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Taxpayers Take a Hit in the Washington Capital Gains Tax Battle

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By motion dated November 3, 2022, the Washington State Attorney General asked the Supreme Court of the State of Washington to allow the Washington Department of Revenue to implement and collect the capital gains tax struck down as unconstitutional by the Douglas County Superior Court, pending the high court's ultimate ruling on the matter.

As previously reported, the tax, which was set to go into effect on January 1, 2022 was struck down by the Douglas County Superior Court as unconstitutional. The first tax payments under the new tax regime would be due on April 17, 2023.

The state appealed the lower court's ruling that the tax violates the Washington State Constitution. The Washington Supreme Court accepted the state's direct appeal to the high court bypassing the Court of Appeals. The case has been fully briefed by the parties and is set for oral argument on January 26, 2023.

The state argued that the lower court's ruling was erroneous and that waiting for the Supreme Court to ultimately rule on the matter puts the vital goal of the tax (i.e., to help fund education) in jeopardy. As a consequence, it asked the court to allow it to implement and collect the tax pending the outcome of the case.

In a brief order of the Supreme Court, on November 30, 2022, Chief Justice Steven Charles Gonzalez delivered the court's ruling that the lower court order is stayed pending the ultimate resolution of the matter. He states that the decision was unanimous among the court's justices.

What this means for taxpayers subject to the Washington capital gains tax is that they are required to report and pay the tax by April 17, 2023. In the interim, the Washington Department of Revenue plans to issue administrative rules to provide guidance to taxpayers relative to the tax and it will publish tax forms to facilitate reporting and payment of the tax.

Lots of questions remain, including:

l. It seems strange that, given a court of competent jurisdiction ruled the tax is unconstitutional, a higher court would later rule that the tax can be administered and collected prior to its ultimate ruling on the matter. Is the November 30, 2022 ruling of the Washington Supreme Court a signal that the justices on

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the court are leaning in favor of reversing the lower court even before they have heard oral argument?
2. Will the Washington Supreme Court issue its ultimate decision in the case before the April 17, 2023 filing and payment deadline? Given the recessionary times we are experiencing, it seems harsh to require taxpayers to come out of pocket and pay a tax that may ultimately be ruled as unconstitutional.
3. If the court strikes down the tax, but does so after the time for filing and payment of the tax, will there be an expedited refund procedure put in place by the state?

I will report more on this tax once the Washington Supreme Court hears oral arguments and renders its ultimate decision in the case.

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