

SENATE BILL NO. 2089
with House AmendmentsSixty-first
Legislative Assembly
of North Dakota

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
2 of the North Dakota Century Code, relating to the add-back of dividends paid by captive real
3 estate investment trusts for income tax purposes; to repeal sections 57-02-24 and 57-02-25 of
4 the North Dakota Century Code, relating to elimination of obsolete provisions relating to listing
5 and assessment of severed coal and mineral interests; and to provide an effective date.

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

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

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

12 (1) For purposes of this subdivision:

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

20 [1] Treated as an association taxable as a corporation under
21 the Internal Revenue Code of 1986, as amended; and

22 [2] Not exempt from federal income taxation under
23 section 501(a) of the Internal Revenue Code of 1986, as
24 amended.

1 (b) "Listed Australian property trust" means an Australian unit trust
2 registered as a managed investment scheme under the
3 Australian Corporations Act in which the principal class of units is
4 listed on a recognized stock exchange in Australia, and is
5 regularly traded on an established securities market, or an entity
6 organized as a trust, provided that a listed Australian property
7 trust owns or controls, directly or indirectly, seventy-five percent
8 or more of the voting power or value of the beneficial interests or
9 shares of such trust.

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

- 13 [1] At least seventy-five percent of the entity's total asset
14 value at the close of its taxable year is represented by real
15 estate assets as defined in section 856(c)(5)(B) of the
16 Internal Revenue Code of 1986, as amended, including
17 shares or certificates of beneficial interest in any real
18 estate investment trust, cash and cash equivalents, and
19 United States government securities;
- 20 [2] The entity is not subject to tax on amounts distributed to its
21 beneficial owners or is exempt from entity level taxation;
- 22 [3] The entity distributes at least eighty-five percent of its
23 taxable income, as computed in the jurisdiction in which it
24 is organized, to the holders of its shares or certificates of
25 beneficial interest on an annual basis;
- 26 [4] Not more than ten percent of the voting power or value in
27 the entity is held directly or indirectly or constructively by a
28 single entity or individual, or the shares or beneficial
29 interests of such entity are regularly traded on an
30 established securities market; and

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

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

(2) For the purposes of applying subparagraph a of paragraph 1, the following entities are not considered an association taxable as a corporation:

(a) A real estate investment trust other than a captive real estate investment trust;

(b) A qualified real estate investment trust subsidiary under subsection i of section 856 of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(c) A listed Australian property trust; and

(d) A qualified foreign entity.

(3) A real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of sections 856(a)(5), 856(a)(6), and 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this subdivision.

(4) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first became a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part-year occurring during its initial year of status as a real estate investment trust. For purposes of this subdivision, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as

1 a real estate investment trust under section 856(c)(1) of the Internal
2 Revenue Code of 1986, as amended.
3 (5) For purposes of this subdivision, the constructive ownership rules of
4 section 318(a) of the Internal Revenue Code of 1986, as amended, as
5 modified by section 856(d)(5) of the Internal Revenue Code of 1986, as
6 amended, apply in determining the ownership of stock, assets, or net
7 profits of any person.

8 **SECTION 2. REPEAL.** Sections 57-02-24 and 57-02-25 of the North Dakota Century
9 Code are repealed.

10 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
11 December 31, 2008.