

State Income and Franchise Tax Laws that Conform to the REIT Modernization Act of 1999  
(May 1, 2001).<sup>1</sup>

1. Alabama does not adopt the Code on a regular basis but instead specifically incorporates only certain specified Code provisions. A REIT is defined as an entity that complies with the provisions of Code sections 856 to 858 (presumably as amended from time to time). Ala. Code § 10-13-2(1) (2000). In addition, for purposes of the Alabama corporate income tax, a REIT's net income is its federal REIT taxable income. Ala. Code § 10-13-21(a) (2000). Accordingly, a REIT generally should be treated in the same manner for federal tax purposes and Alabama tax purposes.
2. Alaska adopts the Code on a continuing basis. Alaska Stat. § 43.20.021(a) (2000). Accordingly, a REIT generally should be treated in the same manner for federal tax purposes and Alaska tax purposes.
3. Arizona generally adopts provisions of the Code on a yearly basis. For taxable years beginning on and after December 31, 1999 through December 31, 2000, Arizona has adopted the Code in effect on January 1, 2000, including those provisions that became effective during 1999 with the specific adoption of all federal retroactive effective dates, but excluding any change to the Code enacted after January 1. See Ariz. Rev. Stat. § 43-105(A) (2000). Practitioners differ as to whether Arizona has adopted the "taxable REIT subsidiary" ("TRS") provisions enacted by Congress on December 17, 1999. Conformity bill HB 2015 has passed the Arizona legislature and was sent to the Governor for signature on April 30, 2001.
4. Arkansas does not adopt the Code on a regular basis but instead specifically incorporates only certain specified Code provisions. After enactment of SB 308, Arkansas specifically has adopted Subchapter M of the Code (which covers REITs) as in effect on January 1, 2001, for years beginning after January 1, 2001. Ark. Stat. Ann. § 26-51-440(a) (2001). Accordingly, Arkansas has adopted the TRS provisions.
5. For taxable years beginning on or after January 1, 1998, California has adopted the Code as of January 1, 1998, including all amendments thereto as enacted on January 1, 1998. See Cal. Rev. & Tax Code § 17024.5(a)(1) (2000). However, legislation enacted earlier this year (AB 10) treats a REIT that qualifies as such for federal purposes (under the relevant Internal Revenue Code) as a REIT for California purposes. Cal. Rev. & Tax Code § 24872.6(a)(2001). Thus, California tax law incorporates the TRS provisions.
6. Colorado adopts the Code on a continuing basis. Colo. Rev. Stat. § 39-22-103(5.3) (2000). A NAREIT member spoke with Glen Emerson of the Colorado Department of Revenue ("DOR"), who confirmed that Colorado adopts the Internal Revenue Code of 1986 ("IRC" or "Code") as amended.

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7. Connecticut adopts the Code on a continuing basis. Conn. Gen. Stat. § 12-213(a)(23) (1999). Thus, Connecticut tax law incorporates the TRS provisions.

8. Delaware adopts the Code on a continuing basis. Del Code Ann. tit. 30, § 502(a) (2000). REITs are exempt from corporate income tax. Del. Code tit. 30, section 1902(b)(16).

9. D.C. adopts the Code on a continuing basis. D.C. Code § 47-1801.4(28A) (1999). Conversations with D.C. tax officials confirm that D.C. intends to conform to the IRC as amended.

10. Florida has adopted the Code as of January 1, 2000. However, it is the intent of the Florida legislature that all amendments to the Code be given effect under the Florida Code in such manner and for such periods as are prescribed in the Code, to the same extent as if such amendments had been adopted by the Florida legislature. Fla. Stat. § 220.03(1)(n), (4) (2000). Practitioners may disagree as to whether Florida conforms. When a NAREIT member first contacted the general counsel's office, the member was told that the TRS provisions were not picked up by because they were not effective until January 1, 2001 and the Florida statute picks up the IRC as amended and in effect on January 1, 2001. The member was referred to a technical person – Al Baulcom at 850-922-4713 – who agreed that Florida was a problem. Later, he called back and said that he talked to his boss – Rob Felix – and they were wrong; since the TRS provisions were enacted on December 17, 1999, they were in the law on January 1, 2000, and, thus, would be followed. He also mentioned that there is a conformity bill pending to update the pick up date to January 1, 2001.

11. Georgia generally adopts provisions of the Code on a yearly basis. Currently, Georgia has adopted the Code as enacted on or before January 1, 2000. Ga. Code § 48-1-2(14) (2000). Accordingly, Georgia arguably has adopted the TRS provisions because they were enacted before January 1, 2000.

12. Hawaii has adopted the Code as of December 31, 1999. Haw. Rev. Stat. § 235-2.3(a) (2000). Accordingly, Hawaii has adopted the TRS provisions. In addition, SB 854 is pending in the legislature and would change the conformity date to December 31, 2000. On April 27, 2001, the decision was made to defer legislative consideration of the bill until May 1, 2001.

13. Idaho generally adopts provisions of the Code on a yearly basis. Idaho has adopted the Code as amended and in effect on January 1, 2001. Idaho Code § 63-3004 (2000). Accordingly, Idaho has adopted the TRS provisions.

14. Illinois adopts the Code on a continuing basis. 35 ILCS § 5/102, 5/1501(a)(11) (2000). A NAREIT member spoke with Paul Caselton (217) 524-3951 and was told that Illinois automatically follows the IRC as amended. Thus, Illinois incorporates the TRS provisions.

15. Following the Governor's signature of HB 1479 on April 12, 2001, Indiana has adopted the IRC as amended and in effect on January 1, 2001. Ind. Code § 6-3-1-11(a) (2000). Accordingly, Indiana has adopted the TRS provisions.



16. Iowa has adopted the Code as amended to and including January 1, 2000. Iowa Code § 422.3(4) (1999). Accordingly, Iowa has adopted the TRS provisions.
17. Kansas adopts the Code on a continuing basis. Kan. Stat. Ann. § 79-32.109(a) (1999).
18. Kentucky has adopted the Code in effect on December 31, 1999, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1999 that would otherwise terminate. K.R.S. § 141.010(3) (2000). We believe that Kentucky conforms to the amended IRC. One NAREIT member spoke with Paul Jones (502-564-0065 ext 4436) in the Kentucky Revenue Cabinet. His conclusion was that since Kentucky followed the IRC as of December 31, 1999, Kentucky would adopt any changes made up to 12/31/1999. This conclusion was confirmed by another NAREIT member in a conversation with Dana Mayton at the Kentucky Revenue Cabinet's Department of Law.
19. Louisiana adopts the Code on a continuing basis. La. Rev. Stat. §§ 47:287.701(A); 47:290(A) (2000).
20. Maine generally adopts the Code on a yearly basis. Maine has adopted the Code and amendments thereto in effect on December 31, 1999. Me. Rev. Stat. Ann. tit. 36, § 111(1-A) (1999). Although some practitioners disagree as to whether Maine has adopted the TRS provisions, we believe that the "in effect on December 31, 1999" language means that Maine has done so.
21. It is unclear as of what date Maryland has adopted the Code. However, a REIT is taxed for Maryland purposes on the amount of its income that is taxed under Code section 857 (presumably, as in effect from time to time). Md. Code Ann., Tax-Gen. § 10-101(a-1) (2000). Under Maryland law, within 60 days after an amendment of the Code is enacted, the Maryland Comptroller must prepare and submit to the Governor a report that outlines the changes to the Code and the impact of those changes on state revenue and on various classes and types of taxpayers. Md. Code Ann., Tax-Gen. § 10-221(b) (2000). Most believe that Maryland conforms to the current IRC.
22. Massachusetts has adopted the Code as amended on January 1, 1998. Mass. Ann. Laws ch. 62, § 1(c) (2000). REITs organized as Massachusetts business trusts are exempt from Massachusetts income tax. Although Massachusetts has not yet adopted the TRS provisions statutorily, in TIR 01-02, the Department of Revenue stated that in order to provide the Legislature the opportunity to consider the appropriate Massachusetts tax treatment of REITs that are corporate trusts and their shareholders, pending further notification, the Department of Revenue will treat a corporate trust as a REIT for Massachusetts purposes, provided that the corporate trust qualifies as a REIT for federal income tax purposes under the Code as amended and in effect for the taxable year.
23. For individual taxpayers, Michigan has adopted the Code in effect on January 1, 1996. However, an individual taxpayer may elect to apply provisions of the Code in effect for the



applicable taxable year. Mich. Stat. Ann. § 7.557(112) (2000). For taxpayers subject to the single business tax (including REITs), Michigan has adopted the Code in effect on January 1, 1999. A taxpayer subject to the single business tax also may elect to apply provisions of the Code in effect for the applicable taxable year. Mich. Stat. Ann. § 7.558(5)(4) (2000). Because Michigan does not allow for a dividends paid deduction, it is inconsequential whether it conforms to the TRS provisions.

24. Minnesota generally adopts the Code on a yearly basis. Minnesota has adopted the Code as amended through December 31, 1999. Minn. Stat. § 289A.02(7) (2000). Most believe that Minnesota has adopted the TRS provisions because they were enacted before December 31, 1999.

25. Mississippi does not adopt the Code on a regular basis but instead specifically incorporates only specified Code provisions. In the Mississippi Code, a “REIT” has the same meaning as in Code section 856, as amended. Accordingly, Mississippi arguably will have adopted the TRS provisions.

26. Missouri adopts the Code on a continuing basis. Mo. Rev. Stat. § 143.091 (1999).

27. Montana has not specifically adopted the Code on a continuing basis. However, Montana uses federal adjusted gross income as the starting point for determining an individual taxpayer’s tax liability and federal gross income as the starting point for determining a corporate taxpayer’s tax liability. Mont. Code Ann. §§ 15-30-111(1), 15-31-113(1) (2000). Thus, Montana incorporates the TRS provisions.

28. Nebraska adopts the Code on a continuing basis. R.R.S. Neb. § 77-2714 (2000).

29. Nevada has not adopted the Code (but there is no income tax on individuals or corporations).

30. New Hampshire has not adopted the Code for individuals (New Hampshire only imposes an interest and dividend tax on individuals). However, for purposes of the business profits tax, for all tax years beginning after January 1, 1998, New Hampshire has adopted the Code in effect on December 31, 1998. N.H. Rev. Stat. Ann. § 77-A:1(XX)(h) (2000). Because New Hampshire does not allow a dividends paid deduction, it is inconsequential whether New Hampshire adopts the TRS provisions.

31. New Jersey has not specifically adopted the Code on a continuing basis for corporate taxpayers. However, New Jersey imposes its corporate income tax on the “entire net income” of a corporation, which is equal to the corporation’s federal taxable income before NOLs and special deductions. N.J. Stat. §§ 54:10A-4(k); 54:10E-4(i) (2000).

32. New Mexico adopts the Code on a continuing basis. N.M. Stat. Ann. §§ 7-2-2(J); 7-2A-2(G) (2000).



33. New York adopts the Code on a continuing basis for individuals. N.Y. Tax Law §§ 607(a); 611-12 (1999). New York has not specifically adopted the Code on a continuing basis for purposes of its corporate income tax. However, New York imposes its corporate income tax on the “entire net income” of a corporation, which is equal to the corporation’s entire federal taxable income, subject to certain modifications. N.Y. Tax Law § 208(9) (1999). In addition, a “REIT” is defined as in Code section 856. N.Y. Tax Law § 209(5) (1999).

34. North Carolina has adopted the Code as enacted as of January 1, 2000, including any provisions enacted as of that date which become effective either before or after that date. N.C. Code §§ 105-228.90(b)(1b), 105-130.2(1) (2000). Additionally, NC General Statute 105-130.12 provides that any organization or trust which, in the opinion of the Secretary or Revenue of North Carolina, qualifies as a "real estate investment trust" under the provisions of section 856 of the Code, and which files with the NC Department of Revenue its election to be treated as a "real estate investment trust" shall be taxed under this Part upon only that part of the its net income ...(NC General Statutes 105-130.12). Hence, North Carolina will consider a corporation a REIT if it meets the REIT definition for federal tax purposes, and files for and receives approval. Since the REIT provisions were amended on December 17, 1999, then North Carolina should adopt the new provisions with respect to taxable REIT subsidiaries. A NAREIT member spoke with Hacia Harris in the Department of Revenue, who confirmed this conclusion with Leni Collins in the DOR.

35. North Dakota adopts the Code on a continuing basis. N.D. Cent. Code §§ 57-38-01(5); 57-38-01.1 (2000).

36. Ohio adopts the Code on a continuing basis. Ohio Rev. Code §§ 5733.04(G); 5747.01(H) (2000).

37. Oklahoma adopts the Code on a continuing basis. Okla. Stat. tit. 68, § 2353(2) (1999).

38. Oregon generally has adopted the Code on a continuing basis. Or. Rev. Stat. §§ 314.011(b) (1999). However, while Oregon has specifically adopted the provisions of the Taxpayer Relief Act of 1997, the Balanced Budget Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, the Transportation Equity Act for the 21st Century, and the Tax and Trade Relief Extension Act of 1998, it has not yet specifically adopted the provisions of the 1999 tax act. Or. Rev. Stat. §§ 314.045(1) (1999). Because Oregon has adopted all of those other tax acts and the legislature is not in session in 2000, we assume that Oregon will adopt the 1999 Tax Act. In certain instances, such as with respect to tax credits (but not with respect to determining a corporation’s income), Oregon only has adopted the Code as amended on or before December 31, 1998, even where amendments take effect or become operative after that date. In response to a request for guidance, a NAREIT member has received a “comfort” letter from Oregon’s Department of Revenue indicating that Oregon incorporates the TRS provisions.

39. Pennsylvania has adopted the Code as amended to January 1, 1997 for purposes of the personal income tax. 72 P.S. § 7301 (1999). The statute does not state as of what date Pennsylvania has adopted the Code for purposes of the corporate income tax. When the statute



exempts a REIT from the corporate income tax, it exempts “any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code.” 72 P.S. § 7401(1) (1999). In addition, the starting point for determining the corporate income tax is federal taxable income.

40. Rhode Island has not specifically adopted the Code on a continuing basis for corporate taxpayers. However, Rhode Island uses federal taxable income as a starting point for determining Rhode Island corporate income tax. R.I. Gen. Laws § 44-11-11(a) (2000). In addition, a “REIT” is as defined in the federal income tax law applicable to the taxable year. R.I. Gen. Laws § 44-11-2(c) (2000).

41. South Carolina generally adopts the Code on a yearly basis. South Carolina has adopted the Code as amended through December 31, 1999, including the effective date provisions contained therein. S.C. Code Ann. § 12-6-40(A)(1999). It is not clear whether South Carolina has adopted the TRS provisions because, although they were enacted before December 31, 1999, they were not in effect before December 31, 1999. However, because South Carolina uses federal taxable income (not as defined by the Code, but as reported to the IRS) as a starting point for determining South Carolina corporate income tax, a REIT generally will be treated the same for federal and South Carolina tax purposes. S.C. Code Ann. § 12-6-580(A)(1999).

42. South Dakota has not adopted the Code (but there is no income tax on individuals or corporations).

43. Tennessee adopts the Code on a continuing basis for purposes of the corporate income tax. Tenn. Code Ann. § 67-4-2004(13).

44. Texas does not impose an income tax. For purposes of the franchise tax, Texas has adopted the Code in effect for the federal tax year beginning on or after January 1, 1996 and before January 1, 1997, and any regulations adopted under the Code applicable to that period. Tex. Tax Code § 171.001(a)(5) (2000). Thus, Texas does not currently incorporate the TRS provisions. HB 3350, which is currently pending in the Texas House’s Ways and Means Committee, would define “Internal Revenue Code” as the means the Internal Revenue Code of 1986 in effect for the federal tax year beginning on or after January 1, 2000, and before January 1, 2001. NAREIT has received a letter from the Comptroller of Public Accounts dated April 23, 2001, which states that if HB 3350 were to become effective, Texas would conform to the TRS provisions enacted in 1999.

45. Utah adopts the Code on a continuing basis. Utah Code Ann. § 59-7-101(16) (2000).

46. Vermont adopts the Code on a continuing basis. Vt. Stat. Ann. tit. 32, § 5811(1), (7), (18) (2000).

47. Virginia adopts the Code on a continuing basis. Va. Code § 58.1-301 (2000).

48. Washington has not adopted the Code (but there is no income tax on individuals or



corporations).

49. For purposes of the corporate and personal income tax, West Virginia has adopted all amendments to the Code made after December 31, 1998, but prior to January 1, 2000, whether the amendments are retroactive or prospective, but West Virginia specifically has not adopted any amendment to the Code made on or after January 1, 2000. W. Va. Code §§ 11-21-9(a), 11-24-3(a) (2000). Accordingly, West Virginia has adopted the TRS provisions. For purposes of the business franchise tax, West Virginia has adopted all amendments to the Code made prior to January 1, 1993, but West Virginia specifically has not adopted any amendment to the Code made on or after January 1, 1993. W. Va. Code § 11-23-3a(a) (2000). Apparently, a conformity bill that would adopt the IRC as of December 31, 2000, is pending.

50. Wisconsin has adopted the Code as amended to December 31, 1999. Wis. Stat. §§ 71.01(6)(o); 71.22(4)(o) (1999). Because the TRS provisions were enacted before December 31, 1999, Wisconsin should be viewed as having adopted them. Wisconsin generally adopts the Code on a yearly basis.

51. Wyoming has not adopted the Code (but there is no income tax on individuals or corporations).

