
HOUSE BILL 2521

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Kirby, Orcutt, Sullivan, and Haigh

Read first time 01/20/14. Referred to Committee on Finance.

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

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

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

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

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

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

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

34 (d) Gains on the sale of valuable rights such as service release
35 premiums, which are amounts received when servicing rights are sold;
36 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 deduction
12 under this subsection (4) and that person either sold the loans on the
13 secondary market or securitized the loans and sold the securities on
14 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 a
17 merger or acquisition of substantially all of the assets of the person
18 who originated the loans, or the person claiming a deduction under this
19 subsection (4) is affiliated with the person that originated the loans.
20 For purposes of this subsection, "affiliated" means under common
21 control. "Control" means the possession, directly or indirectly, of
22 more than fifty percent of the power to direct or cause the direction
23 of the management and policies of a person, whether through the
24 ownership of voting shares, by contract, or otherwise; and

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

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

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

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

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

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