
VIRGINIA STATE BUDGET

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§ 3-5.08 CAPTIVE REAL ESTATE INVESTMENT TRUST

Notwithstanding any other provision of law, for taxable years beginning on and after January 1, 2009, a corporation that is a Captive Real Estate Investment Trust ("REIT") shall, in addition to the provisions of § 58.1-402, Code of Virginia, add the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code, to the extent excluded from federal taxable income.

a. For purposes of this section, a REIT is a Captive REIT if:

(1) It is not regularly traded on an established securities market;

(2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501 (a) of the Internal Revenue Code; and

(3) More than 25 percent of its income consists of rents from real property as defined in § 856 (d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of section a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of this section, the constructive ownership rules prescribed under § 318 (a) of the Internal Revenue Code, as modified by § 856 (d) (5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of this section:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to 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.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) 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 in § 856 (c) (5) (B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities.

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax.

(3) The entity distributes, on an annual basis, 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.

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual.

(5) The entity is organized in a country that has a tax treaty with the United States.

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