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HOUSE BILL 2197

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representative Brekke.

Read first time April 5, 1991. Referred to Committee on Revenue.

1            AN ACT Relating to the taxation of the privilege of receiving  
2 income from intangible personal property; amending RCW 82.32.070;  
3 adding a new chapter to Title 82 RCW; creating a new section; providing  
4 an effective date; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    LEGISLATIVE FINDINGS AND DECLARATION OF  
7 PURPOSE. The legislature finds that intangible wealth, such as stocks  
8 and bonds, represents approximately one-half of all property wealth  
9 with a taxable situs in this state. The legislature further finds that  
10 the present system of taxing all tangible property with limited  
11 exceptions and of exempting all intangible property from taxation is  
12 regressive, in that such a system inures to the benefit of the more  
13 affluent residents and businesses in Washington who have sufficient  
14 wealth to make substantial investments in or own substantial intangible  
15 property.

1       The legislature further finds that while the transfer, sale, or use  
2 of tangible personal property is subject to various excise taxes in the  
3 state of Washington, as a general rule, no comparable taxes are imposed  
4 on the transfer, sale, or use of intangible property.

5       The legislature further finds that persons of limited wealth with  
6 limited income may own intangible property and for this reason  
7 relatively small holdings of intangible property should be exempt from  
8 any tax on the ownership of intangible property.

9       The legislature declares the purpose of this chapter is to impose  
10 a tax on the privilege of ownership of intangible personal property,  
11 subject to the exemptions contained in this chapter, in order to  
12 provide a more equitable and fair system of taxation of both tangible  
13 and intangible wealth in this state.

14       NEW SECTION.   **Sec. 2.**   DEFINITIONS.   When used in this chapter:

15       (1) "Department" means the department of revenue.

16       (2) "Fiscal year" means an accounting period of twelve months  
17 ending on the last day of any month other than December.

18       (3) "Income" means (a) interest received upon intangible personal  
19 property; (b) dividends and other distributions, whether in the form of  
20 cash or property, to the extent that they represent the yield of  
21 intangible personal property; and (c) all other earnings or yield,  
22 including realized net capital gains, of intangible personal property  
23 regardless of the name by which designated:   PROVIDED, That for the  
24 purpose of computing the tax imposed under this chapter, the gross  
25 income, including taxes, charges, and other deductions which may be  
26 made therefrom, shall be the basis upon which the tax shall be  
27 measured.

28       (4) "Intangible personal property" or "intangible property" means  
29 property exempted from ad valorem taxation under RCW 84.36.070.

1 (5) "Nonresident" means a person who is not a resident.

2 (6) "Owner" means any person who: (a) Has both the entire legal  
3 and equitable interest in intangible personal property or both a legal  
4 and equitable estate therein which entitles him or her to the present  
5 enjoyment thereof; (b) holds intangible personal property as an  
6 administrator, executor, personal representative, receiver, trustee in  
7 bankruptcy, or assignee for the benefit of creditors; or (c) is the  
8 beneficiary of an inter vivos or testamentary trust to the extent that  
9 the trust embraces intangible personal property. If there is more than  
10 one beneficiary, the person who is entitled to the present enjoyment of  
11 the trust property is the "owner." If more than one beneficiary is  
12 entitled to the present enjoyment of the trust property, all the  
13 beneficiaries so entitled are the "owners" according to their  
14 respective interests. If there is more than one beneficiary, only some  
15 of which are entitled to the present enjoyment of the trust property,  
16 those beneficiaries who are so entitled are the "owners." If a trustee  
17 of a trust may accumulate the income thereof, the trustee is the  
18 "owner" to the extent that the income is so accumulated. A beneficiary  
19 domiciled in this state shall be taxable irrespective of the state or  
20 other jurisdiction of the creation or administration of the trust.

21 (7) "Partnership" means a syndicate, group, pool, joint venture, or  
22 other unincorporated organization, through or by means of which any  
23 business, financial operation, or venture is carried on, and which is  
24 not a trust, an estate, or a corporation; and the term "partner" means  
25 a member in the syndicate, group, pool, joint venture, or organization.

26 (8) "Resident" or "domicile" means:

27 (a) An individual who is domiciled in this state unless the person  
28 maintains no permanent place of abode in this state and does maintain  
29 a permanent place of abode elsewhere and spends in the aggregate not  
30 more than thirty days of the taxable year in this state; or who is not

1 domiciled in this state but maintains a permanent place of abode in  
2 this state and spends in the aggregate more than one hundred eighty-  
3 three days of the taxable year in this state;

4 (b) The estate of a decedent who at the person's death was  
5 domiciled in this state;

6 (c) A trust created by a will of a decedent who at the person's  
7 death was domiciled in this state; and

8 (d) An irrevocable trust, the grantor of which was domiciled in  
9 this state at the time the trust became irrevocable. For purpose of  
10 this subparagraph, a trust shall be considered irrevocable to the  
11 extent that the grantor is not treated as the owner thereof under  
12 sections 671 through 678 of the federal Internal Revenue Code.

13 (9) The "situs" of intangible personal property is the domicile of  
14 the owner thereof, except that any intangible personal property, not  
15 otherwise exempt under the laws of this state, placed in the hands of  
16 a manager or agent in Washington to the extent that the intangible  
17 personal property is invested in a course of repeated transactions in  
18 obligations of persons residing in Washington or secured by property  
19 located in Washington shall have a situs where the manager or agent  
20 resides within this state.

21 (10) "State" when applied to a jurisdiction other than this state  
22 means any state of the United States, the District of Columbia, the  
23 Commonwealth of Puerto Rico, and any Territory or Possession of the  
24 United States.

25 (11) "Tax" means all taxes, interest, or penalties levied under  
26 this chapter.

27 (12) "Tax year" or "taxable year" means the calendar year, or the  
28 taxpayer's fiscal year when permission is obtained from the department  
29 to use the taxpayer's fiscal year as the tax period in lieu thereof.

1 (13) "Taxpayer" means any person subject to the tax imposed by this  
2 chapter.

3 NEW SECTION. **Sec. 3.** IMPOSITION PROVISIONS--RATES. (1) For each  
4 tax year ending after the effective date of this section, there is  
5 imposed upon each resident or nonresident owner of intangible personal  
6 property having a situs within this state an annual tax on the  
7 privilege of ownership of each item of such property. Except as  
8 otherwise provided, the tax on intangible personal property is one  
9 percent of the income derived therefrom.

10 (2) Where, due to death or change of domicile during the tax year,  
11 the intangible personal property owned by a taxpayer is subject to the  
12 tax imposed in this section for only a part of a tax year, the tax  
13 shall be computed in the same manner as though the property had been  
14 subject to tax for the entire tax year and shall then be reduced  
15 proportionately: PROVIDED, That where an executor, administrator, or  
16 personal representative appointed and qualified in Washington succeeds  
17 to the ownership of intangible personal property previously subject to  
18 tax under this chapter to the decedent for whose estate the executor or  
19 administrator is so appointed and qualified, for the purpose of the  
20 computation of the tax the combined ownership of the decedent and the  
21 executor or administrator during the tax year shall be regarded as the  
22 continuous ownership of a single owner, and the executor,  
23 administrator, or personal representative shall be considered to have  
24 been the owner during the entire period thereof.

25 NEW SECTION. **Sec. 4.** EXEMPTIONS. The following are exempt from  
26 the tax imposed by this chapter:

1 (1) Credits secured by property actually taxed in this state, as  
2 exempted from ad valorem taxation under Article VII, section 1 of the  
3 state Constitution.

4 (2) Obligations of the United States which this state is prohibited  
5 by federal law from subjecting to the tax imposed under this chapter.

6 (3) Obligations of the state of Washington or political  
7 subdivisions of the state of Washington.

8 (4) Intangible personal property owned by partners in any firm or  
9 copartnership to the extent to which the partnership has paid the tax  
10 as provided in this chapter.

11 (5) Pensions, including so-called "annuities," payable under old  
12 age, retirement, or pension provisions of a public authority or private  
13 employer.

14 (6) Intangible personal property owned by persons who received less  
15 than fifty thousand dollars income during the tax year from all forms  
16 of intangible personal property.

17 (7) Intangible personal property owned by entities other than  
18 natural persons. However, beneficial or equitable interests of natural  
19 persons in partnerships, estates, or trusts are not exempt under this  
20 subsection.

21 NEW SECTION. **Sec. 5.** TAX RETURNS FOR FRACTIONAL YEAR. If the  
22 first taxable year of any taxpayer with respect to which a tax is  
23 imposed by this chapter ends before December 31st of the calendar year  
24 in which this chapter becomes effective, referred to in this section as  
25 a fractional taxable year, the income derived from intangible property  
26 for the fractional taxable year shall be the taxpayer's income derived  
27 from intangible property for the entire taxable year, adjusted by one  
28 of the following methods, at the taxpayer's election:

1 (1) The income derived from intangible property for the entire year  
2 shall be multiplied by a fraction. The numerator of the fraction is  
3 the number of days in the fractional taxable year. The denominator of  
4 the fraction is the number of days in the entire taxable year.

5 (2) The income derived from intangible property for the entire year  
6 shall be adjusted, in accordance with rules of the department, so as to  
7 include only income that can be clearly determined from the permanent  
8 records of the taxpayer to be attributable to the fractional taxable  
9 year.

10 NEW SECTION. **Sec. 6.** ADMINISTRATION. (1) The department shall  
11 administer this chapter.

12 (2) All of chapter 82.32 RCW applies to the administration of the  
13 tax imposed under this chapter, except RCW 82.32.020, 82.32.030,  
14 82.32.040, 82.32.045, 82.32.140, and 82.32.270.

15 **Sec. 7.** RCW 82.32.070 and 1983 c 3 s 221 are each amended to read  
16 as follows:

17 Every person liable for any fee or tax (~~((imposed by chapters 82.04~~  
18 ~~through 82.27 RCW))~~ to which this section applies shall keep and  
19 preserve, for a period of five years, suitable records as may be  
20 necessary to determine the amount of any tax for which he or she may be  
21 liable, which records shall include copies of all federal income tax  
22 and state tax returns and reports made by him or her. All his or her  
23 books, records, and invoices shall be open for examination at any time  
24 by the department of revenue. In the case of an out-of-state person or  
25 concern which does not keep the necessary books and records within this  
26 state, it shall be sufficient if it produces within the state such  
27 books and records as shall be required by the department of revenue, or  
28 permits the examination by an agent authorized or designated by the

1 department of revenue at the place where such books and records are  
2 kept. Any person who fails to comply with the requirements of this  
3 section shall be forever barred from questioning, in any court action  
4 or proceedings, the correctness of any assessment of taxes made by the  
5 department of revenue based upon any period for which such books,  
6 records, and invoices have not been so kept and preserved.

7 Any person claiming a credit against the tax imposed by chapter  
8 82.04 RCW by reason of the provisions of RCW 82.04.435 shall keep and  
9 preserve until the claim has been verified or allowed by the department  
10 of revenue sufficient books, records and invoices to prove the right to  
11 and amount of such claim for credit, and no such claim shall be allowed  
12 by the department of revenue unless such books, records and invoices  
13 have been kept and preserved.

14 NEW SECTION. **Sec. 8.** ANNUAL RETURN--PAYMENT OF TAX--EXTENSION OF  
15 TIME. On or before the last day of the fourth month following the end  
16 of the tax year each person owning intangible personal property subject  
17 to tax under this chapter shall make a return in form and content as  
18 prescribed by the department, showing the income derived from  
19 intangible property subject to taxation under this chapter for the  
20 preceding tax year. The taxpayer shall transmit the return to the  
21 department with the taxpayer's remittance covering the tax payable for  
22 the preceding tax year. The department may require any taxpayer to  
23 furnish to the department a correct copy of any return or document  
24 which the taxpayer has filed with the federal internal revenue service  
25 or received from the federal internal revenue service.

26 NEW SECTION. **Sec. 9.** TRUSTEES OR AGENTS--INFORMATION RETURN.  
27 Every person domiciled in or carrying on or transacting business in  
28 Washington, as trustee or agent for another, having in his or her

1 custody any taxable intangible personal property of another for  
2 investment or collection, shall file an information return in such form  
3 as may be prescribed by the department on or before the last day of the  
4 fourth month following the end of the tax year.

5 NEW SECTION. **Sec. 10.** RCW 84.36.070 does not apply to the tax  
6 imposed in this chapter.

7 NEW SECTION. **Sec. 11.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 12.** Captions as used in this act constitute  
12 no part of the law.

13 NEW SECTION. **Sec. 13.** Sections 1 through 6 and 8 through 10 of  
14 this act shall constitute a new chapter in Title 82 RCW.

15 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and shall take  
18 effect July 1, 1991.