
SENATE BILL 5766

State of Washington

69th Legislature

2025 Regular Session

By Senators Lias, Braun, Chapman, and Gildon

1 AN ACT Relating to clarifying the business and occupation tax
2 treatment of the investment income of passive investment vehicles
3 managed by a person subject to business and occupation tax under RCW
4 82.04.290(1); amending RCW 82.04.4281; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the application
7 of the business and occupation tax deduction provided in RCW
8 82.04.4281(1)(a) for investment income has once again become the
9 subject of uncertainty as a result of the decision of the state
10 supreme court in *Antio, LLC v. Department of Revenue*, which could
11 lead to a restrictive, narrow interpretation of the deductibility of
12 investment income for business and occupation tax purposes. The
13 legislature intends, by adopting this revision to RCW 82.04.4281, to
14 clarify and preserve the certainty and stability for taxpayers and
15 the state that generally ensued following the adoption of chapter
16 250, Laws of 2002 in response to the decision of the state supreme
17 court in *Simpson Investment Co. v. Department of Revenue*. The
18 legislature intends, by adopting this clarifying revision of RCW
19 82.04.4281, to avoid uncertainty while continuing to treat similarly
20 situated taxpayers fairly.

1 **Sec. 2.** RCW 82.04.4281 and 2007 c 54 s 9 are each amended to
2 read as follows:

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

5 (a) Amounts derived from investments;

6 (b) Amounts derived as dividends or distributions from the
7 capital account by a parent from its subsidiary entities; (~~and~~)

8 (c) Amounts derived from interest on loans between subsidiary
9 entities and a parent entity or between subsidiaries of a common
10 parent entity, but only if the total investment and loan income is
11 less than five percent of gross receipts of the business annually;
12 and

13 (d) Amounts derived from investments made pursuant to an
14 investment management or advisory agreement with a person subject to
15 tax under RCW 82.04.290(1). Nothing in this section affects the
16 business and occupation tax obligations of any person subject to tax
17 under RCW 82.04.290(1).

18 (2) The following are not deductible under subsection (1)(a) of
19 this section:

20 (a) Amounts received from loans, except as provided in subsection
21 (1)(c) of this section, or the extension of credit to another,
22 revolving credit arrangements, installment sales, the acceptance of
23 payment over time for goods or services, or any of the foregoing that
24 have been transferred by the originator of the same to an affiliate
25 of the transferor; or

26 (b) Amounts received by a banking, lending, or security business.

27 (3) The definitions in this subsection apply only to this
28 section.

29 (a) "Banking business" means a person engaging in business as a
30 national or state-chartered bank, a mutual savings bank, a savings
31 and loan association, a trust company, an alien bank, a foreign bank,
32 a credit union, a stock savings bank, or a similar entity that is
33 chartered under Title 30, 31, 32, or 33 RCW, or organized under Title
34 12 U.S.C.

35 (b) "Investment" has its ordinary meaning and includes without
36 limitation securities; fixed income instruments including, but not
37 limited to, bonds, notes, debentures, commercial paper, savings
38 deposits, bank deposits, time certificates, federal funds, and
39 mortgage loans; derivative instruments including, but not limited to,
40 options contracts, futures contracts, forward contracts, notional

1 principal contracts, repurchase agreements, and swaps; and
2 commodities.

3 (c) "Lending business" means a person engaged in the business of
4 making secured or unsecured loans of money, or extending credit, and
5 (i) more than one-half of the person's gross income is earned from
6 such activities and (ii) more than one-half of the person's total
7 expenditures are incurred in support of such activities.

8 ~~((e))~~ (d) The terms "loan" and "extension of credit" do not
9 include ownership of or trading in publicly traded debt instruments,
10 or substantially equivalent instruments offered in a private
11 placement.

12 ~~((d))~~ (e) "Security business" means a person, other than an
13 issuer, who is engaged in the business of effecting transactions in
14 securities as a broker, dealer, or broker-dealer, as those terms are
15 defined in the securities act of Washington, chapter 21.20 RCW, or
16 the federal securities act of 1933. "Security business" does not
17 include any company excluded from the definition of broker or dealer
18 under the federal investment company act of 1940 or any entity that
19 is not an investment company by reason of sections 3(c)(1) and
20 3(c)(3) through 3(c)(14) thereof.

21 NEW SECTION. **Sec. 3.** This act applies retroactively. The
22 legislature does not intend for section 2 of this act to
23 retroactively create a right of refund for taxes paid on amounts
24 derived from investments before the effective date of this section.

--- END ---