

SENATE BILL 968

Q3

3lr2434

By: **Senators King and Elfreth**

Introduced and read first time: February 28, 2023

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Captive Real Estate Investment Trusts – Alterations**

3 FOR the purpose of altering the definition of “captive REIT” for purposes of a certain
4 addition modification under the Maryland income tax in the amount of the federal
5 dividends paid deduction for captive real estate investment trusts to exclude, under
6 certain circumstances, corporations, trusts, or associations owned or controlled by
7 certain qualified foreign entities and certain trusts owned or controlled by a listed
8 Australian property trust; and generally relating to an addition modification under
9 the Maryland income tax for captive real estate investment trusts.

10 BY repealing and reenacting, with amendments,

11 Article – Tax – General

12 Section 10–306.2

13 Annotated Code of Maryland

14 (2022 Replacement Volume)

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

17 **Article – Tax – General**

18 10–306.2.

19 (a) **(1)** In this section[.] **THE FOLLOWING WORDS HAVE THE MEANINGS**
20 **INDICATED.**

21 **[(1)] (2) (I)** [“captive] **“CAPTIVE REIT”** means a corporation, trust, or
22 association:

23 **[(i)] 1.** that is considered a real estate investment trust for the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 taxable year under § 856 of the Internal Revenue Code;

2 [(ii)] 2. that is not regularly traded on an established securities
3 market; and

4 [(iii)] 3. **OF WHICH** more than 50% of the voting power or value of
5 the beneficial interests or shares [of which], at any time during the last half of the taxable
6 year, is owned or controlled, directly or indirectly, by a single entity that is subject to the
7 provisions of Subchapter C of Chapter 1 of the Internal Revenue Code[; and].

8 [(2)] (II) ["captive] **"CAPTIVE REIT"** does not include:

9 [(i)] 1. a corporation, trust, or association [more than 50% of the
10 voting power or value of the beneficial interests or shares] of which, at any time during
11 which the corporation, trust, or association satisfies [item (1)(iii) of this subsection]
12 **SUBPARAGRAPH (I)3 OF THIS PARAGRAPH, MORE THAN 50% OF THE VOTING POWER
13 OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE CORPORATION,
14 TRUST, OR ASSOCIATION** is owned or controlled, directly or indirectly, by:

15 [1.] A. a real estate investment trust other than a real
16 estate investment trust described in [item (1) of this subsection] **SUBPARAGRAPH (I) OF
17 THIS PARAGRAPH;**

18 [2.] B. a person exempt from taxation under § 501 of the
19 Internal Revenue Code; [or]

20 [3.] C. a listed Australian property trust, **OR AN ENTITY
21 ORGANIZED AS A TRUST IN WHICH A LISTED AUSTRALIAN PROPERTY TRUST OWNS
22 OR CONTROLS, DIRECTLY OR INDIRECTLY, 75% OR MORE OF THE VOTING POWER OR
23 VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE TRUST;** or

24 **D. A QUALIFIED FOREIGN ENTITY; OR**

25 [(ii)] 2. subject to regulations that the Comptroller adopts, a real
26 estate investment trust that is intended to become regularly traded on an established
27 securities market and that satisfies the requirements of § 856(a)(5) and (6) of the Internal
28 Revenue Code by reason of § 856(h)(2) of the Internal Revenue Code.

29 **(3) "QUALIFIED FOREIGN ENTITY" MEANS A CORPORATION, TRUST,
30 ASSOCIATION, OR PARTNERSHIP THAT IS ORGANIZED UNDER THE LAWS OF A
31 FOREIGN GOVERNMENT AND:**

32 **(I) AT LEAST 75% OF THE TOTAL ASSET VALUE OF THE ENTITY
33 AT THE CLOSE OF THE TAXABLE YEAR IS REPRESENTED BY REAL ESTATE ASSETS, AS
34 DEFINED IN § 856 OF THE INTERNAL REVENUE CODE, CASH AND CASH**

1 EQUIVALENTS, AND UNITED STATES GOVERNMENT SECURITIES;

2 (II) 1. IS NOT SUBJECT TO TAX ON AMOUNTS DISTRIBUTED
3 TO THE ENTITY'S BENEFICIAL OWNERS; OR

4 2. IS EXEMPT FROM ENTITY-LEVEL TAXATION;

5 (III) ON AN ANNUAL BASIS, DISTRIBUTES AT LEAST 85% OF THE
6 TAXABLE INCOME OF THE ENTITY, AS COMPUTED IN THE JURISDICTION IN WHICH
7 THE ENTITY IS ORGANIZED, TO THE HOLDERS OF THE SHARES OR CERTIFICATES OF
8 THE BENEFICIAL INTERESTS OF THE ENTITY;

9 (IV) 1. OF WHICH NOT MORE THAN 10% OF THE VOTING
10 POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE ENTITY IS
11 OWNED OR CONTROLLED DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY BY A
12 SINGLE ENTITY OR INDIVIDUAL; OR

13 2. THE BENEFICIAL INTERESTS OR SHARES OF THE
14 ENTITY ARE REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET; AND

15 (V) THE ENTITY IS ORGANIZED IN A FOREIGN COUNTRY THAT
16 HAS A TAX TREATY WITH THE UNITED STATES GOVERNMENT.

17 (b) In addition to the modifications under §§ 10-305 through 10-306.1 of this
18 subtitle, an amount equal to the amount of the dividends paid deduction allowed under the
19 Internal Revenue Code for the taxable year is added to federal taxable income to determine
20 the Maryland modified income of a captive REIT.

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.