

SENATE BILL NO. 2089

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of
2 the North Dakota Century Code, relating to the add-back of dividends paid by captive real
3 estate investment trusts for income tax purposes; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.3 of the North
6 Dakota Century Code is created and enacted as follows:

7 Increased by the amount of the dividends paid deduction otherwise allowed
8 under section 857 of the Internal Revenue Code of 1986, as amended, if the
9 real estate investment trust is a captive real estate investment trust.

10 (1) For purposes of this subdivision:

11 (a) "Captive real estate trust" means a real estate investment trust
12 the shares or beneficial interests of which are not regularly traded
13 on an established securities market, and more than fifty percent
14 of the voting power or value of the beneficial interests or shares
15 of the real estate investment trust are owned or controlled,
16 directly, indirectly, or constructively, by a single entity that is:

17 [1] Treated as an association taxable as a corporation under
18 the Internal Revenue Code of 1986, as amended; and

19 [2] Not exempt from federal income taxation under
20 section 501(a) of the Internal Revenue Code of 1986, as
21 amended.

22 (b) "Listed Australian property trust" means an Australian unit trust
23 registered as a managed investment scheme under the
24 Australian Corporations Act in which the principal class of units is

1 listed on a recognized stock exchange in Australia, and is
2 regularly traded on an established securities market, or an entity
3 organized as a trust, provided that a listed Australian property
4 trust owns or controls, directly or indirectly, seventy-five percent
5 or more of the voting power or value of the beneficial interests or
6 shares of such trust.

7 (c) "Qualified foreign entity" means a corporation, trust, association,
8 or partnership organized outside the laws of the United States,
9 and which satisfies all of the following criteria:

10 [1] At least seventy-five percent of the entity's total asset value
11 at the close of its taxable year is represented by real estate
12 assets as defined in section 856(c)(5)(B) of the Internal
13 Revenue Code of 1986, as amended, including shares or
14 certificates of beneficial interest in any real estate
15 investment trust, cash and cash equivalents, and United
16 States government securities;

17 [2] The entity is not subject to tax on amounts distributed to its
18 beneficial owners or is exempt from entity level taxation;

19 [3] The entity distributes at least eighty-five percent of its
20 taxable income, as computed in the jurisdiction in which it
21 is organized, to the holders of its shares or certificates of
22 beneficial interest on an annual basis;

23 [4] Not more than ten percent of the voting power or value in
24 the entity is held directly or indirectly or constructively by a
25 single entity or individual, or the shares or beneficial
26 interests of such entity are regularly traded on an
27 established securities market; and

28 [5] The entity is organized in a country that has a tax treaty
29 with the United States.

30 (d) "Real estate investment trust" has the meaning ascribed in
31 section 856 of the Internal Revenue Code of 1986, as amended.

- 1 (2) For the purposes of applying subparagraph a of paragraph 1, the
2 following entities are not considered an association taxable as a
3 corporation:
- 4 (a) A real estate investment trust other than a captive real estate
5 investment trust;
- 6 (b) A qualified real estate investment trust subsidiary under
7 subsection i of section 856 of the Internal Revenue Code of
8 1986, as amended, other than a qualified real estate investment
9 trust subsidiary of a captive real estate investment trust;
- 10 (c) A listed Australian property trust; and
- 11 (d) A qualified foreign entity.
- 12 (3) A real estate investment trust that is intended to be regularly traded on
13 an established securities market and that satisfies the requirements of
14 sections 856(a)(5), 856(a)(6), and 856(h)(2) of the Internal Revenue
15 Code of 1986, as amended, shall not be deemed a captive real estate
16 investment trust within the meaning of this subdivision.
- 17 (4) A real estate investment trust that does not become regularly traded on
18 an established securities market within one year of the date on which it
19 first became a real estate investment trust shall be deemed not to have
20 been regularly traded on an established securities market, retroactive to
21 the date it first became a real estate investment trust, and shall file an
22 amended return reflecting the retroactive designation for any tax year or
23 part-year occurring during its initial year of status as a real estate
24 investment trust. For purposes of this subdivision, a real estate
25 investment trust becomes a real estate investment trust on the first day
26 that it has both met the requirements of section 856 of the Internal
27 Revenue Code of 1986, as amended, and has elected to be treated as
28 a real estate investment trust under section 856(c)(1) of the Internal
29 Revenue Code of 1986, as amended.
- 30 (5) For purposes of this subdivision, the constructive ownership rules of
31 section 318(a) of the Internal Revenue Code of 1986, as amended, as

1 modified by section 856(d)(5) of the Internal Revenue Code of 1986, as
2 amended, apply in determining the ownership of stock, assets, or net
3 profits of any person.

4 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
5 December 31, 2008.