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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

AN ACT Relating to the first mortgage interest business and occupation tax deduction; amending RCW 82.04.4292; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) The implementation of tax policy is often complicated by mandatory accounting rules, such as generally accepted accounting principles (GAAP), and that such accounting rules should not dictate the application of tax policy adopted by the legislature.

(b) The department of revenue is often unable to fully implement the will of the legislature due to unanticipated accounting rules or changes to established rules.

(c) The deduction for income on loans secured by a first mortgage is intended to apply to all amounts charged to borrowers for the use of money, and not intended to apply to fees for incidental services, such as appraisals, when charged to the borrower.

(d) The accounting requirement that salary and other direct expenses be deducted from this income before amortization over the life of the loan does not change the character of the income or the applicability of the deduction for purposes of excise tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) By June 30, 2015, the joint legislative audit and review committee must review the deductions provided in this section in accordance with RCW 43.136.055 and make a recommendation as to whether the deductions should be continued without modification, modified, or terminated immediately.

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