Our economy has grown up without an income tax.** It's why Washington is booming. Businesses make decisions based on taxes, and it's why the tech industry flocked here in the '80s and '90s. We aren't like other states. We should be glad of it.
- **We'll lose our biggest competitive advantage.** With an income tax, we'll be just like California and other high-tax states. Business will go elsewhere. We'll see fewer jobs for working families.
- **Just ask the state Department of Commerce.** No income tax used to be a big selling point in state business-recruitment advertising – until the claim was quietly dropped before the 2021 debate on the income tax bill.
- **Current proposals punish the tech industry.** A capital gains income tax targets tech firms and their employees. Talk about killing the golden goose!
- **Small business and farmers would be collateral damage.** A capital gains income tax would hit owners of farms and small businesses. They aren't rich. They'll be hit when they sell at retirement.
- **Eventually the tax would hit all of us.** It's going to grow and grow. Next time the Legislature runs short on money, this "starter income tax" would be expanded to the middle class – because that's where the money is.
- **You'll pay more – lots more.** The whole idea is to raise more money for government, not to replace the taxes we already have. This money would be plucked from the economy, where it would have fueled sales, jobs and economic growth.
- **Incentives for smarter spending will be gone.** With a gusher of money, Olympia won't have to make tough choices, cut wasteful spending and reform ineffective programs.
- **We'll join the ranks of "basket-case" states.** Bond-rating firms say Washington has one of the nation's most-stable tax systems. "Soak the rich" taxes would put us on the same dismal track as California, Connecticut, New Jersey, New York and many others.
- **An income tax is a slap in the face to Washington voters.** The people have voted no 10 times since 1935, most recently in 2010. Cutting the people out of the decision shows them great disrespect.

**Washington is prosperous because we don't have an income tax.**

**An income tax is a recipe for stagnation – and worse.**

# Tax advocates created a phony crisis

## *Cynical new strategy obscures real goal – the income tax*

For years, advocates of higher taxes and spending have tried to convince the people of Washington that an income tax is good for them. But those pesky voters have said no 11 straight times.

So how do income-tax backers solve the problem?

## Step 1: *Take it to court*



The state Supreme Court ruled in 1933 that a graduated income tax requires a constitutional amendment. That's what forces a public vote. Tax advocates need to reverse the ruling to **cut the people out of the decision**. They're sure our current liberal court can find an excuse.

### ■ An incremental victory for tax

**activists.** The Seattle City Council, dominated by progressive activists, attempted to set up a test case by passing a municipal income tax. In 2020, the Supreme Court said no, but the litigation achieved one goal. A state law preventing cities from imposing local income taxes was thrown out by the Court of Appeals.

- **The Legislature set up a test case.** Tax advocates knew that if the Legislature passed an income tax of any sort, even if it called it something else, a court challenge would be certain. That's exactly what happened. As of December 2021, a lawsuit is headed to the state Supreme Court. The state Attorney General's office is defending the new tax. It is urging the court to overturn its 1933 decision and rule that a graduated income tax is constitutional. This would mean no constitutional amendment is needed, no public vote is required – and would allow the Legislature to expand the income tax to the middle class the next chance it gets.

## Step 2: Start by “soaking the rich” – the rest of us come later



An income tax is easier to swallow when it looks like somebody else will pay. Recent proposals target “the rich.” Once a tax is on the books, it can always be expanded later.

- Since 2010, advocates have pushed a narrow type of income tax, on capital gains. This divide-and-conquer strategy targets the few who are compensated with stock options.

- When collections plummet in the next recession, this new income tax can be expanded to the middle class. They’ll just have to reprogram the computers.

## Step 3: Create a phony crisis only an income tax can solve

How can anyone justify a tax increase when the state’s economy is booming?  
How about creating the impression of a crisis?

- **The capital gains income tax was sold as an “emergency” measure – to launch a new childcare program.** There had to be an excuse, but this one was as silly as they came. The Legislature was awash in money in 2021, thanks to the quick rebound of our economy and federal COVID relief funds. Majority Democrats had trouble spending it all. But they did, and then declared the state needed a new childcare program – an “emergency” that required an income tax. Since then, our economy has continued to boom. Tax projections are up more than \$7 billion since the end of the 2021 session. More than enough for childcare, if it’s really an emergency. Mainly, by “declaring an emergency,” Democrats blocked the people from filing a quick-and-easy referendum that certainly would have overturned the tax.
- **We’ve seen it all before.** Every time the state faces a new financial demand, the income tax is trotted out as a solution – even if it wouldn’t solve anything. Until the economy rebounded in late 2020, it was a “COVID relief measure.” Before that, the excuse was school funding. And before that, it was health care reform. We didn’t need an income tax to resolve those issues, and we certainly don’t need it now.



# A capital gains income tax *is* an income tax – *and why it matters*

Advocates of higher taxes and spending are pushing an income tax, but they don't want to call it that. This isn't a matter of hairsplitting. It conceals the real issue involved in the debate. Is any of this a surprise, after Washington voters have rejected an income tax 11 straight times?



## An attempt to stifle honest debate

“Thank you, Mr. President. Our Senate rules ask us to speak to the measure before the Senate. The bill before us enacts an excise tax on capital gains, and not an income tax. So I would ask that you advise the gentleman to keep his remarks to the bill before us.” — Senate Democratic floor leader, during debate on income tax bill, April 21, 2017.

**Washington voters hate the income tax.** So when tax advocates started floating their latest proposal to tax income from high earners, they decided to call it something else – an “excise tax on capital gains.” **This fiction might make an income tax easier to swallow**, but it's contrary to definitions used by the IRS, by every other state, by our courts, by Webster's dictionary, and plain old common sense.

- **The Internal Revenue Service** considers capital gains taxes to be an income tax: “It is an income tax. More specifically, capital gains are treated as income under the tax code and taxed as such.”
- **Every state that taxes capital gains** (all 40 of them) considers capital gains to be a form of income, and imposes taxes as part of their general income tax.
- **Webster's Dictionary** defines “income tax” as “a tax on the net income of an individual or business.” This tax would be based on net-income calculations from IRS tax returns. (*Merriam-Webster edition.*)
- **Washington courts** have ruled it doesn't matter what the Legislature chooses to call a tax – what matters is how it functions. The state Supreme Court rejected previous attempts by the Legislature to describe an income tax as an excise tax. (*Jensen v. Henneford*, 1935, reaffirmed many times.)

**Don't be fooled. An income tax is an income tax.**



# A capital gains income tax would eventually hit all of us

Advocates of higher taxes and spending have passed a “starter tax” on capital gains income. That’s bad news for the tech industry and business. But this narrow income tax won’t end there, and the rest of us ought to worry, too. Once an income tax is on the books, it’s going to **grow and grow and grow**, no matter what anyone promises today.

## A capital gains income tax means a wild roller coaster ride – just ask Jerry Brown!

You can’t count on steady returns when taxes target a handful of people. Income of high earners varies wildly from year to year. They rarely take capital gains when markets are down. We would see big gyrations in tax collections – even though government requires steady funding.



### *Former California Gov. Jerry Brown on ‘Unpredictable Capital Gains’:*

“What goes up just as sharply goes down. It did it once, it did it again, and now – we’re not quite sure what it will do. But we know over time that zig-zag will follow us... The problem here is that if you make commitments to employees’ salaries, to programs that are ongoing, then when the revenue drops, you’re in a hole.” (news conference, Jan. 9, 2014)

## What happens in the next recession?

You can count on lawmakers to spend every dime they expect to collect. They would write budgets that assume income-tax collections will remain steady. They would find excuses not to save. They always do. **We would face an enormous shortfall next time there’s a recession.**

## Next step is an income tax on the middle class

As tax collections plummet, lawmakers would be forced to make up hundreds of millions of dollars in lost revenue. The easiest way to do it would be to **expand the income tax** – eventually, to all of us.

## It happens every time

America has a rich history of expanding income taxes once they are in place. The reason is simple. **The middle class is where the money is.** A few examples:

- **The federal income tax**, sold in 1913 as a tax on the rich, was expanded to the middle class during WWI. The lowest bracket started at 2% and rose to 22% by 1952.
- **Connecticut's income tax**, sold in 1991 as a tax on the rich, was extended to the middle class to reduce "volatility." Initially the tax provided 10% of state revenues. Today it pays for more than half the state budget. Nor has the income tax reduced other taxes, as promised. Connecticut is No. 2 for property taxes, and sales tax rates are rising.
- **New Jersey's income tax**, sold in 1976 as a modest levy of 2% to 2.5%, now ranges between 1.4% and 10.75%, and generates 40% of the state's tax collections. Yet no amount is ever enough, and New Jersey's finances are among the nation's worst.

## Taxpayer protections are rejected

Washington's income-tax advocates **refuse to consider** the only mechanism that could prevent expansion of the income tax – a constitutional amendment. Without this protection, any future Legislature could easily expand the income tax to the middle class.

## Mechanism for general income tax already in place

Broadening the capital gains income tax could be done with the flip of a switch. If this narrow income tax is imposed, Washington state's computers would **already** be linked with the IRS.

## Promises from current lawmakers are meaningless



Advocates of higher taxes and spending want us to focus on their immediate proposal, and ignore what happens next. Surely they wouldn't tax the middle class. But no promise made today can bind future legislatures.

**Washington Gov. Jay Inslee: "We ought to vote on the proposals we have, and not fear progress." (Jan. 10, 2019)**

**A capital gains income tax sets us up for a general income tax.  
Many in Olympia are hoping you won't notice.**



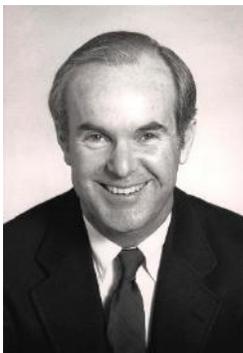
## It's not about fairness. It's about more-ness

### *What that “most regressive in the country” claim really means*

One of the hoariest chestnuts in the income-tax debate is the notion that Washington's tax system is unfair. *It isn't.* It's one of the nation's fairest. When tax advocates claim Washington's taxes are “the most regressive in the country,” they aren't telling the whole story.

- **In Washington, everybody pays the same taxes.** Our constitution requires equal taxation for everyone – on all forms of property, including income. Government can't play favorites. Tax advocates want some people to pay more than others, and they want to decide who pays. **Fairness is what they find objectionable.**
- **We don't tax basic necessities.** Washington's tax code does well by the poor. There's no sales tax on food, no direct tax on rent. The state provides medical care and other services for the neediest.
- **Our tax burden is distributed pretty much like every other state.** At every level of income, we're within 1 or 2 percent of the national average. Even if Washington had an income tax, this would not change in any meaningful way.
- **Studies are skewed by political agendas.** The “most regressive” claim comes from a frequently-cited study by the Institute on Taxation and Economic Policy (ITEP). Its numbers aren't in question, but its conclusions aim to promote heavy taxes on high earners. ITEP says the fairest states include California, Connecticut, and New Jersey, where soak-the-rich taxes have created **terrible financial problems.**
- **Washington's most-regressive taxes won't be reduced.** What the ITEP figures really show is that our sales tax doesn't burden the poor – it's those “little taxes” nobody wants to talk about. Washington has some of the highest excise taxes in the country – on cigarettes, fuel, cell phones, alcohol and marijuana. These won't change. Our system won't be “fairer.” Even worse, since 2020, tax advocates have passed measures that would slam the poor with higher fuel and electricity prices. **How's that for fairness?**

**This isn't about redistributing the tax burden. It's about making it bigger.**



### A Lesson from History

In 1989, Democratic Gov. Booth Gardner proposed an income tax, and one of his favorite arguments was that it would raise more money. Gardner said that if his income tax had been enacted 10 years earlier, tax collections would have risen much faster, and the 1989 Legislature would have had \$700 million more to spend. Gardner was right – and critics pointed out the money would come from people's pockets. Income-tax advocates are smarter now, and no longer make this argument.



# You can't trust what tax advocates say

Many lawmakers claim they don't support an income tax, even as they push an income tax on capital gains. Mighty curious, don't you think? The record shows a big, broad income tax is a longtime goal for many Washington elected officials, and that promises can't be trusted.

- 52 House Democrats and 25 Senate Democrats voted for SB 5096 in 2021. This bill launches a “starter income tax” on capital gains. It also triggered a lawsuit that could open the door to a big, broad income tax with no voter approval required.
- Gov. Jay Inslee signed the bill into law, despite campaign promises to oppose an income tax.
- From 1985 to 2020, 103 income-tax bills were introduced in the Washington Legislature, 90 by Democrats. (Most Republican bills were filed for procedural reasons.)
- Five of the last five Democratic governors either declared support for an income tax or have co-sponsored legislation to create one.
- Prior to passage of the 2021 income tax bill, 75 percent of the members of the Senate Democratic Caucus sponsored or co-sponsored legislation to create an income tax.
- State Democratic Party platforms have endorsed an income tax since 1930.
- During the 1960s and early 1970s, an income tax enjoyed support from some Washington Republicans. But times have changed. Our state has prospered because we don't have one. Our politics have become increasingly unbalanced and vulnerable to pressure from special-interest groups eager for more taxpayer money.
- Old income-tax proposals contained constitutional limits on taxation, which the Legislature cannot override. Today's income-tax advocates refuse to consider constitutional limits to protect the middle class. What do you think they have in mind?

**Here's the only thing you can trust:**

**A capital gains income tax is just the start.**



## What's a promise worth?

Candidate Jay Inslee: **“I would veto anything that heads in the wrong direction, and the wrong direction is new taxes in the state of Washington.”** (News conference, Oct. 11, 2012)

From 2013 to 2020, Gov. Jay Inslee proposed **\$24 billion** in new taxes, and signed every new tax passed by the Legislature. Inslee was a leading advocate for the income tax legislation.



# Which governor do you believe?

## Washington Gov. Jay Inslee says a capital gains income tax is nothing to fear



“This is a proposal to ask about one-and-a-half percent of people in Washington to chip in a bit more. ...Are we going to tell legislators a hundred years from now they can’t consider something else? No, we can’t and we won’t. ...This sort of ‘camels’ nose under the tent’ fear, I think we should work through, because it has stymied so many other common-sense things. ...We ought to vote on the proposals we have, and not fear progress.” (AP Legislative forum, Jan. 10, 2019)

## Governors of basket-case states say high-earner taxes created a fiscal nightmare



### California’s Jerry Brown on “Unpredictable Capital Gains”

“What goes up just as sharply goes down. It did it once, it did it again, and now – we’re not quite sure what it will do. But we know over time that zig-zag will follow us... The problem here is that if you make commitments, to employees’ salaries, to programs that are ongoing, then when the revenue drops, you’re in a hole.” (News conference, Jan. 9, 2014)



### Connecticut’s Dan Malloy says soak-the-rich taxes created \$5B shortfall

“About one percent of the population pays about 30 percent of the income tax revenue. That is going to make you subject to some pretty big swings... What I have argued for routinely is as broad a base of revenue sourcing as possible.” (News conference, May 1, 2017.)



### New York’s Andrew Cuomo says high-earner taxes a factor in \$2.3B shortfall

“The top one percent pay about half of all the taxes... This is the flipside. Tax the rich. Tax the rich. Tax the rich. The rich leave. And now what do you do?” (News conference, Feb. 4, 2019)

**Three out of four Democratic governors agree: High-earner taxes mean trouble.**

**Why on earth would we follow their example?**