RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 28, 2024
TIME: 1:07 PM

WSR 24-14-084

Agency: Department of Revenue

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: This new rule seeks to clarify substantive aspects of the excise tax on capital gains by supplying additional definitions and examples related to this excise tax.

Citation of rules affected by this order:

New: WAC 458-20-301 – Capital gains excise tax – definitions, deductions, exemptions, and allocation of gains and losses

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 82.32.300, 82.01.060

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-06-089 on March 6, 2024 (date).

Describe any changes other than editing from proposed to adopted version: Corrected calculation error in result in Example 5.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
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Web site:
Other:

taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction. See RCW 82.87.100. In no case may the credit under this subsection (c) exceed the individual's capital gains excise tax liability on the capital assets for the tax year in which the individual claims this credit. Entitlement to this credit requires the following:

(i) Another taxing jurisdiction legally imposed an income or excise tax on capital gain included in the taxpayer's Washington capital gains;

(ii) The taxpayer in fact paid the tax imposed by the other taxing jurisdiction before the taxpayer filed their Washington capital gains excise tax return on which the credit is claimed; and

(iii) The gain taxed by the other jurisdiction arose from the sale or exchange of a capital asset within the other taxing jurisdiction. For this purpose, the department will presume that long-term capital gain from sales or exchanges of intangible personal property are within the other taxing jurisdiction if the other taxing jurisdiction legally imposed tax on the long-term capital gain derived from the sale or exchange of the intangible personal property.

Example 27: Allocation of gain from intangible property and credit for other taxes paid.

Facts: Julie is a Washington domiciliary and owns a second home in New York. During 2025, she resided in New York for eight months and in Washington the other four months. Julie is a casual investor. In 2025, Julie sold her investment in cryptocurrency to online buyers. The sale generated long-term capital gain for Julie. Under New York law, Julie is treated as a statutory resident even though she was domiciled in Washington. As a statutory resident, Julie is required to remit to New York income tax on the income she earned from the sale of the cryptocurrency. Julie pays the New York tax and files a Washington capital gains excise tax return, claiming a credit for the income tax paid to New York on the sale of the cryptocurrency.

Result: Because Julie was domiciled in Washington at the time the sale or exchange occurred, the gain from her sale is allocated to Washington. However, because New York legally imposed income tax on Julie's sale of cryptocurrency and Julie remitted income tax on the sale to New York, Julie is entitled to a credit against Washington capital gains excise tax equal to the New York tax Julie paid on the transaction.

(e) **Allocation and sourcing of gains or losses from pass-through entities.** The allocation method for gains and losses is the same whether you owned the property directly or indirectly through a pass-through or disregarded entity.

Example 28: Allocation of passed through gain from intangible property.

Facts: Jack is domiciled in Washington. He is a 50 percent shareholder of Invest Corp., an S corporation. Invest Corp. is a long-time shareholder of Fictional Co. In 2025, Invest Corp. sells its Fictional Co. shares, resulting in long-term capital gain, 50 percent of which is passed through to Jack for federal income tax purposes.

Result: The long-term capital gain from the sale of the Fictional Co. stock is allocated to Washington because the stock is intangible personal property and the taxpayer, Jack, was domiciled in Washington at the time the sale occurred.