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national policy
bulletin

National Association of Real Estate Investment Trusts®

CONGRESS REACHES AGREEMENT ON JOBS AND GROWTH TAX ACT

PROVIDES SOME LIMITED BENEFITS TO REITS

A $350 billion "Jobs and Growth " Tax Relief package was given final Congressional approval on May 23. President Bush said that he is eager to sign the measure into law.

Outline of Package

The final bill largely follows the House version of H.R. 2. It reduces the maximum individual tax rate for capital gains generally from 20% to 15% (from May 6, 2003 through 2008), and for dividends generally from 38.6% to 15% (from 2003 through 2008). It also accelerates the individual, ordinary income tax rate cuts scheduled for 2004 and 2006 to this year, including a maximum 35% tax rate. Absent future Congressional action to extend these rate cuts, the maximum tax rate on capital gains would return to 20% in 2009, and the maximum rate on dividends and ordinary income would move to 35% in 2009 (39.6% in 2011).

REITs and the 15% Rate

With respect to REITs, the legislation provides some limited benefits in connection with the capital gain and dividend provisions. Because REITs receive a dividends paid deduction that enables them to regularly bypass the corporate tax, REIT dividends are generally ineligible for the 15% dividend rate. However, the 15% tax rate will apply to: (1) capital gains on the sale of REIT stock; (2) REIT capital gains distributions (except to the extent of real estate depreciation recapture, which continues to be taxed at 25%); (3) REIT dividends attributable to dividends received by the REIT from non-REIT corporations, such as taxable REIT subsidiaries; and (4) REIT dividends to the extent attributable to income that was subject to tax by the REIT at the corporate level (*e.g.*, "built-in gains" or when a REIT distributes less than 100% of its taxable income).

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