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HOUSE BILL 2641

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Gombosky, Cairnes, Kessler, Morris, Berkey, Edwards, Kenney, Linville, Ogden and Conway; by request of Governor Locke

Read first time 01/23/2002. Referred to Committee on Finance.

1 AN ACT Relating to implementing the recommendations of the  
2 investment income tax deduction task force for the business and  
3 occupation tax; amending RCW 82.04.4281; creating a new section; and  
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the application  
7 of the business and occupation tax deductions provided in RCW  
8 82.04.4281 for investment income of persons deemed to be "other  
9 financial businesses" has been the subject of uncertainty, and  
10 therefore, disagreement and litigation between taxpayers and the state.  
11 The legislature further finds that the decision of the state supreme  
12 court in *Simpson Investment Co. v. Department of Revenue* could lead to  
13 a restrictive, narrow interpretation of the deductibility of investment  
14 income for business and occupation tax purposes. As a result, the  
15 legislature directed the department of revenue to work with affected  
16 businesses to develop a revision of the statute that would provide  
17 certainty and stability for taxpayers and the state. The legislature  
18 intends, by adopting this recommended revision of the statute, to

1 provide a positive environment for capital investment in this state,  
2 while continuing to treat similarly situated taxpayers fairly.

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

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

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

9 (b) Amounts derived as dividends or distributions from capital  
10 account by a parent from its subsidiary ((corporations)) entities.

11 (2) The following are not deductible under subsection (1)(a) of  
12 this section:

13 (a) Amounts received from loans or the extension of credit to  
14 another, revolving credit arrangements, installment sales, the  
15 acceptance of payment over time for goods or services, or any of the  
16 foregoing that have been transferred by the originator of the same to  
17 an affiliate of the transferor; or

18 (b) Amounts received by a banking, lending, or security business.

19 (3) The definitions in this subsection apply only to this section.

20 (a) "Banking business" means a person engaging in business as a  
21 national or state-chartered bank, a mutual savings bank, a savings and  
22 loan association, a trust company, an alien bank, a foreign bank, a  
23 credit union, a stock savings bank, or a similar entity that is  
24 chartered under Title 30, 31, 32, or 33 RCW, or organized under Title  
25 12 U.S.C.

26 (b) "Lending business" means a person engaged in the business of  
27 making secured or unsecured loans of money, or extending credit, and  
28 (i) more than one-half of the person's gross income is earned from such  
29 activities and (ii) more than one-half of the person's total  
30 expenditures are incurred in support of such activities.

31 (c) The terms "loan" and "extension of credit" do not include  
32 ownership of or trading in publicly traded debt instruments, or  
33 substantially equivalent instruments offered in a private placement.

34 (d) "Security business" means a person, other than an issuer, who  
35 is engaged in the business of effecting transactions in securities as  
36 a broker, dealer, or broker-dealer, as those terms are defined in the  
37 securities act of Washington, chapter 21.20 RCW, or the federal  
38 securities act of 1933. "Security business" does not include any

1 company excluded from the definition of broker or dealer under the  
2 federal investment company act of 1940 or any entity that is not an  
3 investment company by reason of sections 3(c)(1) and 3(c)(3) through  
4 3(c)(14) thereof.

5 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 immediately.

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