

Larry's Tax Law

The Newest Chapter in the Tumultuous Journey of the Washington State Capital Gains Tax – Judge Allyson Zipp Rules From the Bench

By Larry Brant on 6.10.24 | Posted in Legislation, State and Local Tax, Tax Laws

As [reported last week](#), opponents of the Washington state capital gains tax, after ultimately losing in the courts to have the legislation stricken as unconstitutional, decided to take the matter to the voters. They have proposed a ballot measure which if successful, among other things, will repeal the tax.

As part of the presentation of the ballot measure in the voters' pamphlet, the State of Washington election officials recently announced that the explanation of the ballot measure must include a disclosure of the revenue impact its passage would have on the state's revenue – a drop of roughly \$1 billion per year. Proponents of the ballot measure promptly filed a lawsuit in the Superior Court of Washington for Thurston County ("Court") to block the inclusion of the revenue impact in the voter packets. A hearing in the case occurred on June 7, 2024.

Judge Allyson Zipp, appointed to the Court by Governor Jay Inslee in 2021, presided over the case. The oral arguments were interesting.

The opponents to the tax agreed with the Attorney General, Robert Ferguson, that state law requires disclosure of the fiscal impact of ballot measures that modify, impose or eliminate taxes. They argued, however, that the ballot measure at issue has no revenue impact. In February of this year, an initiative was passed that bans certain state and local taxes in Washington state. Consequently, the opponents asserted that the state is barred from collecting the capital gains tax. As such, the ballot measure has no fiscal impact.

Judge Zipp, citing the legislative history of the initiative that bans income taxes in Washington, ruled that the initiative applies prospectively (i.e., bans the adoption of certain new income taxes); it does not apply to preexisting taxes. Accordingly, the judge rejected the opponents' argument. Ruling from the bench, Judge Zipp dismissed the case.

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As a result of Judge Zipp's decision, absent an appeal to a higher court, the ballot measure will be presented to the voters in November 2024 and the voters' pamphlet will contain a fiscal impact statement.

I suspect Washingtonians will soon be seeing media statements (i.e., advertisements) from both the proponents and the opponents of the tax. Groups in support of retaining the Washington capital gains tax will likely tout the negative financial impact its repeal will have on the state (e.g., harm to funding schools, fire, police, etc.). Likewise, the opponents of the tax will espouse the losses of tax revenue and economic opportunities the state will endure with its retention due to wealthy Washingtonians fleeing the state and taking their businesses with them.

As I discussed with journalist Dylan Sloan in a recent [Fortune Magazine](#) article, high-tax states like Oregon are losing wealthy residents to low-tax states such as Florida, Nevada and Arizona. With the departure of those residents, tax revenues paid and economic opportunities created by them vanish.

Prior to the enactment of the capital gains tax, Washington was among the low-tax states. It is not, however, currently on that list with the recent enactment of the capital gains tax as well as new local taxes in the City of Seattle. As a result, Washington has already seen the flight of its wealthiest resident, Jeff Bezos, to Florida. Reportedly, if he had remained a Washington resident, he would likely pay billions of dollars of capital gains taxes to the state as he sells shares of Amazon and other capital assets. Those future revenues are lost. As well, business and economic opportunities that Mr. Bezos would have brought to Washington are likewise gone.

Taxation is clearly a balancing act. Taxes cannot be too high; otherwise, they will scare current or prospective residents away. On the other hand, taxes cannot be so low that the government does not have adequate funds to provide residents with appropriate infrastructure (e.g., health services, schools, judiciary, police, fire, roads, etc.).

The fate of the Washington capital gains tax is in the hands of the voters. The outcome will be known in November. Stay tuned!

Tags: capital gains tax