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HOUSE BILL 1853

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Morris, Cairnes, Pennington, Miloscia, Roach, Benson, Van Luven, Veloria, Carrell, Kessler and Linville

Read first time 02/06/2001. Referred to Committee on Finance.

1 AN ACT Relating to clarifying the decision of the Washington state  
2 supreme court in *Simpson Investment Co. v. Dept. of Revenue*; amending  
3 RCW 82.04.4281; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the recent state  
6 supreme court decision in *Simpson Investment Co. v. Dept. of Revenue*  
7 could lead to an unusually restrictive, narrow interpretation of the  
8 deductibility of investment income for business and occupation tax  
9 purposes. If allowed to stand, this interpretation could be extremely  
10 detrimental.

11 Through its ruling, the court called into question the application  
12 of the state's business and occupation tax to investment income derived  
13 by nonfinancial businesses such as family investment vehicles, estate  
14 planning entities, personal holding companies, mutual funds, venture  
15 capital companies, and other similar entities that have traditionally  
16 deducted their investment income pursuant to RCW 82.04.4281. The  
17 court's decision could also be read to expand the business and  
18 occupation tax to individual citizens' investment earnings even though  
19 they have never been considered to be engaging in business.

1 The court's decision has the potential of discouraging capital  
2 investment in this state's businesses and inhibiting individual  
3 citizens, their families, and noncommercial investors from preserving  
4 or increasing their financial security. The legislature recognizes  
5 that capital and investment income is easily moved out of state.  
6 Interpretations that would apply the business and occupation tax to  
7 certain investment income will definitely cause a reduction of overall  
8 capital available to businesses and could cause some to take their  
9 operations and family-wage jobs out of this state.

10 The legislature finds that a narrow interpretation of RCW  
11 82.04.4281 is clearly not in the best interest of this state or its  
12 citizens. Therefore, it is the intent of this act to clarify the  
13 deductibility of investment income and to specifically identify persons  
14 who may not take the deduction provided in RCW 82.04.4281.

15 **Sec. 2.** RCW 82.04.4281 and 1980 c 37 s 2 are each amended to read  
16 as follows:

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

18 (a) Amounts derived ((by persons, other than those engaging in  
19 banking, loan, security, or other financial businesses,)) from  
20 investments or the use of money ((as such, and also)) from investments;

21 (b) Amounts derived as dividends by a parent from its subsidiary  
22 corporations.

23 (2) The following persons are not entitled to the deduction  
24 provided in subsection (1)(a) of this section:

25 (a) Persons holding themselves out to the public and engaging in  
26 business as a banking, loan, or other financial institution chartered  
27 under:

28 (i) Title 30, 31, 32, or 33 RCW;

29 (ii) The national bank act, as amended;

30 (iii) The homeowners loan act, as amended; or

31 (iv) The federal credit union act, as amended;

32 (b) A holding company of any person described in (a) of this  
33 subsection that is subject to:

34 (i) The bank holding company act, as amended; or

35 (ii) The homeowners loan act, as amended;

36 (c) Persons holding themselves out to the public and engaging in  
37 business as a subsidiary or affiliate owned or controlled by one or  
38 more persons described in (a) of this subsection;

1 (d) Persons holding themselves out to the public and engaging in  
2 business as a lender approved by the United States secretary of housing  
3 and urban development for participation in any mortgage insurance  
4 program under the national housing act, as amended;

5 (e) Persons holding themselves out to the public and engaging in  
6 business as an underwriter and distributor of securities issued by  
7 other persons, a seller of securities to the public, a broker of  
8 securities, or any combination of these activities, whose gross income  
9 is normally derived principally from these activities. However, this  
10 subsection shall not be construed to include the entity which issues  
11 any of the securities that are underwritten, distributed, sold, or  
12 brokered by any of the persons identified in this subsection. In  
13 addition, this subsection shall not be construed to include any  
14 collective investment entity such as a mutual fund, venture capital  
15 fund, hedge fund, or deferred compensation trust or account;

16 (f) Persons engaging in business as a provider of revolving credit  
17 accounts, but only to the extent of the interest income derived from  
18 the provision of the revolving credit accounts;

19 (g) Persons engaging in business as a provider of installment sales  
20 contracts, but only to the extent of the interest income derived from  
21 the provision of the installment sales contracts. However, a person  
22 providing installment sales contracts shall not be deemed to be  
23 engaging in business for the purposes of this subsection unless they  
24 hold three or more installment sales contracts;

25 (h) Persons whose primary business is holding themselves out to the  
26 public and engaging in business in substantially identical activities  
27 as any person listed in (a) through (g) of this subsection. However,  
28 this subsection shall not be construed to include any person who  
29 qualifies as a personal holding company as defined in section 542 of  
30 the internal revenue code, or any person who would meet the definition  
31 of a personal holding company if that person was a corporation.

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