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SENATE BILL 5475

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State of Washington

64th Legislature

2015 Regular Session

By Senators Benton, Hobbs, Litzow, Angel, and Fain

Read first time 01/22/15. Referred to Committee on Financial Institutions & Insurance.

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  
15 of money, and not intended to apply to fees for incidental services,  
16 such 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  
19 life of the loan does not change the character of the income or the  
20 applicability of the deduction for purposes of excise tax.

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

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

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

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

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

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

25 (a) Fees for specific services such as: Document preparation  
26 fees; finder fees; brokerage fees; title examination fees; fees for  
27 credit checks; notary fees; loan application fees; interest lock-in  
28 fees if the loan is not made; servicing fees; and similar fees or  
29 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  
34 loan origination fees, that is not recognized over the life of the  
35 loan as an adjustment to yield in the taxpayer's books and records  
36 according to generally accepted accounting principles;

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

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

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

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

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

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

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

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

35 (6) By June 30, 2015, the joint legislative audit and review  
36 committee must review the deductions provided in this section in  
37 accordance with RCW 43.136.055 and make a recommendation as to

1 whether the deductions should be continued without modification,  
2 modified, or terminated immediately.

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