1 **1361 AMH CAIR H2237.1**

2 <u>**HB 1361**</u> - H AMD **0016 SCOPED 3/9/01**
3   By Representative Cairnes

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5   On page 17, after line 18, insert the following:

6   "<u>NEW SECTION.</u> **Sec. 18.** The legislature finds that the recent
7 state supreme court decision in *Simpson Investment Co. v. Dept. of*
8 *Revenue* could lead to an unusually restrictive, narrow interpretation
9 of the deductibility of investment income for business and occupation
10 tax purposes. If allowed to stand, this interpretation could be
11 extremely detrimental.
12   Through its ruling, the court called into question the application
13 of the state's business and occupation tax to investment income derived
14 by nonfinancial businesses such as family investment vehicles, estate
15 planning entities, personal holding companies, mutual funds, venture
16 capital companies, and other similar entities that have traditionally
17 deducted their investment income pursuant to RCW 82.04.4281. The
18 court's decision could also be read to expand the business and
19 occupation tax to individual citizens' investment earnings even though
20 they have never been considered to be engaging in business.
21   The court's decision has the potential of discouraging capital
22 investment in this state's businesses and inhibiting individual
23 citizens, their families, and noncommercial investors from preserving
24 or increasing their financial security. The legislature recognizes
25 that capital and investment income is easily moved out of state.
26 Interpretations that would apply the business and occupation tax to
27 certain investment income will definitely cause a reduction of overall
28 capital available to businesses and could cause some to take their
29 operations and family-wage jobs out of this state.
30   The legislature finds that a narrow interpretation of RCW
31 82.04.4281 is clearly not in the best interest of this state or its
32 citizens. Therefore, it is the intent of this act to clarify the
33 deductibility of investment income and to specifically identify persons
34 who may not take the deduction provided in RCW 82.04.4281.

Sec. 19. RCW 82.04.4281 and 1980 c 37 s 2 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax:

(a) Amounts derived ((by persons, other than those engaging in banking, loan, security, or other financial businesses,)) from investments or the use of money ((as such, and also)); and

(b) Amounts derived as dividends by a parent from its subsidiary corporations.

(2) The following persons are not entitled to the deduction provided in subsection (1)(a) of this section:

(a) Persons who engage in business as a banking, loan, or other financial institution chartered under:

(i) Title 30, 31, 32, or 33 RCW;

(ii) The national bank act, as amended; or

(iii) The homeowners loan act, as amended;

(b) A holding company of any person described in (a) of this subsection that is subject to:

(i) The bank holding company act, as amended; or

(ii) The homeowners loan act, as amended;

(c) Persons who engage in business as a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act, as amended;

(d) Persons who engage in business as a subsidiary of or affiliate owned or controlled by one or more persons described in (a), (b), or (c) of this subsection;

(e) Persons who engage in business as an underwriter and distributor of securities issued by other persons, a seller of securities to the public, a broker of securities, or any combination of these activities, whose gross income is normally derived principally from these activities. However, this subsection shall not be construed to deny the deduction provided in subsection (1) of this section to the entity that issues any of the securities that are underwritten, distributed, sold, or brokered by any of the persons identified in this subsection. In addition, this subsection shall not be construed to deny the deduction provided in subsection (1) of this section to any collective investment entity such as a mutual fund, venture capital fund, hedge fund, deferred compensation trust or account, or any similar fund or account;

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1   (f) Persons who engage in business as a provider of revolving
2 credit accounts. However, this subsection shall only be construed to
3 deny the deduction provided in subsection (1) of this section to
4 interest income derived from the provision of the revolving credit
5 accounts. If the person providing revolving credit accounts is also
6 engaged in business as a person identified in (a), (b), (c), or (d) of
7 this subsection, that person shall be denied the deduction provided in
8 subsection (1) of this section in its entirety;
9   (g) Persons who make installment sales through installment sales
10 contracts. However, this subsection shall only be construed to deny
11 the deduction provided in subsection (1) of this section to interest
12 income derived from the installment sales contracts. In addition, a
13 person making installment sales through installment sales contracts
14 shall not be deemed to be engaged in business for the purposes of this
15 subsection unless they hold two or more installment sales contracts;
16 and
17   (h) Persons whose primary business activity is substantially
18 identical to the activities of any person listed in (a) through (g) of
19 this subsection. However, this subsection shall not be construed to
20 deny the deduction provided in subsection (1) of this section to any
21 person who qualifies as a personal holding company as defined in
22 section 542 of the internal revenue code, nor any person who would meet
23 the definition of a personal holding company if that person were a
24 corporation."

25   Renumber the remaining sections consecutively, correct any internal
26 references accordingly, and correct the title.

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