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**SUBSTITUTE SENATE BILL 6269**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Angel, Hobbs, Fain, Tom, and Benton)

READ FIRST TIME 02/06/14.

1       AN ACT Relating to the first mortgage interest business and  
2 occupation tax deduction; amending RCW 82.04.4292; and creating a new  
3 section.

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

5       NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6       (a) The implementation of tax policy is often complicated by  
7 mandatory accounting rules, such as generally accepted accounting  
8 principles (GAAP), and that such accounting rules should not dictate  
9 the application of tax policy adopted by the legislature.

10       (b) The department of revenue is often unable to fully implement  
11 the will of the legislature due to unanticipated accounting rules or  
12 changes to established rules.

13       (c) The deduction for income on loans secured by a first mortgage  
14 is intended to apply to all amounts charged to borrowers for the use of  
15 money, and not intended to apply to fees for incidental services, such  
16 as appraisals, when charged to the borrower.

17       (d) The accounting requirement that salary and other direct  
18 expenses be deducted from this income before amortization over the life

1 of the loan does not change the character of the income or the  
2 applicability of the deduction for purposes of excise tax.

3 (2) The legislature intends that the department of revenue should  
4 administer the deduction for income on loans secured by a first  
5 mortgage fully and according to the original intent of the legislature,  
6 without regard for accounting peculiarities required by GAAP.

7 (3) It is the intent of the legislature that this tax preference is  
8 being amended to correct a technical inconsistency, and these  
9 corrections are not intended to create a new or expanded tax preference  
10 under RCW 82.32.805.

11 **Sec. 2.** RCW 82.04.4292 and 2012 2nd sp.s. c 6 s 102 are each  
12 amended to read as follows:

13 (1) In computing tax there may be deducted from the measure of tax  
14 by those engaged in banking, loan, security or other financial  
15 businesses, interest received on investments or loans primarily secured  
16 by first mortgages or trust deeds on nontransient residential  
17 properties.

18 (2) Interest deductible under this section includes (~~the portion~~  
19 ~~of fees charged to borrowers, including~~) points and loan origination  
20 fees(~~, that is recognized over the life of the loan as an adjustment~~  
21 ~~to yield in the taxpayer's books and records according to generally~~  
22 ~~accepted accounting principles~~)).

23 (3) Subsections (1) and (2) of this section notwithstanding, the  
24 following is a nonexclusive list of (~~items~~) fees that are not  
25 deductible under this section:

26 (a) Fees for specific services such as: Document preparation fees;  
27 finder fees; brokerage fees; title examination fees; fees for credit  
28 checks; notary fees; loan application fees; interest lock-in fees if  
29 the loan is not made; servicing fees; and similar fees or amounts;

30 (b) Fees received in consideration for an agreement to make funds  
31 available for a specific period of time at specified terms, commonly  
32 referred to as commitment fees;

33 (c) Any other fees, or portion of a fee, other than points and loan  
34 origination fees, that is not recognized over the life of the loan as  
35 an adjustment to yield in the taxpayer's books and records according to  
36 generally accepted accounting principles;

1 (d) Gains on the sale of valuable rights such as service release  
2 premiums, which are amounts received when servicing rights are sold;  
3 and

4 (e) Gains on the sale of loans, except deferred loan origination  
5 fees and points deductible under subsection (2) of this section, are  
6 not to be considered part of the proceeds of sale of the loan.

7 (4) Notwithstanding subsection (3) of this section, in computing  
8 tax there may be deducted from the measure of tax by those engaged in  
9 banking, loan, security, or other financial businesses, amounts  
10 received for servicing loans primarily secured by first mortgages or  
11 trust deeds on nontransient residential properties, including such  
12 loans that secure mortgage-backed or mortgage-related securities, but  
13 only if:

14 (a)(i) The loans were originated by the person claiming a deduction  
15 under this subsection (4) and that person either sold the loans on the  
16 secondary market or securitized the loans and sold the securities on  
17 the secondary market; or

18 (ii)(A) The person claiming a deduction under this subsection (4)  
19 acquired the loans from the person that originated the loans through a  
20 merger or acquisition of substantially all of the assets of the person  
21 who originated the loans, or the person claiming a deduction under this  
22 subsection (4) is affiliated with the person that originated the loans.  
23 For purposes of this subsection, "affiliated" means under common  
24 control. "Control" means the possession, directly or indirectly, of  
25 more than fifty percent of the power to direct or cause the direction  
26 of the management and policies of a person, whether through the  
27 ownership of voting shares, by contract, or otherwise; and

28 (B) Either the person who originated the loans or the person  
29 claiming a deduction under this subsection (4) sold the loans on the  
30 secondary market or securitized the loans and sold the securities on  
31 the secondary market; and

32 (b) The amounts received for servicing the loans are determined by  
33 a percentage of the interest paid by the borrower and are only received  
34 if the borrower makes interest payments.

35 (5) The deductions provided in this section do not apply to persons  
36 subject to tax under RCW 82.04.29005.

37 (6) By June 30, 2015, the joint legislative audit and review  
38 committee must review the deductions provided in this section in

1 accordance with RCW 43.136.055 and make a recommendation as to whether  
2 the deductions should be continued without modification, modified, or  
3 terminated immediately.

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