

CHAPTER 583

(Senate Bill 945)

AN ACT concerning

Income Tax – Captive Real Estate Investment Trusts

FOR the purpose of requiring that a certain deduction for dividends paid be added to federal taxable income to determine Maryland modified income of certain real estate investment trusts for Maryland income tax purposes; defining a certain term; providing for the application of this Act; and generally relating to a Maryland income tax addition modification in the amount of the dividends paid deduction for certain real estate investment trusts.

BY adding to

Article – Tax – General

Section 10–306.2

Annotated Code of Maryland

(2004 Replacement Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

10–306.2.

(A) IN THIS SECTION;

(1) “CAPTIVE REIT” MEANS A CORPORATION, TRUST, OR ASSOCIATION:

~~(1)~~ (I) THAT IS CONSIDERED A REAL ESTATE INVESTMENT TRUST FOR THE TAXABLE YEAR UNDER § 856 OF THE INTERNAL REVENUE CODE;

~~(2)~~ (II) THAT IS NOT ~~PUBLICLY TRADED~~ REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET; AND

~~(3)~~ (III) MORE THAN 50% OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF WHICH ARE, AT ANY TIME DURING THE LAST HALF OF THE TAXABLE YEAR, IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE PERSON OTHER THAN; ENTITY THAT IS SUBJECT TO THE PROVISIONS OF SUBCHAPTER C OF CHAPTER 1 OF THE INTERNAL REVENUE CODE; AND

(2) “CAPTIVE REIT” DOES NOT INCLUDE:

(I) A CORPORATION, TRUST, OR ASSOCIATION MORE THAN 50% OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTEREST OR SHARES OF WHICH, AT ANY TIME DURING WHICH THE CORPORATION, TRUST, OR ASSOCIATION SATISFIES ITEM (1)(III) OF THIS SUBSECTION, IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY:

~~(1)~~ 1. A REAL ESTATE INVESTMENT TRUST OTHER THAN A REAL ESTATE INVESTMENT TRUST DESCRIBED IN ITEM (1) OF THIS SUBSECTION; OR

~~(II)~~ A QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY UNDER § 856(I) OF THE INTERNAL REVENUE CODE.

2. A PERSON EXEMPT FROM TAXATION UNDER § 501 OF THE INTERNAL REVENUE CODE; OR

3. A LISTED AUSTRALIAN PROPERTY TRUST; OR

(II) SUBJECT TO REGULATIONS THAT THE COMPTROLLER ADOPTS, A REAL ESTATE INVESTMENT TRUST THAT IS INTENDED TO BECOME REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET AND THAT SATISFIES THE REQUIREMENTS OF § 856(A)(5) AND (6) OF THE INTERNAL REVENUE CODE BY REASON OF § 856(H)(2) OF THE INTERNAL REVENUE CODE.

(B) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 THROUGH 10-306.1 OF THIS SUBTITLE, AN AMOUNT EQUAL TO THE AMOUNT OF THE DIVIDENDS PAID DEDUCTION ALLOWED UNDER THE INTERNAL REVENUE CODE FOR THE TAXABLE YEAR IS ADDED TO FEDERAL TAXABLE INCOME TO DETERMINE THE MARYLAND MODIFIED INCOME OF A CAPTIVE REIT.

(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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2007, and shall be applicable to all taxable years beginning after December 31, 2006.

Approved by the Governor, May 17, 2007.