

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 (meaning an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or an entity organized as a trust, provided a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent or

more of the voting power or value of the beneficial interests or shares of such trust; or

4. a Qualified Foreign Entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States which satisfies the following criteria:
 - a. at least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets (as defined at Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust), cash and cash equivalents, and U.S. Government securities;
 - b. the entity receives a dividend paid deduction comparable to Section 561 of the Internal Revenue Code of 1986, as amended, or is exempt from corporate level tax;
 - c. the entity is required to distribute at least 85 percent of its taxable income (as computed in the jurisdiction in which it is organized) to the holders of its shares or certificates of beneficial interest on an annual basis;
 - d. not more than 10 percent of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and
 - e. the entity is organized in a country which has a tax treaty with the United States.
- 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.
- 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.

Second Revised MTC July Draft-Uniform State REIT Statute (conditionally approved by MTC Income and Franchise Tax Uniformity Subcommittee on July 30, 2007) (unofficial copy)

- f. A real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of Section 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 Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 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.