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

On July 11, 2008, the Senate passed H.R. 3221, the Housing and Economic Recovery Act of 2008, by a vote of 63-5. With two exceptions, the bill includes the same provisions contained in H.R. 1147, the REIT Improvement Diversification and Empowerment Act of 2007 (RIDEA), which were adopted by the House of Representatives on May 7 when it passed its version of H.R. 3221. CLICK HERE for the May 9, 2008 *National Policy Bulletin* that describes the RIDEA provisions in the earlier legislation.

The Senate bill contains the following changes. First, the RIDEA provisions relating to a REIT's foreign currency gains were amended so that real estate-related foreign currency gains would not be included in the REIT income tests as either "good" or "bad" income (as opposed to being considered "good" income as under RIDEA initially). Second, the Senate version clarifies that a taxable REIT subsidiary (TRS) may be the employer of lodging or health care workers outside the United States without violating the prohibition against a TRS operating lodging or health care facilities, so long as the employees are directed by an eligible independent contractor.

In the next week or two, the House is expected to pass another version of H.R. 3221 that would add an additional revenue-raising provision to comply with the "pay go" rules and that would make several non-tax changes.

It is not clear whether and when the two versions of H.R. 3221 will be reconciled, but the Leadership of both the House and Senate has made passage of this legislation before the August congressional recess their highest priority. Although the White House had indicated that the president would veto an earlier version of H.R 3221, it increasingly appears that the Administration will no longer do so.

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

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