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HOUSE BILL 2318

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Hasegawa, Moeller, Ormsby, Dickerson, Sells,  
Pettigrew and Roberts

Read first time 04/13/2005. Referred to Committee on Finance.

1            AN ACT Relating to taxation of unearned income; amending RCW  
2 82.03.130 and 82.03.140; adding a new title to the Revised Code of  
3 Washington to be codified as Title 82A RCW; prescribing penalties; and  
4 providing an effective date.

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

6            NEW SECTION.    **Sec. 101.**    DEFINITIONS. Unless the context clearly  
7 requires otherwise, the definitions in this section apply throughout  
8 this title. Except as provided in this section, any term used in this  
9 title has the same meaning as when used in a comparable context in the  
10 internal revenue code.

- 11            (1) "Department" means the state department of revenue.
- 12            (2) "Director" means the director of the department.
- 13            (3) "Individual" means a natural person.
- 14            (4) "Internal revenue code" means the United States internal  
15 revenue code of 1986, as amended or renumbered as of January 1, 2005.
- 16            (5) "Taxable income" means income received from:
  - 17            (a) Interest from bonds, notes, money at interest, and from all  
18 debts due the person to be taxed, except interest from notes or bonds

1 of this state and notes or bonds of any political subdivision of this  
2 state;

3 (b) Dividends, other than stock dividends paid in new stock of the  
4 company issuing the same, on shares in all corporations and joint stock  
5 companies organized under the laws of any state, territory, or nation;

6 (c) Dividends, other than stock dividends paid in new stock of the  
7 partnership, limited liability company, association, or trust issuing  
8 the same, on shares in partnerships, limited liability companies,  
9 associations, or trusts if the beneficial interest is represented by  
10 transferable shares;

11 (d) Dividends, other than that portion of a dividend declared by  
12 corporations to be a return of capital and considered by the federal  
13 internal revenue service to be such, the exemption of which is  
14 permitted by section 104 of this act.

15 (6) "Taxable year" means the taxpayer's taxable year as defined  
16 under the internal revenue code.

17 (7) "Taxpayer" means a person receiving income subject to tax under  
18 this title.

19 NEW SECTION. **Sec. 102.** UNEARNED INCOME TAX IMPOSED. A one  
20 percent tax is imposed on the taxable income of:

- 21 (1) Individuals; and
- 22 (2) Partnerships, limited liability companies, associations, and  
23 trusts, the beneficial interest in which is not represented by  
24 transferable shares, whose gross interest and dividend income from all  
25 sources exceeds three thousand dollars during the taxable year.

26 NEW SECTION. **Sec. 103.** PERSONAL EXEMPTIONS. The following  
27 exemptions may be deducted from taxable income:

- 28 (1) Three thousand dollars for each individual taxpayer;
- 29 (2) Three thousand dollars for each individual taxpayer's spouse if  
30 the taxpayer is entitled to an exemption for the spouse under section  
31 151(b) of the internal revenue code.

32 NEW SECTION. **Sec. 104.** EXEMPT INCOME. The tax imposed under this  
33 title does not apply to:

- 34 (1) Interest and dividend income received by an employee benefit  
35 plan as defined by the employee retirement income security act of 1974,

1 29 U.S.C. Sec 1002(3), or any successor act enacted for the purpose of  
2 regulating employee benefit plans, or an individual retirement  
3 arrangement, keogh plan, or any other arrangement pursuant to which  
4 payment of federal tax on the income thereof and of the plan sponsors,  
5 participants, and beneficiaries is deferred; either to the plan or  
6 arrangement or to its sponsors, participants, or beneficiaries,  
7 irrespective of when or whether all or any portion of such income is  
8 accumulated or expended for the benefit of, or distributed in any form  
9 or manner to, such sponsors, participants, or beneficiaries;

10 (2) Any amount received from the sale, exchange, or transfer of  
11 either a share of corporate stock or any other transferable share under  
12 this title, whether by way of liquidation, redemption, or otherwise,  
13 and irrespective of the identity of the parties to the sale, exchange,  
14 or transfer;

15 (3) Any distribution of capital, whether in liquidation or  
16 otherwise, but accumulated profits shall not be regarded as capital;

17 (4) Any amount received and used by any educational, religious, or  
18 charitable organization incorporated or organized in this state, for  
19 the purposes for which it is established as long as none of the income  
20 or profits of the organization is divided among stockholders or members  
21 or is used for purposes other than those for which it is established,  
22 or which is received by any trustee for the use of the state or any of  
23 its political subdivisions, or for the use of the organization for  
24 these purposes;

25 (5) Income accumulated in an employee benefit plan, as defined by  
26 the employment retirement income security act of 1974, 29 U.S.C. Sec.  
27 1002(3), as amended, or in a trust comprising a part of such a plan.

28 NEW SECTION. **Sec. 105.** APPLICATION OF TAX IN CERTAIN  
29 CIRCUMSTANCES. (1) For the purposes of the tax imposed under this  
30 title, any securities or property of the classes designated herein  
31 producing taxable income, held in pledge, or on margin, or otherwise as  
32 security for a debt of the owner, whether standing in the name of the  
33 owner or of any other person, shall be deemed the property of the  
34 owner, and the income arising therefrom shall be included in his or her  
35 total taxable income.

36 (2) The estates of deceased persons who last lived in this state  
37 shall be subject to tax under this title upon all taxable income

1 received by such persons during their lifetime, which has not already  
2 been taxed. The income received by estates during administration shall  
3 be taxable to the estate, except the proportion that equals the  
4 proportion of the estate to be distributed to nontaxable persons or  
5 organizations.

6 (3) The income received by estates held by trustees, any one of  
7 whom is an inhabitant of this state, or has derived his or her  
8 appointment from a court of this state, shall be subject to the taxes  
9 imposed by this title, except that income received by estates held by  
10 trustees treated as grantor trusts under section 671 of the United  
11 States internal revenue code shall be included in the return of their  
12 owners, to the extent that the persons to whom the income from the  
13 trust is payable, or for whose benefit it is accumulated, are  
14 inhabitants of this state.

15 (4) Income accumulated in trust for the benefit of unborn or  
16 unascertained persons shall be taxed as if accumulated for the benefit  
17 of inhabitants of this state.

18 (5) If an inhabitant of this state receives income from one or more  
19 trustees, none of whom is an inhabitant of this state or has derived  
20 his or her appointment from a court of this state, the income is  
21 subject to the taxes imposed under this title if it would be taxable to  
22 the inhabitant if received by him or her from its source.

23 (6) Subsections (2) through (5) of this section apply to guardians,  
24 conservators, trustees in bankruptcy, receivers, and assignees for the  
25 benefit of creditors, as applicable, to the taxable income received by  
26 them and to their beneficiaries, and to corporations acting as trustees  
27 or in any other fiduciary capacity.

28 (7) Partnerships and limited liability companies having a usual  
29 place of business in this state, any member of which is an inhabitant  
30 thereof, shall be subject to taxes imposed under this title. If any of  
31 the members of the partnership or limited liability company are not  
32 inhabitants of this state only the income that is proportionate to the  
33 aggregate interest of the partners or members who are inhabitants of  
34 this state in the profits of the partnership or limited liability  
35 company is subject to tax. .

36 (8) The tax shall be assessed on such a partnership or limited  
37 liability company by the name under which it does business, and the

1 partners or members shall not be taxed with respect to the taxable  
2 income derived by them from such a partnership or limited liability  
3 company.

4 (9) An inhabitant of this state who is a member of a partnership or  
5 limited liability company having no usual place of business in this  
6 state, who receives income from such partnership or limited liability  
7 company derived from such a source that it would be taxable if received  
8 directly from such source by such partner or member, shall as to such  
9 income be subject to the taxes imposed by this title.

10 (10) Subsections (7) through (9) of this section apply, so far as  
11 apt, to associations and trusts, but not to partnerships, limited  
12 liability companies, associations, and trusts, the beneficial interest  
13 in which is represented by transferable shares.

14 NEW SECTION. **Sec. 106.** TAX RETURNS FOR FRACTIONAL YEAR. If the  
15 first taxable year of any taxpayer with respect to which a tax is  
16 imposed by this title ends before December 31st of the calendar year in  
17 which this title becomes effective, referred to in this section as a  
18 fractional taxable year, the taxable income for the fractional taxable  
19 year shall be the taxpayer's taxable income for the entire taxable  
20 year, adjusted by one of the following methods, at the taxpayer's  
21 election:

22 (1) The taxable income shall be multiplied by a fraction. The  
23 numerator of the fraction is the number of days in the fractional  
24 taxable year. The denominator of the fraction is the number of days in  
25 the entire taxable year.

26 (2) The taxable income shall be adjusted, in accordance with rules  
27 of the department, so as to include only such income and be reduced  
28 only by such deductions as can be clearly determined from the permanent  
29 records of the taxpayer to be attributable to the fractional taxable  
30 year.

31 NEW SECTION. **Sec. 107.** ESTIMATION AGREEMENTS. The department may  
32 reasonably estimate the items of business or nonbusiness income of a  
33 taxpayer having an office within the state and one or more other states  
34 or foreign countries that may be apportioned or allocated to the state  
35 and may enter into estimation agreements with such taxpayers for the  
36 determination of their liability for the tax imposed by this title.

1        NEW SECTION.    **Sec. 108.**    ESTIMATED TAX IMPOSED--DUE DATE OF  
2    ESTIMATED TAXES--AMOUNT OF ESTIMATED TAX--UNDERPAYMENT PENALTY.    (1)

3    Each taxpayer who is required by the internal revenue code to make  
4    payment of estimated taxes shall pay to the department on forms  
5    prescribed by the department the estimated taxes due under this title.

6        (2) The provisions of the internal revenue code relating to the  
7    determination of reporting periods and due dates of payments of  
8    estimated tax apply to the estimated tax payments due under this  
9    section.

10       (3) The amount of the estimated tax shall be the annualized tax  
11    divided by the number of months in the reporting period. No estimated  
12    tax shall be due if the annualized tax is less than five hundred  
13    dollars. The provisions of RCW 82.32.050 and 82.32.090 shall apply to  
14    underpayments of estimated tax but shall not apply to underpayments if  
15    the tax remitted to the department under sections 101 through 117 of  
16    this act is either ninety percent of the tax shown on the return or one  
17    hundred percent of the tax shown on the previous year's tax return.

18       (4) For purposes of this section, the annualized tax is the  
19    taxpayer's projected tax liability for the taxable year as computed  
20    under section 6654 of the internal revenue code and the regulations  
21    thereunder.

22       NEW SECTION.    **Sec. 109.**    METHOD OF ACCOUNTING.    (1) A taxpayer's  
23    method of accounting for purposes of the tax imposed under this title  
24    shall be the same as the taxpayer's method of accounting for federal  
25    income tax purposes. If no method of accounting has been regularly  
26    used by a taxpayer for federal income tax purposes or if the method  
27    used does not clearly reflect income, tax due under this title shall be  
28    computed by a method of accounting that in the opinion of the  
29    department fairly reflects income.

30       (2) If a person's method of accounting is changed for federal  
31    income tax purposes, it shall be similarly changed for purposes of this  
32    title.

33       NEW SECTION.    **Sec. 110.**    PERSONS REQUIRED TO FILE RETURNS.    (1)  
34    All taxpayers shall file with the department, on forms prescribed by  
35    the department, an income tax return for each taxable year. An  
36    individual owing no tax for a taxable year is not required to file a

1 return for that year. Each person required to file a return under this  
2 title shall, without assessment, notice, or demand, pay any tax due  
3 thereon to the department on or before the date fixed for the filing of  
4 the return.

5 (2) The department may by rule require that certain taxpayers file,  
6 on forms prescribed by the department, informational returns for any  
7 period.

8 (3) If an adjustment to a taxpayer's federal return is made by the  
9 taxpayer or the internal revenue service, and the adjustment affects  
10 tax liability under this title, the taxpayer shall, within ninety days  
11 of the final determination of the adjustment by the internal revenue  
12 service or within thirty days of the filing of a federal return  
13 adjusted by the taxpayer, file with the department on forms prescribed  
14 by the department, a corrected return reflecting the adjustments as  
15 finally determined. The taxpayer shall pay any additional tax due  
16 resulting from the finally determined internal revenue service  
17 adjustment or a taxpayer adjustment without notice and assessment. The  
18 period of limitation for the collection of the additional tax,  
19 interest, and penalty due as a result of an adjustment by the taxpayer  
20 or a finally determined internal revenue service adjustment shall begin  
21 at the later of thirty days following the final determination of the  
22 adjustment or the date of the filing of the corrected return.

23 (4) Every small business corporation within this state, the  
24 stockholders of which have been elected, or elect, to report their  
25 share of the corporation's taxable income upon their individual federal  
26 income tax returns, pursuant to federal tax laws and regulations, shall  
27 annually on or before May 1st, file a list of the names and addresses  
28 of all stockholders during the preceding year together with the amount  
29 of dividends paid to each with the department. Provided, however, the  
30 information report shall not be filed in any year that no such  
31 dividends are paid and provided further that stockholders not legally  
32 residents in this state need not be listed.

33 NEW SECTION. **Sec. 111.** DUE DATE FOR FILING A RETURN--EXTENSIONS--  
34 INTEREST AND PENALTIES. The due date of a return required to be filed  
35 with the department shall be the due date of the federal income tax  
36 return or informational return for federal income tax purposes. The  
37 department has the authority to grant extensions of times by which

1 returns required to be filed by this title may be submitted. The  
2 department also has the authority to grant extensions of time to pay  
3 tax with regard to taxes imposed by this title. Interest at the rate  
4 as specified in RCW 82.32.050 shall accrue during any extension period  
5 and the interest and penalty provisions of chapter 82.32 RCW shall  
6 apply to late payments and deficiencies. Notwithstanding the  
7 limitation of RCW 82.32.090, in the case of the late filing of an  
8 informational return, there shall be imposed a penalty the amount of  
9 which shall be established by the department by rule. The penalty  
10 shall not exceed fifty dollars per month for a maximum of ten months.  
11 RCW 82.32.105 shall apply to this section.

12 NEW SECTION. **Sec. 112.** JOINT RETURN. (1) If the federal income  
13 tax liabilities of both spouses are determined on a joint federal  
14 return for the taxable year, they shall file a joint return under this  
15 title.

16 (2) If neither spouse is required to file a federal income tax  
17 return for the taxable year, a joint return shall be filed under this  
18 title under the same conditions under which a joint return may be filed  
19 for purposes of the federal income tax.

20 (3) If the federal income tax liability of either spouse is  
21 determined on a separate federal return for the taxable year, they  
22 shall file separate returns under this title.

23 (4) In any case in which a joint return is filed under this  
24 section, the liability of the husband and wife is joint and several,  
25 unless the spouse is relieved of liability under section 6013 of the  
26 internal revenue code.

27 NEW SECTION. **Sec. 113.** RECORDS--RETURNS. (1) Every taxpayer and  
28 every person required to deduct and withhold the tax imposed under this  
29 title shall keep records, render statements, make returns, file  
30 reports, and perform other acts as the department requires by rule.  
31 Each return shall be made under penalty of perjury and on forms  
32 prescribed by the department. The department may require other  
33 statements and reports be made under penalty of perjury and on forms  
34 prescribed by the department. The department may require any taxpayer  
35 and any person required to deduct and withhold the tax imposed under

1 this title to furnish to the department a correct copy of any return or  
2 document that the taxpayer has filed with the internal revenue service  
3 or received from the internal revenue service.

4 (2) All books and records and other papers and documents required  
5 to be kept under this title are subject to inspection by the department  
6 at all times during business hours of the day.

7 NEW SECTION. **Sec. 114.** PROVISIONS OF INTERNAL REVENUE CODE  
8 CONTROL. (1) To the extent possible without being inconsistent with  
9 this title, all of the provisions of the internal revenue code apply to  
10 the taxes imposed under this title.

11 (2) The department by rule may provide modifications and exceptions  
12 to the provisions in subsection (1) of this section, if reasonably  
13 necessary to facilitate the prompt, efficient, and equitable collection  
14 of tax under this title.

15 NEW SECTION. **Sec. 115.** ADMINISTRATIVE PROVISIONS. Chapter 82.32  
16 RCW applies to the taxes imposed in this chapter.

17 NEW SECTION. **Sec. 116.** RULES. The department may adopt rules  
18 under chapter 34.05 RCW for the administration and enforcement of this  
19 title. The rules, to the extent possible without being inconsistent  
20 with this title, shall follow the internal revenue code and the  
21 regulations and rulings of the United States department of the treasury  
22 with respect to the federal income tax. The department may adopt as a  
23 part of these rules any portions of the internal revenue code and  
24 treasury department regulations and rulings, in whole or in part.

25 NEW SECTION. **Sec. 117.** CRIMES. (1) Any person who knowingly  
26 attempts to evade the tax imposed under this title or payment thereof  
27 is guilty of a class C felony as provided in chapter 9A.20 RCW.

28 (2) Any person required to collect tax imposed under this title who  
29 knowingly fails to collect, truthfully account for, or pay over the tax  
30 is guilty of a class C felony as provided in chapter 9A.20 RCW.

31 (3) Any person who knowingly fails to pay tax, pay estimated tax,  
32 make returns, keep records, or supply information, as required under  
33 this title, is guilty of a gross misdemeanor as provided in chapter  
34 9A.20 RCW.

1       **Sec. 118.** RCW 82.03.130 and 1998 c 54 s 1 are each amended to read  
2 as follows:

3       (1) The board shall have jurisdiction to decide the following types  
4 of appeals:

5       (a) Appeals taken pursuant to RCW 82.03.190.

6       (b) Appeals from a county board of equalization pursuant to RCW  
7 84.08.130.

8       (c) Appeals by an assessor or landowner from an order of the  
9 director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if  
10 filed with the board of tax appeals within thirty days after the  
11 mailing of the order, the right to such an appeal being hereby  
12 established.

13       (d) Appeals by an assessor or owner of an intercounty public  
14 utility or private car company from determinations by the director of  
15 revenue of equalized assessed valuation of property and the  
16 apportionment thereof to a county made pursuant to chapter 84.12 and  
17 84.16 RCW, if filed with the board of tax appeals within thirty days  
18 after mailing of the determination, the right to such appeal being  
19 hereby established.

20       (e) Appeals by an assessor, landowner, or owner of an intercounty  
21 public utility or private car company from a determination of any  
22 county indicated ratio for such county compiled by the department of  
23 revenue pursuant to RCW 84.48.075: PROVIDED, That

24       (i) Said appeal be filed after review of the ratio under RCW  
25 84.48.075(3) and not later than fifteen days after the mailing of the  
26 certification; and

27       (ii) The hearing before the board shall be expeditiously held in  
28 accordance with rules prescribed by the board and shall take precedence  
29 over all matters of the same character.

30       (f) Appeals from the decisions of sale price of second class  
31 shorelands on navigable lakes by the department of natural resources  
32 pursuant to RCW 79.94.210.

33       (g) Appeals from urban redevelopment property tax apportionment  
34 district proposals established by governmental ordinances pursuant to  
35 RCW 39.88.060.

36       (h) Appeals from interest rates as determined by the department of  
37 revenue for use in valuing farmland under current use assessment  
38 pursuant to RCW 84.34.065.

1 (i) Appeals from revisions to stumpage value tables used to  
2 determine value by the department of revenue pursuant to RCW 84.33.091.

3 (j) Appeals from denial of tax exemption application by the  
4 department of revenue pursuant to RCW 84.36.850.

5 (k) Appeals pursuant to RCW 84.40.038(3).

6 (l) Appeals relating to income tax deficiencies and refunds  
7 including penalties and interest under Title 82A RCW.

8 (2) Except as otherwise specifically provided by law hereafter, the  
9 provisions of RCW 1.12.070 shall apply to all notices of appeal filed  
10 with the board of tax appeals.

11 **Sec. 119.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to  
12 read as follows:

13 In all appeals over which the board has jurisdiction under RCW  
14 82.03.130, a party taking an appeal may elect either a formal or an  
15 informal hearing, such election to be made according to rules of  
16 practice and procedure to be promulgated by the board: PROVIDED, That  
17 nothing shall prevent the assessor or taxpayer, as a party to an appeal  
18 pursuant to RCW 84.08.130, within twenty days from the date of the  
19 receipt of the notice of appeal, from filing with the clerk of the  
20 board notice of intention that the hearing be a formal one: PROVIDED,  
21 HOWEVER, That nothing herein shall be construed to modify the  
22 provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal  
23 under RCW 82.03.130(1) (e) or (l), the director of revenue may, within  
24 ten days from the date of its receipt of the notice of appeal, file  
25 with the clerk of the board notice of its (~~intention that the hearing~~  
26 ~~be held pursuant to chapter 34.05 RCW~~) election of a formal hearing.  
27 In the event that appeals are taken from the same decision, order, or  
28 determination, as the case may be, by different parties and only one of  
29 such parties elects a formal hearing, a formal hearing shall be  
30 granted.

31 NEW SECTION. **Sec. 120.** CAPTIONS. Captions as used in this act  
32 constitute no part of the law.

33 NEW SECTION. **Sec. 121.** SEVERABILITY CLAUSE. If any provision of  
34 this act or its application to any person or circumstance is held

1 invalid, the remainder of the act or the application of the provision  
2 to other persons or circumstances is not affected.

3 NEW SECTION. **Sec. 122.** This act takes effect January 1, 2006.

4 NEW SECTION. **Sec. 123.** CODIFICATION. Sections 101 through 117  
5 and 120 through 122 of this act constitute a new title, to be codified  
6 as Title 82A RCW.

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