Department of
Revenue
Washington State

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Overview of the Taxability of Intangible Personal Property

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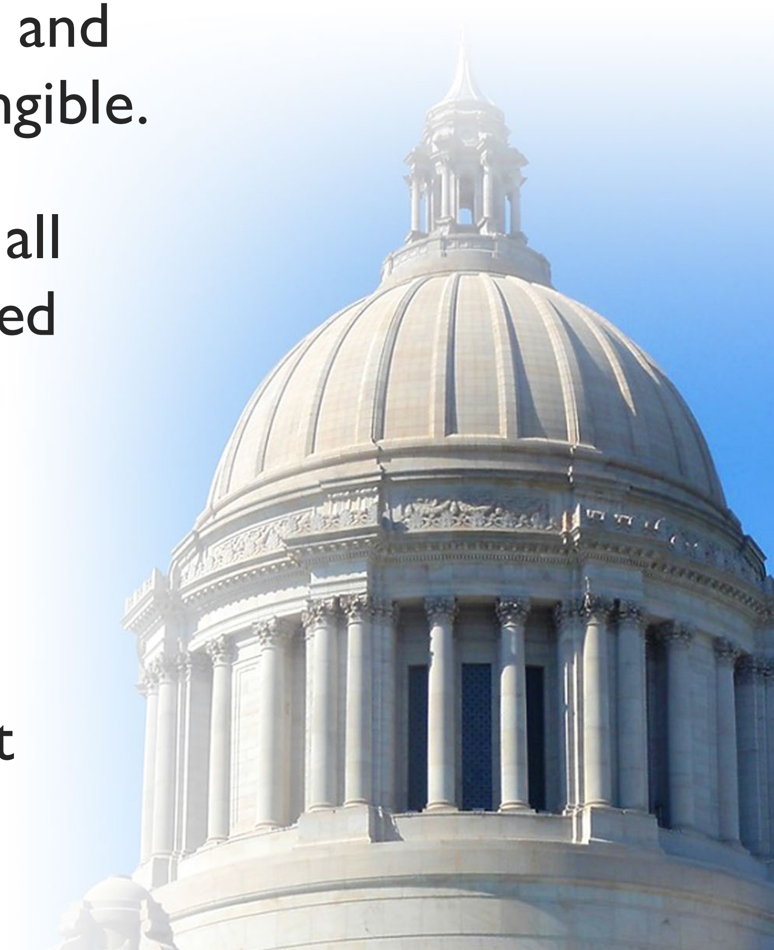
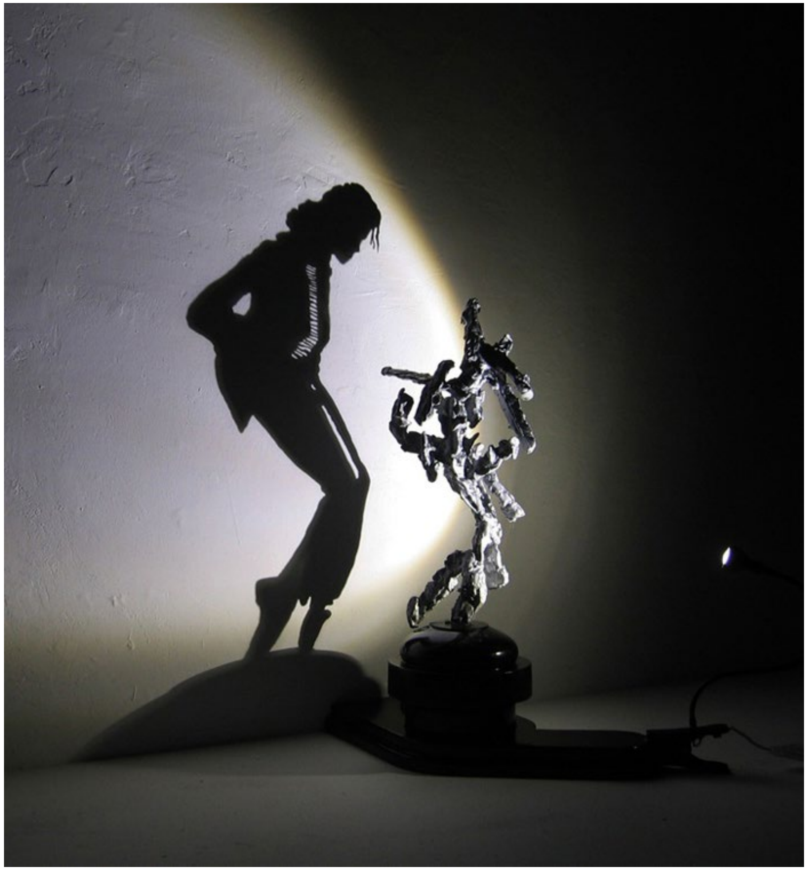
Constitutional Framework

- Washington's Constitution defines the word 'property' broadly to include all real and personal property, tangible and intangible.
- The Constitution also requires that all property, real and personal, be treated equally.
- All property is taxable unless specifically exempted.
- Intangible personal property exempt under RCW 84.36.070.



What is intangible personal property - a.k.a. “intangibles”?



Intangibles Four-Part Test

- Identifiable
- Legal Ownership
- Separate and Divisible
- Legally Transferable

Categorization of Property Types

- Total property of the business
  - Tangible property
    - Real property
    - Tangible personal property
  - Intangible personal property
    - Franchise and other contracts
    - Patent, trademark, copyright
    - Trade name
    - Other intangible assets and liabilities
  - Financial assets and working capital
    - Cash
    - Marketable securities
    - Accounts receivable
    - Supplies and inventory

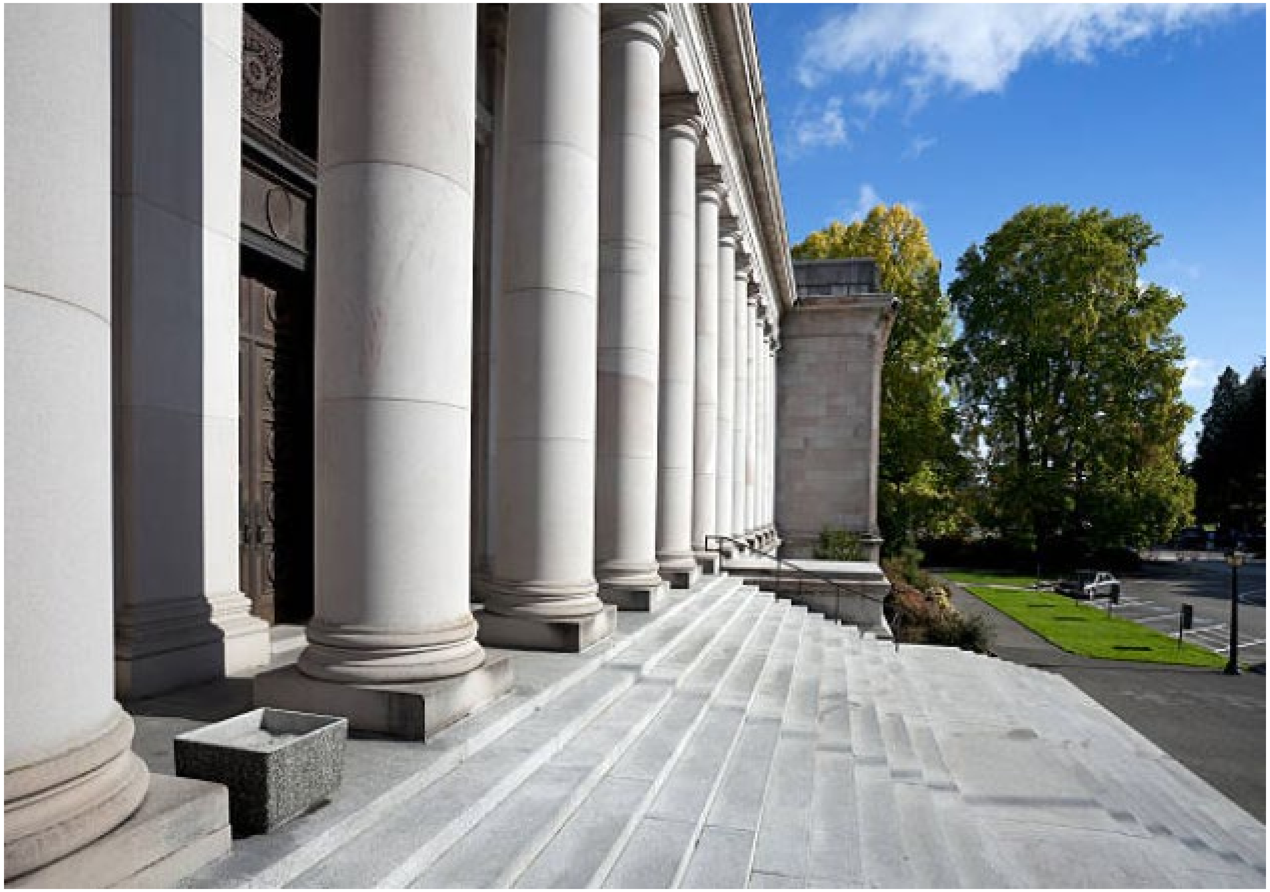
Timeline of Intangibles

- 1930 – Washington voters approve the 14th Amendment.
- 1931 – the Legislature specifically exempts "financial" intangibles.
- 1935 – the Revenue Act of 1935 shifts the state's principal form of taxation from property tax to an excise tax.
- 1974 – exemption added for certain private nongovernmental personal service contracts and private nongovernmental athletic or sports franchises or agreements.
- Mid-1990s – IRS rules change.
- 1997 – revisions to intangibles exemption.

Timeline of Intangibles (cont'd)

- *1997 revisions :*
  - Expanded the exemption to include: trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, non-compete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, or integrity of a business.
  - Clarified that intangible property does not include attributes and characteristics of real property, such as zoning, location, view, and geographic features.

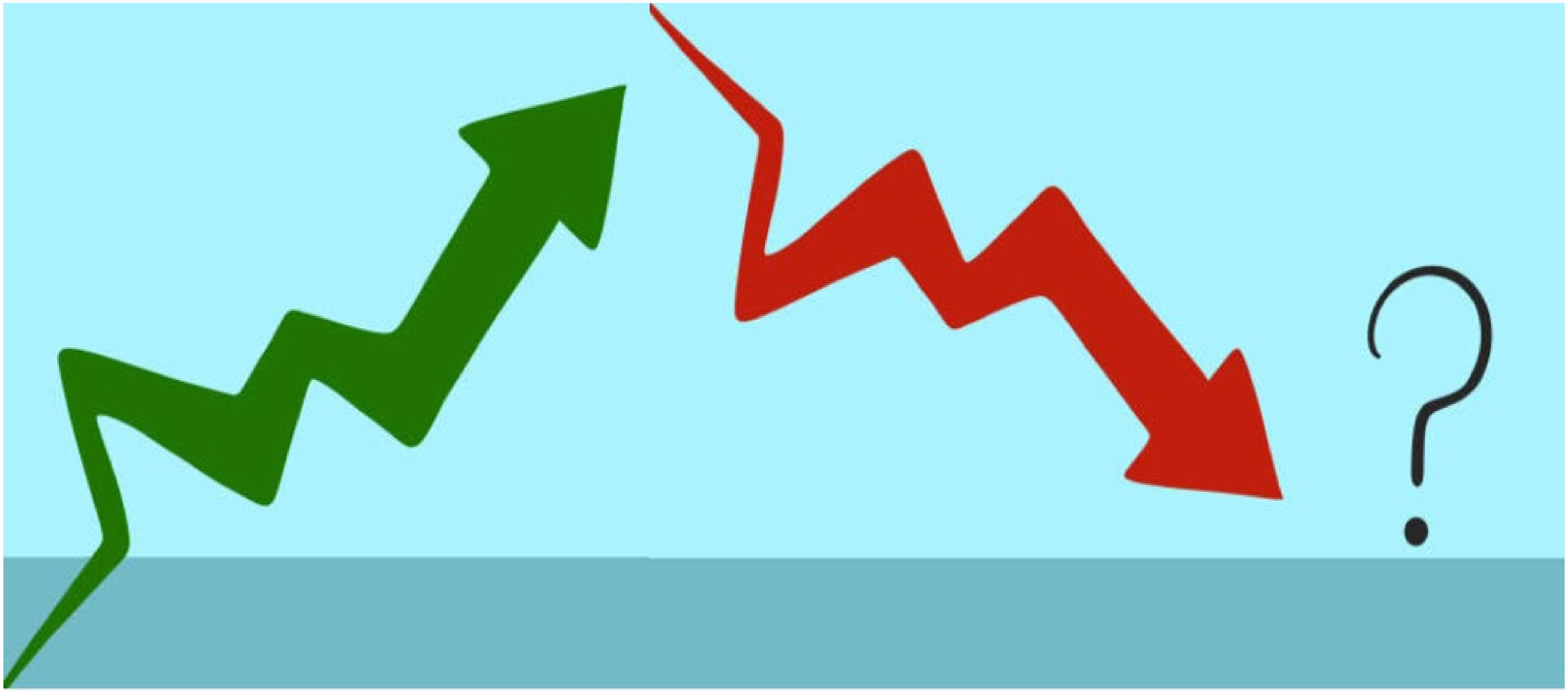
RCW 84.36.070



Additional Background

- 1997 required study.
- Report to the Legislature in 2000.
- County assessors identify and assess all taxable property.
  - *Except* certain properties that operate in multiple counties, generally referred to as state-assessed properties.
  - The Department assesses these properties on behalf of the county assessors, under chapters 84.12 & 84.16 RCW.
  - This includes inter-county airlines, electric, gas, pipeline, railroad, and telephone companies.

Intangibles – to Tax *or* Not to Tax?



Pros

- Intangibles are an increasing share of the national economy.
- Increases the tax base and raises revenue to fund tax districts and important government services.
- Generally reduces tax rates.
- Diminishes likelihood of prorationing for junior taxing district levies under the $5.90 and $10 constitutional aggregate limits.

Cons

- All taxpayers owning intangibles would be required to self-report their intangibles to their county assessor.
- Labor intense administration of valuing and taxing intangibles.
- Assessors may not have the expertise to value intangibles.
- Determining the location of intangible property may be challenging.
- Perceived as double taxation.
- Potential litigation costs due to disputes over location, existence, and the value of intangibles.

Other considerations

- Taxpayers with significant, valuable, intangible property holdings shoulder more of the property tax burden.
- Federal statutes require assessing airlines and railroads like other commercial and industrial properties, unless there is sufficient justification to do otherwise.
- Finance theory as applied to corporate valuation generally does not agree on a methodology for identifying and isolating intangible value.

Questions?