

National Policy Bulletin

National Association of Real Estate Investment Trusts®
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HOUSE AGAIN PASSES REIT TAX LEGISLATION

On July 23, 2008, the House of Representatives passed H.R. 3221, the Housing and Economic Recovery Act of 2008, by a vote of 272 to 152. The House-passed bill contains the same REIT-related provisions that the Senate included in its version of H.R. 3221 that it passed on July 11, 2008. [CLICK HERE](#) for the statutory language of the REIT-related provisions passed by both the House and Senate, and [CLICK HERE](#) for the Joint Committee on Taxation description of these provisions.

Briefly, the REIT-related provisions in H.R. 3221 would: 1) reduce the holding period under the “dealer” sales safe harbor test from 4 years to 2 years; 2) change the measurement of the 10% of sales permitted under the safe harbor test from current tax basis to *either* tax basis *or* fair market value (at the REIT’s annual option); 3) increase the size ceiling for taxable REIT subsidiaries from 20% to 25% of assets; 4) permit health care REITs to use taxable subsidiaries in the same manner as hotel REITs; 5) exclude most real estate-related foreign currency gains from the computation of the REIT income tests; and, 6) provide the Treasury Department with clear authority to rule on whether a variety of items are “good” REIT income. Unlike an earlier-passed Senate bill, these provisions would be permanent rather than “sunset” after five years.

The Senate is expected to approve this new version of H.R. 3221 as soon as tomorrow, but in all events early next week, and it is



expected that the Senate will not make any changes to the House-passed legislation. Importantly, the White House has rescinded its earlier veto threat because the new House bill contains the authority it requested for Government Sponsored Enterprise reform, including the authority for the government to lend money to Fannie Mae and Freddie Mac.

NAREIT will continue to work with key policymakers to ensure that the RIDEA provisions contained in the most recent House legislation are included in a final housing bill.

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