<u>SB968 "Income Tax – CAPTIVE REITs – Alterations"</u>

Please SUPPORT

Sponsors – Senators King and Elfreth

Passed 46-0 in Senate

Who is Unibail-Rodamco-Westfield (URW)?

Unibail-Rodamco-Westfield is an owner, developer and operator of sustainable, high-quality real estate assets in the most dynamic cities in Europe and the United States.

The Group operates 78 shopping centers in 12 countries, including 45 which carry the iconic Westfield brand. These centers attract over 900 million visits annually and provide a unique platform for retailers and brands to connect with consumers. URW also has a portfolio of high-quality offices, 10 convention and exhibition venues in Paris, and a €3 Bn development pipeline of mainly mixed-use assets. Currently, its €52 Bn portfolio is 87% in retail, 6% in offices, 5% in convention and exhibition venues, and 2% in services (as of December 31, 2022).

What is URW's footprint in Maryland?

Westfield Annapolis -over 2000 jobs

Westfield Montgomery (Bethesda) – 3200 jobs

Westfield Wheaton – approximately 2800 jobs

*Cumulatively generating over $50 million per year in property and sales tax revenue to Maryland governments.

What is URW planning for Montgomery Mall?

The Planning Board unanimously approved the plans, which were first announced in the fall of 2018. The plans include 2.9 million square feet of new retail space and 717 residences.

What is a REIT?

- A real estate investment trust (REIT) is a company that owns, operates, or finances income-producing properties.
- REITs generate a steady income stream for investors but offer little in the way of capital appreciation.
- Most REITs are publicly traded like stocks, which makes them highly liquid (unlike physical real estate investments).
- REITs invest in most real estate property types, including apartment buildings, cell towers, data centers, hotels, medical facilities, offices, retail centers, and warehouses.

How are REITs Taxed?

REITs are corporations that do not pay corporate taxes but distribute most of their profits as dividends to shareholders. REIT dividends are taxed as one of three types of return: **ordinary income, capital gains, or returns of capital**. Ordinary income is taxed at the highest rate, while capital gains and returns of capital are taxed at lower rates. REIT investors can deduct 20% of their taxable dividend income until Dec. 31, 2025, which reduces the effective tax rate on qualified REIT dividends.

What is a CAPTIVE REIT?

The definition of CAPTIVE REIT was created to identify the REITs that would be subjected to an "add-back" of dividend income deducted on the federal return. Typically, CAPTIVE REITs were formed by parent companies to avoid taxes at the state and local level.

Why are CAPTIVE REITs taxed Differently?

CAPTIVE REITs are required to "add-back" the amount of dividends paid deduction taken under federal law. This was deemed necessary in many states to prevent corporations from establishing REITs as a way of taking rent expense deductions on state taxes – without paying taxes on the dividends.

When did Maryland Adopt the CAPTIVE REIT legislation?

Maryland passed the CAPTIVE REIT add-back in 2007. This was the result of news stories demonstrating how CAPTIVE REITs were engaged in tax avoidance schemes.

Why did Maryland exclude Australian REITs from the CAPTIVE REIT Tax Provisions?

The legislation stated that a CAPTIVE REIT does not include "a listed Australian property trust." This was done in part due to recognition that foreign REITs were not engaging in the same tax avoidance schemes, and due to the presence of significant property interests held by Westfield (an Australian REIT at the time).

Why is there a problem today?

Arguably, limiting the exclusion to "Australian" REITs violates the federal commerce clause provisions that prohibit state actions discriminating against foreign countries. Plus, Westfield (now URW) is no longer an Australian REIT – it is owned by Dutch/French entities.

What does SB968 do to fix the current problem?

SB968 adopts model law language from the Multistate Tax Commission. The MTC published its model law in 2008 – after MD adopted its provisions in 2007. Maryland has not revisited the 2007 since adoption – and therefore has not considered the MTC language. The MTC model language provides that certain foreign entities are NOT CAPTIVE REITs if they meet certain conditions.

What are the impacts of enacting SB968?

With regard to URW, this bill preserves the tax status on URW. With regard to any other foreign qualified entities, the Comptroller's office has advised that the maximum reduction in tax revenue is $500,000 "but it could be far less."

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On behalf of Unibail Radamco Westfield (URW)