

Hearing Officer Proposed Modifications Are in Red

**MTC proposed statute regarding partnership, ~~or~~ pass-through entity or real estate investment trust (REIT) income
that is ultimately realized by an entity that is not subject to income tax
As Approved by the Income & Franchise Tax Uniformity Subcommittee
October 19, 2010**

When 50 per cent or more of the capital interests or profits interest in an entity for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162 and that would otherwise be treated as a partnership or disregarded entity for purposes of [*insert applicable state tax or taxes*] is owned, directly or indirectly, by [*identify each entity type that is not subject to income tax and that state wants to cover under this provision, such as "an insurance company," with a citation to the state tax statute applicable to each such entity type*], the net income [*or alternative tax base*] that passes through to such [name each entity type identified above, e.g. "insurance company."] shall be taxed to the partnership or disregarded entity as if the partnership or disregarded entity were a corporation subject to tax under chapter [*insert state statute*]. To the extent applicable, income that is taxable to the partnership or disregarded entity pursuant to this section, and any related tax attributes and activities, shall be included and taken into account in a combined report filed under [*insert state statute*]. As used herein, the term "partnership or disregarded entity" shall not include a real estate investment trust (REIT) within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended.

When 50 per cent of more of the capital interests or profits interest in a real estate investment trust (REIT) as defined in section 856 of the Internal Revenue Code, 26 U.S.C. 856 is owned directly or indirectly, by [*identify each entity type that is not subject to income tax and that state wants to cover under this provision, such as "an insurance company," with a citation to the state tax statute applicable to each such entity type*], the dividends paid deduction to which the REIT is entitled under the Internal Revenue Code, to the extent attributable to dividends paid to such entity, shall not be recognized.