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SUPERIOR COURT OF WASHINGTON FOR DOUGLAS COUNTY

CHRIS QUINN, an individual; CRAIG LEUTHOLD, an individual; SUZIE BURKE, an individual; LEWIS and MARTHA RANDALL, as individuals and the marital community comprised thereof; RICK GLENN, an individual; and NEIL MULLER, an individual.

Plaintiffs,

v.

STATE OF WASHINGTON; DEPARTMENT OF REVENUE, an agency of the State of Washington; VIKKI SMITH, in her official capacity as Director of the Department of Revenue.

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, allege the following Complaint for Declaratory and Injunctive Relief against Defendants State of Washington, Department of Revenue of the State of Washington, and Vikki Smith, as Director of the Department of Revenue of the State of Washington:

I. NATURE OF THE CASE

1. The Washington State Legislature enacted ESSB 5096 to impose a seven percent (7%) tax on long-term capital gains. While described as an excise tax on the sale or exchange of long-term capital assets, the tax on capital gains is a tax on income.

1 2. Beginning January 1, 2022, individuals are subject to capital gains tax on their
2 adjusted capital gains during the federal taxable year. Adjusted capital gains are defined by the
3 individual's federal net long-term capital gain, which is based on the amount of long-term capital
4 gain reported on the individual's federal income tax return.

5 3. A standard deduction of \$250,000 from the measure of the tax is allowed, along
6 with an additional deduction for qualifying charitable donations over \$250,000.

7 4. Individuals owing the tax must report and pay the capital gains tax to Washington
8 on or before the date that their federal annual income tax return must be filed. Failure to pay the
9 capital gains tax or otherwise comply with ESSB 5096 will result in penalties for the individual
10 and possible criminal punishment as either a felony or gross misdemeanor.

11 5. Plaintiffs seek a declaratory judgment that ESSB 5096 is void because imposition
12 of the capital gains tax as set forth in ESSB 5096 violates the Washington State Constitution and
13 the United States Constitution.

14 6. ESSB 5096 is unlawful and invalid under the Washington State Constitution
15 because (1) imposition of a non-uniform capital gains tax violates Article VII, Section 1 of the
16 Washington Constitution; (2) imposition of a seven percent tax rate violates Article VII, Section 2
17 of the Washington Constitution; (3) imposing a capital gains tax on certain individuals while not
18 taxing other individuals and not taxing entities violates the privileges and immunities clause of
19 Article I, section 12 of the Washington Constitution; (4) requiring Washington residents and
20 nonresidents to disclose their federal income tax returns and all schedules and supporting
21 documentation violates their privacy rights under Article I, Section 7 of the Washington
22 Constitution.

23 7. ESSB 5096 is unlawful and invalid under the United States Constitution because
24 (1) it allocates taxable gain to Washington based on the taxpayer's residency instead of where the
25 sale generating the gain occurs in violation of Article I, Section 8, clause 3 (the "Commerce
26 Clause") of the United States Constitution and (2) the method for allocating Washington capital
27 gains in the statute violates the Commerce Clause requirements that state taxes be non-

1 discriminatory and fairly apportioned.

2 8. Plaintiffs seek to enjoin the Defendants from assessing and collecting the capital
3 gains tax from Washington residents and otherwise enforcing ESSB 5096.

4 **II. PARTIES**

5 **A. Plaintiffs**

6 9. Plaintiffs are Chris Quinn, Craig Leuthold, Suzie Burke, Lewis and Martha Randall,
7 Rick Glenn, and Neil Muller.

8 10. Each of the named Plaintiffs own capital assets and would be subject to the capital
9 gains tax in ESSB 5096 if they realized capital gains and would incur a tax liability on capital
10 gains in excess of \$250,000.

11 11. Plaintiffs have standing under the Uniform Declaratory Judgment Act because their
12 interests in avoiding unlawful taxation are arguably within the zone of interests to be protected by
13 the constitutional provisions in question and each would be injured if the unlawful capital gains
14 tax set forth in ESSB 5096 were imposed on them.

15 12. Plaintiffs' Complaint also raises issues of significant public interest, which affect
16 nearly 60,000 estimated taxpayers in the State of Washington.

17 **B. Defendants**

18 13. Defendant is the State of Washington.

19 14. Defendant Department of Revenue is an agency of the State of Washington.

20 15. Defendant Vikki Smith is the Director of the Department of Revenue and
21 legislatively charged with assessing, collecting, and administering all programs related to taxes
22 through the Department of Revenue. Director Smith is sued in her official capacity only.

23 **III. JURISDICTION AND VENUE**

24 16. This Court has subject matter jurisdiction under Wash. Const. Article IV, section
25 6, RCW 2.08.010, RCW 7.24.010, and RCW 7.40.010.

26 17. Venue is proper in this Court under RCW 4.92.010 because Douglas County is the
27 county of residence or principal place of business of one or more of the plaintiffs.

1 **IV. FACTUAL ALLEGATIONS**

2 18. The Washington State Legislature adopted ESSB 5096 to impose a tax on the
3 federal income taxable long-term capital gains of individuals.

4 19. The tax is imposed on individuals who have long term capital gains or losses for
5 federal income tax purposes.

6 20. Individuals subject to the capital gains tax must pay a seven percent (7%) tax on
7 the amount of adjusted capital gains less \$250,000 and possibly other deductions. The threshold
8 amount of taxable adjusted capital gains may increase—but never decrease—based on the
9 consumer price index for all urban consumers for the Seattle area for each subsequent 12-month
10 period.

11 21. Adjusted capital gains mean the “federal net long-term capital gain” reportable by
12 individuals for their federal income tax purposes, excluding exempt gains or losses and excluding
13 gains or losses that are not allocated to Washington. Losses carried back for federal income tax
14 purposes are not included in the calculation of the individual’s adjusted capital gain.

15 22. Long-term capital gains or losses derived from tangible personal property is
16 allocated to Washington if either (1) the property was located in this state at the time of sale or
17 exchange or (2) the property was located in Washington at some time during the taxable year, the
18 taxpayer was a resident of Washington at the time of the sale or exchange, and the taxpayer is not
19 otherwise subject to the payment of an income or excise tax on the long-term capital gains or losses
20 by another state.

21 23. Long-term capital gains or losses derived from intangible personal property is
22 allocated to Washington if the taxpayer was domiciled in Washington at the time the sale or
23 exchange occurred.

24 24. A tax credit is allowed against the capital gains tax owed to Washington that is
25 equal to the amount of any legal imposed income or excise tax paid by the individual to another
26 taxing jurisdiction on capital gains derived from capital assets within the other taxable jurisdiction
27 but included in the taxpayer’s Washington capital gains.

1 25. A deduction of \$250,000 is allowed per individual from the measure of adjusted
2 capital gains, but in the case of spouses or domestic partner the total deduction is limited to
3 \$250,000.

4 26. A deduction is allowed for amounts of adjusted capital gains for the sale or transfer
5 of an individual's interest in a "qualified family-owned small business," as defined in ESSB 5096.

6 27. A deduction of up to \$100,000 is also allowed for amounts donated by the taxpayer
7 to one or more qualified charitable organizations in excess of \$250,000 during the same taxable
8 year.

9 28. Capital gains exempt from taxation include capital gains derived from certain real
10 estate, certain retirement plans, livestock used in farming or ranching, timber, depreciable property
11 used in a trade or business, commercial fishing privileges, and certain sales of auto dealerships.

12 29. Individuals owing capital gains tax must report and pay the tax to the Department
13 of Revenue on or before the date that the individual taxpayer's federal annual income tax return
14 must be filed, including extensions. In addition to the Washington tax return form, the taxpayer
15 must also file a copy of their federal income tax return along with all schedules and supporting
16 documentation.

17 30. Failure to pay the capital gains tax or otherwise comply with ESSB 5096 will result
18 in penalties for the taxpayer(s) and possible criminal punishment as either a felony or gross
19 misdemeanor.

20 **V. CAUSES OF ACTION**

21 **A. DECLARATORY JUDGMENT BASED ON STATE CONSTITUTIONAL CLAIMS**

22 **FIRST CAUSE OF ACTION**

23 31. Plaintiffs repeat and reallege Paragraphs 1 through 30 as if fully set forth here.

24 32. There is an actual, present and justiciable controversy between Plaintiffs and
25 Defendants concerning whether ESSB 5096 violates Article VI, Section 1 of the Washington State
26 Constitution because it imposes a non-uniform tax on income of certain Washington residents.

27 33. A judicial determination concerning the statute's constitutional validity will

1 conclusively terminate the dispute.

2 34. Plaintiffs are entitled under RCW 7.24.020 to a declaration that ESSB 5096 is
3 invalid because it violates Article VI, Section 1 of the Washington State Constitution.

4 35. Plaintiffs reserve the right to raise all legal bases under Washington law to
5 challenge the constitutionality, legality, validity or enforceability of ESSB 5096.

6 **SECOND CAUSE OF ACTION**

7 36. Plaintiffs repeat and reallege Paragraphs 1 through 35 as if fully set forth here.

8 37. There is an actual, present and justiciable controversy between Plaintiffs and
9 Defendants concerning whether ESSB 5096 violates Article VI, Section 2 of the Washington State
10 Constitution because it exceeds the one percent limit on taxes upon personal property by the State
11 without a valid vote of the people of the State.

12 38. A judicial determination concerning the statute's constitutional validity will
13 conclusively terminate the dispute.

14 39. Plaintiffs are entitled under RCW 7.24.020 to a declaration that ESSB 5096 is
15 invalid because it violates Article VI, Section 2 of the Washington State Constitution.

16 40. Plaintiffs reserve the right to raise all legal bases under Washington law to
17 challenge the constitutionality, legality, validity or enforceability of ESSB 5096.

18 **THIRD CAUSE OF ACTION**

19 41. Plaintiffs repeat and reallege Paragraphs 1 through 40 as if fully set forth here.

20 42. There is an actual, present and justiciable controversy between Plaintiffs and
21 Defendants concerning whether ESSB 5096 violates Article I, Section 12 of the Washington State
22 Constitution by imposing a capital gains tax on certain Washington citizens while exempting other
23 Washington citizens and all Washington corporations.

24 43. A judicial determination concerning the statute's constitutional validity will
25 conclusively terminate the dispute.

26 44. Plaintiffs are entitled under RCW 7.24.020 to a declaration that ESSB 5096 is
27 invalid because it violates Article I, Section 12 of the Washington State Constitution.

1 45. Plaintiffs reserve the right to raise all legal bases under Washington law to
2 challenge the constitutionality, legality, validity or enforceability of ESSB 5096.

3 **FOURTH CAUSE OF ACTION**

4 46. Plaintiffs repeat and reallege Paragraphs 1 through 45 as if fully set forth here.

5 47. There is an actual, present and justiciable controversy between Plaintiffs and
6 Defendants concerning whether ESSB 5096 violates Article I, Section 7 of the Washington State
7 Constitution because it invades the privacy rights of Washington residents and nonresidents in
8 relation to requiring disclosure of their federal income tax returns, schedules, and all supporting
9 documentation, without careful tailoring and absent a legitimate governmental need for the entirety
10 of that confidential information.

11 48. A judicial determination concerning the statute's constitutional validity will
12 conclusively terminate the dispute.

13 49. Plaintiffs are entitled under RCW 7.24.020 to a declaration that ESSB 5096 is
14 invalid because it violates Article I, Section 7 of the Washington State Constitution.

15 50. Plaintiffs reserve the right to raise all legal bases under Washington law to
16 challenge the constitutionality, legality, validity or enforceability of ESSB 5096.

17 **B. DECLARATORY JUDGMENT BASED ON FEDERAL CONSTITUTIONAL**
18 **CLAIMS**

19 **FIFTH CAUSE OF ACTION**

20 51. Plaintiffs repeat and reallege Paragraphs 1 through 50 as if fully set forth here.

21 52. There is an actual, present and justiciable controversy between Plaintiffs and
22 Defendants concerning whether ESSB 5096 violates the Commerce Clause of the United States
23 Constitution because it (1) allocates taxable gain to Washington based on residency instead of the
24 location of the sale; (2) discriminates against interstate commerce; and (3) is not fairly apportioned.

25 53. A judicial determination concerning the statute's constitutional validity will
26 conclusively terminate the dispute.

27 54. Plaintiffs are entitled under RCW 7.24.020 to a declaration that ESSB 5096 is

1 invalid because it violates the Commerce Clause of the United States Constitution.

2 55. Plaintiffs reserve the right to raise all legal bases under the federal law to challenge
3 the constitutionality, legality, validity or enforceability of ESSB 5096.

4 **C. INJUNCTIVE RELIEF**

5 **SIXTH CAUSE OF ACTION**

6 56. Plaintiffs repeat and reallege Paragraphs 1 through 53 as if fully set forth here.

7 57. Plaintiffs' right to be free from the imposition of an invalid tax is in jeopardy of
8 immediate invasion and will cause actual and substantial injury without any adequate remedy at
9 law.

10 58. Plaintiffs are entitled under RCW 7.40.020 and Civil Rule 65 to an order enjoining
11 Defendants from assessing and collecting the capital gains tax and otherwise enforcing ESSB
12 5096.

13 **VI. REQUEST FOR RELIEF**

14 Plaintiffs request that judgment be entered as follows:

- 15 1. Declaring ESSB 5096 to be unconstitutional and, therefore, void and inoperable as
16 a matter of law.
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18 2. Enjoining Defendants from assessing and collecting the capital gains tax and other
19 enforcing ESSB 5096.
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21 3. Awarding Plaintiffs fees, costs, and expenses as permitted by law or equity.
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23 4. Awarding any additional or further relief that the Court finds appropriate, equitable,
24 or just.
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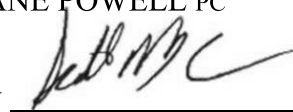
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1 Dated April 28, 2021

2 LANE POWELL PC

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