Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Friday, February 20, 2026 7:40 AM
To: Zalesky, Chuck (ATG)
Subject: RE: quick research for meeting tomorrow

This is great, Chuck. Thanks for forwarding. Based on these materials, I agree with your conclusions below. I do think that it would be helpful to understand what the Legislature's basis for this particular marriage penalty is so we can defend it and that the better course is to eliminate it so that the case can focus on *Culliton*.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Thursday, February 19, 2026 5:49 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>
Subject: quick research for meeting tomorrow

Key language from Druker v. Commissioner, 697 F.2d 46 (2d Cir. 1982), in which Second Circuit held that "marriage penalty" in federal income tax code did not violate the constitution:

> The 1969 reform spawned a new class of aggrieved taxpayers—the two wage-earner married couple whose combined tax burden, whether they chose to file jointly under § 1(a) or separately under § 1(d), was now greater than it would have been if they had remained single and filed under § 1(c). It is this last phenomenon which has been characterized, in somewhat loaded fashion, as the "marriage penalty" or "marriage tax".[2] Here, again, while constitutional attack has been unavailing, see *Johnson v. United States,* 422 F.Supp. 958 (N.D.Ind.1976), *aff'd per curiam sub nom. Barter v. United States,* 550 F.2d 1239 (7 Cir.1977), *cert. denied,* 434 U.S. 1012, 98 S.Ct. 725, 54 L.Ed.2d 755 (1978); *Mapes v. United States,* 576 F.2d 896 (Ct.Cl.), *cert. denied,* 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), as well as the decision here under review, Congress has acted to provide relief. The Economic Recovery Tax Act of 1981, Pub.L. No. 97–34, § 103, 95 Stat. 172, 187, allows two-earner married couples a deduction from gross income, within specified limits, equal to 10% of the earnings of the lesser-earning spouse.
>
> Subsequent to the decisions in *Johnson* and *Mapes,* the Supreme Court made explicit in *Zablocki v. Redhail,* 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978), what had been implicit in earlier decisions, that the right to marry is "fundamental". The Court, however, citing *Califano v. Jobst,* 434 U.S. 47, 98 S.Ct. 95, 54 L.Ed.2d 228 (1977), took care to explain that it did "not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed." 434 U.S. at 386, 98 S.Ct. at 681. Whereas differences in race, religion, and political affiliation are

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almost always irrelevant for legislative purposes, "a distinction between married persons and unmarried persons is of a different character". *Jobst, supra,* 434 U.S. at 53, 98 S.Ct. at 99. "Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status." *Id.*

We do not doubt that the "marriage penalty" has some adverse effect on marriage; indeed, James Druker stated at argument that, having failed thus far in the courts, he and his wife had solved their tax problem by divorcing but continuing to live together. The adverse effect of the "marriage penalty", however, like the effect of the termination of social security benefits in *Jobst,* is merely "indirect"; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual. See generally, Developments in Law—The Constitution and the Family, 93 Harv.L.Rev. 1156, 1255 (1980). The tax rate structure of I.R.C. § 1 places "no direct legal obstacle in the path of persons desiring to get married". *Zablocki, supra,* 434 U.S. at n. 12, 98 S.Ct. at 681 n. 12. Nor is anyone "absolutely prevented" by it from getting married, *id.* at 387, 98 S.Ct. at 681. Moreover, the "marriage penalty" is most certainly not "an attempt to interfere with the individual's freedom [to marry]". *Jobst, supra,* 434 U.S. at 54, 98 S.Ct. at 99. It would be altogether absurd to suppose that Congress, in fixing the rate schedules in 1969, had any invidious intent to discourage or penalize marriage—an estate enjoyed by the vast majority of its members. Indeed, as has been shown, the sole and express purpose of the 1969 reform was to provide some relief for the single taxpayer. See S.Rep. No. 552, *supra,* at 260–261. Given this purpose Congress had either to abandon the principle of horizontal equity between married couples, a principle which had been established by the 1948 Act and the constitutionality of which has not been challenged, or to impose a "penalty" on some two-earner married couples. It was put to this hard choice because, as Professor Bittker has shown, *supra,* 27 Stan.L.Rev. at 1395–96, 1429–31, it is simply impossible to design a progressive tax regime in which all married couples of equal aggregate income are taxed equally and in which an individual's tax liability is unaffected by changes in marital status.[3] . . . . Faced with this choice, Congress in 1969 decided to hold fast to horizontal equity, even at the price of imposing a "penalty" on two-earner married couples like the Drukers. There is nothing in the equal protection clause that required a different choice. Since the objectives sought by the 1969 Act—the maintenance of horizontal equity and progressivity, and the reduction of the differential between single and married taxpayers—were clearly compelling, the tax rate schedules in I.R.C. § 1 can survive even the "rigorous scrutiny" reserved by *Zablocki* for measures which "significantly interfere" with the right to marry. Cf. *Johnson, supra,* 422 F.Supp. at 973–74. Clearly, the alternative favored by the Drukers, that married persons be permitted to file under § 1(c) if they so wish, would entail the loss of horizontal equity.

In the area of family taxation every legislative disposition is "virtually fated to be both overinclusive and underinclusive when judged from one perspective or another". The result, as Professor Bittker has well said, is that there "can be no peace in this area, only an uneasy truce." 27 Stan.L.Rev. at 1443. Congress must be accorded wide latitude in striking the terms of that truce. The history we have reviewed makes clear that Congress

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has worked persistently to accommodate the competing interests and accomplish fairness. While we could elaborate still further, we think that this, along with the discussion in *Johnson, Mapes,* and in Chief Judge Tannenwald's opinion below, is sufficient to show that what the Drukers choose to call the "marriage penalty" deprived them of no constitutional right.

There is a similar discussion in *Johnson v. Pomeroy*, 294 F. App'x 397, 402–04 (10th Cir. 2008)

Courts have subsequently applied the *Jobst/Zablocki* analysis to cases involving claims of impermissible interference with the right to marry. Following the Tax Reform Act of 1969, many two wage-earner married couples were subjected to the "marriage penalty," where their combined tax burden, whether they chose to file jointly or separately, was greater than it would have been if they had remained single and filed as single taxpayers. In *Druker v. Commissioner of Internal Revenue,* 697 F.2d 46 (2d Cir.1982), *cert. denied,* 461 U.S. 957, 103 S.Ct. 2429, 77 L.Ed.2d 1316 (1983), the plaintiff taxpayers alleged that the "marriage penalty" was unconstitutional. The Second Circuit had no doubt that the "marriage penalty" had some adverse effect on marriage, but concluded that the adverse effect, "like the effect of the termination of social security benefits in *Jobst,* is merely 'indirect'; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual." *Id.* at 50, 98 S.Ct. 95. The challenged tax rate structure placed no direct legal obstacle in the path of persons desiring to get married, it did not absolutely prevent anyone from getting married, and it did not attempt to interfere with the individuals' freedom to marry. The Second Circuit concluded that the "marriage penalty" did not deprive the Drukers of a constitutional right. *Id.* at 51, 98 S.Ct. 95.

Similarly, in *Mapes v. United States,* 217 Ct.Cl. 115, 576 F.2d 896 (1978), *cert. denied,* 439 U.S. 1046, 99 S.Ct. 722, 58 L.Ed.2d 705 (1978), the United States Court of Claims held that the tax rates resulting in the "marriage penalty" were constitutional.

> The additional tax liability suffered by two-income couples who cannot avail themselves of the rates for single persons is an indirect burden on the exercise of the right to marry. It is suffered not for marrying but for marrying one in a particular income group. This does not rise to the level of an 'impermissible' interference with the enjoyment of a fundamental right.

576 F.2d at 901. "[T]he elevated tax burden might in fact dissuade some couples from entering into matrimony, but does not present an insuperable barrier to marriage." *Id.* Strict scrutiny is appropriate only where the obstacle to marriage "operates to preclude the marriage entirely for a certain class of people." *Id.*

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We have previously considered and rejected a claim similar to the Johnsons'. In *Martin v. Bergland,* 639 F.2d 647 (10th Cir.1981), the appellants, husband and wife, challenged a regulation promulgated by the Secretary of Agriculture that defined a husband and wife as a single person for purposes of a statute limiting farm subsidy payments to $20,000 per person. In 1973, Congress directed the Secretary to define the term "person" in order to limit farm subsidy payments to farmers who kept their land idle. Appellants argued that the Secretary's refusal to pay farm subsidy payments to both of them solely because of their marriage denied them equal protection of the laws under the Fifth Amendment. Using the principles outlined in *Jobst* and *Zablocki,* we determined that the regulation was not such a direct and substantial burden on the freedom to marry that it should be strictly scrutinized. *Id.* at 649. We upheld the regulation under the rational basis test, finding that the husband-wife rule rationally furthers Congress' interest in limiting farm subsidy payments. *Id.* at 650.

We agree with the district court that the Johnsons have not established an impermissible interference with the right to marry or associate with family. Like the "marriage penalty" discussed in *Druker* and *Mapes,* and the farm subsidy regulation considered in *Martin,* the Employees' interpretation and application of the Wyoming statute did not present a direct legal obstacle in the path of persons desiring to get married. Nor did it absolutely prohibit a class of persons from getting married. Moreover, there is no plausible indiction that the denial of Mr. Johnson's claim for extended PTD benefits was an attempt to interfere with the Johnsons' freedom to make a decision as important as marriage. While the Johnsons may have suffered an indirect burden on their marriage, there was no direct and substantial burden on their freedoms to marry and to associate with family.[5]

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My initial takeaway is that a court would likely hold that the marriage penalty in the Millionaire Tax does not "significantly interfere" with the right to marry and, therefore, is subject to rational basis review. However, it would certainly help if we could articulate a solid reason for the Legislative choice, was the case in *Drukers* and *Johnson v. Pomeroy*.

Regardless, keeping the marriage penalty creates another constitutional challenge that the tax must overcome. In my view, that is not a fight worth having as the important constitutional issue is to get Culliton overturned.

From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Monday, January 19, 2026 3:53 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: RE: millionaire tax draft--Attorney-client privileged

ATTORNEY-CLIENT PRIVILEGE

Hi Noah.

I've only made it through the first 22 pages of the 56-page draft. I need to turn to a Court of Appeals brief and likely will not get through the remainder by COB Tuesday. In any event, attached are some suggested edits for your consideration. Senator Pedersen's email to you seems to invite feedback. Hopefully my extensive edits will not offend.

At a more general level, here are my thoughts and concerns:

- The overall legislative goals, it seems to me, are to (1) have our Supreme Court overturn Culliton v. Chase, (2) craft a tax that the voters will support, and (3) craft a tax that is administrable by the Department of Revenue.

- Nothing in the first 22 pages of this draft struck me as creating additional constitutional problems (beyond the Culliton v. Chase income = property issue). As an example, the credit for taxes paid to other states seemed to meet due process requirements. Thus, as a general matter we should be able to defend this draft against any "non-Culliton" constitutional challenges.

- However, the draft is complex. That complexity will make it harder for us to explain/summarize the tax in litigation. [The Cap. Gain tax was relatively easy to explain and summarize]. In my view, that makes this draft marginally more difficult to defend. "More difficult" is probably not something we can quantify. But all else being equal, a "lean" tax statute would be slightly better from a litigation risk standpoint.

- If there is room to cut back on this first iteration of the tax (i.e., "Millionaire Tax 1.0") to makes it easier to summarize, that would be helpful. Once the first two goals listed above are met, there will be opportunities to amend the tax to make is more administrable by the DOR and close any loopholes identified by the DOR. In other words,

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start with a lean/simplified statute with the idea that it can be improved over time. [Entirely a policy decision by the Leg. Just thought it might be worth mentioning].

Hope this is helpful. Let me know if you have any questions.

Chuck Zalesky
Senior Counsel
(360) 586-0756

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From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Thursday, January 15, 2026 5:07 PM
To: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: millionaire tax draft--Attorney-client privileged

Hi all,

Could I bug you to review this by COB next Tuesday and let me know if you have any feedback or questions?

Thanks!
Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Thursday, January 15, 2026 4:23 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Fitzgibbon, Rep. Joe <Joe.Fitzgibbon@leg.wa.gov>
Subject: millionaire tax draft

[EXTERNAL]

Hi Noah –

Attached please find a first joint House/Senate draft of the mechanical sections of the proposed millionaire tax. We welcome your review and comments. We're hoping to collect feedback by Monday, 1/26 to be able to consider incorporating changes into the introduction version of the bill. Obviously, that will not be the last opportunity for changes. We have not included an intent section yet, but do have your previous suggested language there and anticipate using that as a starting point.

Sam Hendrickson
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Legislative Assistant
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To subscribe to my online newsletter, please sign up here. To send any comments, or to learn more please visit my website.

From: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Sent: Friday, September 5, 2025 11:18 AM
To: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: RE: research and drafting request

Hi Sen. Pedersen –
Below are some brief, initial thoughts in red. As I think of additional points for your consideration, I will periodically send those to you as well.

Also, I will be out of the office for the next two weeks. However, I will be able to follow up on any additional questions/research that you may have as soon as I get back. Also, if you think this concept is likely to be introduced, I should probably start formulating a draft by October. If you could let me know by the end of September, it would be greatly appreciated.

Regards,
Jeff

Jeff Mitchell, Fiscal Coordinator/Counsel
Washington State Senate Ways & Means Committee
Senate Committee Services
Jeffrey.mitchell@leg.wa.gov 360.786.7438

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From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Wednesday, August 27, 2025 9:16 PM
To: Mitchell, Jeffrey <Jeffrey.Mitchell@leg.wa.gov>
Cc: Bridges, Matt <Matt.Bridges@leg.wa.gov>
Subject: research and drafting request

Hi Jeff –

I hope that your summer has been great. I need your help with development of an idea that I am working on for next session.

The basic concept would be a "millionaire excise tax", which would be a new tax on federal adjusted gross income received by individuals (not businesses; I would not expect to touch B&O taxes at this point) in excess of $1 million each year.

Questions/requests:

1. I'd like to use federal AGI as the base so that it is as easy to calculate and enforce as possible – does that create a delegation problem? As a starting point, an open-ended reference to federal tax law (rolling conformity) would likely present a delegation problem. However, structured in a manner that allows DOR to periodically update the federal tax code reference under certain well-defined conditions such as a "de minimis" impact on state revenues with additional sideboards would probably avoid significant delegation concerns. However, because of the broader legal considerations likely to arise, it might make sense to start with static conformity where the state code ties to the federal tax code as existing on a specific date without automatic updates. As some additional context, the state capital gains tax does provide a mechanism where the date for the IRC reference can be updated without legislation. The state law allows DOR by rule to specify a later date in a manner consistent with the capital gains tax law. However, DOR has not updated the reference yet, i.e., it is still based on the date specified in the original enacting legislation. I've reached out to DOR to get their thoughts on what considerations they think would go into a possible update.

2. What are my options for handling the different federal filing statuses (single, married filing jointly)? I think it will be important politically to be able to say that it applies only to income above $1 million and that income below that is fully exempt. Generally, in most states with income taxes, the standard deduction for married couples filing jointly is typically double the amount for single or married filing separate status. However, the standard exclusion is much lower in these states. This proposal could use our state capital gains tax approach where spouses and state-registered domestic partners receive a total, combined exclusion of $270K regardless of filing status. In other words, under this concept, if a married couple filed separately, the $1M exclusion would be divided between the two tax returns.

1. Do you have any other suggestions for how to keep the bill (a) as short and easy to understand as possible and (b) as cheap for DOR to administer as possible? Basing the state tax on the federal return to the largest extent possible will certainly help reduce DOR admin/implementation costs. Also, the $1M exclusion will narrow the scope of the impacted taxpayers considerably further reducing administrative costs. As a very rough estimate, using a uniform $1M threshold for all returns regardless of filing status, the proposal would impact roughly 20,000 taxpayers out of approximately 3.5 million.

2. I'd like to start with a rate of 9.99%, with a dollar-for-dollar credit for capital gains taxes paid. Can you get an estimate for how much money that would raise? As a rough estimate, about $3B in revenue would have been generated in 2025 under a very basic scenario where all tax returns – single and joint - are eligible for a $1M exclusion and the tax pivots directly from federal AGI. In other words, the 9.99% rate is applied to the portion of a taxpayer's federal AGI above $1M. This rough estimate reflects an offset for the state capital gains tax; however, the amount has not been reduced by a credit for WA residents working in Oregon (or other states) and paying Oregon (or other states) income taxes. For example, a WA resident would show all income on a WA return but receive a credit for the portion of income subject to Oregon's income tax. This same taxpayer would file a nonresident return with Oregon only showing the wage income earned in Oregon. With a $1M threshold, I don't think there would be a significant impact for out-of-state credits.

3. I'd like to leave open the possibility that we could allocate part of the stack (maybe up to 2% each) to county and city governments. If you decide to proceed with having this proposal drafted, I'll make sure to include placeholder language for an allocation for cities/counties.

4. I expect that the bill will get challenged in court. I would like to force the Washington Supreme Court to reconsider its caselaw that considers income to be property. Do you have any other suggestions about how to bolster the argument that this would be an excise tax and not a property tax? With the capital gains tax and its specific focus on the sale of capital assets, a lot of people were reasonably confident it would be construed as

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an excise tax because of its transactional nature. As a counter example, a wealth tax, while impacting similar financial assets, is clearly a type of property tax. Along similar lines, a tax based on employment activity, as measured by wages/salaries, would seem to fall within the excise tax bucket. However, dividend and interest income is more complicated because those revenues result directly from property ownership, somewhat conflating matters. However, one option would be to structure the tax for these revenues based on the idea of engaging in investment activity. In short, it might make sense to specify the triggering activity in the draft for each type of income subject to tax to bolster the argument that the disparate forms of revenue captured within AGI and subject to the state tax are based on specific triggering activities, a fundamental hallmark of an excise tax.

5. I'd like to understand where that rate would put us relative to the rates in other US jurisdictions (particularly our major blue-state economic competition, such as CA, MA, IL, NY, CO, and VA, as well as neighboring states such as ID and OR) for income at that scale. Attached is a spreadsheet with state income tax rates.

6. Are there any lessons from previous income tax attempts that I should take into account? I will ponder this one and follow up. I worked on some of the proposals by Jim McIntire many years ago as well as the original version of the capital gains tax by Rep. Jinkins about 14 years ago. However, a lot has changed in terms of the legal landscape as well as the statutory landscape with the state capital gains tax (and working families' credit, which is very similar to the federal EITC).

7. Are there any other suggestions that you have for how to proceed with this concept? Another option would be to work from Sen. Frame's payroll tax proposal last year but change the legal incidence of the tax from the employer to the employee. As some context, wages and salaries account for roughly 2/3 of federal AGI. Capital gains contribute around 5-10%. Therefore, this approach would capture most of the revenue that would be obtained from a more traditional income tax (and the capital gains tax is already in place). Because it would be narrowly focused on high-earner employment activity, it might be potentially easier to argue it is an excise tax and it would also capture the faster wage growth associated with high income individuals. (The latter point would of course also be true under the more traditional income tax approach.) On the flip side, the tax would, by its nature, disregard interest, dividend, and other types of income. Also, I think an effort to truly force the WA Supreme Court to reconsider its caselaw would necessitate the use of a broader AGI-type tax that includes revenue items like dividends and interest. Lastly, there is a 1950s court case (Cary v. Bellingham), where the state supreme court invalidated an employee excise tax imposed by the city of Bellingham. The key issue centered around the city's authority to require employees to secure an annual license. In other words, the focus, in my opinion, was more on the licensing aspect versus the excise tax element. For now, I just wanted to raise the issue for future consideration.

Please let me know if you have any other clarifying questions or need further direction from me. I appreciate your help with this!

Best, Jamie

Senator Jamie Pedersen
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pronouns: he, him, his

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Mayer, Ellie (ATG)

From: Purcell, Noah Guzzo (ATG)
Sent: Thursday, December 11, 2025 11:26 PM
To: Pedersen, Sen. Jamie
Cc: Zalesky, Chuck (ATG); Jensen, Dan (ATG)
Subject: RE: research and drafting request; attorney-client privileged and confidential
Attachments: Pedersen-AGI_czEdits.docx

Senator Pedersen,

Thank you for your patience as we reviewed this. I'm cc'ing here my colleagues Chuck Zalesky and Dan Jensen, from our Revenue Division, who are the leading experts on this issue and both reviewed the bill. In general, as a legal matter, we think this achieves your desired policy goals. We just have a few comments and suggestions for your consideration:

First, Chuck prepared detailed comments in the attached and included potential language for an intent section if you want to incorporate it.

One other idea we had for the intent section was that it might be useful for the legislature to say something about why the Culliton line of cases is harmful (e.g., that it leads to WA having such a regressive tax system).

Both Chuck and Dan noted that the draft grants married couples the same amount of deduction as single persons. That creates a marriage penalty where married persons receive, in effect, only ½ of the deduction amount two single persons would receive in the aggregate. Dan also noted that under Section 7 the DOR would only receive wage data for individuals earning more than $1,000,000, making it more difficult to audit married couples who both earn under that threshold but collectively earn more than $1,000,000.

Dan noted that Section 11 focuses more on businesses that have sales. Other businesses fall under the last subsection of Section 11, which creates an odd petition process to the DOR. We would advise the Legislature to come up with a specific method for non-sales related businesses rather than creating a process where the taxpayer petitions the DOR for an apportionment method. What happens when the DOR denies the taxpayer's petitioned apportionment method? Is that appealable? We think that could get messy.

Dan suggests that you don't need a separate substantial underpayment penalty in RCW 82.32.090(11). The one in subsection (2) already applies because all of Chapter 82.32 RCW is incorporated into this bill. Otherwise, you could have taxpayers owing a 30% substantial underpayment penalty with RCW 82.32.090(2) penalties and proposed RCW 82.32.090(11) penalties both applying.

Last but not least, unless I missed it, I did not see an emergency clause. Without one, someone could try to subject the bill to a referendum. It should not be subject to referendum because it raises revenue, but under the Secretary of State's longstanding practice, they only reject proposed referenda if the bill has an emergency clause, so someone would have to sue to prevent a referendum on the bill as written. I just wanted to make sure you were aware of that.

We hope this is helpful, and please let us know if you have any questions or want to discuss further.

All the best,
Noah

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Monday, December 8, 2025 1:10 PM

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Mayer, Ellie (ATG)

From: Jensen, Dan (ATG)
Sent: Wednesday, December 10, 2025 5:03 PM
To: Zalesky, Chuck (ATG); Purcell, Noah Guzzo (ATG)
Cc: Gonick, Peter B. (ATG)
Subject: RE: research and drafting request; attorney-client privileged and confidential

Noah,

I agree with Chuck both in regards to the proposed legislation not causing problems with future litigation and with his other suggestions, in particular the marriage penalty provision. Here are a few additional thoughts regarding cleaning up the bill:

- Another oddity with the marriage penalty provision is that under Section 7 the DOR would only receive wage data for individuals earning more than $1,000,000, making it more difficult to audit married couples who both earn under that threshold but collectively earn more than $1,000,000.
- Section 11 focuses more on businesses that have sales. Other businesses fall under the last subsection of Section 11, which creates an odd petition process to the DOR. I would advise the Legislature to come up with a specific method for non-sales related businesses rather than creating a process where the taxpayer petitions the DOR for an apportionment method. What happens when the DOR denies the taxpayer's petitioned apportionment method? Is that appealable? I think that could get messy.
- Finally, you don't need a separate substantial underpayment penalty in RCW 82.32.090(11). The one in subsection (2) already applies because all of Chapter 82.32 RCW is incorporated into this bill. Otherwise, you could have taxpayers owing a 30% substantial underpayment penalty with RCW 82.32.090(2) penalties and proposed RCW 82.32.090(11) penalties both applying.

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From: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>
Sent: Tuesday, December 9, 2025 4:40 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Cc: Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: RE: research and drafting request; attorney-client privileged and confidential

Hi Noah.

I didn't see anything in the proposal that would cause problems with eventual litigation.

I do wonder about the policy for granting married couples the same amount of deduction as single persons. That creates a marriage penalty where married persons receive, in effect, only ½ of the deduction amount two single persons would receive in the aggregate.

I had a few other comments and suggestions that might be worth sharing with Senator Petersen. See attached. But that is entirely your call. None substantively relate to fixes that will make it easier to convince the Supreme Court to overrule Culliton.

Chuck.

From: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Sent: Monday, December 8, 2025 12:15 PM
To: Zalesky, Chuck (ATG) <chuck.zalesky@atg.wa.gov>; Jensen, Dan (ATG) <dan.jensen@atg.wa.gov>; Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

Could you all please review and let me know your thoughts? Thanks.

From: Pedersen, Sen. Jamie <Jamie.Pedersen@leg.wa.gov>
Sent: Saturday, December 6, 2025 7:37 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>
Subject: FW: research and drafting request; attorney-client privileged and confidential

[EXTERNAL]

Hi Noah –

Here is the draft of the millionaire tax bill. I welcome your thoughts and comments about what will give us the best shot to have Culliton overruled. Let me know if you would like to set up a time to chat about this.

Best wishes, Jamie

Senator Jamie Pedersen
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