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HOUSE BILL 2794

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives DeBolt, Sullivan, Anderson, Carlyle, Kretz, Springer, Smith, Hudgins, Short, Dickerson, Angel, Darneille, Warnick, Cody, Ross, Hinkle, Kristiansen, Haler, Parker, Ladenburg, Billig, Moscoso, Hansen, Pollet, Tharinger, Jinkins, Pearson, Wylie, Hunt, Kenney, and Roberts

Read first time 02/23/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to narrowing a business and occupation tax  
2 deduction for banking, loan, security, and other financial businesses;  
3 amending RCW 82.04.4292; providing an effective date; and providing a  
4 contingent expiration date.

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

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

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

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

18 (3) Subsections (1) and (2) of this section notwithstanding, the

1 following is a nonexclusive list of items that are not deductible under  
2 this section:

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

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

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

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

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

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

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

31 (ii)(A) The person claiming a deduction under this subsection (4)  
32 acquired the loans from the person that originated the loans through a  
33 merger or acquisition of substantially all of the assets of the person  
34 who originated the loans, or the person claiming a deduction under this  
35 subsection (4) is affiliated with the person that originated the loans.  
36 For purposes of this subsection, "affiliated" means under common  
37 control. "Control" means the possession, directly or indirectly, of

1 more than fifty percent of the power to direct or cause the direction  
2 of the management and policies of a person, whether through the  
3 ownership of voting shares, by contract, or otherwise; and

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

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

11 (5)(a) The deductions provided in this section are not available to  
12 any person that is located in more than ten states.

13 (b) For the purposes of this subsection:

14 (i) A person is located in a state if:

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

17 (B) The person's or the affiliate of the person's in-state presence  
18 allows borrowers or potential borrowers to contact the branch, office,  
19 employee, or representative concerning the acquiring, negotiating,  
20 renegotiating, or restructuring of, or making payments on, mortgages  
21 issued or to be issued by the person or an affiliate of the person.

22 (ii) "Affiliate" means a person is "affiliated," as defined in  
23 subsection (4) of this section, with another person.

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

29 (7) The amendatory changes in section 1, chapter . . . , Laws of  
30 2012 (this section) expire on the date in which any provision of this  
31 section is invalidated by a court of competent jurisdiction, in a final  
32 judgment not subject to appeal, on the basis of a violation of the  
33 state or federal constitution.

34 NEW SECTION. Sec. 2. The department of revenue must provide  
35 written notice of the expiration date of section 1 of this act to  
36 affected parties, the chief clerk of the house of representatives, the

1 secretary of the senate, the office of the code reviser, and others as  
2 deemed appropriate by the department.

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

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