
SENATE BILL 6184

State of Washington 57th Legislature 2001 First Special Session

By Senators T. Sheldon, Rossi, West and Finkbeiner

Read first time 05/09/2001. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the decision of the Washington state
2 supreme court in *Simpson Investment Co. v. Dept. of Revenue*; amending
3 RCW 82.04.4281; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the recent state
6 supreme court decision in *Simpson Investment Co. v. Dept. of Revenue*
7 could lead to an unusually restrictive, narrow interpretation of the
8 deductibility of investment income for business and occupation tax
9 purposes. If allowed to stand, this interpretation could be extremely
10 detrimental.

11 Through its ruling, the court called into question the application
12 of the state's business and occupation tax to investment income derived
13 by nonfinancial businesses such as family investment vehicles, estate
14 planning entities, personal holding companies, mutual funds, venture
15 capital companies, and other similar entities that have traditionally
16 deducted their investment income pursuant to RCW 82.04.4281. The
17 court's decision could also be read to expand the business and
18 occupation tax to individual citizens' investment earnings even though
19 they have never been considered to be engaging in business.

1 The court's decision has the potential of discouraging capital
2 investment in this state's businesses and inhibiting individual
3 citizens, their families, and noncommercial investors from preserving
4 or increasing their financial security. The legislature recognizes
5 that capital and investment income is easily moved out of state.
6 Interpretations that would apply the business and occupation tax to
7 certain investment income will definitely cause a reduction of overall
8 capital available to businesses and could cause some to take their
9 operations and family-wage jobs out of this state.

10 The legislature finds that a narrow interpretation of RCW
11 82.04.4281 is clearly not in the best interest of this state or its
12 citizens. Therefore, it is the intent of this act to clarify the
13 deductibility of investment income and to specifically identify persons
14 who may not take the deduction provided in RCW 82.04.4281.

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

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

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

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

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

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

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

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

29 (iii) The homeowners loan act, as amended;

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

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

33 (ii) The homeowners loan act, as amended;

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

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

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

17 (f) Persons who engage in business as a provider of revolving
18 credit accounts. However, this subsection shall only be construed to
19 deny the deduction provided in subsection (1) of this section to
20 interest income derived from the provision of the revolving credit
21 accounts. If the person providing revolving credit accounts is also
22 engaged in business as a person identified in (a), (b), (c), or (d) of
23 this subsection, that person shall be denied the deduction provided in
24 subsection (1) of this section in its entirety;

25 (g) Persons who make installment sales through installment sales
26 contracts. However, this subsection shall only be construed to deny
27 the deduction provided in subsection (1) of this section to interest
28 income derived from the installment sales contracts. In addition, a
29 person making installment sales through installment sales contracts
30 shall not be deemed to be engaged in business for the purposes of this
31 subsection unless they hold two or more installment sales contracts;
32 and

33 (h) Persons whose primary business activity is substantially
34 identical to the activities of any person listed in (a) through (g) of
35 this subsection. However, this subsection shall not be construed to
36 deny the deduction provided in subsection (1) of this section to any
37 person who qualifies as a personal holding company as defined in
38 section 542 of the internal revenue code, nor any person who would meet

1 the definition of a personal holding company if that person were a
2 corporation.

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