

VETO MESSAGE ON HB 1361

May 15, 2001

To the Honorable Speakers and Members,

The House of Representatives of the State of Washington  
Ladies and Gentlemen:

I am returning herewith, without my approval as to section 19, House Bill No. 1361 entitled:

"AN ACT Relating to simplifying excise tax application and administration;"

House Bill No. 1361 was introduced as the Department of Revenue's annual housekeeping bill. It makes several technical corrections and clarifications to the law implemented by the Department. However, it was amended to include sections 18 and 19, provisions that affect the Business & Occupation (B&O) tax treatment of money earned from investments by businesses other than banks, loan, security or other financial businesses.

Section 19 of the bill would have implemented the intent expressed in section 18, which is to delay any change in the manner or extent of taxation of certain investment income as a result of the recent Washington Supreme Court decision, *Simpson Investment Co. v. Department of Revenue*. However, parties on both sides of the discussion agree that section 19 is clearly unconstitutional. Section 19 would require the Department to treat similarly situated taxpayers differently, contrary to principles of sound tax administration and the equal protection clauses of the state and federal constitutions. Also, the fiscal cost of a successful challenge would be much greater than the legislature assumed when it enacted this bill.

I fully support the goals inherent in section 19 of this bill. However, we should not make tax policy or administrative changes until there has been a thorough evaluation of the implications of the Washington Supreme Court's ruling on the affected parties.

I have directed the Department to adhere to the spirit of section 19 and to not change or expand the application of the law to include activities that heretofore have not been made subject to the tax. The Department will continue to apply pre-*Simpson Investment Co.* policies and interpretations with respect to RCW 82.04.4281. I have further directed the Department to work closely with all affected parties to develop a suitable, constitutional proposal that can be considered by the legislature in 2002.

The Director has formed a task force including representatives of Frank Russell Co., Microsoft, Washington Mutual Bank, Safeco, Allied Daily Newspapers, and Eagle River Partners, as well as Arthur Anderson, Perkins Coie, Davis Wright Tremaine, Stoel Rives, the Association of Washington Business and the Washington State Bar Association on behalf of clients and general interests. I fully anticipate that this group, working cooperatively with the Department, will be able to reach a consensus.

It is important that actions of the legislative and executive branches of government not result in actual or perceived damage to our business climate. The business community is understandably concerned about the implications of the *Simpson Investment Co.* case. However, I cannot in good conscience sign into a law a provision that is clearly unconstitutional and unfair to some

businesses. Additionally, I reiterate that the Department will continue to apply only pre-*Simpson Investment Co.* policies and interpretations with respect to RCW 82.04.4281.

For these reasons, I have vetoed section 19 of House Bill No. 1361.

With the exception of section 19, House Bill No. 1361 is approved.

Respectfully submitted,  
Gary Locke  
Governor