

DRAFT – June 2007
Multistate Tax Commission Income & Franchise Tax Uniformity Subcommittee
Draft Proposed Uniform Legislation
FOR DISCUSSION PURPOSES ONLY

Real Estate Investment Trusts (REITs)

- a. The term "real estate investment trust" shall have the meaning ascribed to such term in Section 856 of the Internal Revenue Code of 1986, as amended.
- b. The term "captive real estate investment trust" shall mean a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, or constructively, by a single entity that is:
 1. Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended, and
 2. Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended.
- c. For purposes of applying subsection b.1, the following entities are not considered an association taxable as a corporation:
 1. any real estate investment trust as defined in subsection a. other than a "captive real estate investment trust;" or
 2. any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a "captive real estate investment trust"; or
 3. any listed Australian property trust [or similar foreign REIT the shares of which are regularly traded on an established securities market].
- d. The tax imposed by [the state corporate income tax statute] shall be imposed upon real estate investment trusts and shall be computed only upon that part of the net income of the real estate investment trust which is subject to federal income tax as provided in Sections 857 and 858 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this Section.

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- e. The dividends paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by this [state income tax statute] if the real estate investment trust is a captive real estate investment trust.
- f. A real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of § 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of § 856(h)(2) of the Internal Revenue Code shall not be deemed a captive real estate investment trust within the meaning of this section.
- g. For purposes of this section, the constructive ownership rules of § 318(a) of the Internal Revenue Code of 1986, as amended, as modified by § 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply in determining the ownership of stock, assets, or net profits of any person.

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