S-1569.1

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**SENATE BILL 5766**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Liias, Braun, Chapman, and Gildon

AN ACT Relating to clarifying the business and occupation tax treatment of the investment income of passive investment vehicles managed by a person subject to business and occupation tax under RCW 82.04.290(1); amending RCW 82.04.4281; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature finds that the application of the business and occupation tax deduction provided in RCW 82.04.4281(1)(a) for investment income has once again become the subject of uncertainty as a result of the decision of the state supreme court in *Antio, LLC v. Department of Revenue*, which could lead to a restrictive, narrow interpretation of the deductibility of investment income for business and occupation tax purposes. The legislature intends, by adopting this revision to RCW 82.04.4281, to clarify and preserve the certainty and stability for taxpayers and the state that generally ensued following the adoption of chapter 250, Laws of 2002 in response to the decision of the state supreme court in *Simpson Investment Co. v. Department of Revenue*. The legislature intends, by adopting this clarifying revision of RCW 82.04.4281, to avoid uncertainty while continuing to treat similarly situated taxpayers fairly.

**Sec.**  RCW 82.04.4281 and 2007 c 54 s 9 are each amended to read as follows:

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

(a) Amounts derived from investments;

(b) Amounts derived as dividends or distributions from the capital account by a parent from its subsidiary entities; ((~~and~~))

(c) Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually; and

(d) Amounts derived from investments made pursuant to an investment management or advisory agreement with a person subject to tax under RCW 82.04.290(1). Nothing in this section affects the business and occupation tax obligations of any person subject to tax under RCW 82.04.290(1).

(2) The following are not deductible under subsection (1)(a) of this section:

(a) Amounts received from loans, except as provided in subsection (1)(c) of this section, or the extension of credit to another, revolving credit arrangements, installment sales, the acceptance of payment over time for goods or services, or any of the foregoing that have been transferred by the originator of the same to an affiliate of the transferor; or

(b) Amounts received by a banking, lending, or security business.

(3) The definitions in this subsection apply only to this section.

(a) "Banking business" means a person engaging in business as a national or state-chartered bank, a mutual savings bank, a savings and loan association, a trust company, an alien bank, a foreign bank, a credit union, a stock savings bank, or a similar entity that is chartered under Title 30, 31, 32, or 33 RCW, or organized under Title 12 U.S.C.

(b) "Investment" has its ordinary meaning and includes without limitation securities; fixed income instruments including, but not limited to, bonds, notes, debentures, commercial paper, savings deposits, bank deposits, time certificates, federal funds, and mortgage loans; derivative instruments including, but not limited to, options contracts, futures contracts, forward contracts, notional principal contracts, repurchase agreements, and swaps; and commodities.

(c) "Lending business" means a person engaged in the business of making secured or unsecured loans of money, or extending credit, and (i) more than one-half of the person's gross income is earned from such activities and (ii) more than one-half of the person's total expenditures are incurred in support of such activities.

((~~(c)~~)) (d) The terms "loan" and "extension of credit" do not include ownership of or trading in publicly traded debt instruments, or substantially equivalent instruments offered in a private placement.

((~~(d)~~)) (e) "Security business" means a person, other than an issuer, who is engaged in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as those terms are defined in the securities act of Washington, chapter 21.20 RCW, or the federal securities act of 1933. "Security business" does not include any company excluded from the definition of broker or dealer under the federal investment company act of 1940 or any entity that is not an investment company by reason of sections 3(c)(1) and 3(c)(3) through 3(c)(14) thereof.

NEW SECTION. **Sec.**  This act applies retroactively. The legislature does not intend for section 2 of this act to retroactively create a right of refund for taxes paid on amounts derived from investments before the effective date of this section.

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