

HB 2794 - H AMD 1360

By Representative Ross

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
4 to read as follows:

5 (1) Amounts received as interest on loans originated by a person
6 located in more than ten states, or an affiliate of such person, and
7 primarily secured by first mortgages or trust deeds on nontransient
8 residential properties are subject to tax under RCW 82.04.290(2)(a).

9 (2) For the purposes of this subsection, a person is located in a
10 state if:

11 (a) The person or an affiliate of the person maintains a branch,
12 office, or one or more employees or representatives in the state; and

13 (b) Such in-state presence allows borrowers or potential borrowers
14 to contact the branch, office, employee, or representative concerning
15 the acquiring, negotiating, renegotiating, or restructuring of, or
16 making payments on, mortgages issued or to be issued by the person or
17 an affiliate of the person.

18 (3) For purposes of this section:

19 (a) "Affiliate" means a person is affiliated with another person,
20 and "affiliated" has the same meaning as in RCW 82.04.645; and

21 (b) "Interest" has the same meaning as in RCW 82.04.4292 and also
22 includes servicing fees described in RCW 82.04.4292(4).

23 **Sec. 2.** RCW 82.04.4292 and 2010 1st sp.s. c 23 s 301 are each
24 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

37 (ii)(A) The person claiming a deduction under this subsection (4)
38 acquired the loans from the person that originated the loans through a

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

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

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

16 (5) The deductions provided in this section do not apply to persons
17 subject to tax under section 1 of this act.

18 NEW SECTION. Sec. 3. This act takes effect July 1, 2012."

19 Correct the title.

EFFECT: Makes restructuring and clarifying changes specifying
that first mortgage income from loans originated by a bank located in
more than ten states is subject to B&O tax. Removes language
nullifying the amendatory language if a court invalidates the language
on constitutional grounds. Removes the 2015 JLARC review of the 1st
mortgage deduction.

--- END ---