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**SUBSTITUTE SENATE BILL 5493**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Housing (originally sponsored by Senators Kuderer, Wellman, Hasegawa, Lovelett, Lovick, Saldaña, and C. Wilson)

AN ACT Relating to limiting a business and occupation tax deduction for financial institutions to fund affordable housing; amending RCW 82.04.4292; adding a new section to chapter 82.32 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  It is the intent of this act to increase funding for affordable housing by limiting the business and occupation tax deduction under RCW 82.04.4292 to interest received by all financial institutions on investments or qualified loans primarily secured by nontransient residential properties, as well as related service fees, previously eligible for a business and occupation tax deduction under RCW 82.04.4292.

**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 qualified 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 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, 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 qualified 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~~)) 50 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.

(7) Any investments or loans serving as the basis for a deduction under this section must be reported to the joint legislative audit and review committee by April 15, 2024, and annually thereafter.

(8) For purposes of this section:

(a) "Qualified borrower" means:

(i) For loans for properties located in counties with median incomes greater than the state's median income as most recently published by United States department of housing and urban development for the fair market rent area, metropolitan statistical area, or county, a qualified borrower is a person or family whose income, adjusted for family size, is at or below 80 percent of the median family income for the fair market rent area, metropolitan statistical area, or county in which the property is located.

(ii) For loans for properties located in counties with median incomes at or below the state's median income as most recently published by United States department of housing and urban development for the fair market rent area, metropolitan statistical area, or county, a qualified borrower is a person or family whose income, adjusted for family size, is at or below 80 percent of the state median family income.

(iii) For loans purchased by the Washington state housing finance commission as a participating lender in the commission's homeownership programs, for properties located in counties with median incomes greater than the state's median income as most recently published by United States department of housing and urban development for the fair market rent area, metropolitan statistical area, or county, a qualified borrower is a person or family whose income, adjusted for family size, is at or below 120 percent of the median family income for the fair market rent area, metropolitan statistical area, or county in which the property is located.

(iv) For loans purchased by the Washington state housing finance commission as a participating lender in the commission's homeownership programs, for properties located in counties with median incomes at or below the state's median income as most recently published by United States department of housing and urban development for the fair market rent area, metropolitan statistical area, or county, a qualified borrower is a person or family whose income, adjusted for family size, is at or below 120 percent of the state median family income.

(b) "Qualified loan" means a loan primarily secured by first mortgages or trust deeds on nontransient residential property provided to a qualified borrower.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) By December 15, 2024, the department must estimate the increase in state general fund revenue collections for the immediately preceding fiscal year resulting from section 2, chapter . . ., Laws of 2023 (section 2 of this act). The department must promptly notify the state treasurer of these estimated amounts.

(b) Beginning December 15, 2025, and by each December 15th thereafter, the department must increase the previous estimate by multiplying the previous estimate by one plus the growth factor.

(c) For purposes of this subsection (1), "growth factor" means the average increase, expressed as a percentage rounded to the nearest thousandth, in collections of the tax imposed under RCW 82.04.290(2) over the period beginning July 1, 2013, and ending June 30, 2024, based on data available to the department as of January 1, 2025.

(2) Beginning January 1, 2025, and by each January 1st thereafter, the state treasurer must transfer from the general fund the estimated amount determined by the department under subsection (1) of this section for the immediately preceding fiscal year into the housing trust fund under RCW 43.185.030.

(3) The department may not make any adjustments to an estimate under subsection (1) of this section after the state treasurer makes the corresponding distribution under subsection (2) of this section based on the department's estimate.

NEW SECTION. **Sec.**  This act applies to interest received on or after August 1, 2023.

NEW SECTION. **Sec.**  This act takes effect August 1, 2023.

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