

POLICY BRIEF

Citizens' Guide to Initiative 2109

to repeal Washington's capital gains income tax

By Paul Guppy,
Senior Researcher

September 2024

Key Findings

1. Initiative 2109 is a citizens' initiative that would repeal Washington's capital gains income tax. It will appear on the November 2024 general election ballot.
2. Three years ago state lawmakers passed SB 5096, imposing a 7% tax on capital gains income of \$250,000 or more.
3. The bill was seen as unconstitutional. The state constitution bars an income tax unless it is applied equally at a uniform 1% rate.
4. Lawmakers got around this provision by labeling the capital gains income tax as an "excise" tax. The state supreme court, in a split decision that overturned its own past rulings, accepted this wording maneuver.
5. A state income tax is highly unpopular. Over the years Washington voters have rejected income tax proposals ten times, by margins as high as 78%.
6. The new income tax resulted in economic losses to the state, by discouraging investment and causing some businesses to re-locate to states without an income tax.
7. If Initiative 2109 fails Washington will have a permanent capital gains income tax, which legislators have already proposed expanding to more people.
8. If the measure passes, Washington will return to its long-standing policy of having no state income tax.



POLICY BRIEF

Citizens' Guide to Initiative 2109

to repeal Washington's capital gains income tax

By Paul Guppy,
Senior Researcher

September 2024

3	<i>Introduction</i>
3	<i>Text of Initiative 2109</i>
4	<i>History of income tax proposals in Washington state</i>
5	<i>Examining claims against Initiative 2109</i>
7	<i>The benefit of the no-income-tax policy</i>
8	<i>Conclusion</i>

Citizens' Guide to Initiative 2109

to repeal Washington's capital gains income tax

By Paul Guppy,
Senior Researcher

September 2024

Introduction

In 2023, a group of concerned citizens called Let's Go Washington gathered enough signatures to present a people's initiative to the legislature, Initiative 2109, which would repeal the state's "excise tax" on income of \$250,000 or more from the sale of certain capital assets. Because the state assesses the tax based on income earned from capital gains it functions as an income tax.

Initiative sponsors needed to collect 324,516 valid signatures (8% of the votes cast in the last election for governor) by December 31st, 2023 to submit the measure for consideration in the 2024 legislative session.

By the end of December supporters had collected over 454,000 signatures.¹ On January 23rd the Secretary of State certified the initiative and forwarded it to the legislature for consideration.²

Legislative leaders chose to take no action. In spite of the request of nearly half-a-million voters, Majority Democrats declined to hold a public hearing on the measure or schedule it for debate in either the state house or senate.

Democratic leaders announced they would not act on Initiative 2109 because they believed passing it would "cost" the state too much money, thus depriving lawmakers of access to future tax revenue.

Unlike a regular bill, however, Democratic leaders could not simply block the initiative in committee. State law requires that any people's initiative on which lawmakers refuse to act be forwarded to the general election ballot.

For that reason, Initiative 2109 will appear on the statewide ballot on November 5th. If it receives a majority vote it will become law 30 days later.

Text of Initiative 2109

A graduated income tax is specifically barred under the state constitution's uniformity clause. In defense of this long-standing constitutional principle, income

-
- 1 Let's Go Washington (2023, December 28). Let's Go Washington Turns in Over 2.6 Million Signatures of Six Landmark Initiatives. <https://letsgowashington.com/lets-go-washington-turns-in-over-2-6-million-signatures-for-all-six-landmark-initiatives/>.
 - 2 Washington Secretary of State, (2024, January 23). Secretary Hobbs notifies Legislature of Initiative No. 2109 certification. <https://www.sos.wa.gov/about-office/news/2024/secretary-hobbs-notifies-legislature-initiative-no-2109-certification>.

tax opponents filed a legal challenge against SB 5096, the capital gains income tax law passed by the legislature in 2021.

In order to find a way to uphold a graduated income tax on capital gains, seven of the nine judges on the state supreme court overturned their own legal precedents. They decided to label the 2021 tax an “excise tax.”³ The amount of the tax is derived by imposing a tax of 7% on income of \$250,000 or more earned from capital gains.⁴

Initiative 2109 would repeal this tax on capital gains and restore the long-standing constitutional policy that Washington does not have a state income tax.⁵

Here is the official ballot title and summary for Initiative 2109.⁶

“This measure would repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over \$250,000.

Should this measure be enacted into law?”

Ballot Measure Summary:

“This measure would repeal an excise tax imposed on the sale or exchange of certain long-term assets by individuals who have annual capital gains of over \$250,000.”

History of income tax proposals in Washington state

A state income tax is highly unpopular in Washington. Income tax proposals have been defeated by voters ten times. Since adding the broadest definition of property in the country to the state constitution in the 1930s, Washington voters have rejected six constitutional amendments to change this definition and allow a graduated income tax.

- 3 Washington State Supreme Court ruling (2023, March 24). *Quinn v. State*, Case No. 100769-8. <https://www.washingtonpolicy.org/library/docLib/100769-8-Opinion.pdf>, and Mercier, J. (2023, March 24), State supreme court breaks precedent, opens door for state income taxes, Washington Policy Center. <https://www.washingtonpolicy.org/publications/detail/state-supreme-court-breaks-precedent-opens-door-for-state-income-taxes>.
- 4 Concerning an excise tax on gains from the sale or exchange of certain capital assets, Senate Bill 5096 (2021). <https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false>.
- 5 Mercier, J. (2023, April 5). No sugar coating it – Washington no longer income tax free. *The Spokesman-Review*. <https://www.spokesman.com/stories/2023/apr/05/jason-mercier-no-sugar-coating-it-washington-no-lo/>.
- 6 Evan, J. (2023, May 30). Letter to Steve Hobbs. Office of the Attorney General of Washington. https://www2.sos.wa.gov/assets/elections/initiatives/ballottitleletter_3029.pdf.

Voters turned down a change in the constitution's ban on a graduated state income tax in 1934 (57% no vote), 1936 (78% no vote), 1938 (67% no vote), 1942 (66% no vote), 1970 (68% no vote) and 1973 (77% no vote).⁷

In addition, Washington residents have voted four times against proposed ballot measures to impose a state income tax: In 1944 (70% no vote), 1975 (67% no vote), 1982 (66% no vote) and 2010 (64% no vote).⁸

Although a graduated income tax is unconstitutional, a flat one percent income tax is permitted by the state constitution if passed by voters or the legislature.

Examining claims against Initiative 2109

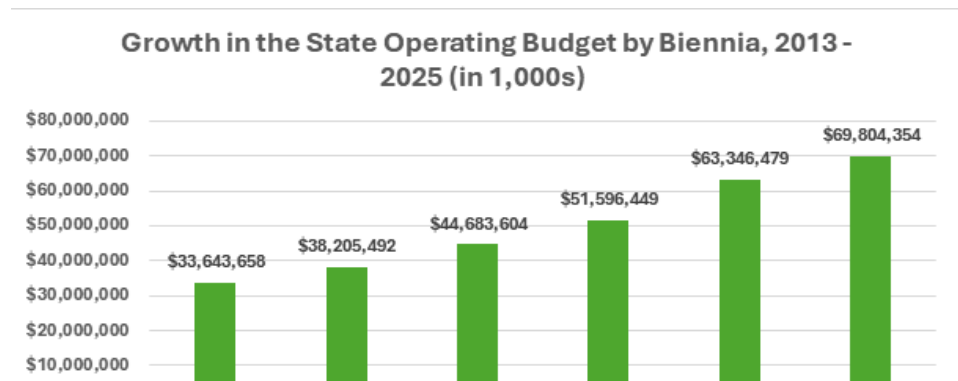
Proponents of Initiative 2109 offer a single argument: Washington should not have a capital gains income tax. Opponents, however, offer voters several reasons for why they believe Initiative 2109 should be rejected. This section examines the validity of those claims.

Claim: Repealing the capital gains income tax would "devastate" basic education

Opponents of Initiative 2109 say it would "result in the loss of" money for the state.⁹ They also say it would "reduce K-12 funding" and "devastate" funding for certain state programs.

Neither statement is true. The state will not "lose" money if voters pass Initiative 2109. State revenue will continue to increase by billions of dollars every year without the capital gains income tax.

The amount of money taken by the state has doubled in ten years (up over 100%, while CPI inflation went up 34%), and is projected to continue increasing (see chart).



7 Mercier, J. (2016, October 17). History of income tax votes in Washington. Washington Policy Center. <https://www.washingtonpolicy.org/publications/detail/history-of-income-tax-votes-in-washington>.

8 Ibid.

9 Davis, B. (2024, February 12). Washington Democrat claims ballot measure would 'devastate' basic education. The Center Square. https://www.thecentersquare.com/washington/article_e90748c6-c9fa-11ee-bf08-4f80e98a0f64.html.

The same upward budget trend applies to K-12 public school spending:

- K-12 spending has doubled since 2013, rising from \$13.5 billion to \$29 billion, an increase of about 59% after inflation.
- Public schools spend over \$19,000 per student per year.
- K-12 employees are among the highest-paid public employees in the state. In 2024 average statewide teacher pay is \$101,000, plus \$31,800 average in benefits for a 181-day work year.¹⁰

The numbers show that the state has plenty of money. If Initiative 2109 passes revenue will continue to grow, even if the state “loses” money it never had to begin with.

The Office of Financial Management initially said the passage of Initiative 2109 would “cost” the state \$5.5 billion over five years.¹¹ Later the agency said that figure is wrong and cut its estimate by more than half, revising it downward to \$2.2 billion over five years.¹²

The agency said repeal of the capital gains income tax would reduce expected one-year revenue in the current fiscal year by \$424 million. For context, the total state General Fund two-year budget, after supplemental spending was added, is now \$72 billion.

Claim: Initiative 2109 would shift taxes to middle- and low-income Washingtonians

Opponents say Initiative 2109 would “shift more tax responsibility onto middle- and low-income Washingtonians.”¹³

This statement is misleading. Initiative 2109 would only reduces taxes; it would not increase the tax burden by a single dollar on anyone. The “tax pressure” opponents refer to would be created by the voluntary choices of lawmakers.

Taxes could go up only if lawmakers respond to voter approval of Initiative 2109 by increasing other taxes on middle- and low-income Washingtonians.

10 “Personnel Summary Reports, 2023-24 School Year,” Table 19, Certificated Teachers, Duty Codes, 31 32, 33, and 34 (2024, February 13). Office of the Superintendent of Public Instruction (OSPI). <https://ospi.k12.wa.us/policy-funding/school-apportionment/school-publications/personnel-summary-reports>.

11 Cornfield, J. (2024, July 30), What’s the cost if WA voters erase capital gains tax, end cap-and-trade? Washington State Standard. https://www.wenatcheeworld.com/news/northwest/what-s-the-cost-if-wa-voters-erase-capital-gains-tax-end-cap-and-trade/article_5194e294-4ec2-11ef-b03c-f7b2a6cf0f80.html.

12 Fiscal Impact Statement for Initiative 2109 (accessed 2024, August 6). Office of Financial Management. <https://ofm.wa.gov/sites/default/files/public/budget/ballot/2024/Initiative2109-FiscalImpactStatement-OFM-Corrected.pdf>.

13 Ibid.

Claim: Initiative 2109 would cut childcare

Opponents say Initiative 2109 would “cut billions from affordable childcare” and that this would shift “tax pressure to small businesses and working families, impacting Washington’s economy.”¹⁴

This statement is false. As noted Initiative 2109 would not cut any state programs because the state has ample revenue to fully fund existing childcare programs at current levels. Further, state revenue would continue to increase without a capital gains income tax. If childcare is a priority for legislators, they have a record amount of funding to provide support

Claim: Initiative would hurt workers and small businesses

This assertion is also false. If Initiative 2109 passes small business owners would benefit from increased levels of investment, which help businesses grow and increase employment. Increased business investment creates jobs and helps workers.

In contrast, the existing capital gains income tax discourages investment by taxing the earnings of profitable enterprises. It has also caused some high-dollar businesses and individuals to move out of the state. Passage of Initiative 2109 would create a more friendly and inclusive business environment in Washington, helping small business owners and their employees.

The benefit of the no-income-tax policy

In addition to being popular, Washington’s long-standing no-income-tax policy has brought significant economic benefit to the state. For many decades this fiscal policy had bipartisan support, providing a point of agreement across the political spectrum and forming a united position for Washington in relation to tax policy in other states.

A range of elected and business leaders have promoted Washington’s policy of not taxing income as important to attracting investment, encouraging business formation, and helping to recruit talented and creative people to come to Washington. Until very recently the state Department of Commerce listed “No income tax” as a primary benefit for re-locating or starting a business in Washington.¹⁵

The enactment of a capital gains income tax in 2021 has weakened that advantage. Business owners rarely advertise why they have decided to pull out of a particular state. In the case of Washington’s capital gains income tax, however, two notable exceptions stand out.

In March 2023, shortly before the capital gains income tax went in to effect, longtime Washington based firm Fisher Investments announced it was re-locating

14 Ibid.

15 Mercier, J. (2021, January 18), ‘Choose Washington’ – No income tax. Washington Policy Center. <https://www.washingtonpolicy.org/publications/detail/choose-washington-no-income-tax>.

its headquarters office from Camas, Washington to Plano, Texas. Texas has no state income tax. The firm employed 1,800 people in Washington and manages some \$197 billion in assets worldwide.¹⁶

Similarly, in October 2023 billionaire Jeff Bezos announced he was relocating his residence from Seattle, Washington to Maimi, Florida. Florida has no state income tax. Six days later Mr. Bezos, in a regulatory filing, indicated he planned to sell 50 million shares of Amazon stock. Based on the 7% tax rate, the change in residence saved him some \$600 million by avoiding Washington's capital gains income tax.¹⁷

Conclusion

The imposition of a capital gains income tax is an example of a policy imposed over the strong objections of a majority of the people of Washington state. Washington voters have consistently voted against such a policy ten times, most recently (in 2010) by a margin of nearly two-to-one. The voter-rejected income tax measures included six proposed amendments to the constitution and four proposed state laws.

A partisan majority of the legislature ignored the people's wishes and passed SB 5096 anyway, in an effort to impose an income tax by labeling it as an "excise tax." By this maneuver they sought to avoid the constitutional limitations on property taxes the people had enacted in the state constitution and to avoid a vote of the people. A majority of the state supreme court agreed to this superficial wording switch while ignoring the true meaning of an "income tax" as understood by officials in 49 states and the federal government.

As a result, a popular movement emerged to send a people's initiative to the legislature to restore the pre-2021 policy of no state income tax in Washington. Sponsors collected over 100,000 more signatures than they needed. That measure is Initiative 2109.

Lawmakers refused to vote on it, hold a public hearing or otherwise discuss it. The measure will be decided by voters in the November election.

If Initiative 2109 fails Washington will have a permanent capital gains income tax, which the legislature would likely use to impose an income tax on more people. If the measure passes Washington will return to its long-standing policy of having no state income tax.

16 Browning, Paige and Oxley, Dyer (2023, March 28). Fisher Investments pulls out of Washington in wake of capital gains tax decision. KUOW Radio. <https://www.kuow.org/stories/fisher-investments-pulls-out-of-washington-in-wake-of-capital-gains-tax-decision>.

17 Pauley, Spencer (2024, February 5). Jeff Bezos to save \$600M selling stock in Florida, not Washington. The Center Square. <https://www.thecentersquare.com/washington/article/b854737c-c462-11ee-b459-3b53dda49da0.html>.

Published by Washington Policy Center

Washington Policy Center is an independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Chairman **Greg Porter**

President **Steven Hatting**

Communications Director **David Boze**

If you have any comments or questions about this study, please contact us at:

Washington Policy Center
PO Box 3643
Seattle, WA 98124-3643

Online: www.washingtonpolicy.org
E-mail: wpc@washingtonpolicy.org
Phone: (206) 937-9691

© Washington Policy Center, 2024

About the Author

Paul Guppy is the Senior Researcher at Washington Policy Center. He is a graduate of Seattle University and holds graduate degrees from Claremont Graduate University and the London School of Economics. He worked for 12 years in the U.S. Congress as a Chief of Staff and Legislative Director. He served as WPC's first Vice President for Research for 26 years, and continues to write extensively on tax policy, public finance and other issues. He is a frequent commentator on radio and TV news programs, and in newspapers across the state.