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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)

READ FIRST TIME 02/09/23.

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

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

6 NEW SECTION. **Sec. 1.** It is the intent of this act to increase  
7 funding for affordable housing by limiting the business and  
8 occupation tax deduction under RCW 82.04.4292 to interest received by  
9 all financial institutions on investments or qualified loans  
10 primarily secured by nontransient residential properties, as well as  
11 related service fees, previously eligible for a business and  
12 occupation tax deduction under RCW 82.04.4292.

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

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

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

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

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

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

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

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

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

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

38 (ii)(A) The person claiming a deduction under this subsection (4)  
39 acquired the loans from the person that originated the loans through  
40 a merger or acquisition of substantially all of the assets of the

1 person who originated the loans, or the person claiming a deduction  
2 under this subsection (4) is affiliated with the person that  
3 originated the loans. For purposes of this subsection, "affiliated"  
4 means under common control. "Control" means the possession, directly  
5 or indirectly, of more than (~~fifty~~) 50 percent of the power to  
6 direct or cause the direction of the management and policies of a  
7 person, whether through the ownership of voting shares, by contract,  
8 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  
14 by a percentage of the interest paid by the borrower and are only  
15 received if the borrower makes interest payments.

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

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

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

26 (8) For purposes of this section:

27 (a) "Qualified borrower" means:

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

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

1 income, adjusted for family size, is at or below 80 percent of the  
2 state median family income.

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

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

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

25 NEW SECTION. Sec. 3. A new section is added to chapter 82.32  
26 RCW to read as follows:

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

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

35 (c) For purposes of this subsection (1), "growth factor" means  
36 the average increase, expressed as a percentage rounded to the  
37 nearest thousandth, in collections of the tax imposed under RCW  
38 82.04.290(2) over the period beginning July 1, 2013, and ending June

1 30, 2024, based on data available to the department as of January 1,  
2 2025.

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

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

12 NEW SECTION. **Sec. 4.** This act applies to interest received on  
13 or after August 1, 2023.

14 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2023.

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