



This Week in State Tax (TWIST)

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Washington: U.S. Supreme Court Declines to Review Capital Gains Tax Case

On January 16, 2024, the U.S. Supreme Court denied certiorari in a case challenging the constitutionality of the Washington State capital gains tax, which was upheld last year by the Washington State Supreme Court. Enacted in 2021, the capital gains tax is imposed at a rate of 7 percent on an individual's Washington allocated capital gains after a standard deduction of \$250,000 for both individuals and joint filers. Before the Washington State Supreme Court, the central question was whether the capital gains tax constituted an impermissible property tax on income. Relying on the state's long history of distinguishing between property taxes—those levied on owners of property merely because they are owners—and excise taxes—those imposed upon the exercise of rights in and to property, such as its lease or sale, the court noted that the state had long permitted taxes *measured* by income so long as they were not imposed *on* income. Because the capital gains tax is imposed on the sale of assets, rather than on their ownership, the court determined that the tax was properly characterized as an excise tax, even though it was measured by taxpayer's gains from the sale of those assets. In their cert petition, the opponents of the tax had argued that if in fact the capital gains tax was an excise tax, rather than an income tax, then it violated the dormant commerce clause because it is imposed a tax on activity that occurs outside the state's borders.

Although the U.S. Supreme Court has declined to hear the dispute, the fate of the capital gains tax may be decided by voters, as efforts to repeal the tax via a ballot measure are underway in Washington State. It has recently been reported that the capital gains tax raised nearly \$900 million in its first year. Please stay tuned to TWIST for future updates on the Washington capital gains tax.

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