



MULTISTATE TAX COMMISSION

*Working Together Since 1967 to Preserve Federalism and Tax Fairness*

To: Steve Cordi, Chair  
Members of Executive Committee  
From: Shirley Sicilian, General Counsel  
Date: July 22, 2011  
**Subject: Proposed Model Statute Regarding Pass-Through Entity Income That Is Ultimately Realized by an Entity That Is Not Subject to Income Tax**

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The Executive Committee met by teleconference on June 6, 2011, to consider the Hearing Officer's report regarding the proposed Model Statute Regarding Pass-Through Entity Income That Is Ultimately Realized by an Entity That Is Not Subject to Income Tax set out below.<sup>1</sup> After significant public comment and deliberation, the Committee voted to continue this agenda item to its July 28, 2011 meeting in Whitefish, Montana.

**(Hearing Officer proposed revisions are underlined)**  
**MTC proposed statute regarding partnership, pass-through entity or real estate investment trust (REIT) income that is ultimately realized by an entity that is not subject to income tax**

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.

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<sup>1</sup> See links to the Hearing Officer's report and additional comments provided prior to the executive committee teleconference at <http://www.mtc.gov/Executive.aspx?id=5124>