



# Federal and State Legislative Update: Key Changes for Estate Planners

Tax Reform



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\*2025 Inside Public Accounting (IPA) Top 100 firms

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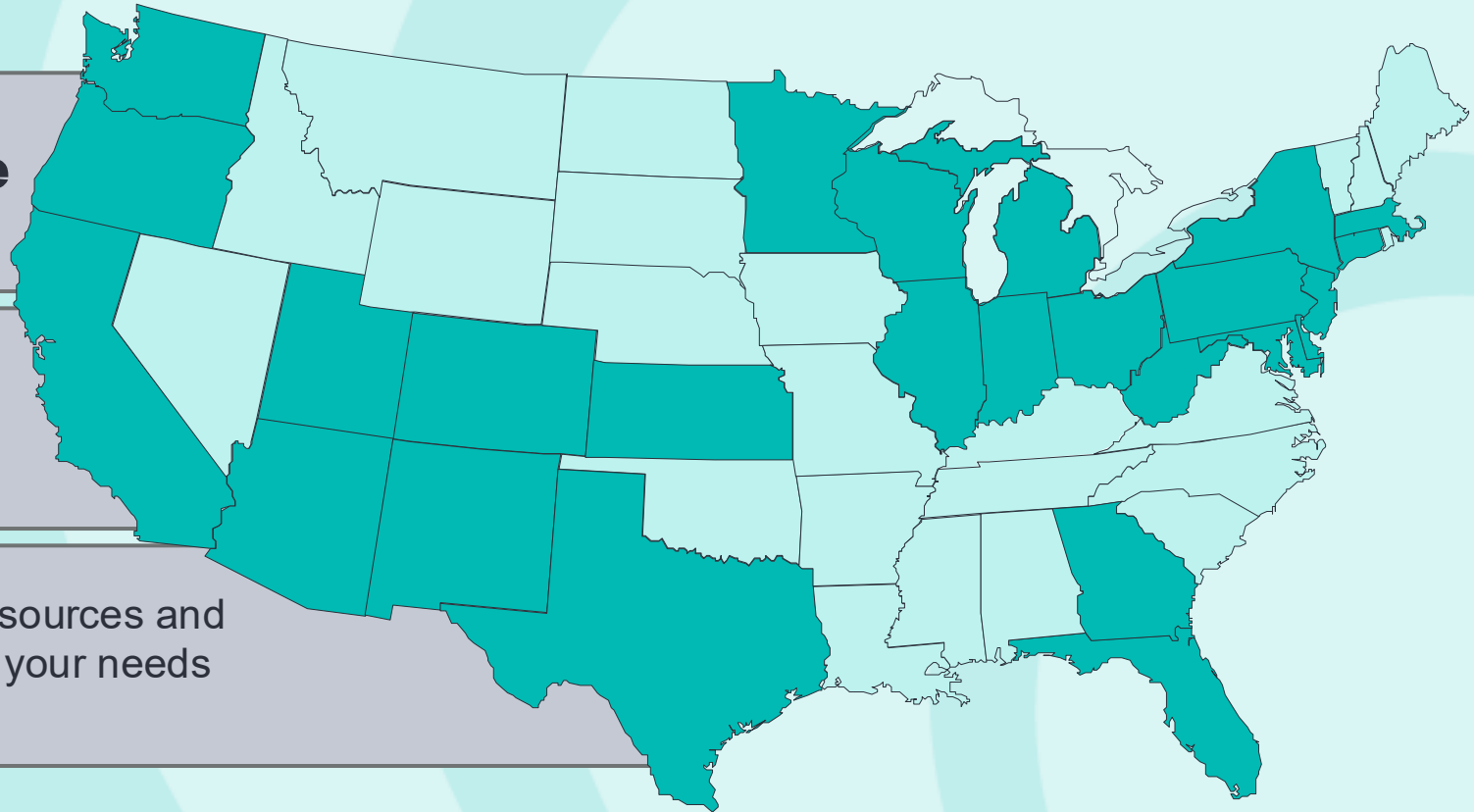
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# Federal Updates

OBBBA – Selected Provisions

# **Key business tax provisions**

# Extension of qualified business income (QBI) deduction (section 199A)

The new law permanently extends the 20% QBI deduction. Under the Tax Cuts and Jobs Act (TCJA), the qualified business income (QBI) deduction was scheduled to sunset after the 2025 tax year.

- **New:** The deduction limitation of 50% W-2 wages or 25% of W-2 wages plus 2.5% of unadjusted basis in qualified property immediately after acquisition (UBIA) phase-in range is increased from \$50,000 (\$100,000 MFJ) to \$75,000 (\$150,000 MFJ)
- **New:** A minimum QBI deduction of \$400 is allowed for taxpayers with aggregate QBI of \$1,000 from qualified business in which the taxpayer materially participates

Applicable to tax years beginning after December 31, 2025.



# Modification of business interest deduction limitation (section 163(j))

The law permanently reinstates EBITDA (earnings before interest, taxes, depreciation and amortization) for the section 163(j) adjusted taxable income (ATI) calculation, providing an increased ability to deduct interest expense for tax years beginning after December 31, 2024.

- **New:** Any capitalized interest - other than interest capitalized under section 263(g) and 263A(f) - will be treated as interest subject to the section 163(j) limitation for tax years after December 31, 2025
- **New:** The definition of “motor vehicle” is permanently modified to include certain trailers and campers designed to be towed or affixed to a motor vehicle, allowing interest associated with these items to be eligible for the floorplan exclusion

**Planning tip:** Consider how the more generous ATI calculation will impact limited interest carried forward from prior years and incorporate this into your projections.



# Bonus and other special depreciation allowance

## Bonus depreciation:

- The bill permanently revives 100% bonus depreciation for qualified property acquired and placed in service after **January 19, 2025**

## Expands section 179 expensing:

- Increases the maximum current expensing up to \$2.5 million of qualifying property with phaseouts beginning at \$4 million. Effective for property placed in service after December 31, 2024

**Planning tip:** Consider how these retroactive changes impact your 2025 projections and quarterly estimates. Monitor state conformity - not all states will follow the expanded depreciation provisions.

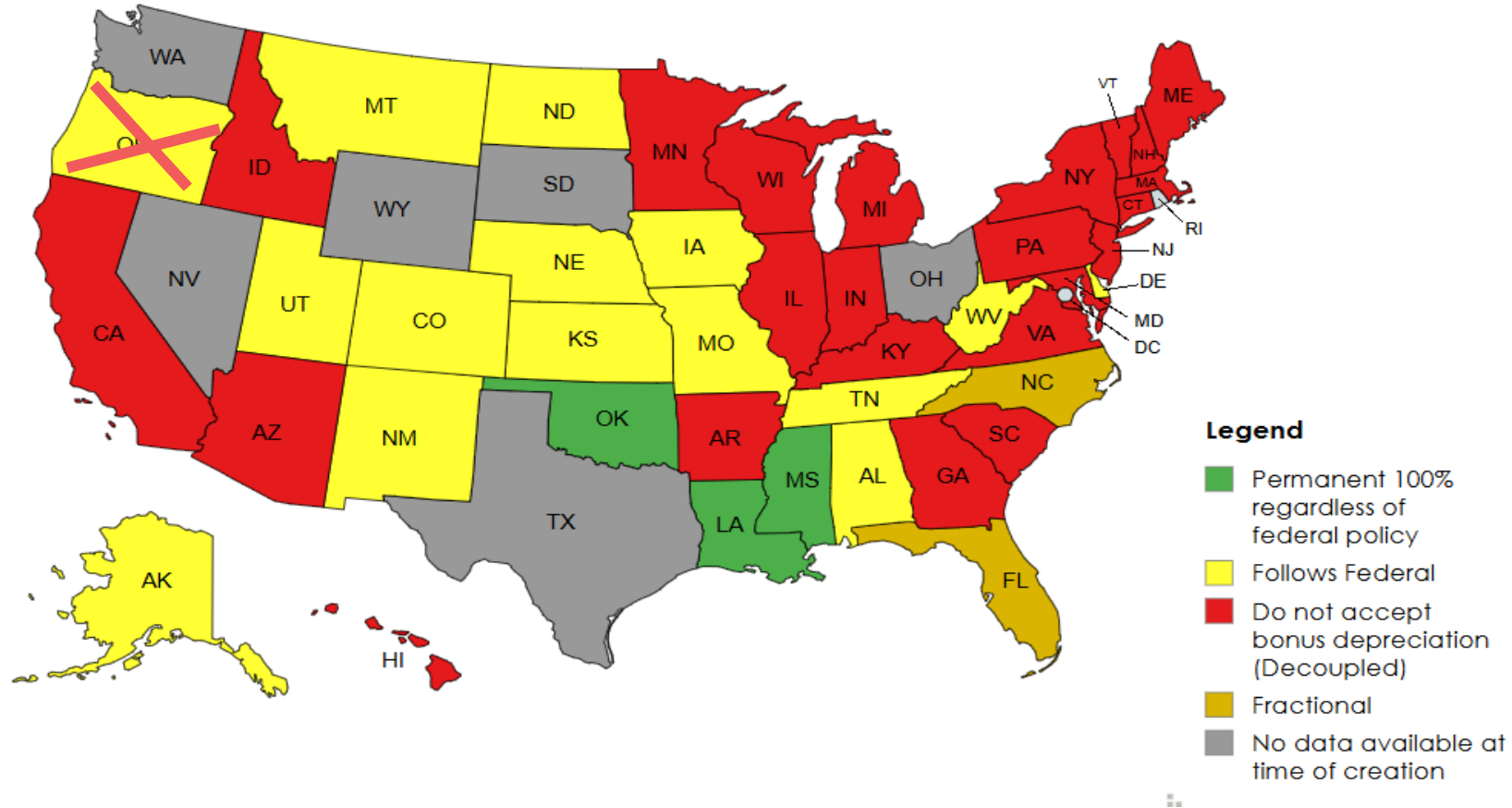


# 168k bonus depreciation

Property placed in service	Bonus depreciation % (TCJA)	Bonus depreciation % (OBBBA, acquired after 1/19/2025)
2018-2022	100%	N/A
2023	80%	N/A
2024	60%	N/A
2025	40%	100%
2026	20%	100%
2027 and later	0%	100%



# State conformity to 168(k) bonus depreciation



Florida provides 1/7<sup>th</sup> of the federal deduction, while North Carolina incorporates 15%

Source: State statutes, Tax Foundation research



The background is split into two vertical sections. The left section is a solid teal color. The right section features a complex, wavy pattern of light grey and white lines that create a sense of depth and movement, resembling a fingerprint or a topographical map.

# **Qualified Opportunity Zones**

## Investments Made on or after Jan. 1, 2027

### Permanent extension and rolling 10-year zones

- New zones determined July 1, 2026, effective Jan. 1, 2027
- Process repeats every 10 years using updated census data

### 10-year hold period and 30-year exemption limit

- 10-year hold rule unchanged: Full gain exemption after 10 years
- 30-year limit: Gain exemption available for 30 years from investment date
- Related-party sales allowed if at fair market value
- Under current OZ rules, gain exemption expires in 2047



## Investments Made on or after Jan. 1, 2027

### Five-year deferral and basis step-up

- Five-year deferral for gains invested in a QOF (no sale before year five)
- 10% basis step-up at year five for QOF investments

### Rural investment benefits

- 30% basis increase at year five for investments in qualified rural opportunity funds
  - Requires most tangible property to be in a rural area
- 50% substantial improvement standard for rural QOZBs
  - Lowered from 100% (i.e., doubling basis) to 50% cost basis increase

# Planning

- Permanent!
- Enhanced benefits for rural areas. A rural area is any area other than:
  - A city or town with a population greater than 50,000
  - Any urbanized area contiguous and adjacent to such a city or town
- Caution!
  - Eligible tracts will be changing
  - WA State does not recognize QOZ gain deferral

# **Other Provisions**

## Trump Child Accounts – Gift and GST tax reporting

- Sec. 2503(b)(1)
  - In the case of gifts (other than gifts of future interests in property) made to any person . . .
  - Sec. 2642(c)(3) permits an annual exclusion for GST purposes
- Sec. 530A(b)(1)(c)(ii)
  - No distribution will be allowed before the first day of the calendar year in which the account beneficiary attains age 18 (*with limited exceptions*)
- Compare to Sec. 529(c)(2)(A)(i)
  - Any contribution to . . . shall be treated as a completed gift to such beneficiary which is not a future interest in property



## Pease Limitation Applicable to Trusts

- Effectively limits the benefit of itemized deductions to 35%.
- Old Sec. 68(e)
  - This section shall not apply to any estate or trust.
- New Sec. 68~~(e)~~
- 37% bracket begins at \$16,000
- Does the Pease Limitation apply to the following deductions?
  - Sec. 651 and 661 distribution deductions
  - Sec. 642(c) charitable deductions
  - Sec. 67(e)(1) administration expenses



## Estate, Gift and GST Tax

- Exemption “permanently” increased to \$15,000,000 for 2026 and indexed for inflation
- Planning:
  - Consider making lifetime gifts to use the approximately \$1 million boost in the exemption in 2026
  - Non-grantor trusts to stack SALT deductions and QSBS exclusion

# Basis Planning is the New Estate Planning

- “Brave New World of Basis Planning”
  - John J. “Jeff” Scroggin, *Trusts & Estates*, April 1, 2005
- Estimated federal taxable estates as a percentage of adult deaths
  - 2004 2%
  - 2023 0.14% *Tax Policy Center*
- Extrapolation to Washington State residents
  - Approximately 90 federally taxable estates





# **Washington State Updates**

# Estate Tax



# Estate Tax Updates

Date of Death	Applicable Exclusion Amount	Maximum Estate Tax Rate
Jan. 1, 2025 – June 30, 2025	\$2,193,000	20%
July 1, 2025 – Dec. 31, 2025	\$3,000,000	35%
Jan. 1, 2026 – June 30, 2026	\$3,076,000	35%
July 1, 2026 – Dec. 31, 2026	\$3,000,000	20%



## **SB 6347 Amends RCW 83.100.040**

- The “Applicable exclusion amount” means
- \$3,000,000 for estates of decedents dying on or after July 1, 2026;
- For estates of decedents dying in calendar year 2027 and each calendar year thereafter, the amount must be adjusted annually . . .
- “Consumer price index” means the consumer price index for all urban consumers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States bureau of labor statistics.
- The Seattle-Tacoma-Bremerton index was renamed the Seattle-Tacoma-Bellevue index in 2018.

## Other Recent Changes (SB 5813) Eff. 7.1.2025

- Qualified Family Owned Business Interest Deduction
  - Increases maximum deduction amount from \$2,500,000 to \$3,000,000
  - Inflation adjusted amount for 2026 is \$3,076,000\*
  - Heirs must continue business for three-years post-death
- Farm Deduction (also applies to Timberlands)
  - Extends to the deduction to property passing to a “qualified nonfamilial heir”
    - Active farm employee who materially participated in the operation of the farm, and acquired property from the decedent, or received property that passed from the decedent.
  - Unlimited deduction
  - Heir does not have to keep farming after death

\*Per WA DOR Website. Recommend confirmation with WA DOR before filing estate tax return claiming deduction.



# Capital Gains Tax



# Updated Capital Gains Tax – SB 5813 - Eff. 1.1.2025

Washington Taxable Capital Gains	Rate
Standard deduction (\$278,000 for 2025)	0
First \$1,000,000 above standard deduction	7%
Excess of \$1,000,000 and standard deduction	9.9%

<b>2025 Example</b>	<b>\$2,000,000</b>
Less: 2025 WA deduction	<u>\$278,000</u>
WA taxable capital gain	\$1,722,000
Tax 7% x \$1,000,000	\$70,000
Plus 9.9% x \$722,000	<u>\$71,478</u>
Total WA tax	<u>\$141,478</u>



# Capital Gains Tax Credit Against B&O Tax

- SB 5314, Section 3 - effective Jan. 1, 2026
- Tax Years 2022 – 2024
  - B&O tax credit for B&O taxes due on the same sale or exchange which is subject to the Washington Capital Gains tax. Repealed January 1, 2026.
- Beginning with tax year 2025 for taxes due in 2026
  - A nonrefundable Washington capital gains tax credit equal to the amount of B&O tax paid on a sale or exchange that is also subject to Washington's capital gains tax.
  - Do not claim the B&O credit on 2025 B&O tax returns.



## Expands the Definition of Capital Asset

- Same definition as Sec. 1221. All property held by the taxpayer except:
  - Stock in trade/inventory
  - Depreciable property or real property used in a trade or business
  - Consumable supplies
  - Accounts or notes receivable acquired in the ordinary course of business
  - Other
- 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 Sec. 1231 or any other provision of the IRC.

# Changes to the Definition of “Adjusted Capital Gain”

Start with federal net LTCG from Schedule D, and then adjust for the following

LTCL(+) or LTCG(-) from a sale/exchange exempt from WA Cap Gains tax

LTCL(+) or LTCG(-) from a sale/exchange that is not allocated to WA

LTCL(+) carryover from a sale/exchange that is not allocated to WA

LTCL(+) carryover from a sale/exchange that is exempt from WA Cap Gains tax

LTCL(+) carryover from a sale/exchange occurring before Jan. 1, 2022

LTCG(+) or LTCL(-) from a Sec. 1256 contract held more than one year that was not included in federal LTCG because of Sec. 1256

## Disregards

Sec. 55 - 59

AMT rules

Sec. 1256

MTM / 60-40 treatment

Sec. 140OZ-1 and 140OZ-2

QOZ rules



## Credit for Taxes Paid to Another Jurisdiction

- Credit is nonrefundable
- Credit is limited to the lesser of
  - WA Cap Gains tax attributable to the relevant assets or
  - Tax paid to the other jurisdiction on the capital gains derived from such capital assets
- SB 5314 refers to tax paid by the taxpayer; DOR guidance recognizes that PTE-paid amount may be treated as tax paid by the owner for purposes of the credit

**Discussion:  
Deductibility of WA Cap Gains  
Tax on Federal Form 1040**



# Millionaire's Tax



## Path to Passage - Governor's Support

- At the end of 2025, Governor Ferguson announced his support for a WA millionaire's tax on those that who make more than \$1M in income in a single year, adjusted for inflation.
- According to Ferguson, less than one half of one percent of Washingtonians will pay the millionaires' tax, and it will raise at least \$3B every year.
- To highlight the benefits of the potential tax, Ferguson contemplated the ways the revenue from the tax could be used, including reducing taxes on small businesses, increasing specific tax credits, increasing funding to K-12 education and sales tax reduction on specific products.

## Path to Passage – SB 6346

- Washington lawmakers officially introduced the proposed legislation (SB 6346) in early February 2026, and the final version of the bill was ultimately delivered to Governor Ferguson on March 13, 2026.
- Those that opposed the legislation urged Governor Ferguson to veto the legislation.
- However, despite his veto powers Governor Ferguson signed the historic tax bill, without any changes to the legislation, on March 30, 2026, significantly altering Washington's tax system.

## Mechanics of the Tax

- Beginning Jan. 1, 2028, the new tax imposes a 9.9% rate on the receipt of an individual's Washington taxable income exceeding \$1M each year.
- For resident individuals, all income must be allocated to Washington.
- For **nonresident individuals**, only Washington-derived income is subject to the millionaire's tax. Differentiator from WA Cap Gains tax.
- Applies to grantor trust and ING structures.
- First returns and payments are due in 2029.



# Mechanics of the Tax

## Key Modifications:

Modification	
<b>Standard Deduction</b>	<ul style="list-style-type: none"> <li>• The standard deduction is \$1M per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to \$1 million regardless of filing status.</li> <li>• Non-residents – the standard deduction is reduced based on a ratio (Washington base income/Federal AGI).</li> </ul>
<b>Long-Term Capital Gains and Losses</b>	<ul style="list-style-type: none"> <li>• Long-term capital gains must be deducted and long-term capital losses must be added back to a taxpayer's federal AGI.</li> <li>• Add to the taxpayer's federal AGI the amount of Washington capital gains subject to the Washington capital gains tax plus the capital gains standard deduction.</li> </ul>
<b>PTET Payments</b>	<ul style="list-style-type: none"> <li>• Taxpayers must add back their distributive share of the pass-through entity tax (PTET) expense to the extent the expense was deducted in calculating federal AGI.</li> </ul>
<b>Charitable Contributions</b>	<ul style="list-style-type: none"> <li>• The charitable contribution deduction is limited to \$100,000 for individuals and spouses or domestic partners regardless of filing status.</li> </ul>
<b>State and Local Taxes</b>	<ul style="list-style-type: none"> <li>• A taxpayer must add back state and local taxes measured by net income which were deducted in computing federal AGI.</li> </ul>



# Mechanics of the Tax

## Key Credits:

### Credit for taxes paid to another jurisdiction

- Resident individuals are allowed a credit for income tax paid to another state on the same income.

### Credit for Business and Occupation (B&O) and Public Utility Taxes

- Public utility tax and B&O tax paid to Washington imposed on base income included in the measure of the millionaire's tax may be eligible as a nonrefundable credit against this tax.

### Credit for Capital Gains Taxes

- Nonrefundable credit for the amount of tax imposed by the Washington capital gains tax for the same year.

### Credit for PTET Payments

- Nonrefundable credit for tax expense incurred by a pass-through entity that made the PTET election provided for in the Legislation.



# Mechanics of the Tax

## PTET Election

- The legislation includes a PTET election beginning January 1, 2028, which allows a pass-through entity to elect to pay the millionaire's tax at the entity level on behalf of its participating owners.
- The election is made annually by June 15 of the taxable year and is irrevocable for the taxable year.
- Pass-through entity includes a partnership, limited liability company, or S corporation which reports out the distributive share of taxable income to its partners, members or shareholders for federal income tax purposes.



# Nongrantor Trust Planning

Trust Fact Pattern	Millionaire's Tax Effect
Income retained in nongrantor trust	Not directly taxed
Income distributed to WA State beneficiary	Potentially included in Fed AGI & WA income
Income distributed to Non-WA resident beneficiary	Requires sourcing analysis



# Potential Challenges Ahead

## Challenges Lie Ahead

- The legislation will need to clear significant hurdles before taking effect.
- Opponents of the legislation have claimed the tax is unconstitutional, unlawful, unnecessary and unfair.

## Constitutional Issues

- Washington's constitution requires uniformity of property tax rates at a rate not exceeding 1%, and pursuant to *Culliton v. Chase*, income is property, and as such any tax on income that has multiple rates is an unconstitutional property tax.

# Potential Challenges Ahead

## Statutory Issues

- [RCW 1.90.100](#) provides “[n]either the state nor any county, city, or other local jurisdiction in the state of Washington may tax any individual on any form of personal income.”
- However, the legislation specifically states that RCW 1.90.100 does not apply to the millionaire’s tax.

## Ballot Initiative

- Supreme Court ruled the tax won’t be put to voters.
- It falls under an exception to the constitutional right to subject legislation to a popular **referendum**.
- Exception applies to laws necessary for the support of the state government, which has been interpreted to include revenue-generating measures.

# Initiative Petition

- Referendum vs Initiative
  - Referendum: Challenge to a bill already passed. It asks voters to approve or reject a law before it takes effect.
  - Initiative: A new voter-proposed law that can amend or repeal existing laws. An initiative has a higher signature threshold than a referendum.
- Let's Go Washington's IP26-645
  - "Stop the Income Tax"
  - Initiative would:
    - Repeal the millionaire's tax
    - Prohibit state and local governments from imposing taxes on individual income or taxes measured by individual income
    - Define income



# **B&O Tax on Investment Income**



# B&O Tax on Investment Income

## Antio, LLC v. DOR

- WA Supreme Court held that the deduction from B&O tax for income earned from investments (RCW 82.04.4281) applies only to income from investments that are incidental to the main purpose of the taxpayer's business.

## House Bill 2081 Modified RCW 82.04.4281

- Definition of “incidental to the main purpose of the business” and what income qualifies for the B&O tax deduction
- Amounts received by individuals from personal investments are not subject to the B&O tax
- Persons eligible to deduct investment income from B&O tax regardless of whether the investments are incidental:
  - Non-profit organizations
  - Collective investment vehicles
  - Retirement accounts and recipients of distributions
  - Family investment vehicles and recipients of distributions

# Collective Investment Vehicle (CIV)

A person who meets ALL the following criteria:

- Total gross income derived from investments is at least 90% of the total worldwide gross income of the business;
- Holds title to passive investment assets for the benefit of the person's investors and investment decisions are made by another person who serves as the collective investment vehicle's manager or advisor; AND
- Accepts unrelated persons as its investors.
- Examples
  - Mutual funds
  - Private investment / hedge funds
  - Private equity funds
  - Venture capital funds



## Family Investment Vehicle (FIV)

- The estate of a decedent
- Any trust, provided that the grantor and all beneficiaries are either members of the family, or nonprofit organizations, or both
  - Members of the same family include:
    - Ancestors
    - Spouse or RDP
    - Lineal descendants of the individual, spouse, or individual's parents
    - Spouses or RDPs of lineal descendants,
- A Sec. 529 plan
- A Coverdell education savings account
- Definition does not include a Family LP or LLC.

# B&O Tax on Investment Income

Two questions:

1. Is the taxpayer engaged in business in Washington?
2. If so, is the investment income incidental to the main business?

Structure	Potential B&O Issue
Individually owned marketable securities	No B&O tax if not engaged in business
Operating company parks excess cash in T bills	Stronger argument for incidental, especially if below 5% safe harbor
Family LLC exists primarily to hold investments	Higher risk unless it qualifies as a FIV
Private investment fund with Washington nexus	High-risk if investing is the primary business activity
Family office management company receives advisory or management fees	Fees are taxable service B&O income
Nonprofit endowment	Bona fide endowment fund income is deductible



# Voluntary Disclosure Program

- Businesses with unreported investment income
- Relief for penalties and interest
- Two phases:
  - ~~July 1, 2025 – April 30, 2026~~
  - July 1, 2026 – April 30, 2027

# **Planning for Business Owners**

# Common Family Business Succession Strategies

- C corporation to S Corporation conversions
- Type F Reorganization and conversion to LLC
- Spousal access trust planning
- Sales to IDGT
- Profits interest
- GRATs



# Stay in touch



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# **Sec. 1202**

# **Stock**

## Sec. 1202 Stock

- Pre OBBBA: QSBS must be held for more than five years for gain exclusion
- OBBBA change: Reduces holding period to three years with graduated benefits:
  - Three years: 50% exclusion
  - Four years: 75% exclusion
  - Five or more years: 100% exclusion
- Applies to stock acquired after July 4, 2025



## Increase in Gain Exclusion Cap

- Per-issuer cap increases from \$10M to \$15M
- Starting 2027, the \$15M cap will be adjusted annually for inflation
- Married individuals filing separately
  - The \$10M cap becomes \$5M
  - The \$15M cap becomes one-half of the adjusted limit in effect for the tax year
  - Only applies to cap, not 10x basis limitation
- Married individuals filing jointly
  - Excluded gain is divided equally between spouses for purposes of applying the limitation in later years



# Increased Complexity

- Two parallel Sec. 1202 regimes
  - Same issuer, but different blocks of stocks, with different cap amounts and different gain exclusion percentages
- Adequate stock lot documentation is more important than ever
  - Issuance date
  - Acquisition method
  - Basis
  - Holding period



## Increased Planning Opportunities - Individual

- Consider sequence of sale when holding both pre- and post-OBBBA stock from the same issuer
- Modeling matters, before stock is issued
  - Subscription amount
  - Investor identity
  - Ownership allocation



## Increased Planning Opportunities - Company

- Consider C corporation formation earlier in the business lifecycle.
- When converting an LLC/partnership, distinguish pre-conversion value from post-conversion appreciation. Document with qualified appraisals.
- Don't assume a state-law conversion, merger, F reorganization, or check-the-box change automatically creates fresh QSBS.
- For S corporations, consider whether an S corporation can own newly formed C corporation subsidiary stock that may qualify, rather than attempting to convert old S stock into QSBS.



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